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Abridged Reports

of the

Interstate Commerce Commission

and

Current Digest of Decisions

UNDER THE
INTERSTATE COMMERCE ACT

(SUPPLEMENTAL DIGEST No. VIII)
(85 I. C. C. to 112 I. C. C.)

BY
HERBERT C. LUST
OF THE
CHICAGO BAR

Author: Consolidated, Supplemental and Quarterly Digests of Decisions Under the Interstate Commerce Act. The Abridged Reports, The Law of Loss and Damage Claims, Etc.

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PREFACE

It is now over twenty years since the author first began to specialize in interstate commerce matters. In that time a great change has taken place in the field of traffic law. From 1887 to 1908 all the decisions of the Commission could have been digested in manner similar to the Lust Digests into a volume of about 250 pages. After the passage of the amended Act in 1906, the Commission became very much more active. The year 1910 when teeth were put into the law, really marked the beginning of the period of intensest activity on the part of the Commission. So from 1908 to 1912 it took a volume of about 1000 pages, being the first volume of our set of Abridged Reports and Digest of Decisions, to digest the decisions of the Commission.

Since that time the work of the Commission has ever increased, so that every year a volume of almost 1000 pages could be issued.

The Abridged Reports in the bound form are published every two years. Thus No. 8 the volume preceding this, and also known as Supplemental Digest No. 7, is a volume of 1400 pages. The present volume is the same.

Recognizing that the Lust Digests have become a trifle cumbersome for quick reference, that is to solve a situation or settle a disputed point in a few minutes, we published in 1925 the Consolidated Digest in two volumes.

This set had a double purpose.

It was a complete Digest of Decisions of the Commission from 1887 to 1908, the period that was not covered by the original Lust Digests.

In addition from that time on, while it rendered immediately accessible only the high lights of the commission's work, it did contain a reference to every principle and every case decided under the particular subject.

A problem of economy has now arisen in supplementing the Consolidated Digest. Economy in financial investment as well as in time of the subscriber. It is recognized that there are a number of sub-

scribers to the Consolidated who are also subscribers to the Abridged Reports.

To give them two volumes containing practically the same information would appear to be a useless expenditure of money on their part and at the same time confusing to them.

Furthermore, the additional investment necessary on the part of the publisher would be large.

In this case it might be interesting to observe that in 1926 Senator Hawes introduced a resolution in Congress, directing the Commission to prepare its own Digest, and that the same should be printed by the public printer. The resolution was passed.

The following day Senator Curtis called attention to the fact that the mere cost of printing alone to the government would be $60,000.00, without figuring the cost of compilation. The resolution was thereupon rescinded. As a matter of fact, the Abridged Reports and Current Digests, of which this is Volume IX, could not possibly be duplicated for less than $125,000.00.

The field is limited. The publication has never been remunerative and has been continued by the author as a matter of pride, because from the many letters of commendation constantly being received, he has believed it was useful.

The volume presented here accomplishes a three-fold purpose. It is Supplemental No. 8 of the "Digest of Decisions Under The Interstate Commerce Act." It is volume 9 of the "Abridged Reports and Current Digests." It is also volume 3 of the "Consolidated Digest of Decisions Under The Interstate Commerce Act."

There is contained in this volume all decisions of the Interstate Commerce Commission, and of the various United States and states' courts construing the Interstate Commission Act, decided since publication of the preceding volume. This takes in all the decisions from 85 I. C. C. through 112 I. C. C. Roughly the period covered is from the latter part of 1924 to almost the end of 1926.

This book is arranged alphabetically, similar to the preceding volumes, by such subjects as are the ordinarily accepted divisions into which the principles governing interstate traffic naturally classify themselves. This can best be seen by referring to the Table of Contents, which immediately follows, and is a reprint of the entire classification. It is earnestly recommended that readers study this classification, printed in the front of the book. By seeing the entire

classification together, it is easier to become familiar with it, and it will be found a simple way of finding the decisions desired.

The classification, section numbers, and topics in this volume, with the exception of the new subjects added, are exactly the same as in the other volumes, so that when the reader finds decisions of interest in any volume, he can turn to the same subject and section number in any book and obtain all other distinctions and variations on that principle.

Owing to the rapid development of traffic law, some new subjects have been added, which were not in the other volumes, because at the time of their publication, such divisions of the law had not yet been developed. Others will be found greatly amplified since the publication of the preceding volume.

It is again earnestly suggested that readers of this book study the Table of Contents very carefully. As about ten thousand points of traffic law are classified, it can readily be understood that familiarity with the classification is necessary to make the book of the quickest available use. It has been attempted to evolve a logical and careful analysis of the field of traffic law and a classification which affords a birds-eye view of the entire subject. But no classification is self executing.

Inasmuch as there are many points which may not be logically classified under a particular head, but which may, nevertheless, have some bearing on it, cross-references are inserted redirecting the reader to such points.

In all cases where it is possible to do so a so-called "fact point" has been made. These "fact points" show tersely, but completely, all evidence on which the Interstate Commerce Commission or the court bases its decision in the particular case. The author has attempted to summarize in an easy, readable style, ton-mile revenues, distances, commodities, rate comparisons and other evidence presented in the particular case. Not only therefore, have all traffic principles been classified but also the economic principles and facts governing each particular case.

The decisions are arranged chronologically under each section, the most recent decisions being placed last.

At the back of the book will be found indexes to the cases involved. In the previous volumes are indexes also to the commodities and localities. The Commission is now preparing an index of commodities and localities from the inception of the Commission. There

is also published by private interests a cumulative index of commodities. The demand for such indexes in the one volume does not appear intense and such indexes are therefore discontinued. It is believed more benefit will be derived by the subscriber in eliminating any feature which subsequent development may cause to become mere "padding."

The author takes this opportunity of thanking the many subscribers whose kindly letters of appreciation have been a real reward for the large expenditure of personal time involved in the preparation of this work.

HERBERT C. LUST.

Chicago, Ill., October, 1927.

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CROSS REFERENCES

See Common Carrier; Switch Tracks and Switching; Tap Lines.

I. APPLICATION OF ABSORBED RATE.

§1. In General.

(a) M. P., respondent, proposed to cancel its rules pertaining to the absorption of switching charges on traffic originating at or destined to North Kansas City, Mo., and to make effective in lieu thereof its present absorption rules applicable on traffic originating at or destined to Kansas City, Mo., Kas. The effect of the proposed change will be to discontinue respondents present practice of absorbing the charge for the switching service necessary to reach industries located off its line at North Kansas City on carload traffic originating at or destined to certain of respondent's local points. This will increase the freight charges payable by the shipper on traffic between certain local points of respondent and North Kansas City by $6.30 per car. North Kansas City is a separate municipality but within the limits of the Kansas City switching district. Generally speaking respondent absorbs the charges for switching to and from industries off its line in Kansas City from and to competitive points, but does not absorb charges on traffic from and to noncompetitive points on its line. If the schedules under suspension are permitted to become effective all industries similarly situated within the Kansas City switching limits, including those in North Kansas City, will be upon the same basis, and the existing preference in favor of protestant and other industries at North Kansas City will be removed. Respondent's practice of absorbing the switching charges of the Burlington at St. Joseph, Mo., is one for which respondent alone is responsible. Its participation in joint rates with the Burlington on traffic which moves from St. Joseph to Kansas City is not necessary, because it has its own rails from St. Joseph to Kansas City. Its withdrawal from participation in those joint rates would put an end to the necessity urged by it as justification for its practice of absorbing the Burlington's switching charges at St. Joseph. HELD, all shippers similarly situated within the Kansas City switching district should be placed on the same basis. HELD, proposed schedules not justified but schedules may be filed which will accomplish the same result without violating the fourth section. Switching charges at North Kansas City, Mo., 91 I. C. C. 369.

(b) Shipment moved from Cushing, Okla., to Lawn switch, a point within the Omaha, Nebr., switching limits. Carrier assessed a charge for movement from Omaha to Lawn switch, in addition to charges to Omaha. HELD: Shipment found overcharged as applicable tariff of line-haul carrier provided for absorption of connecting lines' switching charges at Omaha. Reparation awarded. Douglas County, Nebraska v. A., T. & S. F., 92 I. C. C. 717.

II. DISCRIMINATION.

See Discrimination.

§1½. In General.

(a) Proposed cancellation of absorption of the North Shore's switching charge at Racine and Racine Junction, Wis., on all interstate traffic found not justified. The record shows that industries in the vicinity of Racine, apparently in substantially the same situation as protestant's plant, have all or a portion of their switching charges absorbed by the line-haul carrier and it would be unreasonable to continue that practice and to deny similar treatment to protestant. Undue prejudice would be created if the Milwaukee were permitted to cancel the absorption of $2.50 on crushed stone from protestant's plant and continue a like absorption from the

competing plant at Ives. Absorption of Switching at Racine and Racine Junction,Wis., 101 I. C. C. 60.

§2. Absorption Subsequent to Shipment.

(a) Contention that admissions on part of carriers, by their offer to perform spotting service, their subsequent absorption of charge for that service, and payment of reparation, and admission on part of director general, by offer of settlement, establishes fact that line-haul rates included spotting service at points of loading and unloading, or at point of final placement within plants. HELD, these admissions, although entitled to consideration, are not conclusive. Director General is not chargeable with concessions which may have been made by corporations which succeeded him. His offer was in nature of a compromise, and in accordance with familiar rules of law is not to be held against him. Pressed Steel Car Co. v. Director General, 93 I. C. C. 224, 232.

§3. Refusal to Absorb.

See Compress Companies and Charges II (g) (k), III (a); Facilities and Privileges §3 (a).

(a) Complainant alleged practice of defendants in restricting absorption of outbound switching charges at Toledo, O., between March, 1920, and April, 1922, resulted in the exaction by defendants of through charges on grain, grain products and feed, originating at points west and southwest thereof, milled in transit at, and the finished products forwarded from Toledo to various eastern and southeastern destinations as unreasonable and unduly prejudicial to extent they included certain unabsorbed switching charges. Complainant's mill is on the terminal, and its competitors at Chicago, Peoria, St. Louis, Indianapolis, Detroit, Cleveland, Cincinnati, Columbus and Buffalo dispose of their products in the same general territory. With some exceptions it is and has been the practice of the line haul carriers in central territory to absorb charges for movements to and from feed mills located on rails of terminal lines. The published through rates are the same via the several competing points and the absorption of switching charges, where such service is rendered, results in shippers being placed on an equality with respect to their through transportation charges. Prior to March, 1918, it was the custom for defendants to absorb the switching charges of the terminal, but on that date they continued to absorb only a part thereof coincident with an increase in the switching charges of the terminal, but in April 1, 1922, the charge of the terminal was reduced to an equality with the absorption rules of defendants. During the period in question complainant has been required to pay varying amounts in excess of the through rates, whereas shippers located at competing points served by these defendants, where the situation is not shown to be substantially dissimilar, have not been required to do so. HELD, failure of defendants to absorb the switching charge of the terminal during the period in question unreasonable, reparation awarded. Larrowe Milling Co. v. A. A. R. R., 92 I. C. C. 32.

(b) L. & N., respondent, proposed to restrict the amount of switching charges absorbed by it at Gulfport, Miss., on carload traffic destined to New Orleans, La., to amounts not in excess of those applicable on similar traffic to other destinations. The tariff now provides the L. and & N. will absorb the switching charges of the G. & S. I. on all car load freight from Gulfport, Miss., to New Orleans, the suspended schedules proposing to cancel this provision, which will leave the general absorption provisions of the tariff at Gulfport the same on traffic destined to New Orleans as to all other places. On March 12, 1924, the G. & S. I. increase its switching charges from certain industries to a large amount, and to protect its revenue from this traffic from undue depletion respondent filed the proposed schedules. The preponderance of all traffic will ordinarily move between Gulfport and New Orleans over the lines of respondent's competitors. There need be no actual increase in rates and charges to any shipper from Gulfport to New Orleans. No public good would be subserved by the maintenance of a preference of traffic destined to New Orleans over traffic destined to other points. HELD, proposed schedules justified. Absorption of switching charges at Gulfport, 92 I. C. C. 168.

(c) Failure of defendants to absorb total switching charges of the Toledo Terminal R. R. at Toledo, found unreasonable, and through charges on grain, grain products, and feed stuffs, milled in transit at Toledo, found unreasonable to extent they included such unabsorbed switching charges. Line-haul

carriers in c. f. a. territory generally absorb charges for movements to and from feed mills located on rails of so-called switching, belt, or terminal lines, and shippers at competing points, where the situation is substantially similar, have not been required to pay anything in excess of the through rate. Switching charges were subsequently reduced to a point equaling amounts absorbed by line-haul carriers. Reparation awarded. Larrowe Milling Co. v. A. A. R. R., 92 I. C. C. 32.

(d) Proposal of L. & N. R. R. to cancel its unlimited absorption of switching charges of the Gulf & Ship Island at Gulfport, Miss., on c. l. traffic destined to New Orleans, and to restrict its absorption to amounts not in excess of those applicable on similar traffic to other destinations, found justified. No traffic has moved from industries where the proposed restriction would result in increases, preponderance of all traffic will ordinarily move between Gulfport and New Orleans over competing lines, and no public good would be subserved by the maintenance of a preference of traffic destined to New Orleans over traffic destined to other points. Absorption of Switching Charges at Gulfport, 92 I. C. C. 168.

(e) Nonabsorption by Lehigh Valley at Elmira, N. Y., of switching charges of the Pennsylvania on anthracite coal moving from Hazelton, Pa., found not unreasonable or unduly prejudicial. While Lehigh Valley absorbs connecting lines' switching charges at other New York points, at still others no absorptions are made. Those here involved were discontinued when the Lehigh Valley reduced its rates to Elmira in conformity with rates prescribed for other lines in Anthracite case, 35 I. C. C. 220. Chapel v. P. R. R., 92 I. C. C. 662.

III. CONTROL AND REGULATION.

See Control and Regulation.

§4. In General.

(a) The commission can not compel trunk lines to absorb switching charges of connecting lines in absence of unjust discrimination or undue prejudice. Wood & Son, 45 I. C. C. 587, 589. Simms Oil Co. v. H. & T. C. R. R. Co., 85 I. C. C. 537, 539.

IV. REASONABLENESS.

§5. In general.

See Reasonableness of Rates.

(a) Complainant alleged failure of defendants to absorb switching charges of the Minneapolis Eastern and Minneapolis Western on grain, in carloads, shipped in 1920 and 1921 from South Dakota to industries on the rails of those carriers and also to industries on other lines reached in connection with those lines, resulted in connection with those roads of rates that were unreasonable, unjustly discriminatory, unduly prejudicial and without tariff authority. Complainants case is grounded primarily upon 247 U. S. 490. The record does not establish that the switching charge attacked was unreasonable per se or that collection thereof in addition to the line haul rate resulted in the exaction of unreasonable charges for the entire transportation furnished. HELD, charges attacked not unreasonable, complaints dismissed. Shanard Elevator Co. v. M. E. Ry., 93 I. C. C. 151.

(b) L. N., respondent, proposed to restrict the absorption by it of switching charges on coal, carloads, from stations and mines on its line in eastern Tennessee and southeastern Kentucky to points within the switching limits, suburbs, and industrial limits of Atlanta, Ga. Respondent has its own line from the coal fields to Cartersville, Ga., where connection is made with the N. C. St. L., over whose rails it operates to Atlanta under trackage rights. Under the tariffs now in effect the L. & N., absorbs the entire switching charges of connecting lines at Atlanta and the receivers of coal pay the flat Atlanta rate. Respondent proposed to restrict its absorption of switching on coal to industries in the Atlanta district of $2.25 per car, which has been its policy with respect to the absorption of switching charges of the Southern Ry. since 1906. Thus switching charges of connecting lines at Atlanta, in excess of $2.25 per car would be added to the line haul rate and would be paid by receivers of coal. While it is desirable, in the interest of uniformity, for the L. & N., to revise the absorption by it of connecting lines switching charges at Atlanta so that the amount which it absorbs is the same with respect to all lines serving Atlanta,

such revision must not be accomplished in such manner as to materially increase the total charges which receivers of coal must pay. The present level of rates from L. & N., mines to the Atlanta industrial district are not unreasonably low, particularly as the L. & N., transports the traffic over its own line under operating conditions which are favorable, and as it restricts the rate to the route over its own line, although there are other routes in connection with the Southern Ry. which are feasible and which can be used to advantage without any increase in the rate. HELD, changes proposed not justified. Coal & Coke to Atlanta, 98 I. C. C. 11.

(c) Overruling Conf. Ruling 341. FOUND, that where a common carrier subject to the act performs an intermediate service in connection with traffic moving at joint rates, it should concur in such joint rates and receive divisions thereof, divisional arrangements to be so adjusted as to, in effect, result in absorption of the common carrier's division by the line that delivers traffic to it. Peoria & Pekin Union Ry., 93 I. C. C. 3, 22.

(d) Proposed restriction of absorption of switching charges on coal from L. & N. R. R. stations and mines in Tennesee and Kentucky to points within the switching limits, suburbs, and industrial limits of Atlanta, Ga., which would result in increased rates to Atlanta, found not justified. The present level of rates from L. & N. mines in Tennessee and Kentucky to Atlanta Industrial district is not unreasonably low, particularly as the L. & N. transports the traffic over its own line under operating conditions which are favorable, and as it restricts the rate to the route over its own line, although there are other routes in connection with the Southern Ry. which are feasible and which can be used to advantage without an increase in the rate. Coal and Coke from Kentucky and Tennessee Mines to Atlanta, 98 I. C. C. 11.

(e) Fact that absorption provisions of the carrier at point of origin, during Federal control, were less liberal than at other points found not to have resulted in unreasonable charges on sand from Falls Creek, Pa., to Vandergrift, Pa. Complaint dismissed. United Engineering & Foundry Co. v. Director General, 98 I. C. C. 447.

V. REPARATION.

See Reparation.

§6. **In General.**

(a) In 91 I. C. C. 300, the Commission found that defendants had failed to justify increased rates during the period from April 1, 1914 to April 14, 1915, in so far as they resulted in transportation charges exceeding those contemporaneously in effect to and from trunk line points in the same rate district; and that the aggregate charges were unjust and unreasonable. The increased rates were brought about by the trunk lines discontinuing their absorption of the switching charges of the industrial roads heretofore found to have been common carriers subject to the act, lawfully entitled to receive from their respective trunk line connections divisions of joint rates or absorptions of switching charges under appropriate tariff provisions, such divisions or absorptions to be reasonable. HELD, reparation awarded. Jones & Laughlin Steel Co. v. P. & L. E. R. R., 93 I. C. C. 637.

(b) Following Jones & Laughlin Steel Co., 91 I. C. C. 300, reparation awarded complainants and interveners in respect of interstate shipments on which they paid charges of the Monongahela connecting, South Buffalo, and Union railroads, in addition to district rates of trunk-line connections, defendants having failed to justify increased rates during nonabsorption period in so far as they resulted in transportation charges exceeding those contemporaneously in effect to and from trunk-line points in same rate districts, the aggregate charges applicable during period of nonabsorption having been found unreasonable to that extent in the cited case. Jones & Laughlin Steel Co. v. P. & L. E., 93 I. C. C. 637.

ACCOUNTING

I. POWER TO REGULATE.

§1. Jurisdiction of Commission.

II. APPLICATION TO RATES.

§3. In general.
§4. Necessity of uniform accounting.
§5. Construction of Commission's rules.
§6. Cost accounting.
§7. Destruction of record.

II. APPLICATION TO RATES
§5. Construction of Commission's Rules.

ALL CITATIONS

Oklahoma S. W. Ry. Co. v. St. L. S. F. Ry. Co., 88 I. C. C. 235.

ACROSS LAKE RATES

(a) Complainant attacked commodity rates on silicate of soda, in tank cars, from Carrollville, Wis., to Grand Rapids, Mich., of 19.5c in effect prior to March 15, 1922, and 18.5c thereafter, as unreasonable, unjustly discriminatory and unduly prejudicial. Carrollville is on the Northwestern 12.5 miles south of Milwaukee. The general basis of rates on silicate of soda in central territory is 85 per cent of sixth class. Since Jan. 3, 1922, Carrollville has taken the same class rates as Milwaukee on traffic to Grand Rapids moving over the cross lake routes, which are the car ferry routes of the G. T. and P. M. Over the all rail route the distance from Milwaukee to Grand Rapids is 269 miles; over the cross lake route 118 miles via G. T., 204 via P. M., and over C. & N. W., through Manitowoc, Wis., and P. M., 243 miles. The all rail class rates from Milwaukee to Grand Rapids which apply from Carrollville are higher than the class rates from Milwaukee to Grand Rapids via cross lake. Prior to Jan. 13, 1922, Carrollville took the Waukegan, Ill., rates via cross lake routes but on that date it was placed on the Milwaukee basis. On March 15, 1922, the carrier canceled the cross lake commodity rate of 19.5c from Carrollville and substituted 85 per cent of sixth class or 18.5c prior to July 1, 1922, and 16.5c thereafter. HELD, rate attacked not unreasonable or otherwise unlawful, complaint dismissed. American Fibre Package Company v. C. & N. W. Ry., 91 I. C. C. 334.

(q) Respondents increased local, proportional, and reshipping rates on grain, grain products, and grain by-products in carloads, from west bank Lake Michigan ports across lake, upper Mississippi river crossings, St. Louis, Mo., Chicago, Cairo, Thebes, Peoria, Springfield and other interior Illinois basing points to destinations in a limited area situated midway between Cleveland and Youngstown, Ohio. The purpose of the proposed adjustment is substantially the same as that of 101 I. C. C. 7, in which the suspended schedules were found not justified as they would create violations of the fourth section. It is proposed to change the rate basis from the Cleveland to the Youngstown group. Shipments from Chicago to this destination area generally move through Cleveland. Fourth section violations would be created at points of origin covered by the suspended schedules in that rates by such points from more distant points would remain on the Cleveland basis. HELD, suspended schedules not justified without prejudice to the publication of the Youngstown basis of rates on the traffic herein considered provided that the unlawful situations referred to herein are avoided. Grain and grain products between c. f. a. points, 101 I. C. C. 662.

ACT TO REGULATE COMMERCE

I. CONSTITUTIONALITY.
II. INTERPRETATION IN GENERAL.
III. TIME OF TAKING EFFECT.
IV. ENFORCEMENT.
V. AMENDMENTS.
§1. War Legislation.
VI. TRANSPORTATION ACT.
§2. Construction in general.

CROSS REFERENCES

See Bills of Lading §1a; Carmack Amendment; Commodities Clause; Crimes §2; Cummins Amendment; Discrimination; Government Control; Interstate Commerce; Long and Short Hauls II; Loss and Damage I; Panama Canal Act; Special Contracts II; State Rates and Regulations; Telephone and Telegraph Companies III; Transportation Act; War Legislation.

I. CONSTITUTIONALITY.

See Discrimination §1; Loss and Damage §1, §2; Pipe Lines §2; State Rates and Regulations.

(a) The constitutional power of Congress to regulate interstate and foreign commerce is supreme, and cannot be rendered important by anything a state may do. City of Newark v. Central Ry. Co. of New Jersey, 297 Fed. 77.

(b) Where act is of such character that it may be general in its application to a subject which demands uniformity of regulation, power of Congress to act

is exclusive, and states may not legislate whether Congress has acted or not; but, where no such uniformity is required, the states may legislate until Congress has acted. Whitman v. Northern Cent. Ry. Co., (Md., 1924), 127 Atl. 112.

(c) In prescribing limitation, Congress is not restricted by Const, U. S. art. 1, §10, prohibiting impairment of contracts, which applies solely to states, but is controlled equally with latter by prohibition against deprivation of property without due process. Philadelphia, B. & W. R. Co. v. Quaker City Flour Mills Co., (Pa., 1925) 127 Atl. 845.

(d) Statutes of limitation are statutes of repose, enacted for common weal to quiet threatened disputes or litigation, and generally apply to actions occurring after passage, unless expressly, or by necessary implication, made to cover existing rights of action. Philadelphia, B. & W. R. Co. v. Quaker City Flour Mills Co., (Pa., 1925) 127 Atl. 845.

(e) Legislative determination as to what period for bringing suits on causes of action existing when act was passed is reasonable should not be interfered with by courts, unless time allowed is so short as not to give parties affected reasonable opportunity to protect rights under new laws. Philadelphia, B. & W. R. Co. v. Quaker City Flour Mills Co., (Pa., 1925) 127 Atl. 845.

(f) Congress may prescribe limitation, where none existed, or change one already established; parties having no vested right in particular limitation. Philadelphia, B. & W. R. Co., v. Quaker City Flour Mills Co., (Pa., 1925) 127 Atl., 845.

(g) As operation of public service motor vehicles in interstate commerce admits of and requires uniform regulation, it is exclusively within national domain, and nonaction by Congress does not warrant regulation by state, but merely indicates congressional will that such commerce shall be free and untrammeled. Newport Electric Corporation v. Oakley (R. I., 1925), 129 Atl. 613.

(h) Power of state to tax goods from other states is not measure of powers of Congress over interstate commerce. United States v. Live Poultry Dealers' Protective Ass'n, 4 Fed. 2d 840.

(i) There can be no divided authority over interstate commerce, the acts of Congress on the subject being supreme and exclusive. Missouri Pac. R. Co. v. Stroud, 45 Sup. Ct. 243.

(j) Power of Congress to regulate commerce with foreign nations and among the states is supreme. City of Newark v. Central R. Co. of New Jersey 45 Sup. Ct. 328.

ALL OTHER CITATIONS

Lilly Co. v. O. S. L. R. R. Co., 85 I. C. C. 644; C., M. & St. P. Ry. Co. v. U. P. R. R. Co., 88 I. C. C. 312.

II. INTERPRETATION IN GENERAL.

See Crimes §2; Discrimination §1; Export Rates and Facilities §1½; Long and Short Hauls II, §2½; Loss and Damage §2; Panama Canal Act.

(a) The new act seeks afiirmatively to build up a system of railways prepared to handle promptly all the interstate traffic of the country. It aims to give the owners of the railways an opportunity to earn enough to maintain their properties and equipment in such a state of efficiency that they can carry well this burden. To achieve this great purpose, it puts the railroad systems of the country more completely than ever under the fostering guardianship and control of the Commission by fixing adequate rates for interstate commerce, to secure a fair return upon the properties of the carriers engaged. Rates and charges on grain and grain products, 91 I. C. C. 105, 155.

(b) Even if Congress had not announced a fixed policy, being public utilities carriers are entitled as individual entites to receive from all their rates revenues sufficient to pay expenses and a reasonable return upon the value of their properties, economically and efficiently managed, if obtainable through rate schedules not inherently unjust. The carriers' right to fair return is based on the fact that theirs is private property devoted to a public use, and, as such, certain rights are safeguarded by the Constitution. Rates and charges on grain and grain products, 91 I. C. C. 105, 155.

(c) Issues in action respecting charges for transportation in interstate commerce must be decided according to paramount United States statutes so far as they are applicable, and according to common law where not controlled by such statutes. American Ry. Express Co. v.

Mohawk Dairy Co. (Mass. 1924), 144 N. E. 721.

(d) The words "such transportation" in paragraph (2) of section 1 of the act can only refer to transportation of passengers or property by common carriers described in paragraph (1), and effect of such second paragraph is to impose additional restrictions to application of provisions of the act over transportation by these carriers. Motor Truck or Wagon Transfer Service, 91 I. C. C. 539, 546.

(e) In so far as Code Pub. Gen. Laws, art. 23, §413, defining term "common carrier," is insistent with definition of word "carrier" in Interstate Commerce Act, §20a, subsec. 1, as added by Transportation Act Feb. 28, 1920, §439 (U. S. Comp. St. Ann. Supp. 1923, §8592a), such state law must yield to the federal act. Whitman v. Northern Cent. Ry. Co., (Md., 1924) 127 Atl. 112.

(f) The Transportation Act of 1920 naturally resolves itself into four divisions; they are definitions of terms, termination of federal control of railways, disputes between carriers and their employees and subordinate officials, and amendments to the Interstate Commerce Act (U. S. Comp. St. §8563 et seq.). State v. Seaboard Air Line Ry. Co. (Fla., 1925) 104 So. 602.

(g) The Interstate Commerce Act was passed for the purpose of regulating commerce throughout the nation, and, as amended by the Transportation Act of 1920, for purposes of interstate commerce placed the transportation system of the country completely under supervisory control of the Interstate Commerce Commission. State v. Seaboard Air Line Ry. Co. (Fla., 1925) 104 So. 602.

(h) The Interstate Commerce Act (U. S. Comp. St. § 8563 et seq.) passed in pursuance of Const. U. S. art 1, §8, does not assume to regulate interstate commerce by motor vehicles, though Congress has the right to occupy this field. Interstate Transit Co. v. Derr Co. (Mont. 1924), 228 Pac. 624.

(i) The word "transportation" as used in section 1 (12) of the act is not limited in its meaning to transportation for compensation, but includes also transportation of carrier's own coal over its line. Assigned Cars for Bituminous Coal Mines, 93 I. C. C. 701, 715.

(j) The great, underlying purpose of the act, amplified and strengthened with each successive amendment and supplemental act, is to sweep away every form of favoritism based upon the personality of the shipper or upon his relations with the carrier as a customer; and to place all, the large and small, steady and occasional, and the rich and poor upon a plane of equality in the right to service; and to condemn and make unlawful every regulation, device, or subterfuge which undertakes to give to anyone an advantage based upon conditions other than those inhering in the transportation itself and alone. Rules Governing Ratings of Coal Mines, 95 I. C. C. 309, 332, 333.

(k) The act does not require common carriers to hire instrumentalities for the performance of a transportation service. See 34 I. C. C. 442. Walsh Fire Clay Products Co. v. Director General, 95 I. C. C. 439, 443.

(l) The Supreme Court concluded that the collocation of term "practices" with "classifications" and "regulations" was intended to confine it to acts or conduct having the same purpose as its associates and that it was not to be understood in the broad sense contended. The court noted that a contrary conclusion would apparently give the commission power to order enlargement of terminal facilities, increase in the number of locomotives, and extensions of tracks and branches. Los Angeles Passenger Terminal Cases, 100 I. C. C. 421, 427.

(m) A change in rates which is detrimental to the interests of a particular community is not necessarily inconsistent with the general public interest which the statutes administered by the commission were designed to protect, although those who fear injury may be more vocal than those who expect benefit. Certainly this largely voiceless public interest is one which we should not overlook. Southern Class Rate Investigation, 100 I. C. C. 513, 604.

(n) When the question is whether a federal act overrides a state law, the entire scheme of the statute must of course be considered and that which needs must be implied is of no less force than that which is expressed. If the purpose of the act can not otherwise be accomplished—if its operation within its chosen field else must be frustrated and its provisions be refused their natural effect—the state law must yield to the

regulation of Congress within the sphere of its delegated power. Train service on N. P. 112 I. C. C. 191, 195.

VI. TRANSPORTATION ACT.

See Transportation Act.

§2. Construction in General.

See Discrimination §1.

(a) It is the policy of the Congress as declared in section 8 of the merchant marine act, 1920, and section 500 of the transportation act, 1920, to promote, encourage, and develop transportation by water and to foster and preserve in full vigor both rail and water transportation. Wool rates investigation, 1923, 91 I. C. C. 235, 248.

(b) The Transportation Act shows that what is intended is to regulate interstate and foreign commerce and to affect intrastate commerce only as that may be incidental to the effective regulation and protection of commerce of the other class. It contains many manifestations of a continuing purpose to refrain from any regulation of intrastate commerce, save such as is involved in the rightful exertion of the power of Congress over interstate and foreign commerce. State v. Seaboard Air Line Ry. Co. (Fla., 1925) 104 So. 602.

(c) Fact that word "damage" appears in section 206 (c) of the transportation act, in contradistinction to words "full amount of damages" appearing in section 8 of interstate commerce act, has no special significance. The commission concludes and finds that the director general is liable for "the full amount of damages" suffered by a shipper through collection of an unreasonable rate by Director General of Railroads, or his agents, during Federal control; and that measure of that liability is the same as that of a common carrier subject to the interstate commerce act, the sovereign right of the Government having been waived to this extent by act of Congress. Shreveport Creosoting Co. v. L. & P. Ry., 92 I. C. C. 519, 526.

(d) Section 206 of transportation act is procedural in character. Nothing contained therein indicates that Congress intended to repudiate or in anywise alter, amend, or reduce obligations and liabilities imposed upon the President by the Federal control act and act to regulate commerce, or to relieve the agent appointed by the President under the transportation act from such obligations and liabilities as had been incurred by Director General of Railroads in his operation of properties of carriers. Shreveport Creosoting Co. v. L. & P. Ry., 92 I. C. C. 519, 525.

(e) It is the policy of Congress as declared in section 500 of the transportation act, 1920, to promote, encourage, and develop water transportation, service, and facilities in connection with the commerce of the United States, and to foster and preserve in full vigor both rail and water transportation, and the provisions of section 8 of the merchant marine act, 1920, are of the same tenor. Galveston Commercial Asso. v. G., H. & S. A. Ry. Co., 100 I. C. C. 110, 122.

ACTIONS AT LAW

See Cars and Car Supply §33; Courts I; Demurrage §22; Finance Dockets VIII; Long and Short Hauls §17; Special Contracts IV.

ADDITIONAL CHARGES AND SERVICES

See Agency; Allowances; Baggage Car Service; Branch Lines; Bridges and Tolls; Car Ferry; Compress Companies and Charges; Demurrage; Drayage; Evidence §2½; Export Rates and Facilities; Facilities and Privileges; Floatage; Heater Car Service; Lighterage; Reconsignment; Refrigeration; Special Rates and Services; Storage; Substitution of Tonnage; Switch Tracks and Switching §5; Terminal Facilities; Warehousing; Weights and Weighing §6, §7.

ADJACENT FOREIGN COUNTRY

See Alaska; Canada; Coastwise Traffic; Foreign Commerce; Long and Short Hauls §4½ (b); Loss and Damage §2½; Mexico; Porto Rico; Through Routes and Joint Rates.

(a) Proposed charge of 25 cents per shipment for opening, recoopering, and rewrapping packages for customs exam-

ination at the border ports on import shipments by express from Canada to points in the United States found not justified. This charge would not apply on shipments where the American Express Co. acts as the broker and attends clearance details, nor on shipments of milk or cream. The suspended schedules ordered canceled without prejudice to the filing of new schedules which will provide that a charge of 12 cents per shipment be assessed on shipments when one or more packages are actually opened by order of the Customs and will not apply on any shipments where the American Express Co. or other concern or individual acts as broker for the importer and in that capacity attends to the physical work above described. Charge for Opening, Recoopering, and Rewrapping Packages for Customs Examinations, 98 I. C. C. 284.

(b) Charges resulting from rates on sheep and lambs, in double-deck cars, from Montreal, Canada, to New York, N. Y., and Somerville, Mass. and minima provided in connection therewith, found not unreasonable. This traffic between points involved is very light in volume, the present yield per car is not excessive as compared with rates and minima on like traffic between other points for similar distances, and to prohibit the lines within the United States serving the destination points from participating in a joint rate with Canadian carriers from Montreal, with the present fixed minimum, would possibly result in the application of combination rates to and from the border which would produce total charges in excess of those returned under the prevailing joint rate. Swift & Co. v. G. T. Ry. Co. of Canada, 98 I. C C. 649.

(c) The commission has no jurisdiction to require the establishment of joint rates for future from or to a point in United States to or from a point in a foreign country or from a point in United States through a foreign country to a point in United States. See 69 I. C. C. 337, 343. San Diego Chamber of Commerce v. A. & V., 102 I. C. C. 27, 29.

(d) Where shipments move under unreasonable joint rates from points in adjacent foreign countries to points in the United States, the American lines participating in the transportation are tort feasors and the full amount of reparation may be awarded against them. Lewis-Simas-Jones Co. v. S. P., 102 I. C. C. 245, 246.

(e) Motion of carrier to dismiss complaint, alleging commission lacks jurisdiction over joint rates from points in an adjacent foreign country to points in United States, denied, following 66 I. C. C. 627. Lewis-Simas-Jones Co. v. S. P., 102 I. C. C. 245, 246.

(f) When the commission has no authority to establish a rate of transportation in an adjacent foreign country, nor to order the maintenance of a rate for future from a point in United States to a point in an adjacent foreign country, it may require American carriers to cease and desist from continuing to apply a joint through rate, or any rule, regulation, or practice in connection with that joint through rate, and may, where such rate has been voluntarily maintained, inquire whether it has been reasonable, and if found unreasonable, award damages in that behalf. See Black Horse Tobacco Co., 17 I. C. C. 588, 590, 591; International Nickle Co., 66 I. C. C. 627. American Splint Corp. v. C. P. Ry. Co., 88 I. C. C. 221.

ALL OTHER CITATIONS

U. S. Steel Products Co. v. Director General, as Agent, 88 I. C. C. 57; U. S. Graphite Co. v. Director General, as Agent, 88 I. C. C. 157; Chicago Live Stock Exchange v. Director General, as Agent, 88 I. C. C. 202; Green Cananea Copper Co. v. C. R. I. & P. Ry. Co., 88 I. C. C. 226; Section 28 of The Merchant Marine Act, 88 I. C. C. 645.

ADVANCED RATES

I. CONTROL AND REGULATION.
- §1. Jurisdiction of Commission.
  - (1) Inquiry into reasonableness.
  - (2) Power to require advance.
  - (3) Prescribe minimum rate.
  - (4) To suspend advance.
  - (5) To suspend reduction.
  - (5½) Government initiated rates.
- §2. Limitation of power.

II. JUSTIFICATION OF INCREASE.
- §2½. In general.

§3. Burden of proof.
§4. Effect.
§5. Right to advance.
(½) In general.
(1) To avoid reducing other rates.
(1½) Decline in tonnage.
(2) To equalize rates.
(2½) Fourth section violations.
(3) To preserve commodity relationship.
(4) Unreasonably low prior rate.
(5) Congestion of traffic.
(6) Erroneous rate.
(7) Expense of competition.
(7¼) Low or high state rate.
(7½) Paper rates.
(8) To prefer particular locality.
(9) Inadequate facilities.
§6. Right to earn.
(1) On bona fide investment or value.
(2) On unearned increment.
(3) On reproduction value.
(4) On surplus.
(5) For permanent improvements.
(6) All traffic will bear.
(7) Cost of insurance.

III. EVIDENCE.
§6½. In general.
§7 Change in conditions.
(1) In general.
(2) Increased operating expenses.
(3) Impairment of credit.
(4) Cessation of competition.
(5) Competition in general.
(6) Disputes concerning divisions.
(7) Lack of revenue.
(8) Percentage increases.
(9) Government orders or advances.
§8. Presumptions.
(1) Continuance of prior rate.
(2) Temporary reduction.
§8½. Comparisons.
§8½a. Combination rule.
§9. Concerted action.
§9½. Double advances.
§10. Economy of management.
§10½. Fractions.
§11. Scientific management.
§11½. Differentials or rate relationship.
§12. Branch lines.
(1) Operation.
(2) Purchase.
§13. Detriment to shipper.
§14. Benefit to industry.
§14½. Motive of carrier.
§14¾. Previous decision of Commission.
§15. Standard for judging advance.
§15½. Two line haul.
§16. Uniformity of advance.
§16½. Widespread rate adjustment.

IV. REASONABLENESS OF ADVANCED RATES.
§17. In general.
§18. Circumstances and conditions.
(½) In general.
(1) Low receipts per ton mile.
(2) Water competition.
(3) Heavy and uniform tonnage.
(4) Low grade commodity.
(5) Ratio of rate to value.
(6) To gain import duty.
(7) Rates in like territory.
(8) Circuitous route.
(9) Use of commodity
(10) Increased divisions.
(11) Bulk.

V. DISCRIMINATION THROUGH ADVANCE.
§19. In general.
§19¼. Legal rate.

VI. REMEDIES AND PROCEDURE.
§19½. In general.
§20. Injunctions.
§21. Investigation.
§21½. Orders.
VII. REPARATION.
§22. In general.
VIII. TARIFFS AND PUBLICATION.
§23. In general.
§24. Construction.

CROSS REFERENCES

See Classification §17 (4d); Demurrage §20; Live Stock Shipments; Mails; Passenger Fares and Facilities §5 (c), §10 (c); Proportional Rates; Reparation §3½ (a); Switch Tracks and Switching §13 (e); Through Routes and Joint Rates VI, §20a (v); Water Carriers.

I. CONTROL AND REGULATION.

See Control and Regulation.

§1. **Jurisdiction of Commission.**

See Interstate Commerce Commission I; Jurisdiction of Commission.

(4) **To suspend advance.**

See Suspension of Rates.

(a) Upon contention that a suspension order of the commission prohibiting proposed increased rates from going into effect and requiring maintenance of present rates, constituted the establishment of present rates "pursuant to a finding or order of the commission," and that therefore the commission has authority to require readjustment of divisions of the present rates back at least to date of order of suspension. HELD, an order of suspension is not an order such as is contemplated by Congress when it refers to the "establishment" of a rate by the commission's order. Petroleum Oil from Arkansas to Louisiana, 95 I. C. C. 55, 64, 65.

II. JUSTIFICATION OF INCREASE.

§2½. **In General.**

(a) Where a short line's compensation has not kept pace with general increases in the rates of trunk lines, although its operating expenses have increased in common with theirs, such short line should be accorded the benefit of a proportionate share of the increase in the rates. See Ohio & Kentucky Ry. Co. case, 77 I. C. C. 636, 643. New York Dock Ry. v. B. & O. R. R. Co., 88 I. C. C. 695, 706.

(b) Proposed increased rates on matches, from Bellefonte, Pa., to Chattanooga, Tenn., and stations grouped therewith and to Knoxville, Tenn., for purpose of restoring rates to basis formerly existing, found justified. Proposed rates will reflect the proper increases and reductions authorized since March 15, 1917, and compare favorably with rates from other match-producing points to Chattanooga and Knoxville and to other destinations throughout the South. Matches from Bellefonte, Pa., 89 I. C. C. 337.

(c) A mere desire to readjust through rates on grain to equal the combinations upon particular gateways does not constitute justification for increases in the through charges. Grain from western trunk line points, 91 I. C. C. 632, 634.

(d) Proposed cancellation of commodity rates on stoves, ranges, gas water heaters, and furnaces from Detroit, Mich., and certain intermediate points to Chicago, Ill., Milwaukee, Wis., and St. Louis, Mo., and to upper Missouri River crossings, leaving in effect higher class rates, found justified in part. Principal grounds of justification are that class rates afford normal basis for this traffic, and that present commodity rates are unremunerative. Stoves, Ranges and Furnaces from Michigan, 91 I. C. C. 554.

(e) Increases in grain rates designed to place rates upon full combination upon market points will not be found justified unless clearly shown to be reasonable in themselves, free from undue prejudice or unjust discrimination, and otherwise lawful. Omaha Grain Exchange, 53 I. C. C. 249, and other cited cases. Grain from Western Trunk Line Points, 91 I. C. C. 632, 634, 635.

(f) Respondents proposed to increase the rate on egg carrier fillers, egg cases and egg box material, carloads, minimum 30,000 pounds, from Coffeyville, Kans., to points in Arkansas on the M. & N. A., from 34 to 37c per 100 pounds. Protestants competitor is at Quincy, Ill., and opposed the proposed increase only because no corresponding increase was made in the rate of 42c from Quincy. The increase was proposed because this

competitor asked for a lesser difference between the two rates. The division to the M. & N. A., under the rate now in effect from Coffeyville is greater than that under the rate from Quincy. The rates from both Coffeyville and Quincy are blanketed to destinations on the M. & N. A., from the Missouri-Arkansas state line to Heber Springs. The suspended schedules continue a rate of 43c from Hutchison, Kans., a producing point which is about 70 miles nearer the M. & N. A., point than is Quincy. HELD, schedules not justified. Egg case fillers from Kansas, 101 I. C. C. 1.

(g) Proposed cancellation of interstate commodity rates on hay and straw, from points in Indiana, Illinois, and Ohio to destinations in Indiana and Illinois, certain Ohio River crossings, and Massillon Ohio, leaving in effect fifth-class rates, found not justified. Present commodity rates are of long standing; hay is of low value; and any increase in rates must, under prevailing competitive conditions, be met by reducing amount paid farmers, who are already in poor financial condition. Hay and Straw to Mississippi River Crossings, 92 I. C. C. 128.

(h) Proposed increased rates on sugar from Macon, Ga., territory to Arkansas, Louisiana, Missouri, Oklahoma, and Texas, which fail to conform to long-and-short-haul and aggregate-of-intermediates provisions of the fourth section, found not justified. However, in view of fact that present rates are unduly low as compared with corresponding rates from New Orleans, carriers' proposal to establish a blanket rate, modified in such particulars as to avoid fourth-section departures, and result in rates which are not unreasonable or unduly prejudicial, found justified. Sugar from Macon Territory, 92 I. C. C. 275.

(i) Carriers in complying with an alternative order of the commission advanced lower instead of reducing higher rates. Such advances were suspended and subsequently found not justified. HELD: Fact that order was in the alternative did not relieve carriers from responsibility of publishing rates which would not contravene the act; and whether carriers' literal compliance with such order by proposing increases, or commission's action in suspending them, led to exaction of unreasonable rates during suspension period is immaterial and not controlling in so far as an award of reparation is concerned. If rates in effect during suspension period were unreasonable, carriers are not entitled to retain the excessive portion even though it be said that rates were in effect despite their efforts. Wadhams Oil Co. v. C. & N. W., 92 I. C. C. 361.

(j) Proposed readjustment of rates on live and dressed poultry, butter and eggs from points in Kentucky, Tennessee Alabama and Mississippi to eastern cities and Buffalo-Pittsburgh zone, resulting, among other things, in removal of discriminations, found justified. Dairy Products from Southern Points, 100 I. C. C. 756.

(k) Except where differences in transportation conditions or other dissimilar circumstances exist, rates should not increase in exact proportion with the distance. Class Rates between Memphis, Tenn.; Cairo, Ill., and W. T. L. Points, 102 I. C. C. 207, 216.

§3. Burden of Proof.

See Advanced Rates §19 (d); Burden of Proof; Evidence I; Perishable Freight (c).

(a) While it may be conceded that the burden is on respondents to show the propriety of the proposed charges under section 3 as well as under section 1 of the act, it does not follow that undue prejudice is to be presumed from the mere fact that compensatory charges at Detroit will differ from the charges in effect at other points, particularly as to protestant shippers who have not contended or made any effort to show that they will be handicapped by the establishment of such charges at Detroit in meeting competition from other points. Nashville Switching, 40 I. C. C. 474. Increased switching charges at Detroit, Mich., 91 I. C. C. 82, 96.

(b) For each rate, a carrier offers and obligates itself to perform a certain amount of service. If the service so offered and for a long time performed in consideration of that rate includes taking the property transported from a given point and delivering it at a given point, the delivery at that point is in no sense a free service. The carrier may increase the rate or it may curtail the service performed by that rate, but if such action is challenged it must bear the burden of showing that the new rate or

service is reasonable and free from unjust discrimination. Loading of less carload freight, 91 I. C. C. 394, 397.

(c) The law places upon respondents the burden of showing that the suspended rates are reasonable and otherwise lawful. The fact that they are made in accordance with a basis of long standing, while entitled to due weight, does not of itself constitute sufficient justification. C. 514, 516.
Cotton linters to Indiana points, 95 I. C.

(def) The burden of justifying increased rates cast upon carriers by the act does not depend upon the purpose or intent of the carriers in naming the increased rates. Grain from Kansas City, 96 I. C. C. 154, 156.

(g) Carrier in instant case relieved of burden of proof to justify increased cost of service resulting from discontinuance of a spotting service formerly rendered by it, and converse case of Hanging Rock Iron Co., 87 I. C. C. 373, distinguished. Jackson Iron & Steel Co. v. Director General, 91 I. C. C. 201, 205, 206.

(h) The law places burden upon carriers to prove that a proposed adjustment of rates is just and reasonable, and mere fact that they are attempting to make readjustment because some participating carriers desire that they do so, or that it may help to remove a complaint of discrimination pending before commission, is not sufficient evidence of proof of reasonableness of rates proposed under adjustment, or that present rates are unremunerative or unreasonably low. Boots and Shoes from New York Points, 91 I. C. C. 591, 596.

(i) In reissuing a tariff carriers unintentionally increased arbitrary on fruit, vegetables, and grape packages over rates on lumber to a basis higher than that authorized in Increased Rates, 1920, 58 I. C. C. 220. HELD: Burden of proof is upon carriers, and, since they failed to justify rates as increased, unreasonableness found to extent that arbitraries exceeded those authorized in cited case. Reparation awarded. Package Sales Corp. v. U. P. R. R. Co., 91 I. C. C. 697.

(j) Proposal to increase rates on imported fertilizer and fertilizer materials from New Orleans and related points, to points in Louisiana, by raising rate level by amount of handling charges at the ports, by eliminating certain commodities, and by increasing the minimum weight, found not justified. Respondents failed to satisfactorily explain reasons for changes in commodity lists and minimum weights, and were under impression that import rates applied mainly to fertilizer factories. However, many items listed in proposed schedules move directly from ship side to farms. Fertilizer from New Orleans, 92 I. C. C. 151.

(k) Carriers made no attempt to justify increases in rates on ground of reasonableness, stating that they were merely paper rates and therefore needed no justification. HELD: Burden is clearly upon carriers to justify increases in rates of whatever character. Combination Rule on Cotton and Linters, 92 I. C. C. 165, 167.

(l) Where carriers, under tariffs, hold themselves out as offering for a given rate to render a specified service, and withhold part of that service, shippers not preventing carrier from rendering the complete service offered, there has been an increase in the rate no less than if after a certain date a higher charge had been made for the service. Rates in Chicago Switching District, 34 I. C. C. 234, 242; United Chemical & Organic Products Co., 73 I. C. C. 100, 103. Borden's Farm Products Co. v. N. Y., N. H. & H., 92 I. C. C. 270, 272.

(m) In the western classification boilers were included in list of articles under heading "Machinery and Machines" but carriers removed it from that list, which resulted in making commodity rates on machinery and machines inapplicable to boilers and in leaving full classification basis to apply. After shipments moved, boilers were restored to machinery commodity basis. HELD: Carriers having failed to sustain burden of proof cast upon them to justify rates as increased, class rate assessed on shipments of boilers from Muncie, Ind., to Houston and Orange, Tex., found unreasonable to extent it exceeded lower commodity basis and reparation awarded. National Supply Co. of Texas v. C., C., C. & St. L. Ry., 92 I. C. C. 295.

(n) Where increases under Increased Rates, 1920, 58 I. C. C. 220 have been applied in such a manner as to produce greater net increase in carriers' freight revenue than was authorized under that

decision, burden of justifying resulting rates is upon carriers. Houston Cotton Exchange v. A. & S. Ry., 92 I. C. C. 363, 366.

(o) Rates on fluorspar, as increased to basis higher than that authorized in the Fifteen Per Cent case, 45 I. C. C. 303, and subsequent general advances, and subsequently reduced to basis reflecting proper authorized advances, found not unreasonable. Complainant offered no evidence to indicate that earnings under rates attacked were excessive, but merely urges that rate was unreasonable per se. Moreover, the subsequent reduction of a rate is insufficient to establish unreasonableness. General Chemical Co. v. Director General, 93 I. C. C. 193.

(p) Upon contention that burden of proof to justify rates increased since January 1, 1910, was not met by defendants due to their nonappearance at the hearing, and that complainant is, therefore, entitled to an award of reparation on shipments moving under the rates as increased. HELD, before the commission can find that a shipper is entitled to reparation it must find that the rate is unreasonable, and fact that no evidence was offered on behalf of carriers does not preclude the commission from determining whether or not the rate was in fact unreasonable. Nebraska Bridge Supply & Lbr. Co. v. A., T. & S. F., 93 I. C. C. 301, 303.

(q) Proposed increased rates on cotton piece goods, any quantity, from Texas and Oklahoma points to St. Louis and points in defined territories, published to comply with order entered in connection with Memphis-Southwestern Investigation, 77 I. C. C. 473, denying fourth-section relief, found not justified. Respondents made no attempt to justify the increases, but merely stated that they were forced to make the revision to comply with the fourth-section order. However, such compliance does not require substantial increases proposed, and respondents' revenues would not be reduced to any extent by application from intermediate points of present rate from Texas producing points. Commodity Rates from Southwestern Points, 93 I. C. C. 394, 396.

(r) Proposed increased rates on iron and steel articles, between Newark and points grouped therewith, and New England points, found not justified. Carriers rely entirely upon fact that proposed rates will restore the spread between Newark and Philadelphia groups established following the decision in Pardee Works, 39 I. C. C. 162. For over seven years that spread has been treated as one varying with rates and not as a fixed differential. Moreover, there is no evidence that rates from Newark group are subnormal as compared with rates from other groups, and former relationship, if desired by carriers, could be readily restored by reducing rates from Philadelphia group instead of increasing those from Newark group. Iron and Steel between New Jersey and New England Points, 93 I. C. C. 499.

(s) Proposed increased rates on coke from points in southwestern Virginia, Benham, Ky., LaFollette and Chattanooga, Tenn., to Cincinnati and certain points in vicinity thereof, and to Maysville, Ky., designed for purpose of restoring a parity of rates from these coke-producing points, disrupted following the general increases authorized in Increased Rates, 1920, 58 I. C. C. 220, found not justified. Although record does not indicate that proposed rate to Cincinnati would be unreasonable, it would result in undue prejudice at that point and in undue preference of other Ohio River crossings where a similar situation exists and where a similar increase is not made. Coke to Cincinnati Group, 93 I. C. C. 572.

(t) It does not follow from fact that the commission has approved increases in handling charges at certain ports that a lower basis of charges would have been unlawful. Carriers may, subject to certain restrictions, initiate rates lower than commission may prescribe. The question is as to whether or not they are proposing to go to such lengths in attempting to meet competition and attract business that resulting charges will be so low as to create a burden upon other traffic. Handling Charges on Cement, Fertilizer, and Salt, 93 I. C. C. 640, 644.

(u) Proposed increased rates on crude and refined petroleum oil from points in the Smackover-El Dorado, Ark., field on the C., R. I. & P. to points in Louisiana on the Y. & M. V., found not justified. Except for evidence bearing upon divisions, record contains no evidence purporting to justify the proposed rates, and if permitted to become effective, the Y. & M. V. would be responsible for the maintenance of preferential rates from points on Missouri Pacific to same destinations. Moreover, mere categorical statements of representatives of carriers that present rates are low do not support a finding of justification of the proposed rates. Petro-

leum Oil from Arkansas to Louisiana, 95 I. C. C. 55.

(v) Mere categorical statements of representatives of carriers that rates are low does not support a finding justifying their increase to a higher level. Petroleum Oil from Arkansas to Louisiana, 95 I. C. C. 55, 57.

(w) The law places upon carriers the burden of showing that proposed increased rates are reasonable and otherwise lawful. Fact that they are made in accordance with a basis of long standing, while entitled to due weight, does not of itself constitute sufficient justification. Cotton Linters to Indiana Points, 95 I. C. C. 514, 516.

(x) Proposed increases and changes in method of assessing gathering charges, or proportional rates, on citrus fruits from interior Florida points to Florida basing points to be used as factors of through rates to certain transcontinental and intermountain territory found not justified. Carriers attempted to justify the proposed increases merely by explaining the change in method of determining freight charges. However, instead of promoting uniformity the proposed method of stating charges up to the basing points would further confuse a situation already so complex and disordered that shippers and carriers have difficulty in applying and understanding, or even explaining, the adjustment. Citrus Fruits between Points in Florida, 95 I. C. C. 532.

(y) Carriers can not justify increases in transportation charges, especially when fixed by the commission, merely by explaining a change in method of determining freight charges. Citrus Fruits between Points in Florida, 95 I. C. C. 532, 537.

(z) Proposal to cancel application of wrought-iron pipe commodity rates on iron or steel sucker and pull rods from St. Louis and points in c. f. a. territory to destinations in Kansas and Missouri, leaving in effect higher class rates, found not justified. Pull rods and sucker rods have hitherto been accorded same rates and no justification was offered for the proposed rates under which rates on pull rods would be materially higher than on sucker rods. While evidence indicates that present rates are in need of revision and that present relationship of these rates with those to Oklahoma points results in prejudice to localities in the latter territory, the class rates proposed would result in some instances in rates higher than those to Oklahoma points, and considerably higher in many cases than those proposed by carriers in a pending proceeding. Sucker and Pull rods from St. Louis, 95 I. C. C. 599.

(aa) Through rates, no matter how constructed, must in all cases be reasonable and where increases are proposed the burden is upon carriers to justify the resultant increased rates. Butter, Eggs, Dairy Products, and Poultry, 96 I. C. C. 19, 29, 30.

(bb) Proposed increases in rates on glass and glassware from points in Oklahoma and from Fort Smith and South Fort Smith, Ark., to Mississippi River crossings, Memphis, Tenn., and south, found not justified. There is no satisfactory showing of record that the existing rates to Mississippi Valley points are reasonably compensatory and the data of record do not indicate that the maintenance of such rates is necessary to enable the southwestern producers to obtain a fair share of the trade in the Mississippi Valley. Glass and Glassware to Interstate Points, 98 I. C. C. 83, 89.

(cc) In 93 I. C. C. 499, the Commission found that the proposed increased rates on iron and steel articles, in carloads and less car loads, between Newark, N. J., and points grouped therewith, and points in New England are not justified. The Commission has considered the record in the light of the briefs filed since the promulgation of the original report and are of the opinion that the respondents have not sustained the burden of proof. HELD, previous finding affirmed. Iron and steel between New Jersey and New England 107 I. C. C. 83.

(dd) The statute casts upon respondents the burden of justifying the proposed changes on suspension by the Commission, and the subsequent withdrawal of the protest which led to suspension does not of itself permit the conclusion that the changes are justified. Classification of hand pea hullers, 109 I. C. C. 143, 145.

ALL OTHER CITATIONS

International Harvester Co. v. N. Y. C. R. R. Co., 88 I. C. C. 371.

§4. Effect.

(a) Where carriers under tariffs hold themselves out as offering for a given rate to render a specified service, and withhold a part of that service, the shippers not preventing the carrier from rendering the complete service offered under the rate, there has been an increase in the rate no less than if after a certain date a higher charge had been made for the service. Bordens Farm Products Co. v. N. Y. N. H. & H. R. R., 92 I. C. C. 270, 272.

§5. Right to Advance.

(½). In General.

(a) Proposed increased rates on wool and mohair from points west of Mississippi River to eastern defined territories found not justified. Substantial increases would result from Pacific coast and interior territory, from which rates at present are maintained on a low basis under fourth-section relief, and wool and mohair are not required to pay more than their fair share for transportation service rendered. Wool Rates Investigation, 91 I. C. C. 235, 264.

(b) Increases in grain rates designed to place rates upon full combination upon markets points will not be found justified unless clearly shown to be reasonable in themselves, free from undue prejudice or unjust discrimination, and otherwise lawful. Omaha Grain Exchange, 53 I. C. C. 249, and other cited cases. Grain from Western Trunk Line Points, 91 I. C. C. 632, 634, 635.

(c) Proposed readjustment of rates on poultry, butter and eggs from points in Kentucky, Tennessee, Alabama, and Mississippi to Chicago, Ill., Ohio and Mississippi River crossings and certain other destinations, resulting in heavy increases in rates in practically all cases, found not justified. Dairy Products from Southern Points, 100 I. C. C. 756.

(d) Proposed increased rates on egg-carrier fillers, egg cases, and egg-box material, from Coffeyville, Kans., to points in Arkansas on the M. & N., for purpose of lessening differences between rates from Coffeyville and rates from Quincy, Ill., competing points in destination territory involved, found not justified. Rates from both Coffeyville and Quincy are blanketed to destinations on the M. & N. A., and division accruing to that road under present rates from Coffeyville is greater under the rate from Quincy. Suspended schedule ordered canceled. Egg Case Fillers from Kansas Points, 101 I. C. C. 1.

(e) Proposed change in description of glue stock between points in official territory so as to except from its provision such articles as are edible ingredients of food for human consumption making applicable thereon fifth-class instead of present sixth-class rates and rating, found not justified except as to "pork-hide trimmings" or "fresh-frozen or green-salted pig skin," which are used almost exclusively in manufacture of edible gelatin. Glue Stock in Official Classification Territory, 101 I. C. C. 601.

(f) Respondents proposed to increase their trans-lake rate on salt, carloads, from Ludington and Manistee, Mich., to Chicago, Ill., and intermediate points, applicable over the car ferry route of the P. M., to Milwaukee, Wis., and St. Paul beyond. The increase proposed is from 12 to 13c and would make the trans-lake rate the same as the all rail rate. The P. M., has its own rails from Ludington and Manistee to Chicago, but the 1c differential in favor of the trans-lake route attracts all the traffic. The distances to Chicago over the trans-lake route are 185 miles from Ludington and 229 miles from Manistee. The all rail distances from Ludington and Manistee to Chicago are 299 and 298 miles. There never was a differential in favor of the trans-lake route on salt to Chicago prior to the establishment of the present rate. The Commission sees no sufficient reason for changing the finding made in 92 I. C. C. 388 to the effect that a trans-lake rate of 13c is justified. HELD, schedules justified. Salt from Ludington group 112 I. C. C. 255.

ALL OTHER CITATIONS

Wood Pulp from International Falls, Minn., 85 I. C. C. 95.

§5 (2). To Equalize Rates.

See Equalization of Rates; Relative Rates.

(a) Respondents proposed changes, in the rates on pig iron and iron brisquettes, carloads, from Chicago, Peoria, St. Louis, etc., to certain Iowa destinations. Prior to July 25, 1924 the rates on pig iron from Chicago were $2.80 minimum 44,800 pounds, to Cedar Rapids, and $3.04, minimum 49,280 pounds, to other

destinations. Certain of the destinations are intermediate to Winona, Minn., from Chicago via the C. G. W., and rate to Winona was $2.31, minimum 49,280 or lower than the rate to the intermediate points. No change was made in the alternative rate of $2.80. On July 25, 1924 rates were reduced to intermediate points to the basis of the Winona rate and this proceeding was brought about when this rate was canceled and allowing the advanced basis to apply. The record indicates that one of the purposes of this proposed adjustment is to enable pig iron manufacturers at Duluth and Chicago to reach these consuming points at the same or substantially equal transportation costs. The record does not show that the proposed alternative reduced rates subject to minimum of 60,000 pounds are in any way related to or connected with the proposed rates under consideration. They are published to different points of destination. No good reason appears why these reduced rates should not be permitted to become effective. HELD, proposed schedules not justified except in so far as they relate to the alternative reduced rates, proposed schedules ordered canceled. Pig iron Illinois to Iowa, 95 I. C. C. 409.

(b) Proposed changes in rates on petroleum and products from points in Missouri, Kansas, and Oklahoma to stations on M. & O. R. R. between East St. Louis and Cairo, Ill., for purpose of placing all the destinations on Chicago, Ill., basis, but which would represent increases at East Carondelet and Cairo and reductions at intermediate points, found not justified as to increases, but justified as to reductions. Under respondent's revised proposal fourth-section departures at Murphysboro, Ill., and other intermediate points, while lessened in degree, would be continued. Petroleum from Southwestern States, 91 I. C. C. 464.

(c) Proposed increased proportional rates on canned goods and iron and steel articles from Gulf ports to points on and north of Ohio River, applicable on traffic from Pacific coast through Panama Canal, designed for purpose of equalizing such rates with local rates applicable from New York, N. Y., to Chicago, Ill., found not justified. No similar increases are proposed from south Atlantic ports, and undue prejudice in favor of such ports would result. Canned Goods and Iron and Steel Articles, 91 I. C. C. 623.

(d) Proposed readjustment of rates on grain and products (a) from points in southeastern Missouri to Memphis, Tenn., New Orleans, La., and other points in Mississippi Valley, designed for purpose of bringing rates from southeastern Missouri points into harmony with the rates of east-side lines from southern Illinois points by increasing rates from west-side groups on wheat and articles taking same rates, to basis of St. Louis and Cairo locals, and (b) between points in southeastern Missouri and St. Louis, Mo., Cairo, Ill., and related points, designed for purpose of keeping rates to St. Louis, Cairo, and related points properly aligned with those to Memphis, found justified in part. Grain and Products, 91 I. C. C. 666.

(e) Respondents proposed to increase class rates from stations on the C. & O., N. & W., and R. F. & P., taking Virginia rates or differentials higher to destinations on the Charleston division of the B. & O. The present rates are 107.5c first class, proposed rates 115.5c. The present rates are the same as the rates from Virginia cities to points in the 87% group in central territory, of which Cincinnati, O., is representative, and are lower than the rates from Baltimore to the 87% group by 8c first class. These arbitraries are employed in making rates from Virginia cities to points on, south, and west of the N. Y. C., T. & O. C., and P. C. C. & St. L., from Charleston through Point Pleasant, W. Va., and Columbus, O., to Chicago, Ill. The Baltimore rates apply from Virginia cities to destinations in central territory north and east of that line in groups taking 82% rates or higher and to destinations in percentage groups taking rates lower than 82% rates or higher, and to destinations in percentage groups taking rates lower than 82%, the 82% basis is maintained as minimum. While the Charleston division was operated as the Coal & Coke Ry. the natural and preferred route from traffic to and from these stations was through Charleston. Respondents at the hearing expressed a willingness to maintain the same bases between Virginia cities and points on the Charleston division as those at present maintained from and to Baltimore, that is, rates made on a scale beginning with $1.085 westbound,

and $1.135 eastbound. HELD, proposed rates not justified. Class rates from eastern points, 100 I. C. C. 215.

(f) A mere desire to readjust through rates on grain to equal the combinations upon particular gateways does not constitute justification for increase in the through charges. Grain from trunk line points, 100 I. C. C. 745, 750.

(fa) Proposed establishment by M. & O. R. R. of new rates and charges on uncompressed cotton from Meridian, Miss., to Carolina territory, for purpose of restoring normal differential relationship between rates on uncompressed cotton with carrier's privilege of compressing, and cotton compressed at shipper's expense, found justified. The disrupted relationship was published in error only by the M. & O. and applied only on shipments delivered to it at Meridian, whereas from surrounding points the normal differential was maintained. Moreover, commission's tariff rules require changes in rates to be specified in tariffs containing them, either as advances or reductions, but tariff here referred to published increases as though they had been mere continuations of rates previously in effect. Cotton to Carolina Territory, 92 I. C. C. 125.

(fb) Proposed modification of rules governing intermediate application of rates on lumber and articles taking same rates from stations on the Frisco between St. Louis and Springfield, Mo., to Missouri River cities and certain points beyond, for purpose of eliminating application of St. Louis rates from such points, found not justified. Combination rates which would result would be in line with rates from points in surrounding territory to same destinations, but because of maintenance of lower rates from St. Louis to points beyond Missouri River, would violate the long-and-short-haul provision of the fourth section. Intermediate Rule on Lumber, 92 I. C. C. 153.

(fc) Proposed changes in ratings and minimum weights on automobile fenders in the three general classification territories, involving both increases and reductions, for purpose of establishing absolute uniformity in l. c. l. ratings and practical uniformity in c. l. ratings, found justified, except as to finished fenders, in carloads. Classification of Automobile Fenders, 92 I. C. C. 223.

(fd) Increased rates can not be justified solely upon showing of desire for uniformity in tariff provisions. Iron and Steel Articles to Southwest, 93 I. C. C. 31, 36.

(fe) Proposed increased rates on cotton and cotton regins, uncompressed, any quantity, and on cotton linters, uncompressed, l. c. l., both with carrier's privilege of compressing, from Cairo, Brookport, Gale and Thebes, Ill., to eastern points, for purpose of restoring the relationship with rates from St. Louis, disturbed when the St. Louis rates were increased, but through oversight no similar changes were made in rates from the Illinois points, found not justified. Respondent made no reference to rates under which traffic actually moves to demonstrate reasonableness of the proposed rates, and since the St. Louis rates are paper rates, most of the cotton movement being through Memphis, they have little, if any, probative force in that connection. Cotton, Linters, and Regins to Eastern Cities, 93 I. C. C. 453.

(g) Rates on clean rice from milling points in Arkansas to certain destinations in c. f. a., southern, and western territories, to western termini of trunk-line territory, and to points in Oklahoma, found unreasonable and unduly prejudicial in some instances as compared with corresponding rates from New Orleans, Memphis, and interior Louisiana points. Carriers in making rates have largely ignored distance in an effort to somewhat equalize conditions. Right of complainants to natural advantages of their location can not be taken away by rate adjustments and wide differences in distance between the various fields to common destinations must be recognized. Reasonable and nonprejudicial rates and bases prescribed, Stuttgart Rice Mill Co. v. A. & V., 93 I. C. C. 517.

(h) Proposed increased rates on glass bottles and on fruit jars, fruit-jar tops, jelly glasses, and tumblers in straight or mixed carloads, from Oklahoma points and from Fort Smith and South Fort Smith, Ark., to Mississippi River crossings, Memphis and south, in order to bring about rates between said points no lower than rates between intermediate points within the territory covered by the Memphis-Southwestern Investigation, 77 I. C. C. 473, found not justified. Record fails to show that rates prescribed in 77 I. C. C. 473 are in excess of reasonable maxima for this territory

and proposed rates are the same as or lower than those rates and therefore not in excess of reasonable maxima for local application from and to points concerned. Except for certain unlawful features the order of suspension should be vacated, notwithstanding reiteration of views quoted from Memphis-Southwestern case in respect of the establishment of rates lower than the scale to meet competitive conditions, as therein described provided that the fourth section is observed and no undue prejudice or other unlawful situation results. Glass and Glassware to Interstate Points, 98 I. C. C. 83.

(i) Proposed increases in rates on window glass and rough-rolled glass, in carloads, from Oklahoma and from Fort Smith and South Fort Smith, Ark., to Texas points, found not justified. The proposed adjustment purports to remove fourth-section departures, but has been framed without adequate consideration of its effect. It would remove some departures but cause many others. Glass and Glassware to Interstate Points 98 I. C. C. 83, 90.

(j) Proposed increase in rates on sand and gravel from Barnesville, Downer, and Downer Pit, Minn., to Fargo, N. Dak., in order to again place the rates of respondent on a parity with the Northern Pacific's rate from Muskodo, Minn., to Fargo, found not justified. The evidence offered in connection with the formal docket herein considered was also offered with the proposed increase and it is found that under the scale found reasonable in the formal docket the rate for these distances would be the same as the rate now in effect. Hopeman Material Co. v. N. P. Ry. Co., 98 I. C. C. 361, 371.

(k) Proposed increased proportional commodity rates on chinaware or earthenware plumbers' goods to Oklahoma City, Okla., from upper Mississippi River crossings, on traffic originating at Trenton, N. J., found not justified on ground it would create violations of the long and short haul and aggregate of intermediates provisions of fourth section. Further, proposed proportional rate would exceed local rate on plumbers' earthenware and corresponding rate on similar articles of plumbers' enameled ironware, competitive commodities, resulting in undue prejudice to plumbers' earthenware. Plumbers' Goods from Mississisppi River Crossings to Oklahoma City, Okla., 98 I. C. C. 403.

(l) Upon hearing, rate on silica sand from Ottawa, Ill., to Carrel Street station, Cincinnati in connection with Pennsylvania lines, found not unjust or unreasonable, and proposed rates representing increases to same basis in connection with other lines found justified. Comparison of these rates with rates on sand from Ottawa to other destinations for similar distances shows that rates to Cincinnati are substantially out of line. Moreover, the rate from Ottawa to Cincinnati is more or less of a key rate and the reduction required in original report, 85 I. C. C. 412, jeopardizes the whole fabric of silica-sand rates in offical classification territory. This movement is very heavy and a general reduction in rates would mean a serious reduction in railroad revenues. In large part the general level of eastbound rates from the Ottawa district has been fixed or approved in previous cases cited. Boldt Glass Co. v. C., B. & Q. R. R. Co., 98 I. C. C. 481.

(la) Proposal to cancel l. c. l. commodity rates on clean rice, from, to, and between points in southern territory, designed primarily for purpose of bringing about uniformity and to remove discriminations, leaving in effect higher class rates, found not justified. Rates on basis of those approved in Southern Class Rate Investigation, 100 I. C. C. 513, approved. Rice between Points in Southern Territory, 102 I. C. C. 79.

(lb) Plaster, gypsum rock, and plaster board: Proposed cancellation of excentions to official classification on calcined and wall plaster, gypsum rock, and plaster board from Grand Rapids and other c. f. a. points to Canadian destinations, leaving in effect the full sixth-class basis of rates, found not justified. Purpose of the proposed change is to rectify a condition which would never have existed but for unauthorized action of American carriers publishing the rates in issue without first obtaining consent of the Canadian lines. However, no similar rate change is proposed so far as c. f. a. destinations are concerned, and protestant shows that in selling plaster board in Canada it must equalize its freight rates with those of its competitor at Caledonia, Ont., and that an increase in the present spread would make it im-

possible further to compete in this territory. Classification Exceptions on Plaster Board, 102 I. C. C. 94.

(m) Respondents proposed to cancel joint commodity rates on forest products, including doors, not screened or glazed, door panels, veneered, and kindling wood, carloads, from points in north Pacific coast territory to Michigan City and Gary, Ind., leaving higher combination rates to apply. The proposed cancellations will leave in effect to Michigan City and Gary the same basis of rates as that now accorded to other points in central territory, and, on the articles other than doors, not screened or glazed, and panels, will result either in no increases or in increases only 0.5c. In view of the fact that Michigan City and Gary are the only points in territory east of Chicago at present accorded joint rates lower than the combination on Chicago protestant withdrew his objection. HELD, schedules justified. Forest products from north Pacific coast 102 I. C. C. 319.

(ma) Proposed increased rates on unmanufactured tobacco received from Carolina territory for storage and warehousing at Newport News, designed for purpose of equalizing the warehousemen at Norfolk with those at Newport News, found not justified. The disadvantage under which interior warehousemen at Norfolk operate is due to absence of a storage-in-transit arrangement at that point, while such an arrangement is in effect at Newport News, and to fact that on tobacco exported from Norfolk two separate handling charges are assessed, whereas at Newport News only one such charge is made. Moreover, respondents here do not serve Newport News, and to permit proposed increased rates would be contrary to spirit of decision in 23 I. C. C. 345. Increased Rates on Tobacco, 102 I. C. C. 665.

(mb) Proposed increased rates on lumber and products between Denver and points taking same rates, on one hand, and points on L. & N. and Gulf, Mobile & Northern, on the other, found justified. Existing rates are on a low level and the higher combinations proposed will not result in unreasonable charges. Moreover, proposed changes in rates to points intermediate to Gulf ports place rates to such points on a basis more nearly in harmony with rates to other destinations in same general territory, thereby removing possible discrimination. Forest Products to Southern Points, 102 I. C. C. 717.

(n) Respondents proposed to increase the rates on lumber and lumber products taking arbitraries over lumber rates between Denver, Colo., and points taking same rates, on the one hand, and points on the L. & N., and G. M. & N., on the other hand. No joint through rates are in effect on lumber and lumber products from the Pacific northwest to destinations on the L. N., or G. M. & N., the lowest combinations making on Denver. The rate on certain millwork from Denver to Mobile for Gulf M. & N., delivery and to Mobile, New Orleans and and Pensacola for L. & N., delivery is 55c, and this rate applies as a maximum at intermediate points to which no joint rates are maintained. Under the suspended schedules the proposed increased rates from Denver to the points on the L. & N., New Orleans, Mobile and Pensacola and certain intermediate points, would be effected by cancellation of the present joint rates, in the absence of which the higher sums of intermediate rates, which are higher, would apply. L. & N., stated that the rates from Denver to New Orleans, Mobile and Pensacola are controlled by the western roads which form the direct and short route to New Orleans, and that the New Orleans rate is extended to Mobile and Pensacola because of port competition. The short line distance to New Orleans is 1,330 miles, while over the L. & N., distance is 1,848 miles. The existing rates are on a low level and it does not appear that the combination rates proposed would result in unreasonable charges. The proposed changes in the rates to points on the L. & N., and G. M. & N., intermediate to the Gulf port places the rates to such points on a basis more nearly in harmony with the rates to other destinations in the same general territory, thereby removing possible discriminations. HELD, proposed schedules justified. Forest products to southern points 102 I. C. C. 717.

(o) If a city has the advantage of geographic location it can not be arbitrarily deprived of such advantage by some artificial adjustment which has for its sole purpose the movement of traffic to a competing market. Chicago Board of Trade v. A. T. & S. F. Ry. 107 I. C. C. 319,329.

(p) Respondents proposed to increase their rates on concrete roofing slabs, carloads, from Chicago and points grouped therewith, and from Terre Haute, Ind., to destinations in central territory. The portion of the St. Paul over which the proposed rates would apply was formerly the C. T. H. & S. E., running south from Chicago near the Illinois-Indiana line to Terre Haute and thence southeasterly to Westport, Ind. Average load is nearly 68,000 pounds, claims rate practically negligible, no expedited or special service is necessary. Official classification rating is sixth class, but from Chicago, Cleveland and Detroit and Manistee at some and possibly all of which there is a production the exceptions provide for 75% of the sixth class to central territory destinations. This latter basis has been in effect for some years and has general application from the points named except over the St. Paul and its connections from the Chicago group. From that group and from Terre Haute over these lines to destinations in central territory the brick commodity rates, which are on a much lower basis, have applied since March 30, 1925. This basis was established through error, and respondents here seek to correct the error by proposing restoration of the basis of 75% of sixth class which will put their rates on a parity with those of all the other Chicago lines reaching central territory, and put Chicago on a parity with other producing points in that territory. HELD, proposed schedules justified. Concrete roofing slabs 107 I. C. C. 335.

(q) Respondents proposed increased rates on ore and concentrates, carloads, from producing points in California and Nevada to Utah smelter points and from Nevada, California and Utah to California smelter points. The suspended schedules were published following the issuance of 100 I. C. C. 180. In that case the Commission prescribed reasonable rates on ore and concentrates from Plumas County, Calif., of which Engles and Spring Garden are typical, to Wabuska, Nev., and also required the maintenance between such points of rates related to those from the same origins to the smelters at Garfield and International, Utah. Under this requirement the rates from Spring Garden to Wabuska must not exceed 60% of the Spring Garden-Utah rates. Although the S. P., schedules were apparently proposed to conform with those filed by the W. P., the former did not agree to restore any of the original rates as did the W. P., but stood upon its proposals. The Commission may infer from the testimony of certain of the shipppers that they might not oppose the proposed increases if the Wabaska smelter were in operation, but there is nothing of record to indicate when that plant may resume operations if at all. It is possible, although the record does not so establish, that the present rates on the lower values of ore are in certain instances less than reasonable maxima. Taken as a whole the existing scales of rates for values up to $100 do not appear to be subject to that structure. There is no suggestion of record that the lower value rates are less than reasonable maxima. The present basis has been voluntarily maintained for more than three years. In the present condition of the mining industry the substantial increases proposed ought not to be permitted except upon clear and convincing justification. The evidence wholly fails in that respect. HELD, proposed rates not justified to extent authorized by special permission 74959. Ore and concentrates between Calif., Nev., and Utah 107 I. C. C. 357.

(r) Proposed increase in rates from and to points in Iowa for interstate application on c. l. shipments of butternut, cherry, holly, mahogany, and walnut lumber and articles made therefrom, found justified. The Iowa intrastate distance scale of lumber rates applies also to interstate shipments in absence of specific commodity rates. Proposed schedules would make for a uniform basis of rates on walnut lumber in western trunk-line territory and while protestant has been heretofore favored with a basis of interstate rates on walnut lumber lower than that available to other shippers in western trunk-line territory that fact is no justification for the continuation of this lower basis. Lumber from and to Iowa Points 101 I. C. C. 299.

(s) Proposed increased rates on molding sand from Mount Holly, Hainesport, and Masonville, N. J., to Buffalo and Rochester, N. Y., and points taking same rates, which would result in placing Hainesport on the same rate basis as points in southern New Jersey considerably farther distant from the Buffalo-Rochester group, found not justified. Sand and Gravel from New Jersey, 101 I. C. C. 560.

(t) Proposed increased rates on brick and articles taking same rates from Mason City, Iowa, to destinations on the C., St. P. M. & O., and Soo Line in Wisconsin, designed to restore higher rate previously in effect and meet the rate over the line of a competing carrier, found not justified on ground that such rates compare favorably with rates on like traffic from competing Illinois points to same destinations. Combination rule on Brick and Draintile, 101 I. C. C. 729.

(u) Respondents proposed to increase the rates on brick and related articles taking the same rates, including hollow tile, from Sligo, St. Charles, Climax, and New Bethlehem, Pa., to points in Buffalo and Rochester, N. Y., territory on the Pennsylvania R. R., and connecting lines. The origin points are on the Pennsylvania about 20 miles east of Red Bank Pa. Generally speaking it is proposed to increase the rates from the four points named from $2.05 to $2.50 to Buffalo points and from $2.30 to $2.75 to Rochester rate points. New Bethlehem will be considered as representative of the points of origin. The proposed increased rates are on the same basis as the present rates from Clearfield, Curwensville, and Lock Haven, Pa., designated as the Clearfield group. Respondent stated that in giving consideration to the proposed increased rates on brick it overlooked the fact that there was no production of brick at New Bethlehem and that the hollow tile produced at this point comes into competition with the same commodity manufactured at Brookville and Reynoldsville, the latter about 36 miles east of New Bethlehem. Had this not been overlooked no increases would have been proposed in the rates from the last named point because no such action would have been necessary to correct the situation. There is no competition between New Bethlehem and Climax, St. Charles, or Sligo due to the fact that hollow building tile is not manufactured at the three points last named. HELD, except as to the rates from New Bethlehem, rates found justified. Brick and related articles to New York 109 I. C. C. 10.

ALL OTHER CITATIONS

Sloss-Sheffield Steel & Iron Co. v. Director General, as Agent, 85 I. C. C. 367; Grain from Oklahoma, 85 I. C. C. 602.

§5 (2½) Fourth Section Violations.

See Long and Short Hauls.

(a) Proposed increased rates on petroleum and products from points in Kansas, Missouri, and Oklahoma to Belleville, Ill., and points in Illinois south thereof on the Illinois Central found not justified. Carriers made no attempt to justify fourth-section violations which suspended rates would create, and have not filed a fourth-section application for relief from the long-and-short-haul provision of the fourth section. Petroleum to Belleville, 89 I. C. C. 295.

(b) Proposed revision in short-haul rates, consisting of increases and decreases, on iron and steel articles between points in the Pittsburgh district and adjacent territory in Pennsylvania, New York, Ohio, West Virginia, and Maryland, promulgated primarily for purpose of bringing rates within provisions of the aggregate of intermediates clause of section 4 of the act, found not justified as a whole. Iron and Steel Articles, 89 I. C. C. 606.

(c) Carriers proposed to remove fourth section departures by increases in the rates from South Atlantic and Gulf ports and reductions in the rates from interior points, practically all points of origin in the southeast and Mississippi Valley being placed on a group basis. In 87 I. C. C. 740 the Commission found the proposed revision of rates to Ohio and Mississippi river crossings and points in central, western trunk line and trunk line territories not justified. From the southeast rates from practically all points north of the Jacksonville-River Junction line of the S. A. L., are, in the proposed adjustment blanketed. In 61 I. C. C. 23, the Commission found rates from the Perry branch of the A. C. L. unduly prejudicial to extent they exceed rates from Jacksonville by more than 3c on rosin and 6c on turpentine. From other points in Florida south of the line referred to the respondents proposed to make rates by combination on Jacksonville, using north of that point proportional rates 4.5c on rosin and 9c on turpentine lower than the local rates from Jacksonville. In view of the fact that practically all other points in this general territory were proposed on a blanket basis, the Commission prescribed rates from the Florida points 5c on rosin and 10c on turpentine higher than the rates from Jacksonville. The rates from Jack-

sonville are 1c lower than from New Orleans to Cleveland, O., and Buffalo, N. Y. Although the distance from Jacksonville is less than from New Orleans, from other points in the New Orleans group the distances fairly compare with those from points in the Jacksonville group. On the whole, the distances from the Jacksonville group are slightly less than from the New Orleans group. No urgent necessity appears to exist for precisely the same rates from the two groups to these two destinations. If respondents consider the equalization necessary, this may be accomplished as well by reducing the rate from the New Orleans group as by increasing the rate from the Jacksonville group. To St. Louis, Mo., the rate prescribed from the New Orleans group is 1c less than the rate to Louisville, Ky., and Evansville, Ind., and respondents ask authority to increase this rate to the Louisville basis, inasmuch as over some routes traffic to St. Louis moves through Evansville. The rate prescribed to St. Louis is 1c higher than the suspended rate, and the necessary adjustment may be made by making the rate to Evansville 1c lower than that prescribed. In the suspended schedules the same rates were proposed from the New Orleans and Montgomery subterritory group to Cairo, Ill., as to Louisville, 30c and to Memphis 3c lower. To Memphis they desire to maintain the rate prescribed from New Orleans, Gulfport, Miss., and Mobile, Ala., 25c; but from Pensacola and points in Montgomery subterritory, they desire to maintain the same rate to Memphis as to Nashville, 30c. To Nashville the rate was made higher than it should have been because of the failure to consider the shortest routes from points in the producing territory; and the adjustment with respect to Cairo should be made by establishing to Nashville from Pensacola and points in Montgomery subterritory the lower Cairo rate. A similar adjustment may be made from the remainder of the New Orleans group if the carriers so elect. To Nashville the rate from Pensacola and Montgomery subterritory may well be less than from New Orleans. Just as rates may well obtain to Nashville from Pensacola lower than from New Orleans, so may rates properly obtain to Memphis from New Orleans lower than from Pensacola. If the Pensacola-Nashville rate be reduced to the Cairo basis, it will still be 28c, or 3c higher than the rate from the New Orleans group to Memphis. The findings in the original report will be modified to permit the application from Pensacola and Montgomery subterritory to Memphis of a rate of 28c on rosin and 44c on turpentine. The suspended rates to Milwaukee, Wis., were 3c on rosin and 4c on turpentine higher than the rates to Chicago. As compared with rates prescribed to central territory this difference in rates for an additional 85 miles is not warranted. The original findings will be modified to permit the application of rates to Milwaukee which do not exceed the rates found reasonable to Chicago by more than 2c on rosin and 4c on turpentine. Proposed less carload rates justified. Naval stores from southern points, 89 I. C. C. 634.

(d) Respondents proposed to increase the rates on lumber, car loads, from Missouri, Arkansas, Louisiana, Oklahoma and Texas to Burlington and West Burlington, Iowa. Burlington is on the west bank of the Mississippi on the Burlington. From St. Louis, Mo., Burlington is intermediate to Chicago, but is not on the short or rate making line. Keokuk and Fort Madison, Iowa, are on the same branch between St. Louis and Burlington. These schedules would remove the fourth section violation at Keokuk and Fort Madison by increasing the Burlington rates rather than by decreasing the rates to Keokuk and Fort Madison. The rates from certain points such as Gideon, Mo., to Burlington would, if the proposed schedules become effective, be in excess of the rates to Illinois points such as Galesburg, Peoria, Rockford and Chicago, and would be in violation of the fourth section. As published there is nothing to prevent the application of the rate to Chicago via Burlington. Burlington is considered intermediate and transit arrangements are provided for at that point. Keokuk and Fort Madison both pay equivalent to the full combination, as Burlington will have to do if the schedules are allowed to become effective. A 29.5c rate, which is 3c under the local combination, applies from Gideon to Chicago and Rockford. Peoria takes a rate 2c lower than the combination. HELD, proposed rates justified, but respondents have not justified rates to Burlington and West Burlington which are in excess of rates to more distant points. Lumber from Missouri points to Iowa, 91 I. C. C. 218.

(ef) The reasonableness of an increased rate can not be established by

simply showing that departures from the fourth section are thereby removed. Coal from stations in W. Va., 93 I. C. C. 423, 426.

(g) C. & E. I., proposed to increase the rates on bituminous coal from Group G, Evansville, Ind., to destinations in Illinois on its lines. Destinations are Brewer to Momence, Ill. Most of the destinations are intermediate between Evansville and certain points in Indiana over respondent and connections. On August 1, 1924 respondents published rates to Indiana through these Illinois points lower than to intermediate territory. On September 10, 1924 to remove fourth section violations rates were published to intermediate territory the same as to points beyond. Respondent now proposes to increase these rates to basis in effect prior to that date. Respondents revenue will not be materially affected if the suspended schedules are not allowed to become effective. HELD, suspended schedules not justified. Coal from Evansville group, 95 I. C. C. 607.

(h) Respondents proposed to increase their rates on fencing material, reinforcement steel, and related articles from St. Louis, Mo., and related points north and east thereof to southeastern Kansas. The destinations are in what is known as Kansas group A, and are generally between 400 and 500 miles distant from St. Louis. Wichita is about 479 miles from St. Louis, and is perhaps the principal point. Prior to May 1, 1924 the rates on these commodities were higher from St. Louis to Group A destinations in Kansas than those from the same points of origin to destinations in northeastern Oklahoma, such as Tulsa and Bartlesville, and in many instances represented departures from the long and short haul rule. The carriers decided to bring about conformity with the fourth section by reducing to the northeast Oklahoma basis such of these rates as applied to Group A destinations in Kansas which are intermediate to the destinations in northeastern Oklahoma over what were regarded as the direct routes. The publishing agent filed a tariff in accordance with directions. It being later noticed by respondents that the reductions went beyond their intentions, and resulted in what they regarded as unwarranted disparities against destinations in Kansas groups B, C, and D, they caused the proposed tariff to be filed. If allowed to become effective this tariff would have the effect of limiting the present reduced rates to those destinations in Kansas group A which are intermediate to northeast Oklahoma over what the carriers regard as the direct routes, thus restoring the other Group A rates to the higher or Oklahoma City basis which prevailed before the reduction was made on May 1. Over certain routes respondents are proposing to create departures from the long and short haul rule without authority. HELD, schedules not justified. Fencing material to Kansas, 96 I. C. C. 462.

(i) Proposed cancellation of local and proportional commodity rates on petroleum and products from Pueblo and Walsenburg to destinations on Denver & Rio Grande Western R. R., leaving fifth-class rates in effect, thereby resulting in substantial increases and in certain fourth-section violations, found not justified. Petroleum between Colorado, New Mexico, and Utah, 91 I. C. C. 734.

(j) Respondents proposed a readjustment of rates on live and dressed poultry, butter and eggs from Kentucky, Tennessee, Alabama, and Mississippi to eastern, central and southern points, including increases and reductions. The suspended schedules name joint through commodity rates on live poultry, carloads, and on dressed poultry, butter, and eggs, in carloads and less carloads, to eastern cities and points in the Buffalo-Pittsburgh zone, which are generally higher than the present rates from points having joint commodity rates and lower than the present rates from all other points. It is also proposed to cancel the commodity rates wherever they exist on any or all of these commodities to Chicago, Ill., Ohio and Mississippi river crossings, and certain other destinations, leaving applicable the higher class rates. The principal part of the readjustment is that to the eastern cities, the heaviest movement by far being to New York, N. Y. The present adjustment of the rates to those cities is very uneven and has been the subject of considerable complaint. Although the proposed adjustment is only intended to be temporary, shippers who would benefit by the proposed reductions are anxious to have them made effective as soon as possible, and the removal of the discriminations and fourth section depar-

tures in the present rates should not be delayed unnecessarily. The only way in which the proposed reduction can be made available and the discriminations and fourth section departures removed in this proceeding is by permitting the proposed readjustment to the eastern cities and Buffalo-Pittsburgh zone. The same reasons do not appear to apply to the rates to Chicago, the Ohio and Mississippi river crossings involved. Although some revision of those rates may be justified, the Commission is not convinced that the present class rates should be applied to those destinations, especially since they are now in course of revision. HELD, proposed readjustment to eastern cities and Buffalo-Pittsburgh zone has been justified, but increased rates proposed to Chicago, the Ohio and Mississippi river crossings, not justified. Commodity rates from points on the N. C. & St. L., to junctions with other lines may be increased sufficiently to prevent departures from the aggregate of intermediates rule of the fourth section. No change has been justified in the present practice of transporting caretakers of live poultry. Dairy products from southern points, 100 I. C. C. 754.

(k) Reasonableness of an increased rate can not be established by simply showing that departures from the long-and-short-haul provision of the fourth section are thereby removed. Traffic Bureau of Nashville, 43 I. C. C. 366, 370. Iron and Steel Articles from Philadelphia, 92 I. C. C. 123.

(l) Proposed increased rates on iron and steel articles, from Philadelphia and near-by points to points in Delaware, Maryland, and Virginia, for purpose of removing fourth-section departures and in order to take advantage of proper increases under the Five Per Cent Case, 31 I. C. C. 351, found not justified. Reasonableness of increased rates can not be established by simply showing that fourth-section departures are thereby removed or that carriers by error failed to take advantage of an increase authorized 10 years ago. Moreover, proposed rates would create new fourth-section departures. Iron and Steel Articles from Philadelphia, 92 I. C. C. 123.

(m) Proposed increased rates on cottonseed products from Texas common points, on local traffic to Louisville, Ky., territory, for purpose of removing fourth-section violation in respect of traffic to intermediate St. Louis territory, found not justified. Resulting rates would be on higher basis than rates from Arkansas and Oklahoma points with which Texas common points compete. Cottonseed Cake from Texas, 92 I. C. C. 207.

(n) Proposed increased rates on cotton piece goods and on junk and scrap iron from Texas, Louisiana, and Oklahoma points to St. Louis and other points in defined territories, and on oyster shells from Memphis to Missouri and Kansas points, published for sole purpose of removing fourth-section departures in compliance with commission's fourth-section order No. 8600 issued in connection with decision in Memphis-Southwestern Investigation, 77 I. C. C. 473, found not justified. Commodity Rates from Southwestern Points, 93 I. C. C. 394.

(o) Proposal to eliminate whole or crushed oyster shells from list of fertilizer and fertilizer materials on traffic from Memphis to interior Kansas and Missouri points, result of which would be to increase rates on shells over rates on fertilizer,, found not justified. In 74 I. C. C. 245 and 80 I. C. C. 604, the commission declined to authorize elimination of shells from list of articles taking fertilizer rates, and such a proposal as here contemplated is not justified by mere statement that intermediate points have had a higher basis of rates, particularly when commission has heretofore found that such exclusion was not justified. Commodity Rates from Southwestern Points, 93 I. C. C. 394, 398.

(p) Proposed increased rates on scrap iron and cotton tie clippings from Texas points to St. Louis and points in defined territories, found not justified. Respondents made no attempt to justify proposed increases beyond stating that rates were designed for sole purpose of removing fourth-section violations in compliance with order entered in connection with Memphis-Southwestern Investigation, 77 I. C. C. 473. Such departures, however, could have been removed by establishing the highest rate to St. Louis at the intermediate points. Moreover, evidence was introduced to show that increases proposed would substantially reduce, if not entirely eliminate, shipments of scrap iron and junk between points here involved. Commodity Rates from

Southwestern Points, 93 I. C. C. 394, 397, 398.

(q) Proposed increased rates on coal from farther distant points on the Gauley branch of the C. & O. to level of the New River or intermediate basis of rates, in order to comply with commission's order in 89 I. C. C. 638, denying fourth-section relief, found not justified. No similar increases are proposed from competing mines on the same branch north of Belva, and if advances are allowed it will be necessary for protestants to absorb them in order to continue shipping to western markets. Moreover, respondent made no effort to show that proposed rates are reasonable per se, and its revenue would not be materially affected were departures removed by reducing rates from the intermediate points. Coal from Stations in W. Va., 93 I. C. C. 423.

(r) Reasonableness of an increased rate can not be established by simply showing that departures from the fourth section are thereby removed, Iron and Steel Articles from Philadelphia, 92 I. C. C. 123, or in order not to disturb commercial conditions. Coal from Stations in W. Va., 93 I. C. C. 423, 426.

(s) Proposal to cancel third-class rates plus 3 cents per 100 pounds on common black blasting powder from Fairchance and Evans, Pa., and Rita, W. Va., to stations on the B. & O. in the Pittsburgh, Pa., group and points east thereof, and to apply first-class rates, found not justified. Youngstown, Ohio, and Quaker Falls, Pa., competitive points, object to paying rates relatively higher than from Fairchance, and rather than extend the Fairchance basis carriers propose its cancellation. Proposed basis from Fairchance, however, would place that point at a disadvantage and result in fourth-section departures. Second-class rates from all origin points, satisfactory to all parties concerned, found justified. Rating on Blasting Powder, 93 I. C. C. 451.

(t) Proposed increased rates on lime from points in eastern trunk-line territory to destinations in 60 and 67 per cent territories, published in compliance with decision in Lehigh Lime Co., 85 I. C. C. 341, found not justified. Proposed rates would result in numerous violations of both the long-and-short-haul rule and aggregate-of-intermediates provision of section 4 of the act. In view of the competitive relationship which exists between Mitchell, Ind., and Ohio producing points on the one hand and eastern producing points on the other, findings in cited case modified and an adjustment of rates prescribed for future. Lime from Eastern Trunk Line Points, 93 I. C. C. 617.

(u) Where suspended schedules contain or threaten departures from long-and-short-haul provision of section 4 of the act, such schedules should be ordered cancelled "without considering the intrinsic reasonableness of the proposed rates." Rice Products to Jackson, Miss., 44 I. C. C. 364. Citrus Fruits between Points in Florida, 95 I. C. C. 532, 538.

(v) Proposed increased rates on cement from Ada and Hartshorne, Okla., to points in Texas on the Cisco & Northeastern; Eastland, Wichita Falls & Gulf; Wichita Falls, Ranger & Ft. Worth, and Wichita Falls & Southern, comparatively short-line carriers, found not justified. Purpose of the proposed advances is to bring these rates into proper alignment with rates to other Texas points and remove existing fourth-section departures. However, new fourth-section departures in some instances would result and the proposed rates do not compare favorably with rates prescribed in Iola Cement Mill Traffic Asso., 87 I. C. C. 451, for application from Ada to points in Kansas. Cement from Oklahoma to Texas, 95 I. C. C. 596.

(w) Proposed increased rates on bituminous coal from Evansville, Ind., to Illinois points on the C. & E. I. R. R., to basis in effect prior to reductions established in order to remove fourth-section violations resulting from a decision of the Public Service Commission of Indiana wherein rates were prescribed from mines to consuming points in Indiana, found not justified. Proposed rates would recreate the fourth-section departures and record indicates that carrier's revenue will not be materially affected if suspended schedules are not allowed to become effective. Coal from Evansville Group, 95 I. C. C. 607.

(x) Proposed increased rates on fertilizer from Little Rock, Ark., to El Paso, Tex., and points taking the same rates, designed to eliminate departures from the long-and-short-haul provision of section 4 of the act, found not justified, and such departures should be promptly eliminated. Fertilizers from Little Rock-Fort Smith Territory, 96 I. C. C. 703, 704, 705.

(y) Proposed increases in rates on window glass and rough-rolled glass, in carloads, from Oklahoma and from Fort

Smith and South Fort Smith, Ark., to Texas points, found not justified. The proposed adjustment purports to remove fourth-section departures, but has been framed without adequate consideration of its effect. It would remove some departures but cause many others. Glass and Glassware to Interstate Points, 98 I. C. C. 83, 90.

(z) Proposed increased proportional commodity rate on chinaware or earthenware plumbers' goods to Oklahoma City, Okla., from upper Mississippi River crossings, on traffic originating at Trenton, N. J., found not justified on ground it would create violations of the long-and-short-haul and aggregate-of-intermediates provisions of fourth section. Further, proposed proportional rate would exceed local rate on plumbers' earthenware and corresponding rate on similar articles of plumbers' enameled ironware, competitive commodities, resulting in undue prejudice to plumbers' earthenware. Plumbers' Goods from Mississippi River Crossings to Oklahoma City, Okla., 98 I. C. C. 403.

(za) Proposed cancellation of commodity rates on tanning extract from Norfolk and Newport News to Memphis, Chicago, and other destinations in c. f. a. territory, leaving in effect higher class rates, found not justified. Suspended schedules would create departures from long-and-short-haul provision of fourth section of the act. Tanning Extract from Norfolk and Newport News, 102 I. C. C. 196.

(aa) Respondents proposed to increase the rates on lumber and other forest products, carloads, from Latonia, Newport, and Covington, Ky., to Hamilton, Middletown, Miamisburg and Dayton, O. Points of origin are called the south bank points, are on the Ohio river, directly opposite Cincinnati, O., and within its switching limits. They are reached by the L. & N. The present rates from the south bank points are the same as those from Cincinnati, namely, 7.5c to Hamilton, 8c to Middletown and 9c to Miamisburg and Dayton. The proposed rates are in each instance 2c higher, this being the switching charge from the south bank points to Cincinnati. The suspended schedules would create fourth section departures in that the present rates from the south bank points in some instances also apply to destinations beyond Hamilton, Middletown, Miamisburg and Dayton to which more distant points no increase is proposed. HELD, to extent fourth section departures are created schedules not justified. New schedules to be filed naming the proposed rates provided no fourth section departures would be created thereby. Lumber from Kentucky to Ohio points 104 I. C. C. 387.

(bb) Complainant attacked commodity rates charged on petrolem and its products carloads from Oklahoma, Arkansas, Louisiana and Texas and related rate points, to Florence, Sheffield, Tuscumbia, and also to Russellville, Ala., as unjust, unreasonable, unjustly discriminatory, and unduly prejudicial in favor of Corinth, Tupelo, Miss., Decatur, Athens, and Cullman, Ala., and Columbia, Tenn. Respondents filed schedules purporting to eliminate the fourth section departures at the destination points named by restricting routing through those points, and by increasing the rates in some instances. The points of destination are in northwestern Alabama on or near the Memphis division of the Southern, which extends from Memphis to Chattanooga, Tenn., and the alleged preferred points are located in the surrounding territory. The average distance from Baton Rouge, La., to the Florence group is 462 miles, and the rate on gasoline and kerosene is 41.5c. The average rate to 149 destinations in Alabama, Kentucky and Tennessee for an average distance of 569 miles is 34c. From Shreveport, La., to the Florence group the rate is 43c, while a rate of 29.5c is shown to apply to destinations in Mississippi, Tennessee, Kentucky, and Illinois for distances ranging from 439 to 1,059 miles. A rate of 29.5c applies from Shreveport to Florence, 507 miles, whereas the rate to the Florence group, except Russellville, is 13.5c greater by the distance is 37 miles less. The rate from Shreveport to Russellville, 492 miles, is 46.5c, or 3.5c higher than to Florence, 470 miles. The rate from Shreveport to Louisville, Ky., 951 miles, and to many points in central territory for distances ranging as high as 1,299 miles is 41c. Oil is not shipped from Vicksburg, Miss., but the rates from that point are used as a basis for constructing rates from points west of the Mississippi river. The rate from Vicksburg is the same as from New Orleans and Baton Rouge to the destination points. The rates

from Vicksburg to Corinth and Tupelo are on the Mississippi Valley basis. A rate of 29c applies from Memphis to Florence, Sheffield, and Tuscumbia, while a rate of 17c is in effect from the same point to Corinth. The Florence group is entirely surrounded by points which are accorded much lower rates, although the distance to the Florence group is considerably less than to many of the preferred points. Defendants exhibits abundantly demonstrate that so far as distance is concerned, the rates attacked are not unduly high, and that they conform to the level of numerous rates in the southeastern territory. The issues are not broad enough and the record is not sufficiently comprehensive for the Commission to consider the reasonableness of the southeastern adjustment as a whole in this case. I. S. 2357. The rates on petroleum and its products, carloads, from Gulf ports and lower Mississippi river crossings to various points in the southeast, central territory, and St. Louis, Mo., apply in connection with various carriers participating in the tariff, including the Southern Ry., without restriction of routes. One of the primary objects of the schedules may have been to eliminate wasteful transportation, and instances of the proposed elimination of substantially longer routes are cited, but to most of the destinations many of the proposed routes are longer than some of those it is proposed to close. There may be some justification for the elimination of a few of the longer routes as contemplated by the proposed schedules, but it is impossible upon this record to designate the exact extent to which there may be a justification. HELD, rates attacked in 16684 not unreasonable or unjustly discriminatory, but unduly prejudicial to extent they exceed rates to Decatur or Columbia from Gulf ports; that rates attacked from Memphis, Tenn., to Florence, Sheffield and Tuscumbia unduly prejudicial to extent they exceed the rates to Corinth by more than 8c, or 5.5c less than to Decatur; rates from Memphis to Russellville unduly prejudicial to extent they exceed 11.5c more than from Memphis to Corinth, or 2c less than Memphis to Decatur. Proposed schedules not justified. Florence Chamber of Commerce v A. & V. Ry. 107 I. C. C. 84.

(cc) Proposed readjustment of rates on live and dressed poultry, butter, and eggs from points in Kentucky, Tennessee, Alabama, and Mississippi to eastern cities and Buffalo-Pittsburgh zone, resulting in reduction in rates generally and removal of discriminations and numerous departures from long-and-short-haul rule of fourth section, found justified, but from same points to Chicago Ill., Ohio and Mississippi River crossings and certain other destinations, resulting in heavy increases in rates in practically all cases, found not justified. Dairy Products from Southern Points 100 I. C. C. 756.

(dd) Commodity rates from points on the N., C. & St. L. to junctions with other lines may be increased sufficiently to prevent departures from the aggregate of intermediates rule of the fourth section. Dairy Products from Southern Points, 100 I. C. C. 756, 762.

(ee) Proposal to increase rates on grain and grain products from certain Indiana, Illinois, and Michigan points to Aurora, Garretsville, and Mantua, O., to be effected by transferring these destinations from Cleveland to Youngstown, Ohio, group, found not justified, without prejudice to establishment of rates in conformity with fourth section of the act. Present adjustment is illogical and inconsistent, and its correction is proper, but the application of rates to the three destinations higher than those to Solon, Ohio, which is near Cleveland and just beyond destinations in question over respondents' through routes, would contravene the long-and short-haul provisions of fourth section. Grain and Grain Products from C. F. A. Points, 101 I. C. C. 7.

(ff) Proposed increased rates on lumber and forest products from stations on the Clear Fork, Hog Camp, and Crooked Fork branches of the L. & N. R. R., in Tennessee and Kentucky to Lexington, Ky., found not justified, respondent offering no justification for departures from the long-and-short-haul provision of the fourth section at points intermediate to Lexington. Forest Products between Kentucky and Tennessee, 101 I. C. C., 469.

(gg) Proposed changes in rates on canned goods from Wisconsin points to eastern destinations, designed for purpose of eliminating present exceptions to fifth class rating generally in effect on such commodities in official classification territory, and of curing departures

from the fourth section of the act, found justified in some instances and not justified in others. Canned Goods to Eastern Points, 101 I. C. C. 502.

(hh) Proposed increased rates on grain and grain products from certain points in Kansas on the Union Pacific to St. Joseph, Mo., when routed over Union Pacific to Marysville, Kans., and St. Joseph and Grand Island beyond, found not justified. If suspended schedules became effective departures from the long-and-short haul provision of section 4 would result, also undue prejudice to protestants at Marysville who would not be able to purchase grain at Union Pacific points in competition with St. Joseph competitors. Grain and Products from Kansas, 101 I. C. C. 595.

(ii) Proposal to increase local, proportional, and reshipping rates on grain, grain products and grain by-products from west-bank Lake Michigan ports across lake, upper Mississippi River crossings, St. Louis, Chicago and other Illinois basing points, to northeastern Ohio, to be effected by changing the rate basis of the destination area from the Cleveland to Youngstown, Ohio, group, found not justified, in that such a change would result in an unlawful rate situation and departures from the long-and-short haul provisions of section 4 of the act. Grain and Products Between C. F. A. Points, 101 I. C. C. 662

(jj) Proposal to cancel commodity rates on brick, draintile, and other clay products from Mason City, Des Moines, Acme, and Rockford, Iowa, points on Rock Island, to Ashland, Wis., on So Line, leaving in effect considerably higher class rate and creating many violations of long-and-short-haul provisions of fourth section of the act, found not justified. Combination Rule on Brick and Draintile, 101 I. C. C. 729.

ALL OTHER CITATIONS

Grain from Oklahoma, 85 I. C. C. 602; Grate Bars to Memphis, 88 I. C. C. 701.

§5 (3). To Preserve Commodity Relationship.

See Classification §17, §22; Comparative Rates; Evidence §12; Relative Rates.

(a) Rates on roofing talc as increased under General Order No. 28 of director general and general increases of 1920, result of which was to widen spread existing between talc and crushed slate, a competitive commodity, found unreasonable to extent they exceeded lower rates subsequently established and which restored same relation as existed prior to such increases. Reparation awarded. Barrett Co. v. St. J. & L. C. R. R. Co., 91 I. C. C. 9.

(b) In reissuing a tariff, carriers unintentionally increased arbitrary on fruit, vegetable, and grape packages over rates on lumber, to a basis higher than that authorized in Increased Rates, 1920, 58 I. C. C. 220. HELD: Burden of proof is upon carriers, and since they failed to justify the rates, as increased, unreasonableness found to extent that arbitraries exceeded those authorized in cited case. Reparation awarded. Package Sales Corp. v. U. P. R. R. Co., 91 I. C. C. 697.

(c) Proposal to increase rates on wheat bran from points in western trunk line territory to points in New Mexico from coarse-grain basis to wheat basis, found not justified. Respondent did not submit any evidence in justification of proposed adjustment. Abilene Flour Mills Co. v. A. & S. Ry., 101 I. C. C. 14.

(d) Proposed change in description of glue stock between points in official territory so as to except from its provisions such articles as are edible ingredients of food for human consumption, making applicable thereon fifth-class instead of present sixth-class rates and rating, found not justified except as to "pork-hide trimmings" or "fresh-frozen or green-salted pig skin," which are used almost exclusively in manufacture of edible gelatin. Glue Stock in Official Classification Territory, 101 I. C. C. 601.

(e) Respondents propose generally to increase their carload rates on brass, bronze, and copper scrap, ingots, residues, and related articles between points in official classification territory. Brass, bronze, and copper scrap, bars, cakes, pigs, slabs, ingots, borings, and turnings are rated fifth class, and brass, bronze, and copper residues, such as ashes, skimmings, mud, sweepings, and washings are rated sixth class in official classification. With three or four exceptions, commodity rates equivalent to full sixth class rates are now in effect on the fifth class articles between points in central territory, and for movements within the same territory the residues, by exceptions to the classification, take 85 per-

cent of sixth class rates. Within trunk line territory and from or to points in that territory to or from points in central and New England territories, specific commodity rates ranging from about 67.3 per cent to over 91 per cent of sixth class rates are applicable on both the higher rated articles and the residues, but only between certain specified points where the traffic moves in heavy volume. Between other points in these territories class rates are applicable. In New England territory the classification basis is generally applied. Except on the residues between points in central territory now taking 85 per cent of sixth class, as to which no change is proposed, the suspended schedules propose generally to increase to the full sixth class basis, where now lower, all commodity rates applicable on these articles between points in the above described territories, both intra and interterritorial. The proposed rates are published as specific commodity rates but in every instance are equivalent to the current sixth class rates. The sixth class rates between points in central territory, on the one hand, and points in trunk line and New England territories, on the other, are about 33 1-3 per cent of first class rates, whereas between points in cenral territory and also in New England territory, they are uniformly 28 per cent of first class. Between points in trunk line territory the relationship of sixth class to first class varies greatly but will average around 34.5 per cent. HELD, proposed schedules have not been justified in their entirety, but the proposed sixth class basis would be reasonable for application on the fifth class articles, subject to the application as maximum of a rate of 40c between New York and Chicago, scaled on the regular percentage basis at other points in c. f. a. territory, and observing the recognized port differentials, and that 85 per cent of the rates on the fifth class articles would be reasonable for application on the residues. The Commission sees no reason why the foregoing basis should not be applied in trunk line territory and between points in that territory and New England or central territory where the present rates are now higher as well as where they are lower than such bases, at least wherever there is a substantial movement. The findings apply to the sixth class rates as a whole and are not to be understood as approving the specific rates from and to every point in the above territories. Brass, bronze and copper articles 109 I. C. C. 351.

§5 (4) Unreasonably Low Prior Rate.

See Evidence §43.

(a) Proposed increased rates on pig iron between Sheffield and Florence, Ala., when for movement by water beyond, found justified. Present rate is very low, is in the nature of a raw-material rate for manufacturing purposes, on the manufactured product of which carriers receive an outbound movement, and was not intended to apply to river landings at Florence or Sheffield. Respondents point out that there is generally no return movement from Sheffield, and if proposed rate should become effective the rail-water-and-rail rate from Florence would still be lower than the all-rail rate to some destinations. Instances were also cited of higher rates on various commodities between these points and between Alabama City, Gadsden and Attalla, Ala. Pig Iron Between Florence and Sheffield, 89 I. C. C. 324.

§5 (6). Erroneous Rate.

See Erroneous Rates.

(a) A rate admittedly low does not become unreasonable merely because other low rates to the same destination are not increased at the same time. Nor is an increase applied through error sufficient in itself to show that the resulting rate is unreasonable. Consolidated Coal Co. v. Director General, 93 I. C. C. 53, 54.

(b) Respondents proposed to cancel joint commodity rates on cement plaster, carloads, from Pyramid and Sweetwater, Tex., to destinations in Arkansas, Louisiana, Missouri and Illinois on the Cotton Belt, leaving in effect higher combinations of intermediate rates. Pyramid is on the T. & P., 199 miles west of Forth Worth, Tex. Sweetwater is 3 miles west of Pyramid on the T. & P., and K. C. M. & O. The joint rates were established contrary to instructions furnished agent Leland by that line, and the proposal to cancel them is made at its request for the purpose of correcting an error in tariff publication. That is the sole justification offered. Even though protestant would be able to reach competitive points at equal rates, it would not enjoy as liberal routing privileges as

its competitors. Protestant is as favorably situated with respect to distance as are its competitors and no reason appears why it should not have the same basis of rates. Schedules not justified. Cement plaster from Pyramid and Sweetwater, Tex., 93 I. C. C. 315.

(c) Complainant asked for reasonable rates for the future because of alleged erroneous methods of defendants in applying general percentages increases and reductions in rates on June 25, 1918, and other dates on stable manure from Jersey City, N. J., on ex water traffic from New York, N. Y., to New Jersey, Pennsylvania, Delaware, Maryland, Virginia and other states. Complainant gathers these shipments in New York and conveys them by scow or car float to Jersey City where they are loaded into cars from the scows or picked up by the railroad from the car float for transportation to destinations. An allowance of 35c per ton is made to complainant for the water ferriage from New York to Jersey City which is not in issue. The general increases mentioned, with one exception, were applied to the gross rate, or rate including the allowance, after which the allowance is deducted. On Nov. 1, 1921 defendants voluntarily canceled the resulting rates and published rates equal to the net rates of August 25, 1920 plus about 15% and the allowance of 35c. These rates were increased in the same manner as all other rates of defendants which reflected allowances. No reason appears for making an exception to that method in this instance. HELD, rates attacked not unreasonable or otherwise unlawful complaint dismissed. New York Stable Manure Co. v. Director General, 93 I. C. C. 349.

(d) Proposed increased rates on lumber from Missouri, Arkansas, Louisiana, Oklahoma, and Texas to Burlington and West Burlington, Iowa, promulgated for purpose of correcting former mistakes in tariff compilation brought about by various general increases and reductions, found justified in instances where they would remove existing fourth-section violations at Keokuk and Ft. Madison, Iowa, intermediate points, but found not justified where new fourth-section departures would be created at Burlington and West Burlington by application of higher rates thereto than to Galesburg, Peoria, Rockford, and Chicago, Ill., farther distant points. Lumber from Missouri Points to Iowa, 91 I. C. C. 218.

(e) In applying percentage increases authorized in Increased Rates, 1920, 58 I. C. C. 220, carriers erroneously applied territorial advances instead of authorized interterritorial increases. HELD: Such rates, as erroneously increased, were unreasonable to extent they exceeded those reflecting proper advances authorized. Reparation awarded. Whiting Plover Paper Co. v. S. Ry., 92 I. C. C. 292.

(f) Carrier erroneously increased rates a greater percentage than authorized by commission in Increased Rates, 1920, 58 I. C. C. 220. Upon contention that failure to advance rates in conformity with case cited is not conclusive that the higher rate is unreasonable, and that whether a specific rate was plussed more or less than percentage authorized has no conclusive bearing upon its reasonableness or unreasonableness, FOUND: While the erroneous and unauthorized increase is not conclusive proof of unreasonableness, it raises a presumption to that effect. Whiting Plover Paper Co. v. S. Ry., 92 I. C. C. 292, 293, 294.

(g) Fact that rates may have been published in error does not necessarily demonstrate unreasonableness. Denver Alfalfa Products Co. v. Director General, 92 I. C. C. 326, 327.

(h) Proposed increased rates on cotton and cotton regins, uncompressed, any quantity, and on cotton linters, uncompressed, l. c. l., both with carrier's privilege of compressing from Cairo, Brookport, Gale and Thebes, Ill., to eastern points, for purpose of restoring relationship with rates from St. Louis, disturbed when the St. Louis rates were increased, but through oversight no similar changes were made in rates from the Illinois points, found not justified. Respondent made no reference to rates, under which traffic actually moves to demonstrate reasonableness of the proposed rates, and since the St. Louis rates are paper rates, most of the cotton movement being through Memphis, they have little, if any, probative force in that connection. Cotton, Linters, and Regins to Eastern Cities, 92 I. C. C. 453.

(i) Rates on coal from Mount Olive and Staunton, Ill., to West Pullman, Ill., during Federal control, increased in error

by director general and subsequently restored to former level, found not unreasonable as compared with rates from other mines not subjected to the increase. Rates from Illinois mines are admittedly low and did not become unreasonable merely because other low rates to same destination were not correspondingly increased; nor was increase applied through error sufficient in itself to show that resulting rate was unreasonable. Consolidated Coal Co. v. Director General, 93 I. C. C. 53.

(j) Proposed cancellation of joint commodity rates on plaster and cement from Pyramid and Sweetwater, Tex., to certain destinations on the St. L. S. W. Ry., leaving in effect higher combinations, found not justified. The joint rates were published contrary to instructions, and sole justification offered is carrier's desire to correct this error. However, no rate change is proposed from competing points at which cement-plaster plants are located, and such a rate disadvantage would exclude protestant from markets at local Cotton Belt points. While protestant would be able to reach competitive points at equal rates, it would not enjoy as liberal routing privileges as its competitors. Moreover, protestant is as favorably situated with respect to distance as are its competitors, and no reason appears why it should not have same basis of rates. Cement Plaster from Pyramid and Sweetwater, 93 I. C. C. 315.

(k) Proposal to correct error in schedules originally published on the Peoria basis, by increasing to the Chicago group basis the proportional rates on grain and grain products from Kansas City, Mo.-Kans., to points in Iowa on the Chicago & North Western, found not justified. Present adjustment is in harmony with rates from Omaha, Nebr., to same points and Peoria basis is that maintained to same territory by other lines for both single and joint line hauls. Moreover, respondents have not shown that the present adjustment is improper or the present rates too low, nor have they offered any justification for a different basis over their lines from Kansas City to destination territory. Grain from Kansas City, 96 I. C. C. 154.

(l) Upon contention that, inasmuch as suspended schedules were designed to correct an error made in publishing schedules which were contrary to the policy of the Chicago & North Western, they cannot be regarded as providing for increases and therefore no burden is upon respondents to justify increases. HELD, Whether suspended schedules were intended to effect increases or not, an increase would result if such schedules became effective and fact that present rates were established through error is not controlling. The burden of justifying increased rates cast upon carrier does not depend upon purpose or intent of carriers in naming increased rates. Grain from Kansas City, 96 I. C. C. 154, 156.

(m) Rate on kerosene from Fort Worth, Tex., to Waterbury, Conn., found unreasonable to extent it exceeded rates contemporaneously applicable from Fort Worth to greater part of New England over route of movement, through Waterbury to more distant points. Due to error on part of tariff compiler the lower rate was not applicable on shipments to any destination in Connecticut, and this omission was subsequently corrected. Reparation awarded. Transcontinental Oil Co. v. D., L. & W., 96 I. C. C. 173.

(n) Proposed increased rates on petroleum and its products from Gates and Port Arthur, Tex., and Ardis, La., and other points in Texas and Louisiana to destinations in Kansas Groups 1, 2, and 3, and to certain destinations in Oklahoma, on the ground that present rates were established erroneously and that present schedules represent an effort merely to eliminate a tariff error, found not justified. Petroleum and Petroleum Products from Southwestern Points to Points in Kansas and Oklahoma, 98 I. C. C. 321.

(o) Upon further hearing, proposal to correct error in schedules originally published on Peoria basis, by increasing to Chicago group basis proportional rates on grain and products from Kansas City to points in Iowa on Chicago and North Western, found justified. While present rates are more in harmony with general adjustment than rates proposed, present rates sought to be increased are on a highly competitive basis and are less than maximum reasonable rates. Finding in former report, 96 I. C. C. 154 reversed. Grain from Kansas City, 102 I. C. C. 475.

(p) Fact that present rates were established in error does not relieve respondents of burden of justifying proposed increase in such rates. Grain from Kansas City, 102 I. C. C. 475, 476.

ALL OTHER CITATIONS

Brick and Draintile from St. Louis, 85 I. C. C. 353; National Tube Co. v. Director General, as Agent, 85 I. C. C. 689.

§5 (7¼) Low or High State Rate.

See State Rates and Regulations.

(a) Proposed increased rate on sand and gravel from Jedburg, Mo., and other points in same territory, to St. Louis, when for movement to interstate destinations beyond, found justified. Present rate, for substantially same service, on shipments for intrastate points beyond, was established under authority from Missouri Public Service Commission, and it is proposed to advance the interstate rates so that same rate will apply on both intrastate and interstate shipments. Such increased rates will reflect rate in effect on June 25, 1918, plus subsequently authorized advances and reductions. Sand and Gravel from Missouri, 92 I. C. C. 177.

§5 (8). To Prefer Particular Locality.

See Evidence §2, §40½.

(a) Respondents proposed to increase the rates on newsprint paper carloads from Canadian mills in northeast Canada to Nashville and Memphis, Tenn. and to reduce rates on this traffic to Knoxville, Tenn. Present to Knoxville 60c proposed 57c, present to Nashville 47c, proposed 57c, present to Memphis 48c, proposed 58c. For many years the rates from Shawinigian Falls and other mills in northeast Canada to points in Tennessee have been the same or related to those from mills in New England. The proposed rates would apply only from Canadian mills, thus disrupting this blanket of long standing and giving to the New England mills an advantage of 10c over their competitors in Canada. Competition between the Canadian mills and New England mills on newsprint paper to points in Tennessee is keen, and while the average distance from the New England mills to the destinations concerned appears to be somewhat less than that from the Canadian mills accorded the same rate, the record does not warrant a finding that the present adjustment should be disturbed. The establishment of the proposed rates without a similar readjustment of the rates from the New England mills now accorded the same rates as the Canadian mills or rates related thereto, would result in undue preference of the New England mills. HELD, schedules not justified without prejudice to the filing of schedules in conformity with the conclusions herein. Newsprint paper from eastern Canada 109 I. C. C. 701.

§6. Right to Earn.

(6) All Traffic Will Bear.

See Evidence §6.

(a) Increased prosperity of an industry may not be made excuse for advancing rates on commodity it produces. Rates and Charges on Grain and Products, 91 I. C. C. 105, 143.

III. EVIDENCE.

See Evidence.

§6½. In General.

ALL CITATIONS

Louisville Fire Brick Works v. Director General, as Agent, 85 I. C. C. 457; California Grain Co. v. Director General, as Agent, 85 I. C. C. 680; National Tube Co. v. Director General, as Agent, 85 I. C. C. 689; Royall & Borden Mfg. Co. v. A. C. L. R. R. Co., 85 I. C. C. 715.

§7. Change in Conditions.

(6) Disputes Concerning Divisions.

See Divisions §4.

(a) Dissatisfaction on the part of carriers over divisions is a circumstance not recognized as adequate to justify increased rates to be borne by shippers. Increased Rates on Ice from Wisconsin, 74 I. C. C. 662; Crushed Stone from Thornton, 87 I. C. C. 759. Paper Stock from St. Louis, 89 I. C. C. 267, 269.

(b) The Commission has frequently found that disputes as to divisions between carriers afford no justification for increased rates. Peaches from Alabama, Georgia and Tennessee, 93 I. C. C. 534, 538.

(c) Respondents proposed to increase certain of the rates on crude and refined petroleum oils, carloads, from points on the Smackover El Dorado, Ark., field on the Rock Island to points in Louisiana on the Y. & M. V. Complainant, V. S. & P. Ry., intermediate carrier, alleged that the divisions accruing to it under the present rates are unjust, unreasonable and inequitable. The Smackover-El Dorado field extends about

9 miles north of El Dorado, Ark. The M. P., passes through the Smackover portion and the Rock Island is about 7 miles from its center. To meet competition the M. P., reduced its rates on oil from the Smackover field to those points. To meet this competition similar rates were also established by the Rock Island in conjunction with the V. S. & P., and Y. & M. V., through Ruston, La., and Vicksburg, Miss., to Baton Rouge, New Orleans, and stations on the Y. & M. V. between those two points. While the Rock Island has other connections with other carriers south of Ruston over available routes which would afford the Rock Island a longer haul, the route just described is the only route over which the reduced rates apply from stations on the Rock Island. The haul of the Rock Island to Raton is from Marrow Spur 63.4 miles, and from El Dorado 54.5 miles. The effect of the proposed schedules is to reestablish the higher rates in effect prior to the establishment of the 14c and 15c rates. HELD, proposed schedules not justified. HELD, further, just division of 14c rate on crude oil and 15c on petroleum oil other than crude to Rock Island 4.5c and 4 2-3c, V. S. & P., 4c and 4½c, Y. & M. V., 5.5c and 6c, respectively. Petroleum oil from Arkansas to Louisiana, 95 I. C. C. 55.

(d) Increases in rates may not be justified solely by a showing that the earnings received in division by certain of the carriers participating in the through transportation are inadequate. Grain to Pacific coast, 98 I. C. C. 158, 161.

(e) A dispute among carriers over divisions is no justification for increased rates. Transit Privileges on Grain, 92 I. C. C. 161.

(f) Proposed cancellation of transit privileges by M.-K.-T. R. R. of Texas on grain originating on or moving via Rock Island lines, found not justified. Sole justification offered by respondent is demand of the Rock Island for a proportion of the rate from origin to transit station, instead of division from origin to ultimate destination, but disputes among carriers over divisions is no justification for increased rates. The Rock Island is a party to joint through rates under which transit is accorded and is not concerned with transit privileges accorded by respondent, as transit privileges are local to carrier according them. Transit Privileges on Grain, 92 I. C. C. 161.

(g) Dissatisfaction between carriers over divisions is no justification for increased rates. Concentration of Cotton at New Orleans, 83 I. C. C. 18. Transit Privileges on Lumber at Buffalo, 92 I. C. C. 181, 182.

(h) Proposal to restrict territory of origin in rules governing stop-off in transit of lumber westbound at Black Rock, Buffalo, and North Tonawanda, N. Y., while no similar restriction is proposed at Falconer and Jamestown, N. Y., and Corry, Pa., competing points, found not justified. Proposal is induced by fear of unsatisfactory divisional arrangements with connecting carriers, but this is not recognized as a sufficient justification for increased rates. Moreover, there is no warrant for extending to Buffalo, Black Rock, and North Tonawanda different treatment from that accorded Falconer, Jamestown, and Corry. Transit Privileges on Lumber at Buffalo, 92 I. C. C. 181.

(i) Fact that carrier has been operating at deficit does not of itself prove that it is fairly entitled to increased divisions. Federal Valley R. R. case 68 I. C. C. 499, 502. Salina Northern R. R. Co. v. A., T. & S. F., 92 I. C. C. 475, 481.

(jk) Proposed increase in rate on sand from Eau Claire, Wis., to Detroit, Mich., via Manitowoc, which would result in increased divisions beyond junction point, found not justified. Present rate is a joint commodity rate and is equivalent in amount and divisions to joint rates in effect from certain other points of origin in Wisconsin to Detroit via other junctions. No justification of the proposed increase is offered except the contention that division to eastern carriers is unsatisfactory. Suspended schedules ordered canceled and proceeding discontinued. Sand from Eau Claire to Michigan, 100 I. C. C. 213.

(l) Fact that carriers are in disagreement as to proportions of through revenue they should receive is not sufficient justification for increased rates. See 33 I. C. C. 601, 605; 53 I. C. C. 369. Such disagreements or controversies will not be permitted to work injury to shippers and if carriers propose to obtain a greater proportion of through revenue charges, they should be sought by nego-

tiation with connections or by proper proceeding before the commission. Switching at Hagerstown, 102 I. C. C. 14, 18.

ALL OTHER CITATIONS

Sisal from Gulf Ports, 85 I. C. C. 467; Sisal From Gulf Ports, 88 I. C. C. 704.

§7 (8) Percentage Increases.

See Advanced Rates §5 (6) (c) (f), §7 (9) (a); Evidence §43¼ (a); Percentage Rates.

(a) The percentage of an increase is not controlling if the resulting rates are not unreasonable. Endicott-Johnson Corp. 73 I. C. C. 562, 565. Virginia Can Co. v. A. & V. Ry. Co., 89 I. C. C. 558, 562.

(b) Carriers proposed increased carload rates on glucose products from Chicago and Iowa to South Dakota east of the Missouri river and west of Sioux Falls, S. D. All commodities are rated fifth class. The rates to Minneapolis, Sioux City, Omaha, Kansas City and Sioux Falls are about 85% of the fifth class rates, and present rates to destinations here considered range from 69 to 84%. The purpose of the proposed schedules is to make the commodity rates to these destinations about 85% of fifth class, thereby making that basis applicable to all destinations between St. Paul and Missouri river. The present record does not disclose that the class rates afford a proper basis upon which to construct the commodity rates proposed to all of these destinations. HELD, proposed schedules not justified. Glucose products to South Dakota, 96 I. C. C. 579.

(c) Rates on stable manure from Jersey City, on ex-water traffic originating in New York, increased following general rate advances, by applying percentage increases to gross rate, including allowance for water ferriage, instead of first deducting such allowance and applying increases to net rates, found not unreasonable or unduly prejudicial. Reasonableness of rates charged, and not strict conformity with prescribed method of making percentage increases in their predecessors, is the controlling consideration. See 57 I. C. C. 723 and other cited cases. Moreover, rates complained of were increased in same manner as all other rates which reflected allowances, and no reason appears for making an exception to that method in this instance. N. Y. Stable Manure Co. v. Director General, 93 I. C. C. 349.

(d) Reasonableness of rates charged, and not strict conformity with prescribed method of making percentage increases in their predecessors, is the controlling consideration. Anaconda Copper Mining Co., 57 I. C. C. 723, and other cited cases. N. Y. Stable Manure Co. v. Director General, 93 I. C. C. 349, 351.

(e) Upon contention that application of a flat increase greater than the percentage increase authorized by General Order No. 28 of the director general resulted in unreasonable rates. HELD, an increase of more than 25 per cent under the general order can not be condemned unless the resulting rate is unreasonable. Omaha Chamber of Commerce v. A., T. & S. F., 95 I. C. C. 713, 717.

ALL OTHER CITATIONS

Louisville Fire Brick Works v. Director General, as Agent, 85 I. C. C. 457; Royall & Borden Mfg. Co. v. A. C. L. R. R. Co., 85 I. C. C. 715; Mason City Brick & Tile Co. v. Director General, as Agent, 88 I. C. C. 37.

§7 (9). Government Orders or Advances.

(a) Upon contention that application of a flat increase greater than the percentage increase authorized by General Order No. 28 of the director general resulted in unreasonable rates. HELD, an increase of more than 25 per cent under the general order can not be condemned unless the resulting rate is unreasonable. Omaha Chamber of Commerce v. A., T. & S. F., 95 I. C. C. 713, 717.

(b) Mere departure from the terms of General Order No. 28 of the director general can not be regarded as proof that the resulting rates were unreasonable. Lincoln Chamber of Commerce v. A. C. R. R. 101 I. C. C. 759, 762.

§8½. Comparisons.

See Comparative Rates; Evidence §12, §13.

(a) Proposed increased rates on fencing material, reinforced steel, and related articles from St. Louis, Mo., and related points north and east thereof to destinations in southeastern Kansas, found not justified. Proposal would have the effect of limiting the present reduced rates to those destinations in Kansas Group A which are intermediate to northeast Okla-

homa over what are regarded as the direct routes and restoring the other Kansas Group A rates to a higher basis and create unauthorized fourth-section departures. Fencing Material to Kansas, 96 I. C. C. 462.

(b) Proposed increased commodity rates on glucose products from Chicago, Ill., and certain points in Iowa to South Dakota destinations north and west of Sioux Falls and east of the Missouri River, designed to make such rates approximately the same percentage of the contemporaneous fifth-class rates as obtains to Sioux Falls, Sioux City, Iowa, Minneapolis, Minn., and other destinations in the same general territory, found not justified, in view of the fact that the record does not disclose that the class rates afford a proper basis upon which to construct the commodity rates proposed to all of these destinations. Glucose Products to South Dakota, 96 I. C. C. 579.

(c) Proposed increased rates on fertilizer, from Little Rock, Ark., to El Paso, Tex., and points taking the same rates, found not justified as compared with rates on the same commodity from Memphis, New Orleans, Kansas City, St. Louis, and Chicago to El Paso. Fertilizers from Little Rock-Fort Smith Territory, 96 I. C. C. 703.

(d) Rate comparisons, based upon distance alone, have but slight probative value in determining the reasonableness of rates, and do not overcome the burden of proof imposed upon carriers by the act to justify increases in rates. International Harvester Co. v. N. Y. C. R. R. Co., 88 I. C. C. 368, 371.

ALL OTHER CITATIONS

Tripoli from Kansas and Missouri, 85 I. C. C. 35; Strawboard and other Paper Articles, 85 I. C. C. 470.

§8½a. Combination Rule.

See Infra §9½.

(a) The so-called combination rule was adopted by the director general as a temporary expedient whereby combination rates on certain commodities each factor of which had been increased under his General Order No. 28 by specific amounts, should thereafter reflect only the increase which they would have received had they been published in the form of joint rates. It provided that where no specific through rates are in effect between points of origin and destination and two or more factors, increased under the general order, are used to construct the through rate, a specific amount shall be deducted from each factor and a specific amount added to the sum of the reduced factors thus obtained. Combination Rule on Box Shooks, 89 I. C. C. 219, 220.

(b) Complainant attacked combination commodity rates charged on 75 bales of cotton shipped Nov. 13, 1919 from Blythe, Calif., to Galveston, Tex., and compressed in transit at Ballinger, Tex., as unreasonable and inapplicable. Shipment moved over California Southern to Rice, Santa Fe beyond, charged commodity rate of 40c to Rice and $1.20 beyond. The second component was published in Countiss I. C. C. 1065 and was subject to the combination rule in Morris I. C. C. U. S. 1. At the time of shipment Supplement 3 to the latter carried a provision that each component of combination rates subject to the rule should be reduced by a specific amount, and that to the sum of the remainders thus obtained a specific amount dependent upon the commodity, should be added. Under that supplement the two foregoing components should have been reduced by 15c each and 15c representing the increase authorized under G O 28 should have been added to the sum of the remainders, making a through rate of $1.45. HELD, rate attacked inapplicable reparation awarded on basis of $1.45. California Cotton & Factorage Co. v. Director General, 93 I. C. C. 260.

(c) Shipments moved under combination rates each factor of which was increased under General Order No. 28 of director general. Tariff governing one factor carried so-called combination rule which provided for application of but a single increase to through rates made on combination but such tariff made no reference to and was in no way connected up with tariff governing other factor. HELD: Following Standard Oil Co., 81 I. C. C. 193, there was a holding out to shipper of rates constructed in accordance with combination rule which publishing carriers must protect. Shipments found overcharged and reparation awarded against carriers publishing the rule. Sloan & Zook Co. v. M. V. R. R. Co., 91 I. C. C. 693.

(d) While the combination rule as applied on certain commodities may be

objectionable, that fact alone does not justify its cancellation and application of resulting higher rates. Combination Rule on Cotton and Linters, 92 I. C. C. 165, 167.

(e) Proposed cancellation of combination rule in connection with rates on cotton and linters from the South and Southwest to the North and East, without first providing joint through rates for application in absence of that rule, found not justified. Innumerable rate increases would result in absence of such rule on traffic moving through New Orleans, Memphis, and other gateways, which carriers made no attempt to justify. While combination rule, as applied to cotton and linters, may be objectionable, that fact alone does not justify its cancellation and application of resulting higher rates. Combination Rule on Cotton and Linters, 92 I. C. C. 165.

(f) The so-called combination rule was adopted by director general as a temporary expedient whereby combination rates, each factor of which had been increased under General Order No. 28 by specific amounts, should thereafter reflect only the increase which they would have received had they been published in the form of joint rates. It provided that where no specific through rates are in effect between points of origin and destination and where two or more factors, increased under the general order, are used to construct the through rate, a specific amount shall be deducted from each factor and a specific amount added to sum of the reduced factors thus obtained. Combination Rule on Cotton and Linters, 92 I. C. C. 165, 166.

(g) Proposed cancellation of combination rule in connection with shipments of livestock from Washington, Idaho, Montana, and North Dakota to primary markets, found not justified. To many destinations present rates would be protected under decision in Sligo case, 62 I. C. C. 643, because most tariffs of eastern lines carry the combination rule, but to points on roads which do not publish the rule increases would result. While commission has approved efforts of carriers to eliminate this rule by publication of joint through or proportional rates to take care of traffic which would move under the rule, it has refused to allow its cancellation where increases would result. Combination Rule on Livestock, 92 I. C. C. 205.

(h) Proposed cancellation of combination rule on common brick between points on lines of Great Northern and Northern Pacific in Iowa, Wisconsin, Minnesota, the Dakotas, Montana, Idaho, Oregon, and Washington, found not justified. Proposal to cancel application of the rule in connection with common brick only would result in many instances in rates higher than those approved in the General Brick case, 68 I. C. C. 213, 80 I. C. C. 179. Moreover, confusion would result from application of full combination of locals as certain lines serving many destinations in above territory carry reference to the rule in their tariffs and have not joined in proposal to cancel the same. Combination Rule on Common Brick, 92 I. C. C. 289.

(i) Proposal to restrict application of the combination rule so that it will apply only where all issues publishing factors used in arriving at through rates from origin to destination carry reference to the rule and authorize an affirmative application thereof, found not justified. Carriers made no effort to justify increased rates which would result in instances where the rule is published in a separate combination tariff and no reference is made thereto in connection with one factor of a combination, although such reference is made in connection with other factors. While commission has repeatedly sanctioned efforts to eliminate the rule by publication in its stead of joint or proportional rates, it has denied authority to cancel it where unjustified increased rates would result. Combination Rule on Lumber, 93 I. C. C. 279.

(j) Carriers stress fact that in several reports the commission has commented upon undesirability of the combination rule from a tariff standpoint, and refer to cooperation and suggestions of the Bureau of Traffic looking to ultimate elimination of the combination tariff. FOUND, suggestions did not contemplate increases in rates, for which no sound justification is offered, by cancellation of the rule. Combination Rule on Lumber, 93 I. C. C. 279, 281.

(k) Proposal of carriers in c. f. a. territory to restrict application of combination rule on livestock so that it will only apply where all factors used in ar-

riving at through rates from origin to ultimate destination carry reference thereto and authorize an affirmative application thereof, found not justified. Such restriction would not merely relieve respondents of assumption of deductions from western lines' separately established rates, but also from their own, since the rule would not apply where any carrier in the through route did not make appropriate reference thereto. This would result in increased charges, the burden of justifying which rests upon respondents. Moreover, from some origin points tariffs of western carriers still refer to the rule, and an inadmissible result of the restriction would be to make rates to be applied by respondent eastern lines depend upon separate tariffs of western lines. This would not accord with requirements of section 6 of the act. Combination Rule on Livestock, 93 I. C. C. 458.

(l) The combination rule originated with the Director General of Railroads and was adopted as a corrective expedient whereby combination through rates on certain commodities, each factor of which had theretofore received a flat increase under General Order No. 28, were so amended as to reflect the same single increases as were applied to equivalent joint rates. Combination Rule on Livestock, 93 I. C. C. 458, 459.

(m) Mere desire to eliminate the combination rule is not a justification for increased rates. Cancellation Rule for Combination Rates, 93 I. C. C. 614, 615.

(n) Tariffs of originating lines neither carried nor made reference to the so-called combination rule, which provided a method for constructing through rates made on combination. Tariffs of other participating carriers either carried the rule or made specific reference thereto. The rule, however, restricted its use to lines under Federal control and since originating carriers were nonfederally controlled, the rule laid down in the Sligo case, 62 I. C. C. 643; 73 I. C. C. 551, that there is a holding out to shipper of the rate constructed in conformity with the rule which publishing carrier must protect, is not controlling. Combinations, both factors of which were increased under General Order No. 28 of the director general, found to have been legally assessed. Pendleton & Gilkey v. Director General, 95 I. C. C. 699.

(o) Shipments moved under combination rates, each factor of which was increased under General Order No. 28 of director general. Tariff of one participating carrier contained the combination rule which provided a method for constructing through rates made on combination, which rule was not published in tariff of other participating carrier until after shipments moved. HELD, where one tariff used in making combination rates on through shipments contains a rule that such rates will be subject to a single increase, there is a holding out to shipper of rate so constructed which publishing carrier must protect. Sligo Iron Store Co., 62 I. C. C. 643, 73 I. C. C. 551. Shipments found overcharged and reparation awarded. Southwestern Shipbuilding Co. v. Director General, 93 I. C. C. 337.

(p) On shipments moving during Federal control charges were collected on basis of a combination rate both factors of which had been increased under General Order No. 28 of director general. Tariff carrying one factor contained a provision that where charges on through continuous movements were based on combinations of separately established rates increases authorized by the general order should be applied to combination in effect on June 24, 1918. HELD, following Sligo Iron Store Co., 62 I. C. C. 643; 73 I. C. C. 551, a through combination plus a single increase was applicable on the shipments and they were accordingly overcharged. Delta Beet Sugar Corp. v. Director General, 93 I. C. C. 547.

(q) Traffic of originating lines neither carried nor made reference to the so-called combination rule, which provided a method for constructing through rates made on combination. Tariffs of other participating carriers either carried the rule or made specific reference thereto. Contention that specific reference to the rule must be made in each tariff naming a factor of a combination, found untenable following Armour Fertilizer Works, 93 I. C. C. 186. The rule laid down in the Sligo case, 62 I. C. C. 643; 73 I. C. C. 551, that there is a holding out to shipper of the rate constructed in conformity with the rule which must be protected by the publishing carrier, is controlling. Pendleton & Gilkey v. Director General, 95 I. C. C. 699.

(r) Shipments moved under combination rates both factors of which were increased under General Order No. 28 of the director general. Tariff of initial line did not contain the so-called com-

bination rule, which provided a method for constructing through rates made on combination, nor did either of the tariffs naming the separate factors refer one to the other. The combination rule, however, was contained in a supplement governing one of the factors. HELD, principle laid down in the Sligo case, 62 I. C. C. 643; 73 I. C. C. 551, applied and but a single increase should have been added to the through rate. Reparation awarded. M'Fadden & Bros. Agency v. Director General, 95 I. C. C. 734.

(s) Shipment moved under combination rate, both factors of which were increased under General Order No. 28 of director general. Tariff of one participating carrier contained the so-called combination rule providing for application of but single increase to rates made on combination. Other participating carrier neither published similar rule nor made reference thereto. HELD, following Sligo case, 62 I. C. C. 643; 73 I. C. C. 551, there was a holding out to shipper of rate so constructed in conformity with the rule which publishing carrier must protect. Omaha Chamber of Commerce v. Director General, 96 I. C. C. 234.

(t) No joint rate was in effect and shipment moved under a two-factor combination, both of which were increased under General Order No. 28 of the director general. Tariff of neither participating carrier contained the combination rule which provided a method for constructing through rates made on combination. However, both carriers were issuing lines for an agency tariff which contained such a rule. HELD, following 81 I. C. C. 298 and 83 I. C. C. 369, applicable rates were the sum of the combinations plus a single increase as authorized under the rule. Omaha Chamber of Commerce v. Director General, 96 I. C. C. 234, 235, 236.

(u) Shipments of compressed cotton from Brownsville, Tenn., to Seattle and Tacoma, Wash., for export, found to have been overcharged to extent that rate charged exceeded that constructed on combination basis in effect on June 24, 1918, plus the authorized increase on this commodity. Tariff naming the combination from Humboldt, Tenn., via which shipments moved, carried the rule providing for application of but a single increase to through rates made on combination, while tariff naming the factor from Brownsville to Humboldt contained no similar rule nor reference to a tariff which did. See 73 I. C. C. 551. Reparation awarded. Southern Products Co. v. Director General 98 I. C. C. 462.

(v) Shipments of gasoline and other petroleum products moved from Sugar Creek, Mo., and El Segundo, Calif., to Blythe, Calif., during Federal control, the originating carrier having been under such control but the delivering carrier was not. The tariff of originating carrier provided that the combination rates applicable would be subject to one increase of 4.5 cents authorized by Director General, but the tariff of delivering carrier did not carry a similar rule nor did the tariffs of that carrier and of the originating carrier carry reference to each other. FOUND: Following 74 I. C. C. 188, shipments overcharged to extent such charges exceeded those accruing at rates constructed on basis held out by originating carrier. Reparation awarded. Standard Oil Co., (Calif.) v. Director General 98 I. C. C. 587.

(w) Complainant attacked combination rates charged on forest products, carloads, from Washington, Oregon and British Columbia to destinations in United States and Canada over routes composed of lines not under federal control, and specified lines under federal control as unjust, illegal and unreasonable in violation of section 6 of the act to extent they exceeded by more than 5c the rates in effect on these commodities on June 24, 1918. Rates assessed were full combinations on the junctions of short lines with the trunk lines. Complaints are predicated on the failure to apply the so called combination rule which, in effect provided for the application of only one increase under G. O. 28 when rates on through shipments were made by combination of separately established rates. Prior to Feb. 15, 1919 the combination rule was published in individual tariffs. Effective on that date these individual provisions generally were canceled and the rule was published in Morris I. C. C. U. S. 1. The shipments fall into two major groups: (1) those made when the rule was contained in one or more of the individual tariffs; and (2) those made when it was contained in Morris tariff. When the shipments moved the short lines did not publish or refer to the combination rule and none of them was named in I. C. C. 1. The trunk lines were so named. HELD, on shipments made on and after Feb.

15, 1919 the rates applicable were the combinations of the rates to and from the junctions of the short lines and trunk lines because the short lines were not named in circular 5 US 1, and did not publish or refer to the combination rule. On shipments made between June 25, 1918 and Feb., 14, 1919, both inclusive the rates applicable were those made by applying the combination rule in effect on date of shipment to the rates to and from the junctions of the short lines and the trunk lines if one or more of the individual tariffs naming the rate applicable to the shipment contained or made appropriate reference to that rule, and were the combinations on those junctions if none of the individual tariffs naming a rate applicable to the shipment contained or made appropriate reference to such a rule, reparation awarded. Pacific Coast Shippers Asso., v. Director General 109 I. C. C. 166.

(x) Complainant attacked rates on cotton, in bales, in carloads, between Feb. 1, 1919 and Jan., 30, 1920 from Blythe, Calif., to Memphis Tenn., Oakland, Calif., South Providence, R. I., and New Bedford and Watuppa, Mass., as unjust, unreasonable and in violation of section 6 of the act. All the shipments originated at Blythe on the California Southern and moved over that road to its junction with the Santa Fe at Rice, Calif., 42 miles. No joint rates were in effect and a combination rate was assessed in each instance on the basis of the local rate of 25c, increased by 15c on June 25, 1918 under G. O. 28 to Rice, plus the factors, likewise increased by 15c under the same order, to the respective destinations beyond. The tariffs in which the rates from Rice were published referred to a so-called combination rule in a tariff of Agent Morris. HELD, rate charged prior to Feb., 15 and subsequent to Sept. 9, 1919 unreasonable, reparation awarded to basis of combination using the combination rule. California Cotton & Factorage Co. v. Director General 109 I. C. C. 293.

(y) Eastern lines proposed to amend their tariffs by canceling reference to the Kelly rule in so far as such tariffs were applicable in traffic originating at points on the lines of carriers whose rates were no longer subject thereto. Schedules found not justified in 93 I. C. C. 458. Respondents again propose to cancel the application of the Kelly rule on traffic originating on the North Western and Milwaukee in South Dakota and stations intermediate thereto in adjacent states, and in lieu thereof to publish proportional rates from Chicago which purport to reflect their proper proportion of the general order increase when applied to through traffic and which they understand meet the suggestions made by the Commission. The proposed proportional rates range from about 2.5 to 4.5c lower than the corresponding local rates from Chicago, and in combination with the rates of the western lines result in increased through charges of about the same amounts. It must not be lost sight of that the decision in the Sligo case merely enunciated a tariff interpretation, and should not in any way be construed as passing upon the reasonableness of the charges resulting therefrom. Certain it is that when the Kelly rule was first established it was never intended that one carrier alone should bear the burden of adjusting its rates so as to take care of the entire increase under G. O. 28 in connection with traffic moving under combination rates. At that time all participating carriers bore their proportionate share. To now require the equalization to be made by a single line smacks not only of inequity and unreasonableness, but would saddle upon respondents a shrinkage of their earnings which, so far as this record is concerned, they should not be called upon to bear. HELD suspended schedules justified. Proportional rates on livestock 109 I. C. C. 417.

(z) Burlington, respondent, proposed to increase the rates on sand, gravel, and crushed stone, carloads, from eastern Nebraska to Iowa and Missouri by cancellation of the combination rule. The protest was against the increase in rates from Meadow, Neb., on the Rock Island to destinations on the A. N., and other railroads in western Iowa. Rock Island at the hearing agreed to continue the present rates in effect. The Burlington points are from 28 to 65 miles southwest of Council Bluffs, Ia. Louisville, Neb., about 40 miles from Council Bluffs may be taken as representative. The destinations are on connecting lines. The traffic does not generally move to points more than 60 miles beyond Council Bluffs. Present rates are based on respondents proportional of 3c, to Council Bluffs plus connecting lines proportional beyond, treated by the combination

rule. It seems clear that the proposed rates to Iowa points are too high, but it is also clear that the present rates are on a rather low basis and therefore could well be increased to some extent. If the Nebraska-Iowa scale is proper for single line hauls between points in Nebraska and points in Iowa, the rates for joint line hauls should be made on the same scale plus the differential of 20c per ton. HELD, schedules not justified, but without prejudice to establishment from Nebraska on the Burlington to Iowa rates in substantial conformity with those prescribed in 88 I. C. C. 1 and 98 I. C. C. 361. Combination rule on sand, gravel and stone 112 I. C. C. 231.

§9½. Double Advances.

See Supra §8½a.

(a) The so-called combination rule was adopted by the director general as a temporary expedient whereby combination rates on certain commodities, each factor of which had been increased under his General Order No. 28 by specific amounts, should thereafter reflect only the increase which they would have received had they been published in the form of joint rates. It provided that where no specific through rates are in effect between points of origin and destination and two or more factors, increased under the general order, are used to construct the through rate, a specific amount shall be deducted from each factor and a specific amount added to the sum of the reduced factors thus obtained. Combination Rule on Box Shooks, 89 I. C. C. 219, 220.

(b) Three factor proportional rates charged on vegetables from points in Florida to Chicago, Ill., to each of which was applied the interterritorial increase of 33 1-3 per cent under Increased Rates, 1920, 58 I. C. C. 220, in lieu of the territorial increases, found applicable and not unreasonable. While rates involved were published in three factors, from both a technical and practical standpoint they were joint through rates. Factors could not be used on local business and under decision cited were properly increased 33 1-3 per cent. Moreover, defendants show that a like increase was applied to separate factors of rates on other commodities. Ahern Brokerage Co., v. A. C. L. R. R. Co., 89 I. C. C. 274.

(c) Where carriers under Federal control publish the so-called combination rule, which provides a method for constructing through rates made by use of combinations, and tariffs do not restrict its application to Federally controlled lines, there is a holding out to shippers of the rate so constructed which publishing carriers must protect, and principle laid down in the Sligo case, 62 I. C. C. 643, 73 I. C. C. 555, applies. This situation is applicable to shipments moving to points on nonfederally controlled lines, even though such carriers do not concur in the rule or carry a similar rule in their tariffs, and is equally applicable to intrastate shipments moving during Federal control. McCloud River Lumber Co. v. Director General, as Agent, 89 I. C. C. 645, 647.

(d) Upon rehearing, prior report, 58 I. C. C. 442, modified and shipments of lumber from Hopkins, Fla., to Baltimore, Md., and other points, during Federal control, found overcharged. None of the applicable tariffs specifically referred to tariff which provided a rule for the construction of through rates made on combinations under which but a single increase was to be added to sum of the separate factors, nor did the latter make specific reference to applicable tariffs. Following Acme Cement Plaster Co., 81 I. C. C. 298, the combinations to and from Jacksonville, Fla., each increased 5 cents under General Order No. 28 of director general, were applicable. Reparation awarded. Union Cypress Co. v. F. E. C. Ry. Co., 89 I. C. C. 679.

(e) Complainant attacked commodity rate of 71.5 c charged on 27 cars of lumber between June 25 and August 6, 1918, from Tiger, Ione and Spokane, Wash., to Barberton, O., as unreasonable to extent it exceeded by more than 5c the rate in effect prior to June 25, 1918. Under G. O. 28 rates on lumber increased 25% subject to maximum of 5c. Subsequently, tariffs were generally amended to provide that combination rates on through movements would be constructed by adding a single increase to the through combination in effect June 24, 1918. Following Sligo case, 62 I. C. C. 643 and 73 I. C. C. 551, rates attacked illegal, combination on June 24, 1918, plus a single increase of 5c applicable, reparation awarded. Diamond Match Co. v. Director General, 91 I. C. C. 43.

(f) Complainant attacked commodity rates charged on 41 cars of smithing coal and coke from West Virginia, Pennsylvania and Indiana to destinations in

the Northwest between Februarv 1919 and February 1920, as unlawful, in violation of section 6. The rates charged were combination commodity rates, each factor of which had been increased by the specific amounts authorized in G. O. 28. HELD, applicable rates were those determined by application of the combination rule by increasing the through combination by the specific rates named, overcharges to be refunded. Romann & Bush Pig Iron & Coke Co. v. Director General 92 I. C. C. 605.

(g) Complainant attacked commodity rates charged on 11 cars of hard coal, 7 cars of soft coal, and 2 cars of coke shipped from Virginia, Pennsylvania, Kentucky, Indiana and Colorado to Nebraska, Kansas and Iowa between Oct. 2, 1918 and January 1920, as unjust and unreasonable. Charged combinations had been increased by the specific amounts authorized in G. O. 28. One of the applicable tariffs in each instance of commodity rates each factor of which contained a combination rule to the effect that increases under G. O. 28 would be applied but once to the sum of the factors going to make up a combination of commodity rates on coal and coke. HELD, applicable rates were those determined in accordance with the combination rule published in connection with one or more factors of the separately commodity rates, shipments overcharged, reparation awarded. National Supply Co. v. Director General 92 I. C. C. 610.

(h) Where one of the tariffs used in making combination rates on through shipments contains a rule that such rates will be subject to a single increase, there is a holding out to the shipper of the rate so constructed which the carrier publishing the rule must protect. Southwestern Shipbuilding Co. v. Director General, 93 I. C. C. 337, 338.

(i) Complainant attacked commodity rate of $1.60 charged on carloads of cotton between Oct. 4, 1918 and Jan. 29, 1920 from Blythe, Calif., to Galveston, Tex., and compressed in transit as illegal. Shipments originated at Blythe, a local point on the California Southern, 42 miles south of Blythe Junction, thence Santa Fe, rate charged combination on Blythe Junction. Complainant contended rate was $1.45, and the issue is whether the aggregate increase in charges authorized, effective on and after June 25, 1918 was 15 or 30c per 100 pounds. HELD, following Sligo rule, 73 I. C. C. 551, applicable rate was $1.45, reparation awarded. M'Fadden & Bros. Agency v. Director General, 95 I. C. C. 734.

(j) Complainant attacked combination rates charged on a car of posts in Sept. 1918 from Branson, Mo., to Colome, S. D., and on a car of cedar piling from Arrington, Tenn., to Smithland, Iowa, as unreasonable and illegal. Posts moved over M. P., to Omaha thence C. & N. W. Cedar piling moved L. & N., to East St. Louis, Ill., I. C., beyond. Piling charged 20c to East St. Louis and 21.5c beyond. On June 24, 1918 the rate on posts from Branson to Omaha was 17c and from Omaha to Colome 18.5c and on cedar piling from Arrington to East St. Louis 16c beyond 17c, each of the factors being increased on June 25, 1918. The tariffs provided for a single increase under the combination rule. HELD, rates attacked on posts illegal to extent it exceeded 40.5c on the piling 38c, reparation awarded. Omaha Chamber of Commerce v. Director General, 96 I. C. C. 234.

(k) Combination rate charged on lumber from Tiger, Ione, and Spokane, Wash., to Barberton, Ohio, both factors of which were increased under General Order No. 28 of director general found illegal to extent it exceeded aggregate rate plus a single increase. Applicable tariff of originating line carried combination rule which provides for application of but a single increase to rates constructed on combinations and rule laid down in Sligo Iron Store case, 62 I. C. C. 643 and 73 I. C. C. 551, is controlling. Reparation awarded. Diamond Match Co. v. Director General, 91 I. C. C. 43.

(l) Shipments moved under combination rates, either factor of which was increased under General Order No. 28 of director general. Tariff governing one factor carried so-called combination rule which provided for application of but a single increase to through rates made on combination, but such tariff made no reference to and was in no way connected with tariff governing other factor. HELD: Following Standard Oil Co., 81 I. C. C. 193, there was a holding out to shipper of rates constructed in accordance with combination rule which publishing carriers must protect. Shipments found overcharged and reparation awarded against carriers publishing rule.

Solan & Zook Co. v. M. V. R. R. Co., 91 I. C. C. 693.

(m) Shipments moved under combination rates, both factors of which were increased under General Order No. 28 of director general. Tariffs publishing one factor carried the combination rule which provided for application of but a single increase to through rates made on combination. Tariffs of carriers publishing other factors contained no similar rule. HELD: Following Sligo case, 62 I. C. C. 643, 73 I. C. C. 551, where one tariff used in making combination rates on through shipments contains the combination rule there is a holding out to shipper of the rate so constructed which should be protected. Shipments found overcharged and reparation awarded. Romann & Bush Pig Iron & Coke Co. v. Director General, 92 I. C. C. 605; National Supply Co. v. Director General, 92 I. C. C. 619.

(no) Shipments moved under combination rates, each factor of which was increased under General Order No. 28 of director general. Tariff of one participating carrier contained the combination rule which provided a method for constructing through rates made on combination, which rule was not published in tariff of other participating carrier until after shipments moved. HELD, where one tariff used in making combination rates on through shipments contains a rule that such rates will be subject to a single increase, there is a holding out to shipper of rate so constructed which publishing carrier must protect. Sligo Iron Store Co., 62 I. C. C. 643; 73 I. C. C. 551. Shipments found overcharged and reparation awarded. Southwestern Shipbuilding Co. v. Director General, 93 I. C. C. 337.

(p) On shipments moving during Federal control charges were collected on basis of a combination rate both factors of which had been increased under General Order No. 28 of director general. Tariff carrying one factor contained a provision that where charges on through continuous movements were based on combinations of separately established rates the increases authorized by the general order should be applied to the combination in effect on June 24, 1918. HELD, following Sligo Iron Store Co., 62 I. C. C. 643; 73 I. C. C. 551, a through combination plus a single increase was applicable on the shipments, and they were accordingly overcharged. Delta Beet Sugar Corp. v. Director General, 93 I. C. C. 547.

(pa) Shipments of petroleum products moved locally to junctions with narrow-gauge lines there unloaded into permanent storage tanks, and subsequently reloaded into narrow-gauge equipment for movement beyond. Plan of storage at the junctions was agreed upon between complainant and carrier in interest of efficiency and mutual convenience. An equality existing between the locals and the through rates was disrupted by director general who applied a flat increase of 4.5 cents to each of the locals but only one increase to the through rate. Subsequently equality was restored. FOUND: Considering conditions leading to use of permanent storage tanks, agreement between parties, prior and subsequent continued maintenance of equal rates, and fact that transfer through medium of storage tanks relieved carriers of expense which they would have incurred had shipments been made on lower through rates, combinations assessed, embodying the double increase, were excessive for service performed. Reparation awarded. Continental Oil Co. v. Director General, 102 I. C. C. 338.

(pb) Governing tariff specifically provided that through rates made on combination were to be subjected to single increase under General Order No. 28 of Director General. Shipments moved under combination rates to each factor of which increase was added. HELD: Following Acme Cement Plaster Co., 81 I. C. C. 298, shipments were overcharged to extent that charges exceeded those which would have accrued by application of single increase to sum of factors. Reparation awarded. Lehigh Portland Cement Co. v. Director General, 102 I. C. C. 617.

(q) Where one of the tariffs used in making combination rates on through shipments contains a rule that such rates will be subject to the increase but once, there is a holding out to the shipper of the rate so constructed which the carrier should protect. Continental Oil Co. v. Director General 109 I. C. C. 289, 291.

(r) When one of the tariffs used in making combination rates on through shipments contains a rule that such

rates will be subject to a single increase, there is a holding out to the shipper of the rate so constructed which the carrier publishing the rule must protect. Phosphate Products Corp. v. C. & O. Ry., 112 I. C. C. 161.

(s) Fact that combination rates were subjected to double increase under General Order No. 28 of director general is not in itself proof of unreasonableness. Pacific Coast Shippers Asso. v. Director General, as Agent, 85 I. C. C. 386, 387.

ALL OTHER CITATIONS

Nebraska Bridge Supply & Lumber Co. v. Director General, as Agent, 85 I. C. C. 327; Sloss-Sheffield Steel & Iron Co. v. Director General, as Agent, 85 I. C. C. 367; Sperry Flour Co. v. Director General, as Agent, 85 I. C. C. 675; Mason City Brick & Tile Co. v. Director General, as Agent, 88 I. C. C. 37.

§11½. Differentials or Rate Relationship

See Differentials; Relative Rates.

(a) In comparative rate adjustments consideration may and should be given to economic conditions surrounding traffic, so that adjustment may result which will reflect as high a degree of uniformity as is practicable and at the same time accord to all interested the fair opportunity to which the law entitles them. Southwestern Coal Operators' Asso. v. A. & W. Ry. Co., 89 I. C. C. 73, 82.

(b) Relationship of rates on potatoes and lettuce from Divide, Canon City, Villa Grove, and Antonito, Colo., to destinations in Texas, Oklahoma, Kansas, and States east thereof, found unduly prejudicial to Divide and its traffic and unduly preferential of Canon City, Villa Grove, and Antonito and their traffic. From standpoint of transportation conditions there is no reason why relationship of Divide to Colorado common-point group should be different from that of Canon City, Villa Grove, and Antonito. Pikes Peak Cooperative Asso. v. M. T. Ry. Co., 89 I. C. C. 379.

(c) Proposed readjustment, involving increases and reductions on fresh fruits and vegetables between north Pacific coast points, prompted by the filing with the commission of complaints seeking rates to Portland, Oreg., and Spokane, Wash., on same basis as Seattle and Tacoma, Wash., found not justified. Fresh Fruits and Vegetables, 89 I. C. C. 473.

(d) Proposed increased rates on, egg-carrier fillers, egg cases and egg box material from Coffeyville, Kans., to points in Arkansas on the M. & N. A., for purpose of lessening differences between rates from Coffeyville and rates from Quincy, Ill., competing points in destination territory involved, found not justified. Rates from both Coffeyville and Quincy are blanketed to destinations on the M. & N. A., and division accruing to that road under present rates from Coffeyville is greater than under the rate from Quincy. Suspended schedules ordered cancelled. Egg Case Fillers from Kansas Points, 101 I. C. C. 1.

(e) Proposed increased rates on brick and articles taking same rates from Mason City, Iowa, to destinations on the C., St. P., M. & O. and Soo Line in Wisconsin, designed to restore higher rate previously in effect and meet the rate over the line of a competing carrier, found not justified on ground that such rates compare favorably with rates on like traffic from competing Illinois points to same destinations. Combination Rule on Brick and Draintile, 101 I. C. C. 729.

(f) Proposed increased rates on canned goods from Group J points in Colorado, New Mexico, Texas, and Wyoming to Arizona, California, and New Mexico, under which Colorado canneries will be placed on a rate parity with Utah and California canneries on traffic to destination territory here involved, found justified provided present grouping of destinations is maintained. Relative reasonableness as compared with rates from near-by producing territories, rather than intrinsic reasonableness, is the important consideration of this case. Weighted-average haul to Arizona destinations from Colorado is considerably in excess of that from California, yet California is paying higher rates, and the proposed adjustment will correct this situation by placing them on a parity. Canned Goods from Colorado, New Mexico, Texas, and Wyoming, 102 I. C. C. 156.

ALL OTHER CITATIONS

Cotton and Cotton Linters to Louisiana and Texas Ports, 85 I. C. C. 5; Coal from Tennessee R. R. Stations, 85 I. C. C. 25; Wood Pulp from International Falls, Minn., 85 I. C. C. 95; Louisville Fire Brick Works v. Director General, as

Agent, 85 I. C. C. 457; Cement to New England, 88 I. C. C. 605.

§12. Branch Lines.

(1) Operation.

See Branch Lines.

(a) Proposed increased rates on grain and grain products between points in Idaho and Washington and Pacific coast points found justified as to destinations in Washington and Oregon, but not justified as to destinations in California, no evidence having been offered in justification of proposed rates to points in latter State. These increases are primarily designed to raise the rates from points on branch lines, on which traffic is relatively light, to the level of rates from main-line points for approximately same distances, thus preventing the anticipated necessity of eventually reducing the rates from all points of origin here considered found reasonable in the Inland Empire case, 59 I. C. C. 321. Grain Between Pacific Coast Points, 98 I. C. C., 601.

§13. Detriment to Shipper.

See Blanket Rates §10½ (xx); Evidence §45.

(a) Considerable evidence was introduced to show that the increased ratings will curtail complainants existing markets and reduce their profits. But these considerations do not control in determining the reasonableness of transportation rates. Indiana Public Service Commission v. A. A. R. R., 92 I. C. C. 83, 86.

(b) Increased prosperity of an industry may not be made excuse for advancing rates on commodity it produces. Rates and Charges on Grain and Products, 91 I. C. C. 105, 143.

(c) Proposed increased class and commodity rates from various interstate points to Mesa, Ariz., for purpose of removing undue prejudice against points on Globe division of Arizona Eastern R. R. found to exist in Graham & Gila Counties Traffic Asso., 81 I. C. C. 134, found not justified. Mesa and Phoenix have been on same rate basis for many years and a higher basis of rates to Mesa than to Phoenix would compel the removal of jobbing establishments to Phoenix thereby resulting in considerable financial sacrifices, would enable Phoenix to take over much of the trade territory now enjoyed by Mesa, and would not benefit points on the Globe division to any appreciable extent. Class and Commodity Rates to Mesa, 92 I. C. C. 512.

§14¾. Previous Decision of Commission.

See Previous Decisions of Commission.

(a) Respondents proposed to increase rates on fertilizers, carloads, from Little Rock, Ark., to El Paso, Tex., and points taking same rates. Respondents explanation that the proposed adjustment is in harmony with the findings in 92 I. C. C. 504 is not correct. HELD, proposed rates not justified. Fertilizers from Little Rock-Fort Smith territory, 96 I. C. C. 703.

(b) Respondents proposed to increase the rates on glass bottles, carloads, and on glass fruit jars, fruit jar tops, jelly glasses, and tumblers, in straight or mixed carloads from Oklahoma and Fort Smith and South Fort Smith, Ark., to Mississippi river crossings, Memphis, Tenn., and south and on window glass and rough rolled glass, carloads, from Oklahoma and Arkansas to Texas. **Glass Bottles & Fruit Jars, etc.** Respondents state the suspended rates were filed in order to bring about rates from Oklahoma and Fort Smith to Mississippi river points no lower than rates between intermediate points within the territory covered by 77 I. C. C. 473. The respondents are willing to allow the present rates to remain in effect provided fourth section relief is granted to permit the application of higher rates to intermediate points in Arkansas, Louisiana and Texas. There is no evidence of record warranting the granting of fourth section relief such as that sought or now in effect under the applications assigned for hearing. There is nothing of record to show that the rates prescribed in 77 I. C. C. 473 are in excess of reasonable maxima for this territory. The proposed rates are the same as or lower than those rates and therefore not in excess of reasonable maxima for local application from and to the points concerned. HELD, proposed rates not justified, fourth section denied but carriers may establish rates observing maxima as shown in 77 I. C. C. 473. **Window Glass and Rough Rolled Glass.** Respondents sole justification for the proposed

changes is the removal of fourth section departures. HELD, proposed rates not justified. Glass and glassware to interstate points, 98 I. C. C. 83.

(c) Proposed increased rates on bottles, glass, from Chattanooga to Memphis, via interstate route, for purpose of restoring previously existing relationship between Chattanooga and St. Louis, found justified. Relationship was disrupted following Fourth Section Violations in the Southeast, 32 I. C. C. 61, when rates from St. Louis were increased and no change was made in rates from Chattanooga, work on a readjustment being interrupted by intervention of Federal control. Glass Bottles from Chattanooga to Memphis, 93 I. C. C. 317.

(d) Proposed increased rates on coal from farther distant points on the Gauley branch of the C. & O. to level of the New River or intermediate basis of rates, in order to comply with commission's order in 89 I. C. C. 638, denying fourth-section relief, found not justified. No similar increases are proposed from competing mines on the same branch north of Belva, and if advances are allowed it will be necessary for protestants to absorb them in order to continue shipping to western markets. Moreover, respondent made no effort to show that proposed rates are reasonable per se, and its revenue would not be materially affected were departures removed by reducing rates from the intermediate points. Coal from Stations in W. Va., 93 I. C. C. 423.

(e) Proposed increased rates on iron and steel articles between Newark, and points grouped therewith, and New England points, found not justified. Carriers rely entirely upon fact that proposed rates will restore the spread between Newark and Philadelphia groups established following the decision in Pardee Works, 39 I. C. C. 162. For over seven years that spread has been treated as one varying with rates and not as a fixed differential. Moreover, there is no evidence that rates from Newark group are subnormal as compared with rates from other groups, and former relationship, if desired by carriers, could be readily restored by reducing rates from Philadelphia group instead of increasing those from Newark group. Iron and Steel between New Jersey and New England Points, 93 I. C. C. 499.

(f) Proposed increased rates on lime from points in eastern trunk-line territory to destinations in 60 and 67 per cent territories, published in compliance with decision in Lehigh Lime Co., 85 I. C. C. 341, found not justified. Proposed rates would result in numerous violations of both long-and-short-haul rule and aggregate-of-intermediates provision of section 4 of the act. In view of the competitive relationship which exists between Mitchell, Ind., and Ohio producing points on the one hand and eastern producing points on the other, findings in cited case modified and an adjustment of rates prescribed for future. Lime from Eastern Trunk Line Points, 93 I. C. C. 617.

(g) It does not follow from fact that commission has approved increases in handling charges at certain ports that a lower basis of charges would have been unlawful. Carriers may, subject to certain restrictions, initiate rates lower than commission may prescribe. The question is as to whether or not they are proposing to go to such lengths in attempting to meet competition and attract business that resulting charges will be so low as to create a burden upon other traffic. Handling Charges on Cement, Fertilizer, and Salt, 93 I. C. C. 640, 644.

(h) Proposed increased rates on bituminous coal from Evansville, Ind., to Illinois points on the C. & E. I. R. R., to basis in effect prior to reductions established in order to remove fourth-section violations resulting from a decision of the Public Service Commission of Indiana, wherein rates were prescribed from mines to consuming points in Indiana, found not justified. Proposed rates would recreate the fourth-section departures and record indicates that carrier's revenues will not be materially affected if the suspended schedules are not allowed to become effective. Coal from Evansville Group, 95 I. C. C. 607.

(i) Proposed increased commodity rates and increased minimum weight on tin cans from points in Illinois to points in Michigan, Minnesota, and Wisconsin, and proposed cancellation of the two-for-one rule wherever in effect under commodity rates, found not justified. In Wisconsin Dairy Products Co., 68 I. C. 307, and Armour & Co., 74 I. C. C. 709, the commission found that the commodity rate from Chicago to Stoughton, Wis., and the fourth class rate from Chicago to Bloomer, Wis., applicable on tin cans were unreasonable to extent they exceeded the basis of commodity

rates subsequently established and these rates as modified only by general changes in rate levels are now in effect. Tin Cans from C. F. A. Points to Michigan, Minnesota and Wisconsin, 100 I. C. C. 208.

(j) Proposed increased class rates from Virginia cities and points taking same rates, or rates made differentially higher, to destinations on the Charleston division of the Baltimore & Ohio found not justfied. First class rate from Lynchburg to Grafton on the main line of the B. & O. is lower than the present first-class and the proposed rate to points on the Charleston division, and, since no restrictions upon the routing are made in the tariff, this rate is applicable over the Charleston division. Following Zelnicker Supply Co., 80 I. C. C. 651, and Dixie Portland Cement Co., 96 I. C. C. 47, respondents contention that no increase in discrimination against intermediate points under the fourth section results because no arrangements for divisions are in effect over these routes to Grafton, and routing over this line would not be observed, can not be sustained. Class Rates from Eastern Points to Points in West Virginia, 100 I. C. C. 215.

(k) Proposed increased basing rates on paving brick from Jacksonville, Fla., to points in Florida, on traffic originating at Robbins, Tenn., resulting in rates higher than rates between same points on shipments originating at other southern producing points; higher than rates for corresponding distances from Jacksonville to points in Florida on lines of Florida East Coast Ry., and higher than rates on other articles included in uniform brick list, in violation of the order in National Paving Brick Mfrs. Asso., 68 I. C. C. 213, found not justified. Basing Rates on Paving Brick, 100 I. C. C. 390.

(l) Proposed increased rate on brick and clay products from Nashville, Tenn., to Paducah, Ky., to the basis approved by the commission in Brick and Clay products in the South, 88 I. C. C. 543, found justified except to the extent that the rate proposed on common brick exceeds a certain amount over the route specified via Hopkinsville, Ky. Schedules ordered canceled without prejudice to the filing of other schedules in which respondents may apply the rate herein found reasonable on common brick over the more circuitous routes between Paducah and Nashville. Brick from Nashville to Paducah, Ky., 101 I. C. C. 11.

(m) Proposed revision of distance commodity rates on commodities other than those treated in Memphis-Southwestern Investigation, 77 I. C. C. 473, for application between points in southwestern territory, between points in such territory, on the one hand, and defined territorities in c. f. a., western trunk-line, and southern territories and related points, on the other, designed for the purpose of complying with the commission's orders in the above cited case, found justified with respect to certain commodities and not justified with respect to others. Reasonable rates in specific instances prescribed for the future and fourth section relief granted. Commodity Rates in Southwestern Territory, 101 I. C. C. 308.

(n) Proposed increased class rates between Memphis, Tenn., and Cairo, Ill., on the one hand, and points in Kansas, Missouri, Nebraska, and Colorado on the other hand, found not justified. The percentages of classes under the proposed rates, although substantially the same as those prescribed in 55 I. C. C. 515, are materially different from those prescribed in 100 I. C. C. 274, and other cases. The Topeka rates, if fairly related to Kansas City rates, would be higher than the latter, but the proposed differences are excessive. Moreover, if the proposed rates to and from Topeka and points grouped therewith are permitted to become effective without change in the present rates to and from various other points in Kansas, the Topeka rates on certain classes would be higher than the corresponding rates to and from Wichita and other more distant points grouped therewith. Class Rates between Memphis and W. T. L. Points, 102 I. C. C. 207.

(o) Following 102 I. C. C. 79, in which commission quoted its statement in Southern Class Rate Investigation, 100 I. C. C. 513, that with a reasonable level of class rates, there would appear to be little if any justification for requiring l. c. l. commodity rates in southern territory, proposed cancellation of l. c. l. commodity rates on clean rice between points in southern territory, which would result in increases, found not justified. Rice between Points in Southern Territory, 102 I. C. C. 2, 317.

ALL OTHER CITATIONS

General Fire Extinguisher Co. v. Director General, as Agent, 88 I. C. C. 521.

§15. Standard for Judging Advance.

See Evidence §55, §56; Relative Rates.

(a) A rate admittedly low does not become unreasonable if increased merely because other rates to same destination are not increased at same time; nor is an increase applied through error sufficient in itself to show that the resulting rate is unreasonable. Consolidated Coal Co. v. Director General, 93 I. C. C. 53, 54.

(b) Proposal to increase rating on jute packing in rope form, l. c. l., in official, southern and western classifications, designed to provide same ratings as those applicable on oakum and to prevent shippers from obtaining lower rates by billing this commodity as rope, found not justified. Jute packing in rope form is not, in fact, oakum or rope, and it is not evident how the proposed specific classification rating would serve to stop the practice of shipping this commodity as rope. Classification of Jute Packing 98 I. C. C. 287.

(c) Proposed increase in l. c. l. ratings on rags, "having value for purposes other than conversion into fiber," in official classification, found not justified. Under proposed schedules shippers and carriers would be required to determine in first instance, as at present, whether a given lot of material was in fact rags, and following that it would be necessary before the legal rate could be known, to relate the rags to some standard of value or usefulness which the record here shows is quite indefinite and intermediate if it exists at all. Classification of Rags, 98 I. C. C. 591.

ALL OTHER CITATIONS

California Grain Co. v. Director General, as Agent, 85 I. C. C. 680.

§16½. Widespread Rate Adjustment.

See Evidence §66.

(a) Proposed readjustment, involving increases and reductions on, fruit and vegetables between north Pacific coast points, prompted by the filing with the commission of complaints seeking rates to Portland, Oreg., and Spokane, Wash., on same basis as Seattle and Tacoma, Wash., found not justified as to proposed increases only. Fresh Fruits and Vegetables, 89 I. C. C. 473.

(b) Rates on roofing talc as increased under General Order No. 28 of director general and general increases of 1920, result of which was to widen spread existing between talc and crushed slate, a competitive commodity, found unreasonable to extent they exceeded lower rates subsequently established and which restored same relation as existed prior to such increases. Reparation awarded. Barrett Co. v. St. J. & L. C. R. R. Co., 91 I. C. C. 9.

(c) Rates on bituminous coal from Kanawha district, Group 3, W. Va., to New Boston (Yorktown), Ohio, found unreasonable as compared with rates to Ironton, Ohio, and East Ashland and Ashland, Ky., competing points. Lack of uniformity in applying certain increases in rates to these destinations resulted in widening spread formerly existing between rates to these points, to disadvantage of New Boston and to advantage of competing points. Reparation awarded. Whitaker-Glessner Co. v. C. & O. Ry. Co., 91 I. C. C. 339.

(d) Respondents proposed increased rates for the transportation of canned fruits and vegetables and condensed and evaporated milk, carloads, from various Wisconsin and Minnesota points to eastern trunk line, New England and Canadian territories. Complainant attacked class rates on condensed milk from Northfield, Minn., to points in c. f. a. territory and eastern trunk line as unduly prejudicial. Respondents proposed certain changes in proportional rates for the transportation of canned and preserved fruits, vegetables and milk. c. l., from Twin Cities and Minnesota Transfer, Minn., to eastern destinations. In official classification territory the commodities named are generally rated fifth class or higher, in carloads, minimum weight 36,000 pounds. The record indicates that the only important exceptions to this rating in all the territory north of the Potomac and Ohio rivers and east of the Mississippi river are the commodity rates applicable from Wisconsin points to eastern destinations. These commodity rates, lower than the class rates otherwise applicable from Wisconsin, were first established by the car ferry routes operated across Lake

Michigan, and are not to be confused with similar, but lower, rail lake and rail rates. The rates before the Commission are substantially the same as were in effect prior to the World war, increased and decreased only by the percentages authorized. The percentage increases authorized in 1920 resulted in advances of 40% on, south, and east of a line running through Beloit, Madison and Watertown, Wis., and of 33⅓% north of that line. It is true that no prospective right arises by reason of the long continuance of a rate; nevertheless, the rates here sought to be increased were established voluntarily by respondents for the purposes of building up the industries of Wisconsin and thereby obtaining more tonnage; and now, after these industries have grown, and readjustment of the rates should be accomplished with as few sharp breaks as possible. Present rates on canned goods and canned milk from Beloit, Janesville and Watertown, Wis., to New York are 63c, proposed 64.5c, present from Madison 63c, proposed 66.5c. HELD, respondents have justified rates not exceeding 64.5c from these points. Among the many rates embraced in the suspended schedules are about 31, mainly from points close to the west shore of Lake Michigan adjacent to Manitowoc, Milwaukee, and other Lake Michigan ports, that show an increase or change from those now in effect. No further notice will be given these rates. From North Prairie present rate 63c, proposed 60c. From points on and south of the C. M. & St. P., Oconomowoc, Watertown and Waterloo to Madison, rates should not exceed 64.5c; and 64.5c should not be exceeded from points on and east of the C. & N. W., from Madison through Evansville and Footville to Beloit. Rate of 66.5c proper to New York from the Oshkosh-Fon du lac group. Rates proposed from Monticello, Monroe and Albany, all reductions, 66c, are just and reasonable; rates from Middleton and De Forest, now 66c, proposed 70.5c should not exceed 66c; and rates from Waunakee should be the same as from Middleton and DeForest. Rates from Prairie du Chein and Richland Center are proposed which are reductions from the class basis, 78c to 70.5c. These rates appear to be properly adjusted, and the proposed increase in rates from Lancaster, from 66c to 70.5c will be permitted; but rates from Spring Green and Sauk City should not exceed 68c. From Winano, Galesville, Onalaska, La Crosse, West Sales, Sparta, Bangor Black River Falls, Neilsville and Cashton, Wis., present 66c proposed 73.5c, found justified. From Wausau and points in that vicinity rates proposed 70.5c found justified, including Marshfield. From points north and west of the groups already considered proposed rates 75c, found justified, and rate of 78c found justified from Bayfield Ashland group. HELD, schedules not justified, and carriers will cancel the schedules without prejudice to filing new tariffs to conform to the opinions herein expressed. Northfield, Minn., is on the M. N. & S. Ry., 45 miles south of Minneapolis. It is served also by the C. G. W., the C. M. & St. P., and Rock Island. There are no commodity rates applicable to the transportation of canned or condensed milk, carloads from Northfield to points east, but are fifth class, constructed substantially upon the rate to Chicago plus the rates beyond, no provision having been made for export. Complainant by reason of geographical location is less favorably situated than the Wisconsin points named. Northfield has rates no higher than from St. Paul and the disadvantage and prejudice to which it is subjected is no more than all other producing points west and east of the Mississippi river suffer by reason of commodity rates lower than the full fifth class from Wisconsin. The measure of the disadvantage of Northfield is 3c. A finding of undue prejudice and preference should take into account all circumstances and conditions which affect the particular traffic and bear upon a proper adjustment of rates, in which particulars the record is deficient. HELD, rates attacked not unreasonable or unduly prejudicial, complaint dismissed. Canned goods to eastern points, 101 I. C. C. 502.

(e) Proposed increased rates on glass bottles from Chattanooga to Memphis, via interstate route, for purpose of restoring previously existing relationship between Chattanooga and St. Louis, found justified. This relationship was disrupted following Fourth Section Violations in the Southeast, 32 I. C. C. 61, when rates from St. Louis were increased and no change was made in the rates from Chattanooga, work on a readjustment being interrupted by intervention of Federal control. Glass Bottles from Chattanooga to Memphis, 93 I. C. C. 317.

(f) Proposed revision of rates on paper boxes between points in the Southeast, found justified in part. Complaint against maintenance of commodity rates from Nashville to interior southern points, while class rates apply from Chattanooga, Atlanta, and Birmingham, and in order to satisfy insistent demands for an immediate adjustment on a more consistent and relative basis, and at same time correct existing fourth-section departures, is given as reason for the revision. Proposed rates are intended only as a temporary measure to take care of the situation until such time as all rates on paper and paper articles between points in the Southeast may be revised on a more comprehensive scale. Paper Boxes between Southeastern Points, 93 I. C. C. 559.

(g) Proposed increased rates on coke from points in southwestern Virginia, Benham, Ky., LaFollette and Chattanooga, Tenn., to Cincinnati and certain points in the vicinity thereof, and to Maysville, Ky., designed for purpose of restoring a parity of rates from these coke-producing points, disrupted following the general increases authorized in Increased Rates, 1920, 58 I. C. C. 220, found not justified. Although record does not indicate that proposed rate to Cincinnati would be unreasonable, it would result in undue prejudice at that point and in undue preference of other Ohio River crossings where a similar situation exists and where a similar increase is not made. Coke to Cincinnati Group, 93 I. C. C. 572.

(h) Proposed increased rates on cattle and calves from points in New Mexico, Oklahoma, and Texas, to Omaha, for purpose of establishing from points of origin to Omaha and Kansas City, a reasonable rate relationship, disrupted by application of the general increases and reductions, found not justified. Such increases would make permanent the highest differential brought about by the general percentage changes and would throw rates in issue out of line with rates from other points in the Southwest. Moreover, differences in distance to Omaha and Kansas City are generally ignored on cattle from the West and Northwest and to take mileage into consideration from one section and not from another would be unfair. Livestock from Southwest to Omaha, 95 I. C. C. 405.

(i) Fact that proposed increased rates are made in accordance with a basis of long standing, while entitled to due weight, does not of itself constitute sufficient justification. Cotton Linters to Indiana Points, 95 I. C. C. 514, 516.

(j) Where a general readjustment of rates, involving increases as well as reductions, is required to be established by the commission, retroactive effect to such rates as a basis for an award of reparation will be declined. Texas Co. v. K. C. S., 96 I. C. C. 81, 85.

IV. REASONABLENESS OF ADVANCED RATES.

See Across Lake Rates (b); Basing Points and Lines §3 (p); Blanket Rates §10½ (s), §18; Branch Lines §1 (x); Class Rates §2 (4r), (6e); Classification §5 (rr), §16 (a) (b) (v) §22 (3w) (3x); Compress Companies and Charges II (d); Import Traffic §2 (ff); Live Stock Shipments (q); Long and Short Hauls §4 (3e), §4½ (n), §6⅞ (r) (s); Minimums §7 (j) (k) (l) (q) (dd) (ff), §8 (b); Percentage Rates (l); Proportional Rates II (k) (l) (s) (x) (kk) (mm); Routing and Misrouting §6 (pp) (qqa); State Rates and Regulations (n) (tt) (3i); Switch Tracks and Switching §6 (c); Through Routes and Joint Rates §13 (3b), VI.

§17. In General.

(ab) Proposed increased rates on limestone from Krause and Columbia Quarry No. 2, Illinois, via Vulcan,, Ill., and the Missouri Pacific to industries on latter-named carrier in the St. Louis, Mo., switching district, found not justified. Rates proposed exceed the combinations applicable over more circuitous three-line route through East St. Louis, would be prohibitive of any movement from protestant's quarries due to competition of other quarries and shippers of gravel located within or near the St. Louis district, and while respondents disclaim any purpose other than the establishment of reasonable rates for the service performed, the proposed increases are largely the outgrowth of a disagreement concerning divisions. Limestone from Illinois Points, 89 I. C. C. 11.

(c) Proposed increased rates on manufactured iron and steel articles from St. Louis, Mo., and Chicago, Ill., groups, and

from Fort Wayne, Ind., to various destinations in Indiana and Illinois, and on cast-iron pipe and fittings from Chicago group to destinations in Indiana designed to correct a maladjustment of rates and remove fourth-section departures over routes through Terre Haute, Ind., and Decatur, Ill., to Paris, Ill., found not justified. If proposed rates should become effective a maladjustment would still exist, and only fourth-section departures corrected would be at points on circuitous routes. Iron and Steel Articles, 89 I. C. C. 17.

(d) Proposal to cancel application of the Deming, N. Mex., rates as maxima on grain and products from points in Illinois, Minnesota, South Dakota, Iowa, Missouri, Kansas, Nebraska, Wyoming, Colorado, and New Mexico, to certain points in South Texas, found not justified. Respondents made no serious attempt to justify reasonableness per se of the proposed increases, relying upon fact that destinations which it is proposed to eliminate from application of the rule are not intermediate to Deming, but application of rates higher than the transcontinental rates on grain moving to points in differential territory can not be justified by simply showing that such points in differential territory can not Grain and Products to Texas, 89 I. C. C. 141.

(e) Proposed increased rates on paper stock and scrap paper from St. Louis, Mo., to Alton, Edwardsville Junction, and Federal, Ill., found not justified. Apparent moving cause of proposed increases is dissatisfaction on part of line-haul carriers with revenue received after provision is made for the switching lines, a circumstance not recognized as adequate justification for increased charges to be borne by shippers. Moreover, present commodity rates, distance considered compares favorably with rates on same article from St. Louis and Chicago to other destinations and with rates on various other commodities applying principally between points in Illinois. Paper Stock from St. Louis, 89 I. C. C. 267.

(f) Proposed increased rates on petroleum and products from points in Kansas, Missouri, and Oklahoma to Belleville, Ill., and points in Illinois south thereof on the Illinois Central found not justified. Carriers made no attempt to justify fourth-section violations which suspended rates would create, and have not filed a fourth-section application for relief from long-and-short-haul provision of the fourth section. Petroleum to Belleville, 89 I. C. C. 295.

(g) Proposed increased rates on pig iron between Sheffield and Florence, Ala., when for movement by water beyond, found justified. Present rate is very low, is in the nature of a raw-material rate for manufacturing purposes, on the manufactured product of which carriers receive an outbound movement, and was not intended to apply to river landings at Florence or Sheffield. Respondents point out that there is generally no return movement from Sheffield, and if proposed rate should become effective the rail-water-and-rail rate from Florence would still be lower than the all-rail rate to same destinations. Instances were also cited of higher rates on various commodities between these points and between Alabama City, Gadsden, and Attalla, Ala. Pig Iron Between Florence and Sheffield, 89 I. C. C. 324.

(h) Proposal to restrict joint rates on lumber from Pacific coast points to stations on Cooper Range R. R. to shipments handled via C. M. & St. P. Ry. via McKeever, Mich., or delivered to that carrier at Missouri River gateways, found not justified. In justification respondents urge that Copper Range has divisional arrangements with the Milwaukee but none with the Duluth, South Shore & Atlantic, with which it connects at Houghton, Mich., and that the Copper Range receives a shorter haul frequently involving the participation of an additional carrier when the traffic moves through Houghton. However, under proposed restriction, traffic to the Twin Cities could not be forwarded under joint rates to points on Copper Range because the Milwaukee would not receive shipments at Missouri gateways. Routing on Lumber, 89 I. C. C. 351.

(i) Combination rates on cottonseed cake and meal from Texas common points to points in eastern trunk-line and New England territories intermediate to, and ordinarily grouped with, New York, N. Y., Boston, Mass., and other eastern basing points, found unreasonable to extent they exceeded joint rates from Texas common points to such basing points. Originally joint rates reflected lowest combinations, but carriers failed to revise them so as to reflect changes brought about following Increased Rates, 1920, 58 I. C. C. 220. Moreover, it has been the custom of defendants to publish joint

commodity rates lower than combinations on all commodities moving in large volume. Reasonable basis of rates prescribed and reparation awarded. Larrowe Milling Co. v. A., T. & S. F. Ry. Co., 89 I. C. C. 439.

(j) Respondents proposed to readjust the rates on fresh fruits and vegetables between certain stations in Washington, Oregon, Idaho and British Columbia. Points of origin are in the Yakima Valley, Wenatchee district, Lewiston and Joseph, Idaho, and The Dalles, Ore., destinations being Seattle, Tacoma, Everett, Bellingham, Chehalis, Aberdeen, and South Bend, Wash., Vancouver, B. C. Some of the proposed increases in the rates on fruit amount to as much at 11.5c and on vegetables 13c. The proposed reduced rates to Spokane from points in southeastern Washington and northeastern Oregon are based upon 68% of the fifth class rates, plus 2c to compensate for the additional empty haul of refrigerator cars. It is not proposed to change the rate on fruit to Vancouver, from Yakima proper, but from other points in that valley increases are proposed. The effect of this is to break up the present grouping of all points in the valley so far as rates to Vancouver are concerned, the distances from the affected points ranging from 329 to 417 miles. HELD, proposed rates not justified. Fresh Fruits and Vegetables, 89 I. C. C. 473.

(k) Proposed increased rates on egg-case materials from points in Iowa to destination in southeastern South Dakota, found not justified. Southeastern South Dakota is in active competition with Sioux City, Iowa, and Sioux Falls, S. Dak., in the distribution of egg-case materials in South Dakota, but no change in the rates to either Sioux City or Sioux Falls. Moreover, earnings under present rates to southeastern South Dakota compare favorably with earnings under rates to Sioux City and Sioux Falls. Egg Cases and Carriers to South Dakota, 89 I. C. C. 479.

(l) The commission is not justified in denying the establishment of reasonable rates from a specific territory simply because to do so happens to increase the existing differences between the rates from that territory and the rates from another territory. Cancellation of Coal Rates to Minnesota, 89 I. C. C. 573, 586.

(m) Respondents proposed to increase the rates on egg cases and egg carriers and commodities grouped therewith, carloads, from points in Iowa to certain destinations on the C. M. & St. P. and C. St. P. M. O. Ry. in South Dakota. The schedules under suspension are part of a revision of the rates on egg case materials from Illinois and Iowa to South Dakota. This revision, as proposed, included reductions in the rates from Chicago, Peoria and Quincy, Ill., and in some instances from certain Iowa points. These commodities are rated fifth class in the western classification. Mitchell, S. D., is in active competition with Sioux City, Iowa, and Sioux Falls, S. D., in the distribution of egg case materials in South Dakota. No change was made or proposed in the rates from Tama to either Sioux City or Sioux Falls and shippers at Mitchell fear that if the proposed rates to Mitchell become effective the trade in these commodities which hey have built up in southeastern South Dakota will be greatly jeopardized. HELD, schedules not justified. Egg ases and carriers to South Dakota, 89 . C. C. 479.

(n) Where a short line's compensation has not kept pace with the general increases in rates of trunk lines, although ts operating expenses have increased in common with theirs, such short line should be accorded the benefit of a proportionate share of the rate increases. See Ohio & Kentucky Ry. Co., 77 I. C. C. 636, 643. New York Dock Ry. v. B. & O. R. R. Co., 89 I. C. C. 695, 706.

(o) Respondents proposed to cancel the existing commodity rates on stoves, ranges, gas water heaters and furnaces, applying from Detroit, Mich., and from Battle Creek, Coldwater, Kalamazoo, Holland and other intermediate points in Michigan to Chicago, Ill., Milwaukee, Wis., St. Louis, Mo., and upper Mississippi river crossings, leaving in effect higher class rates. HELD, proposed schedules have been justified except in so far as they relate to present commodity rates on warm air furnaces. Stoves, ranges and furnaces from Michigan, 91 I. C. C. 554.

(p) Carriers operating in central territory, proposed to cancel all local and proportional commodity rates on furniture, in carloads and less carloads, between points in central territory. Respondents proposed concurrently to amend the existing exceptions to the classification, to include all points in central territory, which provide for third class rates, mini-

mum 12,000 pounds, or 126 per cent of fourth class, minimum 20,000 pounds, on furniture, in carloads, rated third class or higher from various points in central territory east of the Illinois-Indiana state line to Chicago, Ill., east bank Mississippi river crossings and other points in Illinois, Wisconsin and Michigan. They further proposed to cancel commodity rates maintained on furniture, carloads, from Port Washington and Sheboygan, Wis., and exception basis from Chicago and Milwaukee and points taking same rates to Indianapolis, Ind., and the Ohio river crossings leaving second class rates generally applicable. Furniture in carloads generally is rated second class in the official classification and third class in the western and southern. The suspended schedules would result in both increases and reductions, the latter being due to the proposed broadening of the application of the exception basis of rates to apply from certain points where class rates are now in effect. Little evidence was introduced relative to the proposed cancellation of less carload commodity rates on furinture in central territory. Under the proposed adjustment, exceptions to the classification will permit furniture, carloads, to move to certain points in Illinois, such as Chicago, Peoria, and Springfield, and to Mississippi river crossings at rates lower than the classification basis, it is to be noted that on all other traffic in central territory the class basis would apply. The proposed cancellation of the commodity rates from central territory and continuance of commodity rates from producing points in adjoining territories on a relatively lower basis will seriously disturb long standing and important relationships, and create undue prejudice against southern Indiana manufacturers. HELD, respondents have not justified cancellation of local and proportional commodity rates and rates provided in exceptions to the official classification on furniture, carloads, from and to points in central territory, but the cancellation of less carload commodity rates has been justified. Furniture from c. f. a. territory, 92 I. C. C. 97.

(q) Pennslyvania R. R., proposed increased rates on iron and steel articles, carloads from Philadelphia, Pa., and points in the vicinity of that city to points in Delaware, Maryland and Virginia. Present rates 25.5c and 17.5c, proposed rates 27 and 18.5c. The 25.5c rate applies from Philadelphia and beginning at Moore, Pa., to Chester, Pa., a rate of 27c applies, these points being intermediate to the points taking the 25.5c rate. HELD, proposed rates not justified. Iron and Steel Articles from Phliadelphia, Pa., 92 I. C. C. 123.

(r) M. P., respondent, proposed increased rates on sand and gravel, carloads, from Drake and Jedburg, Mo., to St. Louis, Mo., when for beyond, to interstate destinations. Jedburg is 25 miles west of St. Louis and other producing points in that vicinity, the average distance to St. Louis being 12 to 47 miles. Prior to June 25, 1918 the rate was 25c for local and for interstate points beyond, increased on that date to 50c, increased in August 1920 to 67.5c when for interstate points, but the 50c rate for local deliveries in St. Louis, or when for intrastate points was maintained. Following 64 I. C. C. 233 the rate for local deliveries and for intrastate points beyond also was made 67.5c and on March 9, 1922 respondent voluntarily restored the 50c rate on both intrastate and interstate shipments. Effective Jan. 20, 1924 a rate of 61c was established via M. P. and Frisco from these points to St. Louis, when for intrastate rates beyond, the rate of 50c for local delivery and for interstate points beyond continuing in effect. The respondent now proposes to increase its interstate rate, so that a 61c rate will apply on interstate as well as intrastate shipments when for points beyond St. Louis, but a similar increase for the interstate rate is not proposed by the Frisco. The proposed rate of 61c to St. Louis on interstate shipments does not exceed the rate in effect June 25, 1918, by more than the subsequently authorized increases and reductions. HELD, schedules have been justified. Sand and Gravel from Missouri, 92 I. C. C. 177.

(s) Respondents proposed to increase from 42 to 50c the rates on cottonseed cake and meal and other articles taking same rates, in straight or mixed carloads, from Texas common points on local traffic to Louisville, Ky., and on proportional traffic to points in said territory other than Louisville. The 42c rate now applies on both local and proportional traffic to Louisville territory. The proposal to increase the rate on proportional traffic was in error, and the suspended schedules will be discussed only as proposing increases in the rates on local traffic. The existing rate on local traffic

to Louisville territory is less than the rate of 45.5c applicable on local traffic to the intermediate St. Louis territory and permission to continue this fourth section departure was denied, effective May 24, 1924. The suspended schedules represent respondent's effort to comply with order 8852. HELD, proposed schedules not justified. Cottonseed cake from Texas, 92 I. C. C. 207.

(t) Respondents proposed to increase the rates on sugar, carloads, from Macon, Ga., territory to points in Arkansas, points in Louisiana, except western portion of that state, and to a few points in Missouri, Texas and Oklahoma. Respondents state the suspended schedules were filed as a result of 77 I. C. C. 473. Prior to G. O. 28 the sugar rates to Little Rock, a typical point, were 22c from New Orleans and 28c from Savannah. At present, the rates are 52c from New Orleans and 54c from Savannah and proposed rate is 71.6 from Savannah. The record establishes that, generally speaking, the present rates from Savannah are unduly low compared with corresponding rates from New Orleans. The rates which would become effective under the blanket adjustment proposed would not be unreasonable and would properly reflect the additional service from Savannah as compared with New Orleans. HELD, suspended schedules not justified but a rate not in excess of 70c justified. Sugar from Macon Territory, 92 I. C. C. 275.

(u) Complainant attacked commodity rate of 58c charged on 10 cars of wood pulp between Sept. 7 and Nov. 10, 1920, from Bristol, Va., to Stevens Point, Wis., as unjust in that it was published through error and exceeded 55.5c. Shipments moved Southern, C. N. O. & T. P., and Southern, C. I. & L., E. J. & E., and Soo Line, distance 989 miles Prior to August 26, 1920 a through rate of 41.5c was maintained, increased on that date 40% instead of 33⅓% authorized in 58 I. C. C. 220. On May 28, 1921 the 58 c rate was reduced to 47.5c, on July 1, 1922 to 43c, and on March 8, 1923 to 42.5c the present rate. HELD, rate attacked unreasonable to extent it exceeded 55.5c, reparation awarded. Whiting Plover Paper Company v. Southern Ry., 92 I. C. C. 292.

(v) Respondents proposed to increase their rate on glass bottles, carloads, from Chattanooga, Tenn., to Memphis, Tenn. The present rate is 35c and it is proposed to increase this rate to 40.5c the same as the rate from St. Louis, Mo., to Memphis. Short line distance from Chattanooga to Memphis is 313 miles, from St. Louis the short line distance is 305 miles and from Evansville 312 miles. For many years rates were maintained to that point from St. Louis, the Ohio river crossings and related points on a low basis, in order to meet water competition on the Ohio and Mississippi rivers. The rates to interior points were on a somewhat higher level, being made generally arbitraries over the river points. Under 32 I. C. C. 61, rates on glass bottles from St. Louis and Evansville to Memphis were increased to 23 and 21c, no change being made in the rates from Chattanooga to Memphis, the original relationship becoming disrupted. HELD, proposed schedules justified. Glass bottles from Chattanooga to Memphis, 93 I. C. C. 317.

(w) Respondents proposed certain increases in their rates on iron and steel articles in carloads and less carloads between Newark, N. J., and points grouped therewith, and points in New England. The rates under suspension would result in increasing the rates on bar iron, carloads 0.5c, bar iron, less carloads, 2c, and scrap iron, carloads, 5c. There is no evidence that the rates from the Newark group are subnormal as compared with the rates from other groups, and the former relationship, if desired by respondents, could be readily restored by reducing the rates from the Philadelphia group instead of increasing the rates from the Newark group. HELD, suspended schedules not justified. Iron and steel between New Jersey and New England points, 93 I. C. C. 499.

(x) Respondents proposed to increase to $2.90 the present rate of $2.59 on coke carloads, applying from points of production in Southwestern Virginia served by the L. & N., and Interstate R. R., from Benham, Ky., and La Follette, Tenn., on the L. & N., and Chattanooga on C. N. O. & T. P., to Cincinnati, Covington and other points in Kentucky, and from L. & N., and Interstate R. R. points to Maysville, Ky. It is proposed to increase the $2.90 rate of $2.48 from La Follette to Erlanger, Ky., near Cincinnati. The proposed rate is the same as that now in effect to Cincinnati from the New River district in West Virginia, served by the C. & O., and from ovens in West Virginia served by the

N. & W. The record shows that the proposed increase was published at the instance of the C. & O., which threatened to reduce its rates to the Cincinnati district if the increase were not made. The rate of the C. & O., from West Virginia points to Louisville is $2.65 as compared with $2.37 served by the L. & N., and Interstate R. R. The rates from both producing territories were formerly the same and in this case also the present disparity resulted from the increase made on August 26, 1920. HELD, proposed schedules not justified. Coke to Cincinnati, O., group 93 I. C. C. 572.

(y) Respondents proposed to increase the interstate commodity rates on lime, carloads, from Pennsylvania, West Virginia, Maryland, Virginia, New Jersey, New York, and Vermont to destinations in Pennsylvania, Ohio and West Virginia in socalled 60 and 67% territories. The suspended schedules were published following 85 I. C. C. 341 in which the Commission found rates on lime from Mitchell, Ind., to these destinations unreasonable and unduly prejudicial and prescribed a distance scale of reasonable maximum rates from Mitchell and also required that the undue prejudice should be removed by the establishment of rates from the eastern points which should bear the same relationship to the rates from Mitchell as that which would obtain on basis of the distance scale from Mitchell on the one hand and of certain specified rates from the eastern points on the other. The proposed rates would result in numerous violations of both the long and short haul rule and aggregate of intermediate provision of the fourth section, in that the rates from a number of Virginia lime producing points in which no change is proposed would be lower than the proposed rate from certain of the eastern points through which traffic from the Virginia points could and probably does move to destinations in 60 and 67% territory. There is no uniformity or consistency in the present rates on lime in trunk lime territory or between that territory and points in 60 and 67% territory. HELD, suspended schedules not justified. Rates from Buckeystown, Frederic Grove, and Lime Kiln, Md., Bakerton and Engle, Va., Stephens City and Strasburg, Va., and York, Pa., are unduly preferential to extent that the rates from those points to destinations in central territory in Pennsylvania, Ohio and West Virginia in the percentage groups known as 60 and 67% territories fail to bear the following relationship to the rates from Mitchell, Ind., to the same destinations: from Buckeystown, Frederick Grove, Lime Kiln, Bakerton, Engle, Stephens City, Strasburg and York, 16.5c to Pittsburgh and points in the Pittsburgh district; 18c to Youngstown, Sharon, Steubenville, Wheeling and Erie; and rates to other points in said destination territory that will be in harmony with the rates above specifically named; from Mitchell on the basis prescribed as reasonable in 85 I. C. C. 341. No finding is made as to the reasonableness of the present rates on socalled agricultural or fluxing lime which has no generally recognized commercial value for chemical or building purposes. Lime from eastern trunk line points. 93 I. C. C. 617.

(z) Respondents proposed to increase the rates on cement, carloads, from Ada and Hartshorne, Okla., to points on the C. & N. E., E. W. F. & G., W. F. R. & Ft. W., W. F. & S. The four lines have a common terminus at Breckenridge, Tex. The short line distance from Ada is 295 miles. The shortest reasonable route is over the Santa Fe to Chickasha, Rock Island to Graham and W. F. & S., beyond, 316.4 miles. HELD, suspended schedules not justified. Cement from Oklahoma to Texas, 95 I. C. C. 596.

(aa) Respondents proposed to increase generally rates on soapstone, or talc, crude or ground, carloads, from North Carolina to points located principally in central territory. This commodity is rated sixth class in official and southern classifications. North Carolina producing points are divided into Groups 1, 2 and 3, of which Hemp, Hewitts, and Marshall, are representative points. Hemp is served by the Norfolk Southern and Hewitts and Marshall by the Southern. The rates on talc from Hemp and Marshall to central territory are 45c higher and lower, respectively, than the rates from Hewitts. The present rates are joint rates. They were established on June 15, 1923 and are based on proportional rates maintained on this traffic to the Ohio river, plus proportional rates maintained beyond on clay originating in Georgia. The proposed rates are based on the same proportionals to the Ohio river crossings and 80% of sixth class be-

yond. HELD, schedules not justified. Soapstone or talc from North Carolina, 96 I. C. C. 191.

(bb) Respondent, C. & N. W. Ry., proposed certain increases and reductions in the local rates on sand and gravel, carloads, from points in the so-called inner and outer zones, in Illinois and Wisconsin to destinations in the Chicago switching district. Waukesha and Janesville, Wis., and Rockford, Ill., will be considered as outer zone points and Waukegan and Elgin, Ill., of the inner zone. The destinations extend from Peterson Avenue to Greenwood Boulevard on the Mayfair cutoff of respondent and from Evanston to Ravenswood on its Lake Shore division. In 64 I. C. C. 37 the Commission found that the interstate rate on sand and gravel from the outer zone to points in the district should be 3.75c per 100 pounds and that the intrastate rates from the outer zone should be increased to the same amount to remove undue prejudice to interstate traffic. Also that the rates on sand and gravel from the inner zone to the district should be maintained on a differential of 0.25 under the rates from outer zone points. The rates prescribed, modified by the subsequent general reduction of 10%, would be 3.5c from the outer zone and 3.25c from the inner zone, or the same as those which respondent proposes to establish to the Rogers Park district. No justification has been shown for maintaining rates on sand and gravel to stations in the Rogers Park district different from those maintained from the same points of origin to other stations in the district. Respondent should publish rates from the outer zone, including Waukesha, which are the same to all destinations in the district, at the same time preserving the differential of 0.25c as between the inner and outer zones and observing as a maximum a rate of 3.5c from the outer zone, including Waukesha. HELD, suspended schedules not justified, respondent to file new schedules in conformity with the views herein expressed. Sand and gravel between Illinois and Wisconsin, 96 I. C. C. 325.

(cc) Respondents proposed to increase the rates on grain and grain products, carloads, between certain points in Idaho and Washington and Pacific coast points, Vancouver, B. C., to San Diego, Calif., inclusive. The present and proposed rates are published for application in both directions between the various points, but the points of origin in which protestant is particularly interested, and from which the proposed increased rates would apply, are, with the exception of Bradken Spur, Wash., in northern Idaho on the N. P., C. M. & St. P. Spokane International, C. & P. O., and S. & E. Ry. & P. Co., or served by the Red Collar Steamboat Company which operates on Lake Coer d'Alene and the destinations are in Washington, Oregon and California. Most of the evidence related to the rates from points on the branch line of the N. P., extending 13.5 miles from Hauser Junction, Idaho, to Couer d'Alene, Idaho. The present and proposed rates to Portland and Seattle are 25.5c and 28c respectively. The rate from Port Falls, Idaho a branch line point on the C. M. & St. P., and N. P., to Seattle, 334 miles, is 25.5c and proposed 28c. HELD, no evidence was offered in justification of the proposed rates to points in California. Rates to that state not justified but to other destinations justified. Grain between Pacific coast points, 98 I. C. C. 601.

(dd) Respondents proposed to increase rates on molding sand carloads from Mount Holly, Hainesport and Masonville, N. J., to Buffalo and Rochester, N. Y., and points taking same rates. Molding sand is a heavy loading low grade commodity valued at $1.50 per ton. Prior to August 5, 1924 a carload rate of $3 was in effect from Hainesport, a representative point. The rate from Smithville a representative contiguous point was $3.40. On that date the Pennsylvania increased its local rate from Hainesport to $3.40. In the suspended schedules respondents proposed to increase the rate applicable from Hainesport over the two line routes to $3.40. HELD, proposed rate not justified. Sand and gravel from New Jersey, 101 I. C. C. 560.

(ee) Proposed cancellation of commodity rates on furniture, c. l. and l. c. l., from and to points in c. f. a. territory, and substitution therefor of classification basis and in certain instances exception basis, which would result in both advances and reductions, found not justified except as to l. c. l. traffic. Proposed cancellation while at same time continuing relatively lower commodity basis from producing points in adjoining territories would seriously disturb

long-standing and important relationships, and create undue prejudice against southern Indiana manufacturers. Furniture from C. F. A. Territory, 92 I. C. C. 97.

(ff) Proposed cancellation of special commodity rates on woven-wire cloth, from points in defined territories to points in Arkansas, leaving higher class rates in effect, found justified as to copper, brass, and bronze woven-wire cloth, but not justified as to iron woven-wire cloth. In many instances proposed schedules would increase rates on iron woven-wire cloth over 100 per cent, result of which would be to materially affect continuance of the manufacture of screen doors and windows at points in Arkansas where plants are now located and which have built up and fostered the industry under present rates. Woven-Wire Cloth to Arkansas, 92 I. C. C. 120.

(gg) Proposed changes in tariff description of beets, carrots, and parsnips, from Texas points to eastern destinations, by adding to description "with tops" the words "or clipped tops" found not justified. The clipped variety consists of those with only leaves removed, from 3 to 6 inches of stems being retained to permit tying in bundles. The trade considers commodities so shipped as being "without tops" and on them lower rates apply under present tariff description. To permit proposed change would effect increases and unauthorized departures from aggregate-of-intermediates provision of section 4 of the act, which carriers made no attempt to justify. Beets and Carrots from Texas, 92 I. C. C. 141.

(hh) Proposed increased rates on South American and Australian imported wool in the grease, in machine-compressed bales, from Boston, Lowell, New London, and New York, to La Porte and Mishawaka Ind., found justified. Wool in the grease in bales of the same density as South American and Australian wool, move under higher rates from Boston and New York to all points of consumption in official territory. Present rate to La Porte, although fixed by commission, is low and gives undue preference to South American and Australian wool as against wool imported from other foreign countries, and as against domestic wool, and unduly prefers La Porte as against other consuming points in official territory. Imported Wool from Boston and New York, 93 I. C. C. 26.

(ii) First class rate on cotton shirt forms, l. c. l., from Baltimore to Washington, N. C., found not reasonable as compared with lower commodity rate formerly in effect, or with rate on finished shirts in opposite direction. Commodity rate was cancelled because other manufacturers of shirt forms in North Carolina requested establishment of similar rates lower than first class and defendants urged that it would be unduly prejudicial to charge first-class rates from other points while maintaining lower commodity rates from Washington. The finished shirt rate in the opposite direction was also subsequently cancelled because considered subnormal, and first-class rates now apply in both directions. Moreover, defendants instanced first-class rates for similar and greater distances which are higher than rates charged. Flowers & Stell v. N. S. R. R., 93 I. C. C. 388.

(jj) Proposed increased rates on iron and steel articles between Newark, N. J., and points grouped therewith, and New England points, found not justified. Carriers rely entirely upon fact that proposed rates will restore the spread between the Newark and Philadelphia groups established following decision in Pardee Works, 39 I. C. C. 162. For over seven years that spread has been treated as one varying with the rates and not as a fixed differential. Moreover, there is no evidence that rates from the Newark group are subnormal as compared with rates from other groups, and former relationship, if desired by carriers, could be readily restored by reducing rates from Philadelphia group instead of increasing those from Newark group. Iron and Steel between New Jersey and New England Points, 93 I. C. C. 499.

(kk) Proposed increased rating on acid carboys, returned empty, from and to points in western trunk-line territory, found justified. Acid carboys are not desirable freight and can not be handled as expeditiously or cheaply as other empty returned containers which can be tiered. There is considerable danger involved in their handling, and many restrictions not operative with respect to mineral-water and other empty returned containers increase cost of their transportation. Moreover, rating proposed is the same as that now applicable from in-

termediate points and will have effect of removing fourth-section departures, is the same as that generally applicable in western trunk-line territory east of Missouri River, does not appear unreasonable, and it is not shown that it will result in undue prejudice or preference. Carboys, Returned Empty, in Western Territory, 93 I. C. C. 672.

(ll) Proposal to cancel rates and minimum weights on wooden hoops, from Group C points to western destinations and establish higher rates based upon lower minima, in compliance with carriers' interpretation of the commission's order in 91 I. C. C. 329 found not justified. Reasonableness of the rate was not in issue in case cited and in pointing out that carriers should not protect themselves from unduly lower charges per car by prescribing minimum weights which can not be loaded in ordinary equipment available the commission merely intended to dispose of a contention that minimum assailed was justified because earnings under rate applicable in connection therewith were less than reasonable. The commission did not intend to sanction an increase in rates. Carriers do not contend here that present rates are unreasonable and offered no justification of the proposed rates which reflect substantial increases. Wooden Hoops to Western Destinations, 95 I. C. C. 519.

(mm) Proposed increases and changes in method of assessing gathering charges, or proportional rates, on citrus fruits from interior Florida points to Florida basing points to be used as factors of through rates to certain transcontinental and intermountain territory found not justified. Carriers attempted to justify the increases merely by explaining the change in method of determining freight charges. However, instead of promoting uniformity, the proposed method of stating charges up to the basing points would further confuse a situation already so complex and disordered that shippers and carriers have difficulty in applying and understanding, or even explaining, the adjustment. Citrus Fruits between Points in Florida, 95 I. C. C. 532.

(nn) Proposal to increase interstate rates on ashes and cinders between points on Indiana Harbor Belt R. R., designed primarily for purpose of preventing the industries from disposing of them other than to respondent as a gift for use on its roadbed, found not justified. Proposed schedules would result in a substantial increase in revenue on local traffic over that accruing under the present rate. Ashes and Cinders, 98 I. C. C. 163.

(oo) Proposed increased rates on petroleum and petroleum products from Gates and Port Arthur, Tex., and Ardis, La., and other points in Texas and Louisiana to destinations in Kansas groups 1, 2 and 3, and to certain destinations in Oklahoma, on the ground that present rates were established erroneously and that present schedules represent an effort merely to eliminate a tariff error, found not justified. Proposed schedules ordered canceled without prejudice to the establishment, from and to the points involved, of reasonable rates properly related to the rate adjustment on these articles in this territory. Petroleum and Petroleum Products from Southwestern Points to Points in Kansas and Oklahoma, 98 I. C. C. 321.

(pp) Upon rehearing, rates on silica sand from Ottawa, Ill., to Carrel Street Station, Cincinnati, Ohio, in connection with Pennsylvania lines, found not unjust or unreasonable, and proposed rates representing increases to same basis in connection with other lines found justified. Comparison of these rates with rates on sand from Ottawa to other destinations for similar distances shows that rates to Cincinnati are substantially out of line. Moreover, the rate from Ottawa to Cincinnati is more or less of a key rate and the reduction required in original report. 85 I. C. C. 412, jeopardizes the whole fabric of silica-sand rates in official classification territory. This movement is very heavy and a general reduction in rates would mean a serious reduction in railroad revenues. In large part the general level of eastbound rates from the Ottawa district has been fixed or approved in previous cases cited. Boldt Glass Co. v. C., B. & Q. R. R. Co., 98 I. C. C. 481.

(qq) Rates on plaster, cement from Plasterco, Plasterco Junction, and Hamlin, Tex., to destinations in Alabama, Florida, Georgia, Kentucky, Mississippi, and Tennessee, from and after July 1, 1922, found unreasonable to extent they exceeded by more than 20 per cent rates in effect August 25, 1920. Reparation awarded. Texas Cement-Plaster Co. v. A. & M. R. R. Co., 98 I. C. C. 519.

(rr) Proposed increase in l. c. l. ratings on rags, "having value for purposes other than conversion into fiber." in official classification, found not justified. Under proposed schedules shippers and carriers would be required to determine in first instance, as at present, whether a given lot of material was in fact rags, and following that it would be necessary, before the legal rate could be known, to relate the rags to some standard of value or usefulness which the record here shows is quite indefinite and indeterminate, if it exists at all. Classification of Rags, 98 I. C. C. 591.

(ss) Respondents proposed increased rates on canned goods, carloads, from Colorado, New Mexico, Texas and Wyoming to Arizona, southeastern California, and western New Mexico. Longmont, Colo., about 37 miles north of Denver, may be taken as a representative origin point. Present rate is 81c, proposed 95c. A rate of $1 is also maintained minimum 40,000 pounds as to which no change is proposed. Under the circumstances of this case relative reasonableness as compared with rates from the nearby competing producing territories, rather than intrinsic reasonableness, is the mort important consideration; to this all parties of record seem to agree. HELD, respondents have justified their proposal to place Colorado canneries on a parity with Utah and California canneries on traffic to the destination territory here considered, as long as they maintain present grouping of the destinations. Schedules justified. Canned goods from Colo., N. M., Tex., and Wyo. 102 I. C. C. 156.

(tt) Rock Island, M. P., Frisco, and connections proposed to increase class rates applying between Memphis, Tenn., and Cairo, Ill., on the one hand, and points in Kansas, Missouri, Nebraska, and Colorado, on the other hand. The proposed increased rates between Memphis and points in Missouri, Nebraska, and Colorado are incidental to the main changes, which are in the rates to and from Kansas points. Rates between Cairo and the same Kansas points have been and are on a parity with the rates between Memphis and those points except in instance where to or from Cairo the combinations on the Missouri river are lower and the specific rates have been held down accordingly. No change in this relationship is proposed. The Rock Island is the moving factor in the proposed increases. Its single line route to the Kansas points and to Kansas City, Mo., runs west from Memphis to El Reno, Okla., thence north through Enid, Okla., and Wichita to Herington, and thence northeasterly through Topeka to Kansas City. Salina is the terminus of a branch line from Herington. Hutchinson is southwest of Herington on the main line to Tucumcari, N. M. Rock Island limits its single line participation in this traffic to Herington and points south and west thereof. To and from such stations as Topcka on its lines east of Herington to and including Kansas City it handles the traffic under joint rates with its connections at S. Louis, Mo., Kansas City, or other junction points in eastern Kansas. Respondents base these increases on fourth section considerations. The present first class rate between Memphis and Wichita over all lines is 182c. The short line distance over the Frisco direct is 551 miles. The distances over the single line routes of the M. P., and Rock Island are 613 and 672 miles. The corresponding rate between Memphis and Enid over the Rock Isand is 197.5c. It seeks to comply with the fourth section by increasing the present rates to and from the Kansas points. The Frisco and M. P., have no reason drawn from the fourth section for increasing their rates. It will thus be seen that the proposed basis to and from central Kansas points, of which Wichita is typical would result in the paradox that the fourth section problems of the circuitous line would dictate the rates for the more direct lines. The short line distance Memphis to Omaha, Neb., is 672 miles. No change in present rates is proposed which range from 4c on class E to 18.5c first class over Kansas City rates. The rates proposed for Topeka are in each instance the same as the Omaha rates because of fourth section requirements, Topeka being intermediate to Omaha over several routes. The proposed Topeka rates are nearly 13% greater than the Kansas City rates although the distance to Topeka is only 14% greater than to Kansas City. The proposed differences are excessive. HELD, proposed schedules not justified. Rates between Memphis and W. T. L. points 102 I. C. C. 207.

(uu) Respondents proposed to cancel the commodity rate applicable on salt cake from Pacific coast and related

points to certain destinations in Wisconsin. Salt cake is crude sodium sulphate and is mined from natural deposits in California, Arizona and Saskatchewan, Can. It is also manufactured at Grasselli, Ind., and at Hegewisch, Ill., within the switching limits of Chicago. The record in this proceeding deals mainly with salt cake used by paper mills in Wisconsin north of the east and west line of the Milwaukee from Milwaukee through Madison to Prairie du Chein; and the rates are those in natural salt cake from Clarkdale, Ariz., to these Wisconsin paper mills as compared with the rates from Grasselli and Hegewisch to the same destinations. In western territory, in the absence of commodity rates, salt cake moves in car loads on the fifth class rates. For many years respondents have maintained a commodity rate of 60c on salt cake, carloads, from McKittrick and Niland, Calif., and from Clarkdale to many destinations east thereof known as Group D points, including all points in Wisconsin and many points in the northern peninsula of Michigan. The schedule under suspension proposes to cancel this rate to points in Wisconsin north of the line of the Milwaukee, leaving the rate applicable to the other points in group D. The hearing disclosed that what these respondents had attempted to accomplish by the schedules proposed would not result therefrom. Respondents intended to increase the 60c rate to 72c to mills in the Fox River group and 75.5c to mills north of that group, equal to the combinations of 60c to Milwaukee plus the rates of 12 and 15.5c respectively beyond. The division accorded respondents out of the rate of 60c for the haul east of Kansas City, Mo., or Omaha, Neb., is 11c. HELD, schedules not justified without prejudice to the filing of new schedues in conformity with the intentions proposed. Salt Cake from Pacific coast, 102 I.C.C. 261.

(vv) B. & O., respondent, and connections, proposed to increase the present joint commodity rates on common black powder, carloads and less carloads, from Fairchance, Pa., to Delaware River Pier (Wilmington), Del., and Carneys Point and Thompsons Point, N. J., to full class basis and increase the minimum to 20,000 pounds. The Reading Company is the delivering carrier. Under its tariffs the rates are the same to these points as to Wimihgton. Present joint rates are 75c in lots of 10,000 pounds or over and 151c in lots under 10,000 pounds. It is proposed to cancel these rates and publish a carload commodity rate of 79c representing the full classification rating of first class, with minimum of 20,000 pounds and less carload apply double first class, or 158c. Prior to July 16, 1917 the commodity rate on black powder was the same as the first class rate. Fairchance is on a branch of respondents line 19 miles south of Connellsville, Pa. Short line distance 349 miles over respondent, joint line routes ranging from 391 to 404 miles. HELD, proposed increase in rate in carloads not justified but increase in carload minimum weight and less carload rate justified. Black Powder from Fairchance, Pa., 104 I. C. C. 45.

(ww) Respondents proposed to increase the commodity rates on iron and steel wagon parts, including wagon skeins, carloads, from Chattanooga, Tenn., to Charleston, S. C., Hopkinsville, Ky., and Laurel and Meridian, Miss.; also to establish a commodity rate from Chattanooga to Montgomery, Ala., lower than the class rate now in effect. Chattanooga is the only point of manufacture of iron and steel wagon parts south of the Ohio river, and the destinations named are the only points to which wagon skeins are shipped in carload quantities. Wagon skeins carloads, normally take the sixth class rating in southern classification. The proposed rate from Chattanooga to Charleston is 91.1% of the current sixth class rate of 56c whereas the present rate from Louisville to Charleston is 95.8% of the sixth class rate of 72c. There is no specific commodity rate on wagon skeins, carloads, from Chattanooga to Montgomery. It is proposed to establish a commodity rate 1c lower than the present sixth class rate. The 21.5c rate to Charleston is low but iron and steel wagon material has long been included with other manufactured iron and steel articles. HELD, with the exception of the rate of 43c from Chattanooga to Montgomery, proposed schedules not justified. Wagon parts to southern destinations 104 I. C. C. 179.

(xx) Respondents proposed to cancel the rates on anthracite coal from Erie, Pa., and Brocton, Buffalo and Buffalo Jct., N. Y., to Sparland, Ill., on the Rock Island, thereby making applic-

able higher combination rates based on Chicago. Protestant is a dealer at Henry, Ill., a point 7 miles north of and intermediate to Sparland. The mines to Sparland are made by the use of proportional rates of $2.96 from the mines to Lake Erie and Niagara frontier junction points plus rates of $2.96 beyond. Only the factor from the junction points is in question here. HELD, proposed schedules justified. Coal from Erie, Pa., to Sparland, Ill., 104 I. C. C. 188.

(yy) Respondents proposed to increase the present domestic rate of 14c on crude petroleum and fuel oil in tank cars from the so-called El-Dorado-Smackover field in Arkansas to the New Orleans-Baton Rouge district in Louisiana to 16c and to reduce the present domestic rates on crude petroleum of 22.5c and 23c to Texas ports to 16c. They further propose to increase the present coastwise and export rate of 14c on crude petroleum and fuel oil from the same district to the New Orleans-Baton Rouge district and to Texas ports to 16c and to increase the present rates of 15c on refined gas and road oils to the New Orleans-Baton Rouge district and of 16.5c on gas oil to Texas ports to 17c. The El Dorado-Smackover field is in the south central part of Arkansas, and is served by a branch line of the M. P., the Rock Island and El D. & W. R. R. The movement of petroleum oil to Louisiana and Texas points from the El Dorado-Smackover field prior to July 1924 was relatively light. Following the establishment of the present 14c rate, except to Texas points on domestic traffic, the oil began to move in great volume, and although fluctuating greatly from month to month, continued to do so up to the date of the hearing in this proceeding. There is little if any, movement of crude oil to Texas ports under the present domestic rates of 22.5c and 23c, which it is here proposed to reduce and the carriers would sustain no reduction in revenues of consequence if the reduced rates become effective. The record is lacking in detailed information as to the degree in which the oil traffic moving under the present rates yields a profit to the respondents. All of the facts of record, however, tend to support the conclusion that the circumstances and conditions surrounding the movement are so unusually favorable to economical handling of the traffic as to be almost unique. HELD, proposed increases not justified, but reductions to Texas points, justified. Petroleum from Arkansas 104 I. C. C. 651.

(zz) Proposed to increase from 28.5c to 31c rates on petroleum and its products, carloads, from points on the B. & O., between Charleston and Gassaway, W. Va., to Buffalo, N. Y., and points taking same rates. The principal destinations are on the Pennsylvania and the B. R. & P., in New York and Pennsylvania, intermediate to Buffalo The rates apply on petroleum and its products generally, but protestants interest in the suspended schedules apparently confined to proposed increased rates on wax distillate from Falling Rock, W. Va., to Warren, Pa. Wax distillate moves in tank cars. Falling Rock is 17 miles from Charleston. Cabin Creek Jct., W. Va., a point on the C. & O., about 15 miles southeast of Charleston is representative of a number of petroleum producing points on that line in the same general territory. In an agency tariff, in which respondent B. & O., concurs, a rate of 31c is named from Cabin Creek Jct., and Falling Rock districts to these destinations, whereas in a separate tariff of the B. & O., a rate of 28.5c is named from the Falling Rock district to the same destinations. The distances from Falling Rock over short line routes through Charleston as shown by respondents are, to Buffalo 494 miles and to Warren 455 miles, which closely approximate the distances from the Cabin Creek district. HELD, schedules justified. Petroleum from West Virginia 104 I. C. C. 676.

(3a) Respondents proposed to increase the rates on salt from Pomeroy, O., and Hartford and Mason City, W. Va., to Cincinnati, O., from 9.5c to 12c and from Dickinson, Malden and Witcher, W. Va., to same destinations from 11.5c to 12c; also to increase the rates from Hartford and Mason City to stations on the C. & O., Fernald, O., to Bath, Ind., from 9.5c to 17.5c. The Ohio mines of the Hartford group are reached by the Hocking Valley and the New York Central both of which connect with the B. & O., in reaching Cincinnati. The remaining mines of this group are on the B. & O., which has a short line route in connection with the C. & O., to Cincinnati. The B. & O., also reaches Cincinnati by a circuitous route over its own rails. The West Virginia group

is on the NYC which connects with the C. & O., in reaching Cincinnati. In 1902 the carriers reduced the then existing rate of 7c from the Ohio river plants to Cincinnati in order to compete with the rate in effect by water, and the present rate of 9.5c is the direct outgrowth of this rate, subject only to the general increases and reduction since then. The rate from Malden, Witcher and Dickinson to Cincinnati is 11.5c, and the average distance from these points to Cincinnati is somewhat greater than that from the Hartford group. HELD, respondents have not justified the increased rates to stations on the C. & O., Fernald, O., to Bath, Ind., that, when used as a local rate to Cincinnati and points within the switching district, the proposed rate of 12c has been justified, and that, when used as a proportional rate on shipments moving beyond, it has not been justified. Salt from Ohio and West Virginia points 104 I. C. C. 730.

(3b) Respondents proposed an increase from 11.5c to 15.5c in rate on barley, corn, oats, rye and wheat and screenings thereof in carloads from Mt. Vernon, Ind., to Louisville, Ky., and Jeffersonville, Madison and New Albany, Ind., over the C. & E. I., and connections. Mount Vernon is in a grain producing territory at the end of a branch line of respondent, extending 37 miles in a southerly direction from Mount Vernon Junction, Ind., 21 miles north of Evansville, Ind. Respondents traffic to these four destinations moves north from both Mount Vernon and Evansville through Mt. Vernon Junction to Princeton, Ind., thence Southern, or north to Vincennes, Ind., and thence over B. & O., or Pennsylvania. A rate of 15.5c applied from Mt. Vernon and Evansville to these destinations for several years prior to June 20, 1925 when respondent established the present rate of 11.5c from both points. Apparently respondent now meets the competition of other lines at Evansville, a point from which the L. H. & St. L., and the Southern, the short lines, maintain an 11.5c rate to Louisville, and seeks to maintain from Mt. Vernon the same rate as the L. & N., which is its only competitor at that point. Louisville is 155 and 139 miles from Mt. Vernon and Evansville, respectively, over the lines of respondent and the Southern via Princeton, and 245 and 227 miles over respondents line in connection with the B. & O., via Vincennes. Louisville is 175 miles from Mt. Vernon over the L. & N., and L. H. & St. L., via Evansville, and 291 miles over the L. & N., as a single line haul. As the L. & N. is the only carrier except respondent which reaches Mt. Vernon, the competition at that point is not the same as that met at Evansville. HELD, schedules justified. Grain and grain products to Ohio river crossings 104 I. C. C. 764.

(3c) Respondents proposed increases and reductions in the rates and minimum weights on lumber and related articles of wood, in carloads, from Arizona, California, Nevada, New Mexico, Oregon and Utah to destinations in eastern Canada. The territory of origin comprises generally four groups, designated Coast, Truckee, Hawley and Arizona. Rates from the last three groups are the same. From the Coast group, which embraces most of California, the rates are somewhat higher. From a number of points on San Francisco Bay proportional or transshipment rates apply on shipments received from ocean carriers or accorded certain transit services, such as storing or manufacturing, before delivery to mail carriers at the bay points. They have been maintained with a view to equalizing conditions and competitive requirements between mills not served by rail-lines and those so served. The proposed increases are part of a general adjustment whereby respondents seek to equalize the rates applying from the Coast group and from north Pacific coast points, Portland, Ore., for example. Respondents attempted no justification of the proposed changes from the Hawley, Truckee, and Arizona groups and the consideration of the proposal will be confined to the changes from California. The proposed adjustment would result in cancellation of the proportional or transshipment rates from the bay points, application of local rates in lieu thereof, and a shortening of the list of lumber articles upon which the proposed rates would apply. Rates from the north Pacific coast were reduced effective October 1, 1924 but no change was made in the rates from California; the proposed rates would place the origin territories on a parity as to the various kinds of lumber, whereas the parity has not heretofore included cedar and redwood lumber. The proposed cancellation of the transshipment or proportional rates would result in increasing the rates on redwood lumber from Bay

points to Toronto and Montreal by 16.5c and 19.5c, respectively. Practically no evidence was offered by respondents in justification of the proposed schedules. Respondents have long maintained the same rates on redwood lumber as on pine and various other kinds from this general territory. Sufficient reason does not appear why any different basis should now obtain. Whatever circumstances warrant the maintenance from north Pacific coast points to Canadian destinations of rates higher on one kind of lumber than on other kinds are not necessarily controlling as to traffic from the origin territory here considered. On the other hand the proposed reduced rates under suspension on pine lumber and various other kinds restore an equalization, long maintained prior to October 1, 1924 from California and north Pacific coast points. No reason appears why the disparity created on that date, and which respondents appear willing to remove, should be continued. The evidence does not support a finding that the change proposed in the minima, the restriction proposed in the lumber list, or the cancellation of the transshipment or proportional rates is warranted. HELD, schedules not justified without prejudice to the filing of new schedules in conformity with the views herein expressed. Lumber and related articles 107 I. C. C. 57.

(3d) Respondents proposed to increase from 16c to 19c the interstate rates on soda products other than caustic soda, carloads, from Syracuse and Solvay, N. Y., to New York, N. Y., lighterage points. Syracuse is on the Lackawanna, N. Y. C., and West Shore. Both points now ship to New York Harbor lighterage points all water by way of the barge canal as they did formerly by way of the Erie Canal. The commodities load heavily, soda ash predominating in the movement. The present rate of 16c represents the 8.5c water compelled rate as modified by general increases and decreases. The present rate on all soda products over the lines of carriers other than the respondents is 19c and respondents also maintain this rate on 19c on caustic soda following 83 I. C. C. 196. Generally soda products, including caustic soda, are grouped on a common basis throughout central and trunk line territories. In central territory by exception to the official classification 85% of sixth class rates generally applies. HELD, respondents have justified the schedules. Soda products to New York Lighterage points 107 I. C. C. 171.

(3e) Respondents proposed increased class rates between points in Iowa, Illinois, Wisconsin and Minnesota, included within the so-called Burlington group, and Fargo, N. D. These schedules also proposed increased and reduced class rates between the Burlington group and Jamestown, Jamestown Junction, State Hospital, and Wahpeton, N. D., Breckenridge and Moorhead, Minn., and other points in Minnesota and North Dakota on the Ortonville-Fargo branch of the C. M. & St. P. Ry. and Midland Continental. The Burlington group, as constituted for about 50 years prior to the present adjustment, lay within a line drawn, roughly, from Burlington, Iowa through Des Moines and Denison, Iowa, thence northwest and north to the Minnesota state line, thence east along the state line, taking in a small portion of Minnesota, across the Mississippi river into Wisconsin, thence paralleling the river south, and across to Burlington. Within this group were the river crossings of Burlington, Davenport, Clinton and Dubuque, Iowa, and Rock Island and Moline, Ill., and such interior Iowa cities as Des Moines, Cedar Rapids, Waterloo, Mason City, Fort Dodge and Ottumwa. In 98 I. C. C. 691 the Commission prescribed first class rate to Fargo from Omaha, Neb., 155c, Chicago 165c, and proportional from Chicago 149c. Rates in compliance with the decision became effective from Omaha and Chicago to Fargo on September 11, 1925. At the same time respondents increased the fourth class and class A rates from Fargo to Chicago from 82 to 64c to 81 and 71c, the rates which were prescribed westbound. These rates to Chicago are blanketed over the greater portion of Wisconsin, Illinois as far south as Lincoln and Clinton, and small portions of northwestern Indiana and northwestern Missouri. Attention was directed to the existence of a lower scale between the Burlington group and Fargo than was in effect between the Chicago group and Fargo, and the carriers then stated it would be their purpose to increase it. They first contemplated publishing the Chicago scale from the Burlington group and Fargo, but found that because the greater portion of the group was intermediate between Fargo and Omaha, the provisions of the fourth section necessitated publication

of west bound rates no higher than those in effect under the $1.55 scale from the latter point. Such a scale became effective on westbound traffic Sept. 11, 1925. This intermediate territory, hereinafter called interior Iowa, lies west and north of a line paralleling the rails of the C. G. W. from the Iowa-Minnesota state line to Nelda, Iowa, thence south to Cedar Rapids, thence west and southwest to Des Moines, both the latter city and Cedar Rapids falling in interior Iowa. From the remainder of the Burlington group, the Chicago $1.65 scale was published to Fargo. No fourth section obstacles were encountered in the publication of rates eastbound, and the Chicago $1.78 scale, with the increased fourth class and class A rates was accordingly published to the entire Burlington group. This scale and the $1.65 scale from the crossings to Fargo were suspended. Competition in the sale and distribution of numerous articles moving on class rates is unusually keen in the territory lying north of St. Louis, Mo., and Kansas City, east of Omaha, west of Chicago and south of the Twin Cities. The Burlington group is an important part of this territory. Transportation conditions between the crossings and Fargo, on the one hand, and between Chicago and Fargo on the other, are not materially different and the difference of 93 miles between the distance of 640 miles from Chicago and the average distance of 547 miles from the crossings cannot be ignored. HELD, schedules not justified. Reasonable maximum class rates between the crossings on the one hand and Fargo and Moorhead on the other are 151 first class 27c class E; reasonable maximum class rates from the crossings to Fargo for application on traffic from points east of Chicago in central, trunkline, and New England territories will be 136c first class and 24c class E. Rates from upper Mississippi crossings 107 I. C. C. 256.

(3f) Respondents proposed increased rates on apples, carloads and less carloads, from Virginia on the Washington division and in the Manassas-Harrisburg division to but not including Strasburg, Va., on the Southern, and from all points on the Washington and Old Dominion Ry., and Virginia Blue Ridge Ry., to certain destinations in trunkline and New England territories. In official classification apples take fifth class rates carloads and third class less carloads and in southern sixth class carloads and fourth class less carloads. As to general traffic the Virginia lines, with the exception of the Southern Ry, operate under the official classification. The Southern asserts that the rates from this territory are controlled by its trunk line competitors. In 31 I. C. C. 145 the Commission considered rates on apples from points in the producing territory of Virginia on the N. & W., C. & O., B. & O., and Southern to eastern cities, and found that the application of the fifth class rates, carloads, which were on the level of the official classification basis was not unreasonable. HELD, proposed schedules justified except in those instances in which the proposed rates exceed the existing fifth class rates in carloads, and third class rates on less carloads, between the same points. Apples from Virginia points 107 I. C. C. 349.

(3g) Respondents proposed to cancel the present commodity rates on coal tar and pitch based on a minimum of 60,000 pounds from Birmingham, Ala., and points grouped therewith, to certain points in North Carolina and South Carolina, leaving applicable higher commodity rates based on a minimum of 40,000 pounds. They do not propose to increase the rate on hard carbon pitch from Birmingham to Badin and Whitney, and the extension of this rate to cover coal tar and pitch, in carloads, minimum 60,000 pounds, and, under rule 77, to intermediate points, seems proper. HELD, suspended schedules not justified. Coal tar and pitch from Birmingham 109 I. C. C. 73.

(3h) Respondents proposed to increase the rates on plaster board, wall plaster, and stucco, in straight or mixed carloads, from Los Angeles, Calif., and on plaster board and plaster blocks, in straight or mixed carloads, from Seattle Wash., to Utah common points. The rate on plaster board, carloads, from Los Angeles to Utah common points prior to Nov. 25, 1923 was 49.5c, minimum 60,000 pounds. On that date a number of rates between California and Utah common points were voluntarily reduced to the basis of 75 per cent of the rates between the Missouri river and Utah common points, and among them the rate of 49.5c was reduced to 32.5c and made applicable to plaster board, wall plaster and stucco, in straight or mixed carloads. On Jan. 20, 1925 the

32.5c rate was canceled and the rate of 49.5c was restored on plaster board, making class rates applicable to wall plaster and stucco. The basis was restored on the other commodities April 20, 1925. Respondents proposed to increase the present rates of 32.5c and 40c from Los Angeles and Seattle to 42 and 47c, principally on the ground that the present rates are too low, but also for the purpose of placing Los Angeles and Seattle on a more nearly equal basis. HELD, rates attacked not justified. Plaster board to Utah common points 112 I. C. C. 3.

ALL OTHER CITATIONS

Coal from Tennessee R. R. Station, 85 I. C. C. 25; Acid from Moundsville, 85 I. C. C. 149; Louisville Fire Brick Works v. Director General, as Agent, 85 I. C. C. C. 457; Petroleum Oils from Philadelphia, 85 I. C. C. 583; Royall & Borden Mfg. Co. v. A. C. L. R. R. Co., 85 I. C. C. 715; Mason City Brick & Tile Co. v. Director General, as Agent, 88 I. C. C. 37; Thompson-Wells Lumber Co. v. Director General, as Agent, 88 I. C. C. 395.

§18. Circumstances and Conditions.

(½). In General.

See Evidence II.

(a) Respondents proposed to increase the rates on brick and clay products, carloads, from Nashville, Tenn., to Paducah, Ky. In Glenns tariff I. C. C. A-481 a rate of 10.5c is published on standard and common brick. In Speidens tariff I. C. C. 841 rates of 7.5c and 9.5c on common and standard brick, respectively. Proposed to increase the latter to 10.5c. The routes ordinarily used in handling traffic between Nashville and Paducah are the N. C. & St. L., direct, 181 miles and T. C., to Hopkinsville, Ky., and I. C., beyond, 162 miles. There is also an available route of 150 miles over the L. & N., to Hopkinsville and I. C. beyond. HELD, proposed schedules justified except to extent rate proposed on common brick exceeds 8.5c, L. & N., and I. C., via Hopkinsville, Ky. Brick from Nashville, 101 I. C. C. 11.

ALL OTHER CITATIONS

California Grain Co. v. Director General, as Agent, 85 I. C. C. 680.

§18 (8). Circuitous Routes.

ALL CITATIONS

Bituminous Coal from Mines in Illinois, 85 I. C. C. 105.

V. DISCRIMINATION THROUGH ADVANCE.

§19. In General.

See Discrimination.

(a) The Commission must decline to sanction and not look with favor upon a general increase in rates made under the pretext of satisfying a complaint of discrimination against one point, when such discrimination can be otherwise removed and the general increase is of far reaching effect, unless the justification therefore is more clear and convincing. Boots and Shoes from New York Points, 91 I. C. C. 591, 596.

(b) Respondents proposed to increase their proportional rates on canned goods, and iron, and steel articles, carloads, from Gulf ports to Ohio river crossings, and points north thereof, applicable on traffic from the Pacific coast through the Panama Canal. Canned goods is the only commodity involved. About two years ago the southern lines entered upon a policy of publishing from the south Atlantic and Gulf ports to the destination territory under consideration on various commodities moving from the Pacific coast through the Panama Canal, proportional rates made with relation to the local rates from New York to Chicago on such traffic, and to thus substantially equalize all these ports, particularly in so far as the inland haul was concerned. The rates of the eastern lines from New York to Chicago were reproduced in section 1 of each tariff to apply as proportionals from the south Atlantic and Gulf ports to most of the destinations involved. In section 2 of each tariff the local rates of the southern lines from the south Atlantic and Gulf ports were reproduced, and provision made for their application if lower than the proportionals named in section 1. On July 1, 1923, there was a general revision of the local canned goods rates in the considerable portion of the south and the local rates from Gulf ports to points on and north of the Ohio river were increased, the rate to Chicago becoming 68c. No change, however, was made in section 2 of the tariff and the 47.5c rate still applies to Chicago. It is proposed in the present case to correct section 2 of the tariff so that the rates

named in that section will correspond with those named in the regular local tariff that went into effect July 1, 1923. Now that their locals have been increased they here desire to amend their proportional tariff to the extent necessary to eliminate from it their former local rates, and generally observe the New York-Chicago rate except where their present locals are lower. From a competitive standpoint no good reason appears for respondents generally maintaining lower rates from the Gulf ports than apply from New York, HELD, proposed rates unduly prejudicial and not justified. Canned Goods and Iron and Steel Articles, 91 I. C. C. 623.

(c) Rates on bedroom furniture from Nashville, Tenn., to eastern and Virginia cities found not unreasonable, but unduly prejudicial to complainant and unduly preferential of competitors at Chattanooga, Tenn., to extent that percentage relationship of the rates to first-class rates from Nashville exceeds percentage relationship of contemporaneous rates to first-class rates from Chattanooga. Standard Furniture Co. v. N., C. & St. L. Ry., 91 I. C. C. 27.

(d) While it may be conceded that burden of proof is on carriers to show propriety of proposed charges under section 3 as well as under section 1 of the act, it does not follow that undue prejudice is to be presumed from mere fact that compensatory charges at one point will differ from charges in effect at other points, particularly as to protestant shippers who have not contended or made any effort to show that they will be handicapped by establishment of such charges in meeting competition from other points. Nashville Switching, 40 I. C. C. 474. Increased Switching Charges at Detroit, 91 I. C. C. 82, 96, 97.

(e) Rates on rosin from southeastern points to Kalamazoo and Grand Rapids, Mich., found not unreasonable or unjustly discriminatory as compared with rates from same points to Chicago, Ill., Milwaukee, Wis., and Detroit, Mich. At time this case was submitted defendants had in course of preparation a general readjustment of rates and in Naval Stores from Southern Points, 87 I. C. C. 740, commission fixed reasonable rates for the future. New adjustment will result generally in removal of existing fourth-section departures and any undue prejudice to complainants. Western Paper Makers Asso. v. Director General, 91 I. C. C. 223.

(fg) Proposed increased class and commodity rates from various interstate points to Mesa, Ariz., for purpose of removing undue prejudice against points on Globe division of Arizona Eastern R. R., found to exist in Graham & Gila Counties Traffic Asso., 81 I. C. C. 134, found not justified. Mesa and Phoenix, Ariz., have been on same rate basis for many years and a higher basis of rates to Mesa than to Phoenix would compel removal of jobbing establishments to Phoenix thereby resulting in considerable financial sacrifices, would enable Phoenix to take over much of the trade territory now enjoyed by Mesa, and would not benefit points on the Globe division to any appreciable extent. Class and Commodity Rates to Mesa, 92 I. C. C. 512.

(h) Proposed increased rates on coke from points in southwestern Virginia, Benham, Ky., LaFollette and Chattanooga, Tenn., to Cincinnati and certain points in the vicinity thereof, and to Maysville, Ky., designed for purpose of restoring a parity of rates from these coke-producing points disrupted following general increases authorized in Increased Rates, 1920, 58 I. C. C. 220, found not justified. Although record does not indicate that proposed rate to Cincinnati would be unreasonable, it would result in undue prejudice at that point and in undue preference of other Ohio River crossings where a similar situation exists and where a similar increase is not made. Coke to Cincinnati Group, 93 I. C. C. 572.

(i) Proposal to increase rates on grain and grain products from certain Indiana, Illinois, and Michigan points to Aurora, Garrettsville, and Mantua, Ohio, to be effected by transferring these destinations from Cleveland to Youngstown, Ohio, group, found not justified, without prejudice to establishment of rates in conformity with the fourth section of the act. Present adjustment is illogical and inconsistent, and its correction is proper, but the application of rates to the three destinations higher than those to Solon, Ohio, which is near Cleveland and just beyond destinations in question over respondents' through routes, would contravene the long and short haul provisions of the fourth section. Grain and

Grain Products from C. F. A. Points, 101 I. C. C. 7.

(j) Proposed increased rates on grain and products from certain points in Kansas on the Union Pacific to St. Joseph, Mo., when routed over Union Pacific to Marysville, Kans. and St. Joseph and Grand Island beyond, found not justified. If suspended schedules become effective undue prejudice would result to protestants at Marysville who would not be able to purchase grain at Union Pacific points in competition with St. Joseph competitors. Grain and Products from Kansas, 101 I. C. C. 595.

ALL OTHER CITATIONS

Cheese from Wisconsin Points, 85 I. C. C. 18; Coal from Tennessee R. R. Stations, 85 I. C. C. 25.

§19¼ Legal rate.

See Demurrage §20; Legal Rates; Through Routes and Joint Rates.

(a) Three factor proportional rates charged on vegetables from points in Florida to Chicago, Ill., to each of which was applied the interterritorial increase of 33⅓ per cent under Increased Rates, 1920, 58 I. C. C. 220, in lieu of the territorial increases, found applicable and not published in three factors, from both a unreasonable. While rates involved were technical and practical standpoint they were joint through rates. Factors could not be used on local business and under decision cited were properly increased 33⅓ per cent. Moreover, defendants show that a like increase was applied to separate factors of rates on other commodities. Ahern Brokerage Co. v. A. C. L. R. R. Co., 89 I. C. C. 274.

(b) Upon rehearing, prior report, 58 I. C. C. 442, modified and shipments of lumber from Hopkins, Fla., to Baltimore, Md., and other points, during Federal control, found overcharged. None of the applicable tariffs specifically referred to tariff which provided a rule for the construction of through rates made on combination under which but a single increase was to be added to the sum of the separate factors, nor did latter make specific reference to applicable tariffs. Following Acme Cement Plaster Co., 81 I. C. C. 298, the combinations to and from Jacksonville, Fla., each increased 5 cents under General Order No. 28 of the director general, were applicable. Reparation awarded. Union Cypress Co. v. F. E. C. Ry. Co., 89 I. C. C. 679.

(c) Contention that increased rates were in violation of section 6 of the act and not lawfully published because tariff reissue publishing such increases failed to indicate that a change had been made in rate; HELD: Such omission did not render published rate unlawful. National Preservers & Fruit Products Asso., 74 I. C. C. 179, 182. Package Sales Corp. v. U. P. R. R. Co., 91 I. C. C. 697, 698.

(d) Upon contention of complainants that during Federal control the rule under section 2 (e) of General Order No. 28 of director general must govern all tariffs, and that as it limits the power to increase rates, the legality of the rates depends upon the observance of this condition, HELD: Legal rates must be determined by the words of the published tariffs themselves, rules or provision of that order to the contrary notwithstanding. Nash Spokane Co. v. Director General, 100 I. C. C. 223, 226.

VII. REPARATION.

§22. In General.

See Absorption of Charges §6 (a); Claims; Reparation.

(a) Upon contention that burden of proof to justify rates increased since January 1, 1910, was not met by defendants due to their nonappearance at the hearing, and that complainant is, therefore, entitled to an award of reparation on shipments moving under rates as increased. HELD, before commission can find that a shipper is entitled to reparation, it must find that the rate is unreasonable, and fact that no evidence was offered on behalf of carriers does not preclude commission from determining whether or not the rate was in fact unreasonable. Nebraska Bridge Supply & Lbr. Co. v. A., T. & S. F., 93 I. C. C. 301, 303.

ALL OTHER CITATIONS

Halliday Milling Co. v. Director General, as Agent, 85 I. C. C. 687.

VIII. TARIFFS AND PUBLICATION.

§23. In General.

See Export Rates and Facilities §6 (k); Tariffs II.

(a) Contention that increased rates were in violation of section 6 of the act and not lawfully published because tariff reissue publishing such increases failed to indicate that a change had been made

in the rate, HELD: Such omission does not render published rate unlawful. National Preservers & Fruit Products Asso., 74 I. C. C. 179, 182. Package Sales Corp. v. U. P. R. R. Co., 91 I. C. C. 697, 698.

§24. Construction.

ALL CITATIONS

Varnish, Chicago, Memphis, and St. Louis to Texas, 85 I. C. C. 33; Mason City Brick & Tile Co. v. Director General, as Agent, 88 I. C. C. 37; Greene Cananea Copper Co. v. C. R. I. & P. Ry. Co. 88 I. C. C. 226.

ADVERTISING MATTER

See Clayton Act (a).

AGENCY.

See Crimes §15; Passenger Fares and Facilities §15; Reparation §6 (ii); Tariffs §3 (2); Terminal Facilities §3½.

(a) Carrier engaged in interstate commerce could not, in view of Interstate Commerce Act, §6, subsec. 7 (U. S. Comp. St. §8569), waive terms of published tariff requiring prepayment of freight and agree that terminal carrier, as its agent, appropriate and apply money collected by it in liquidation of freight charges due by other persons to payment of freight for which original consignee became initially liable and to substitute undertaking of terminal carrier so to make collections and apply them to consignee's obligation. Monongahela Ry. Co. v. Read, (Md., 1925) 127 Atl. 739.

(b) A carrier delivering shipments to industries on its line, for which service its charges are absorbed by initial carrier, may be looked upon as an agent of latter, in that it is completing a service which initial carrier has taken upon itself to perform. Peoria & Pekin Union, 93 I. C. C. 3, 16.

(c) Contention that a warehouse company can not lawfully be agent of shipper and carrier in respect of same transaction at the same time not sustained, Diffenbaugh Case, 222 U. S. 42, where agency for the railroad includes unloading, sending of notices, collection of freight charges, etc.; and that for the shipper storage after free time, separation of traffic, etc. McCormick Warehouse Co. v. P. R. R., 95 I. C. C. 301, 306.

(d) It would be an extension of carrier's duty beyond reasonable limits to require it to be responsible for failure of its agent to make inquiry as to whether a lower combination rate could be figured on some relatively obscure point beyond the recognized gateways in the absence of specific routing instructions from shipper and where the files of its agent do not contain tariff showing a lower rate than that existing over route of movement. See 19 I. C. C. 448 and Conference Ruling 214 (g). Alabama Chemical Co. v. Illinois Traction, Inc., 98 I. C. C. 451 452.

ALASKA

See Adjacent Foreign Country; Control and Regulation; Foreign Commerce.

ALLOWANCES

I. CONTROL AND REGULATION.
- §1. Jurisdiction of Commission.
- §2. Power to prescribe.
- §3. Effect of orders.

II. PUBLICATION AND TARIFFS.
- §4. Obligation to file.
- §5. Effect of publication.
- §6. Construction.

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- §7. Obligation to treat alike.
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  - (5) Spotting and delivering cars.
  - (6) Staking and bulk heads.
  - (7) Transfer.
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§9. In general.
§10. Transportation service performed by shipper.
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§12. What is not transportation service.
(1) Accessorial or incidental.
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VII. AS REBATES.

§15. In general.

VIII. CRIMINAL LIABILITY.

§16. In general.

CROSS REFERENCES

See Common Carrier §9; Divisions; Facilities and Privileges; Ferry Charges; Industrial Lines; Lighterage III; Mails; Tap Lines §4, §6½, §9; Terminal Facilities; Weights and Weighing §8.

I. CONTROL AND REGULATION.

See Control and Regulation.

§1 Jurisdiction of Commission.

See Jurisdiction of Commission.

(a) Where carrier, in lieu of its own performance of a transportation service within its duty, while standing ready to perform it, assents to a shipper's voluntary assumption of the service, whether or not it makes him an allowance therefor, the commission may prescribe merely the allowable maximum. Colorado & Utah Coal Co., 85 I. C. C. 545, distinguished. Borden's Farm Products Co. v. N. Y., N. H. & H., 92 I. C. C. 270, 273.

III. DISCRIMINATION.

§8. Particular Allowances.

(½) Car Ferry and Cars.

See Car Ferry; Cars and Car Supply.

(a) Mileage allowance for use of specially constructed multiple-unit tank cars loaded and empty found illegal in that it was less than established compensation of 1.5 cents per mile for class V single-unit tank cars. Mathieson Alkali Works v. B. & O. R. R. Co., 85 I. C. C. 728, 734.

§8 (2). Cooperage and Grain Doors.

ALL CITATIONS

Colorado & Utah Coal Co. v. D. & S. L. R. R. Co., 85 I. C. C. 545.

§8 (3). Elevation.

See Facilities and Privileges §15.

(a) It is not unlawful for a carrier to make an allowance to a shipper for performing for it a service in the elevation of grain even though at the same time the shipper has the opportunity to perform other services to the grain in the way of treatment, or cleaning, clipping and mixing the grain, which, although not included under the term elevation or paid for by the railroad, it is an advantage to them to be able to perform at the same time. McCormick Warehouse Company v. Pennsylvania R. R., 95 I. C. C. 301, 306.

§8 (4). Lighterage.

See Lighterage.

ALL CITATIONS

Atlas Portland Cement Co. v. C. R. R. Co. of N. J., 85 I. C. C. 611.

§8 (4⅞). Loading and Unloading.

See Loading and Unloading, Transportation §10.

(a) Defendants under tariff authority, written contracts, or verbal agreements, pay to certain warehouses located in Baltimore 35c per ton for services rendered in connection with the loading and unloading of carload package freight, except that on flour, the measure of the charge varies. Complainant attacked failure and refusal of defendants to afford equal treatment to complainant in respect of like service in transportation of like kind of traffic under substantially similar circumstances which might be done either by making an allowance to complainant similar to that made to the warehouses referred

to or by withdrawing the allowance to the latter, resulted in unjust discrimination and undue prejudice. The services for which the allowance is made include loading, unloading, second notices of arrival of shipments to the consignees, holding and insuring the freight for not exceeding 48 hours free time, collecting freight charges, taking receipts from consignees for shipments, and handling incidental matters pertaining to claims. All shippers using the contract warehouses are treated identically in this respect and no shipper who uses complainants warehouses has complained that any other shipper using the contract warehouses is accorded free time in excess of that authorized by the tariff, nor has any such instance been shown to exist. If allowances are made to the contract warehouses for unloading shipments of which they are the consignees or for loading shipments of which they are the consignors, such allowances must be published and filed with the Commission and made available to all shippers furnishing a like facility or performing a like service of transportation in connection with their traffic. When consideration is given to the assertion of complainant that it is not a shipper or receiver of freight, the conclusion must be reached that it has no relation with a common carrier which could result in a discrimination against it in violation of the act. The discrimination there forbidden is in respect of transportation. HELD, complaint dismissed. McCormick Warehouse Company v. Pennsylvania R. R., 95 I. C. C. 301.

(b) Complainant sought an allowance of 45c per ton for unloading carloads of cottonseed cake, in bulk, at Port Arthur, Tex., between Oct. 18, 1920 and April 21, 1922 and alleged that the failure of defendants to make the allowance was unjustly discriminatory and unduly prejudicial. Most of the cake originated in Texas and Oklahoma, all arriving over the T. & F. S., and are unloaded by complainant at the wharf of the Port Arthur Canal & Dock Co. Complainant was the owner of the cake and performed the unloading upon request of defendants. The applicable tariffs provided for an unloading charge at Port Arthur of 12.5c on cottonseed cake, in bulk, which charge was absorbed by the line haul carriers. Effective June 2, 1921 the charge became 45c which was also absorbed. Prior to Jan. 20, 1922 the tariffs did not authorize payment to the shipper of the cost of unloading. Effective on that date they were amended to provide that the Port Arthur Canal & Dock Co. would make the same allowance to the consignee as it received from the line haul carriers. Tariffs in effect at Galveston named an unloading charge of 45c on cottonseed cake in bulk at the S. P. piers, absorbed by the line haul carriers. HELD, allowance requested appears to be no more than reasonable for the service performed, and an order will be entered authorizing its payment to complainant on the shipments which moved prior to Jan. 20, 1922. Galveston Export Co. v. T. & F. S. Ry., 96 I. C. C. 141.

(c) Shippers have a right to load their own freight, if they so prefer, but where an industry has installed labor-saving apparatus at corresponding expense because of inducements held out by carriers to perform loading for shippers such service should not lightly be taken away. Loading of L. C. L. Freight, 91 I. C. C. 394, 397.

(d) Practice of carriers in employing certain warehouse companies to perform terminal services in connection with loading and unloading of c. l. package freight at Baltimore, for which allowances are paid, while refusing to employ other warehouse companies to perform similar services, found not to result in discrimination, preference, or prejudice. Complainant's primary business is that of a public storage warehouse, and its sole purpose in bringing its complaint is to make more profit out of its warehouse business. Moreover, complainant is not a shipper or receiver of freight and has no relation with a common carrier which could result in a discrimination against it in violation of the act, the discrimination forbidden therein being in respect of transportation. See 51 I. C. C. 535. McCormick Warehouse Co. v. P. R. R., 95 I. C. C. 301.

(e) Defendants authorized to pay complainant an allowance for unloading shipment of cottonseed cake, in bulk, at Port Arthur, Tex. Section 15 authorizes carriers subject to its provisions to pay to the owner of property transported reasonable allowances for services rendered by him in connection with common carrier transportation. Galveston Export Co. v. T. & F. S., 96 I. C. C. 141.

(f) Contention that movement of ex-lake iron ore within the yards of Carnegie Steel Company's plant at Youngstown, Ohio, to its incline tracks, where it is received and handled by an unloading mechanism operated by the company, does not constitute the placing of cars for unloading within the meaning of the tariffs, not sustained. Carnegie Steel Co. v. Director General, 96 I. C. C. 527, 533.

§8. (4⅞a). Motor Truck or Wagon Transfer.

See Motor Truck Service.

(a) Motor-truck or wagon transfer can be, and is, employed by owners of property transported under arrangements whereby such owners render a service connected with transportation which carriers otherwise would be under obligation to perform. The act contemplates that carriers may make just and reasonable allowances to such owners for rendering service, and commission is given authority to determine what is a reasonable charge and allowance as maximum to be paid by carrier and to fix same by appropriate order. Commission has required that such charges or allowances be duly published in carriers' tariffs and be made available to all owners of property transported furnishing like instrumentalities or performing like services. Motor-Truck or Wagon Transfer Service, 91 I. C. C. 539, 540.

§8 (5). Spotting and Delivering Cars.

See Facilities and Privileges §12½; Spotting.

(a) In 77 I. C. C. 110, it was found that defendants failure to perform a spotting service at the complainants plant at Jackson, O., or to make complainant an allowance for its own performance of the service, although respectively performing such services at certain other named plants in the same general territory, had not been shown to violate the act. In 1909 carrier agreed to pay complainant as an allowance for the service 85c for each loaded car, empty cars and cars containing slag not shipper commercially having been excluded. A tariff providing for this allowance was published, and payments were made thereunder until cancellation of the tariff in April, 1914, following 29 I. C. C. 212. No allowance has since been made by that carrier, nor has it performed the service except for limited periods of time during strikes or for other unusual reasons at the request of complainant, and then has been paid therefor at the tariff rate. The interchange tracks are owned by the B. & O., but are upon property of complainant. That carrier never has made any allowance to complainant or performed the spotting service. To establish the fact of a general custom and usage the spotting services performed by the respective defendants at Wellston, Lawrence and Ironton are pointed out and relied upon. The furnaces at Wellston and Ironton are in competition with complainant. The practice of the trunk line carriers in the region in question is to place cars for loading or unloading at the blast furnaces without charge in addition to the line haul rates, except in the case of ore, but this practice apparently does not involve complicated movements within the plant after one placement has been made. In no event is there any obligation on a carriers part to undertake such service after delivery has been made by placing the cars within the plant, although the carrier may not perform such extra service for one shipper and refuse it to another shipper where conditions are similar. There likewise is no burden upon the carrier to absorb the cost of the spotting service when performed by the shipper if for his own convenience the latter excludes the carrier from performing the final placement by a single movement, but the service performed for competing shippers where the conditions are substantially similar must be approximately equal. HELD, failure of defendants to perform spotting service at complainants plant or to make an allowance not unreasonable, but unduly prejudicial, reparation denied. Jackson Iron and Steel Co. v. Director General, 91 I. C. C. 201.

(b) Carriers now signify their willingness and preference, as an alternative duty, to perform the spotting service at complainants plant, provided it may be done at their reasonable convenience. While a carrier may not be required to perform such services at the convenience of the shipper, the service that it does perform must be adequate, reasonable, and nonprejudicial. This does not require placing of cars more than once or include spotting or reswitching, unless the carrier performs reswitching or spotting services for competitors under substantially similar conditions. Jackson Iron & Steel Co. v. Director General, 91 I. C. C. 201, 210.

(c) Complainant alleged it suffered damage due to failure of defendant to allow spotting charges. Original report found in 57 I. C. C. 745. Complainant asked for damages resulting from the undue prejudice which has been found to exist, based upon the actual cost to it of performing the interchange switching at its Buffalo and North Tonawanda plants, for the entire period between January 1916 and January 1921, the date upon which an allowance to complainant was established by defendants for performing the interchange switching in order to remove the undue prejudice. HELD, complainant has not established the fact that it has been damaged because of the undue prejudice the existence of which was found in the original report, reparation denied. Donner Steel Co. v. D. L. & W. Ry., 92 I. C. C. 595.

(d) Complainant attacked rates charged on inbound shipments of iron, steel, coal, lumber, machinery, and other commodities and outbound new and repair cars, car trucks, car parts and miscellaneous commodities from and to complainants plants since Feb. 15, 1918, as unjust, unreasonable, unduly preferential and unduly prejudicial to the extent they exceeded rates to and from the Pittsburgh district. Complainants plants are located at McKees Rocks and Allegheny, Pa., on opposite sides of the Ohio river, the former about 2.5 miles from the P. & L. E., station in Pittsburgh, Pa., and the latter 3 or 4 miles from the Pennsylvania station and within the city limits of Pittsburgh. Complainants plants are served by the P. A. & McK. R. Ry. a terminal and switching carrier owned by complainant and held to be a common carrier engaged in interstate commerce, 57 I. C. C. 1. Following that case, the P. A. & McK., failed to agree with the trunk lines upon a division of through rates or an absorption of switching charges, and in a supplement complaint, the Commission found that there were no joint rates to divide and that the Commission could not properly require defendants to absorb increased portions of the P. A. & McK., switching charges, complaint dismissed, 69 I. C. C. 223. From the history of the rates of the P. A. & McK., and the absorptions by the trunk lines it is apparent that the charges in excess of the flat Pittsburgh rates, namely 5.73c per ton except on new and repair cars, paid by the complainant were due principally to the increase by the P. A. & McK., of those rates from $2.50 per car to 10c per ton effective Feb. 15, 1918. The main issue presented is whether the line haul rates include switching service to points of loading and unloading in complainants plants. The record does not show that industries generally within the Pittsburgh district, without regard to their size or the complexity of their plant tracks, received the benefit of the flat Pittsburgh rates on all commodities regardless of their origin or destination. It does appear that a considerable number of large industries performed their own spotting service. Some of these received allowances from the trunk lines and others did not. HELD, charges paid not unreasonable, complaint dismissed. Pressed Steel Car Co. v. Director General, 93 I. C. C. 224.

(e) Whether the line haul rates include terminal services to points of loading and unloading in large industrial plants is a question which must be determined upon the facts and circumstance of each particular case. The question is so closely related to the industrial railway problem that it has seldom been considered apart from the question of whether an industrial railway serving a particular industry was or was not a common carrier. Pressed Steel Car Co. v. Director General, 93 I. C. C. 224, 229.

(f) At large industrial plants the obligation of the carriers in connection with the line haul rates extended only to the receipt and delivery of cars at some reasonably convenient points of interchange. Pressed Steel Car Co. v. Director General, 93 I. C. C. 224, 229.

(g) It has long been the custom of carriers in this country to receive and deliver carload freight upon spur tracks leading to private industries at convenient points for loading and unloading without imposing any charge for that service in addition to the line haul rate, and in 18 I. C. C. 310, the Commission held that where this service is merely a substitute for team track receipt and delivery of carload freight the line haul rate covers the service for the reason that rates generally in this country have been constructed upon that basis. The order of the Commission in that case was upheld by the Supreme Court. 234 U. S. 294. The mere size and complexity of the industry is not controlling

in determining whether or not the line haul rate covers the receipt of delivery at the door of the plant. The service involved in the placement of cars for loading or unloading at an isolated industry to which a single spur leads may be as great as that rendered in the placement of cars for loading and unloading in a large plant having an intricate system of interior tracks. Indeed, there is testimony tending to show that by reason of greater density of traffic and greater tonnage the cost of spotting at the larger industries is less per car than at the smaller industries. There may be cases in which the spots in which cars are placed for loading and unloading in request for the receipt and delivery of complex industries are so located that the carload freight at such spots could not, in view of general usage, be regarded as reasonable, and where a charge for the spotting service in addition to the line haul rate might therefore be justified, but the mere fact that an industry is complex, or that it requires an interplant service in addition to the receipt and delivery of carload freight, is not sufficient to justify an additional charge for the placing of cars at the door of the industrial plant for the receipt or delivery of carload freight. Pressed Steel Car Co. v. Director General, 93 I. C. C. 224, 230.

(h) Wherever a particular delivery service-spotting at some place of unloading within a plant-properly may be construed as the equivalent of either of these two services (typical team track delivery or shunting of a car upon a siding of a shipper clear of the main track) and the rendition of such service practical, the Commission may compel a carrier to perform such service with its own equipment as part of its legal obligation as to delivery of carload track. As the magnitude becomes greater than the equivalent of team track delivery or simple switching delivery, the demand on the carrier for its performance tends to exceed what may be regarded as a proper delivery service under transportation rates. Pressed Steel Car Co. v. Director General, 93 I. C. C. 224, 230.

(i) The placement of cars on the tracks within the plant inclosures constituted delivery by the trunk lines under the line haul rates, and any allowance by the trunk lines for the service of spotting cars after such placement would be improper. Pressed Steel Car Co. v. Director General, 93 I. C. C. 224, 230.

(j) Upon rehearing, prior report 77 I. C. C. 110, failure or refusal of defendants to perform spotting service at complainant's plant at Jackson, Ohio, or to make complainant an allowance for its own performance of service, while performing such service at Wellston, Lawrence, and Ironton, Ohio, competing points, without charge therefor in addition to line-haul rates, found not unreasonable but unduly prejudicial to complainant and unduly preferential of complainant's competitors. Reparation denied. Jackson Iron & Steel Co. v. Director General, 91 I. C. C. 201.

(k) Finding in original report, 57 I. C. C. 745, that complainant has not shown damage due to practice of defendants in spotting cars or making allowances therefor at plants of competitors in the Buffalo rate district, while refusing to spot cars or make allowances at complainant's plants, affirmed on further hearing. It was not shown that competitors controlled the market, that complainant was forced to meet prices fixed by them, or that undue prejudice had any definite influence on market conditions. Prices on steel and products were fixed by the Government and complainant's position would not have been altered had there been no switching services performed or allowances paid competitors. Fact that competitors were in a more favorable position than complainant does not, in and of itself, establish that complainant was damaged. Donner Steel Co. v. D., L. & W., 92 I. C. C. 595.

(l) Charge for spotting cars in loading of iron ore from stock piles on iron-ore ranges in Minnesota, Michigan, and Wisconsin, and rates thence to vessels at the Lake ports, found not unreasonable or otherwise unlawful. In stock-pile spotting, operating conditions are unfavorable, delays frequent, and service in connection therewith is in excess of what may be required of carriers in connection with their road hauls. Moreover, a reasonable charge for the service is not inappropriate, and it was not shown that those assessed for the service unduly preferred shippers from shaft or open-pit mines, or that they were included in line-haul rates. Jones & Laughlin Ore Co., v. Director General, 92 I. C. C. 683.

(m) Contention that admissions on part of carriers, by their offer to perform spotting service, their subsequent absorption of charges for that service, and payment of reparation, and admission on part of director general, by offer of settlement, establishes fact that line-haul rates included spotting service at points of loading and unloading, or at point of final placement within plants. HELD, these admissions, although entitled to consideration, are not conclusive. Director general is not chargeable with concessions which may have been made by corporations which succeeded him. His offer was in nature of a compromise, and in accordance with familiar rules of law is not to be held against him. Pressed Steel Car Co. v. Director General, 93 I. C. C. 224, 232.

(n) As to the question whether the service performed by complainant at its plant at Gulf and between that plant and Gulf Hill, Tex., or any of it, is a service of transportation covered by the line-haul rates. FOUND, that one movement of inbound and outbound cars between Gulf Hill and complainant's plant, substantially similar to the service performed by the Santa Fe prior to a certain date, is the only transportation service which the Santa Fe may lawfully be required to perform under the line-haul rates. Allowances or Divisions Received by Texas Gulf Sulphur Co., 96 I. C. C. 371, 376.

(o) Line-haul rates prescribed in 41 I. C. C. 181 and 44 I. C. C. 368, did not include the dock service and the service of placing carload shipments of ore at the point of unloading on private industry tracks at destination, for which service separate charges were ordered established. Carnegie Steel Co. v. Director General, 96 I. C. C. 527.

ALL OTHER CITATIONS

Terminal Allowances to St. Louis Coke & Iron Co., 85 I. C. C. 591.

§8 (6). Staking and Bulk Heads.

(a) Complainant attacked charges collected on a double carload of piles, shipped October 6, 1918 from Hadley, Ala., to St. George, N. Y. as unjust, unreasonable and illegal in violation of sections 1 and 6 of the act. Shipment moved in two cars over the G. F. & A., a non-federal controlled line, at Atmore, Ala., and beyond over federal controlled lines. The destination to which it actually moved appears to have been West New Brighton, N. Y., to which point the same rate applied as to St. George. Delivery was made by the Staten Island Rapid Transit Co., but otherwise the federal controlled lines participating in the movement are not definitely disclosed. The delivering line collected charges based on a billed weight of 120,000 pounds, and a rate of 38c. The rate ordinarily applicable from and to these points was 37c. The shipment was track scaled enroute and found to weigh 88,400 pounds and the weight basis employed in the assessment of freight charges was improper to the extent that it exceeded such actual weight. However, the tariffs did not authorize a weight allowance for stakes used in the transportation of piles or piling and there is an outstanding overcharge of $128.92. HELD, charges illegal to extent of $327.08, reparation awarded. Bowers Co. v. Director General 107 I. C. C. 305.

§8 (7) Transfer.

See Transfer.

(a) Commission instituted an investigation on its own motion concerning the legality of schedules contained in all tariffs not including express tariffs, filed wherein motor trucks or wagon transfers are employed to perform any portion of the transportation service either within or between defined terminal districts, between defined terminal districts and interior points, or between interior points, in connection with carriers by rail, water, or rail and water routes, subject to the act. Motor truck or wagon transfer can be, and is, employed either by the owner of property transported for rendering a service connected with such transportation, which the carrier otherwise would be under obligation to perform, or by the carrier itself. Under the former arrangement the act contemplates that the carrier may make an allowance to the owner of the property transported for rendering such service, or for furnishing any instrumentality used therein, and requires that the allowance shall be no more than is just and reasonable. The Commission is given authority to determine what is a reasonable charge and allowance as the maximum to be paid by the carrier and to fix the same by appropriate order. The Commission has required that such damages or allowances be duly published by the carrier in its tariffs and be made available to all own-

ers of property transported furnishing like instrumentalities or performing like services in connection with the transportation of their traffic. This inquiry is concerned particularly with the tariff features connected with the use of wagon or truck transfer by the carriers, first, in connection with terminal services within terminal districts: second, in connection with transfer in transit between rail carriers at an intermediate point; third, in connection with hauls extending beyond terminal districts commonly designated as lone hauls. The provisions of the act are applicable to service by motor truck or drayage transfer only when they can be regarded as terminal facilities. This construction would place under the jurisdiction of the Commission the first two classes of truck service, but would exclude from its jurisdiction the third class. The hauls by motor truck from the inland points to the docks at New Haven can not be said to be transportation over which the Commission has jurisdiction or a service that can be required of a common carrier. The trucking company can not be acting as an agent for a common carrier. The law, however, does not prohibit either a rail or water carrier subject to the act from interchanging business with motor trucks and entering into proper arrangements to acquaint the shipping public with the total charges for the full movement. But such arrangements are not required by law and the fact that they may be entered into does not extend the terms of the act to include the motor truck service. Section 6 of the act requires that the charges for the service subject to the act be filed with the Commission, which requirement the Commission has always construed as making necessary the statement in the tariffs of such charges separately from other charges not subject to the act. In view of the circumstances, carriers may, if desired, include in their tariffs naming rates to or from New Haven the charges of motor trucks for the service from such inland points to New Haven, provided such charges are separate from the charges subject to the act. They may also include the combined charges for the two services from such inland points to ultimate destinations, but the motor truck charges and the combined charges must both be clearly shown as published for information only. Motor truck lines may not be shown as participating carriers in tariffs filed with the Commission. Nothing here said should be construed as general authority to carriers subject to the act to include in their tariffs charges for service not subject to the act, as generally it is undesirable to complicate tariffs by including therein foreign matter, and each case should be determined by the circumstances. Publication by the Starin-New Haven of proportional rates from New Haven lower than the local rates and applicable on traffic originating at the inland points named will therefore be lawful, provided that the application of such rates is not confined to traffic moved from these inland points to New Haven by certain designated truck companies. Discrimination of this character in the application of the proportional rates would be unlawful. If proportional rates of this kind are published by carriers subject to the act they will be held to strict accountability for properly policing such rates by definite and unmistakable regulations, practices and tariff provisions. Proper evidence of the required movement from the designated inland points must be demanded before any shipper is accorded rates contingent upon such movement. Certain carriers are handling short haul package freight between points on their lines via motor trucks instead of via local trains. As this situation is not before the Commission on this record, it expresses no opinion at this time as to its jurisdiction over such service and the manner in which the rates therefor are published. Tariffs embracing motor truck or wagon transfer service, 91 I. C. C. 539.

(b) Complainant attacked commodity rates charged on coal, carloads, from Kentucky and Alabama to New Orleans, between May 1921 and January 1923 as unjust and unreasonable in that an allowance of only 11c per ton was made by defendants for the transfer of this coal into vessels while a reasonable allowance would have been 25c per ton. L. & N., is willing to make the retroactive allowance requested. HELD, 25c per ton was a reasonable maximum allowance for services rendered and instrumentalities furnished by complainant in transferring coal to barges, boats, or other vessels at New Orleans, reparation awarded. New Orleans Coal & Bisso Towboat Co. v. I. C. C. R. R., 92 I. C. C. 333.

§8 (8). Yardage and Wharfage.

See Drayage; Wharfage; Yardage.

(a) Commission instituted an investi-

gation to determine the reasonableness and propriety of the charges of common carriers subject to the act and applicable to interstate or foreign commerce for wharfage, handling, storage and other accessorial service at the south Atlantic and Gulf ports at and south of Hampton Roads; and also as to the propriety of including in the rates to and from the ports the cost of or charges for the above services. The record presents numerous instances of the overlapping conditions affecting traffic handled through the north and south Atlantic ports, which raise questions that can not satisfactorily be disposed of in a proceeding limited to the south Atlantic and Gulf ports. This proceeding should be reopened on this account. HELD, combined wharfage and handling charges on kerosene, in cases, at New Orleans is unreasonable to extent it exceeds 3.5 per 100 pounds. Wharfage Charges at South Atlantic Ports and Gulf Port, 93 I. C. C. 600.

§8 (10) Icing.

See Refrigeration §3½.

(a) Refusal of carriers to pay shippers allowances specifically provided for in tariffs to cover cost on initial icing performed by them at carriers' request on shipments of butter, eggs, dressed poultry, and cheese, found to have resulted in the collection of illegal charges. Reparation awarded. Swift & Co. v. Director General, 92 I. C. C. 263.

(b) Defendant's failure and refusal to ice, when necessary, interstate l. c. l. shipments of milk and other dairy products from various points in New York and Connecticut to destinations in those States, while exacting rates including such service, found to constitute an unreasonable and unlawful practice. Rates prescribed by commission in Milk and Cream Rates to New York City, 45 I. C. C. 412, included icing when necessary, but carriers have never performed service required under such rates, have never provided necessary facilities with which they might perform the service, and have not been and are not in a position to do that which they were and are legally bound to do. Reparation denied for lack of proof of amount of damages sustained. Borden's Farm Products Co. v. N. Y., N. H. & H., 92 I. C. C. 270.

(c) In 92 I. C. C. 270, the Commission found the defendants failure and inability, which amounted to a refusal, to ice, when necessary, as provided by tariff, complainants interstate less than carload shipments of dairy products from New York and Connecticut to destinations in those states had constituted an unreasonable and unlawful practice; and that complainant had been damaged to the extent of the reasonable cost of icing such shipments. Defendants herein intimate that if requested they might have hired local ice dealers to perform the service or might have shipped in a carload of ice for this purpose. But they do not assert that any preparations were in fact made to place themselves in a position to comply with their tariffs. The facts indicate that a demand by complainant that they comply with their tariff would not have prevented their failure to do so. For even after this complaint was filed defendants did not do the icing but instead made an allowance to complainant under tariff authority; and when approached by complainant earlier defendants agreed on Nov. 6, 1922 to pay an allowance, but did not keep the agreement. From April, 1919 to March 1923 they gave other shippers an allowance in lieu of performing the service provided by their tariffs. Moreover, the general practice of all carriers in that territory was to make allowance in lieu of such service. HELD, original findings affirmed. Bordens Farm Products Co. v. N. Y. N. H. & H. R. R. 102 I. C. C. 497.

(d) Complainant alleged that from March 1, 1920 at the present time, except between March 5 and Nov. 4, 1923, the legal charge for reicing shipments of fresh meats, packing house products, and produce, in straight or mixed carloads, at Howell, Ind., was $4 per ton; that $4.50 was collected and illegal. The applicable tariff provided for $4.50 at Evansville, Jeffersonville and New Albany, Ind. and $4 at all other Indiana points. The icing station at which the charges attacked were assessed is on the L. & N. A witness for that defendent explains that Howell is shown as a station for passenger and accounting purposes, that there is a passenger station known as Howell which issued mostly by employees working in the break up yards, but that the L. & N., does not recognize any freight station by that name; that no rates are carried in any freight tariffs to or from Howell; that if a bill of lading designat-

ed Howell as the destination the rate to Evansville would apply, plus any switching charge applicable under the terminal switching tariff at Evansville. The town of Howell surrendered its charter and became a part of Evansville in 1915, and the icing plant was and is located within the municipal as well as the switching limits of that city. HELD, $4.50 applicable, complaint dismissed. Swift & Company v. A. & R. R. R. 102 I. C. C. 499.

IV. LEGALITY OF ALLOWANCES.

See Common Carrier; Legality of Rates; Tap Lines §9, §10.

§9. In General.

(a) Proposed new rules, regulations, and practices, restricting application of certain transit, terminal, and other privileges and allowances on transcontinental traffic, found not justified. Proposed schedules attempt to restrict rights of individual carriers to extend to shippers such privileges at points on their own lines, as they may see fit, and is in effect tantamount to an attempt to say that carriers may not grant privileges to shippers without consent of the transcontinental bureau, unless such carriers are willing to subject shippers to the application of combination rates. Terminal Charge on Transcontinental Traffic, 89 I. C. C. 332.

(b) Section 15 of the act authorizes carriers subject to its provisions to pay to the owner of property transported reasonable allowances for services rendered by him in connection with common carrier transportation. Galveston Export Co. v. T. & F. S. Ry., 96 I. C. C. 141, 142.

(ba) An allowance to a shipper or receiver of freight for services rendered in connection with transportation is not unlawful provided the allowance is not more than just and reasonable. McCormick Warehouse Co. v. P. R. R., 95 I. C. C. 301, 308.

(c) Allowance made to complainant was made wholly without consideration of the cost of the service to complainant but solely to place complainant more nearly on a parity with its competitor, which at that time had a lower rate on the same commodity to Sabine, Tex., from Brimstone Junction, La., but this rate has since been canceled and the same rate now applies from Sulphur Mine, La., to Sabine and other Gulf ports as that from Gulf Hill to other Gulf ports. A commercial allowance such as the $9 per car received by complainant, made wholly without regard to the cost of the service, may defeat one of the main purposes for which the act to regulate commerce was passed. Allowances or Divisions Received by Texas Gulf Sulphur Co., 96 I. C. C., 371, 376.

(d) Texas Gulf Sulphur Co. found not entitled to allowances from the Santa Fe for switching service performed by it between Gulf Hill, Tex., and its plant. A carrier has the right to itself perform any transportation service which it may lawfully be required to perform. Atchison Railway Co. v. United States, 232 U. S. 199. When, as here, it is prevented from performing the service by the election of the industry to itself perform it, and when the service of the carrier would not meet the needs and convenience of or be satisfactory to the industry, as is also here the case, the carrier's duty to perform the service is discharged, and consequently there is no obligation resting upon the Santa Fe to make an allowance to the sulphur company for performing the service. Allowances or Divisions Received by Texas Gulf Sulphur Co., 96 I. C. C. 371, 376.

ALL OTHER CITATIONS

Colorado & Utah Coal Co. v. D. & S. L. R. R. Co., 85 I. C. C. 545; Terminal Allowances to St. Louis Coke & Iron Co., 85 I. C. C. 591.

§10. Transportation service performed by shipper.

See Transportation §1, §11.

(a) Where a carrier, in lieu of its own performance of a transportation service within its duty, while standing ready to perform it, assents to a shipper voluntary assumption of the service, whether or not it makes him an allowance therefor, the Commission may prescribe merely the allowable maximum. Very different is the case in which a carrier unlawfully refuses or omits to perform the service included in the tariff publication, and the shipper is thereby forced to assume it to make shipment possible, to protect his property in transit or the like, in which circumstance, the reasonable cost to the shipper represents, not a desired allowance, in any sense, but the measure of damages imposed upon him by the carrier's violation of the act.

Bordens Farm Products Co. v. N. Y. N. H. & H. R. R., 92 I. C. C. 270, 273.

(b) An allowance to a shipper or receiver of freight for services rendered in connection with the transportation is not unlawful provided the allowance therefor is not more than just and reasonable. McCormick Warehouse Company v. Pennsylvania R. R., 95 I. C. C. 301, 308.

(c) The act does not require common carriers to hire any instrumentality for the performance of a transportation service. Walsh Fire Clay Products Co. v. Director General, 95 I. C. C. 439, 443.

(d) Complainant attacked as unjust, unreasonable and unduly prejudicial the carload rates on sulphur from Gulf Hill, Tex., to all points in the United States and alleged that the practice of defendants in refusing to make a reasonable allowance to complainant for handling carload shipments of sulphur between Gulf and Gulf Hill as unreasonable. The general issues are: whether the service performed by complainant at its plant at Gulf and between that plant and Gulf Hill, or any of it, is a service of transportation covered by the line haul rates; and, if so, whether complainant is entitled to an allowance therefor from the Santa Fe, its trunk line connection; and, if so, the maximum reasonable allowance which it should receive. The spur from Gulf Hill, together with the various switch connections serving the plant, are owned by complainant. Complainant switches all loaded and empty cars between Gulf Hill and its plant and performs all necessary switching at its plant, but does not transport passengers, mail or express and does not publish tariffs. Practically all the traffic handled is its own. Complainant does not profess to be a common carrier. From April 1919 to April 1921 the switching at the plant was done partly by the Santa Fe and partly by complainant, each operating a switch engine and doing with it the same character of service. It does not appear that either was paid anything by the other for its share of that service. Neither of these switching engines was used in the service tween Gulf Hill and the plant. That was performed by the Santa Fe with its road locomotives which received loaded cars and delivered empties at the plant storage plants. Eventually complainant elected to perform all switching at the plant as well as between Gulf Hill and the plant, and so advised the Santa Fe in April 1921. As a result the Santa Fe switch engine was withdrawn from the plant and complainant has performed all of the switching beyond Gulf Hill since that time. This necessitated the building by the Santa Fe of storage tracks at Gulf Hill to accommodate the outbound loads of sulphur and the inbound empties and loads of oil. The record clearly indicates that when complainant elected to perform the switching beyond Gulf Hill there was no agreement or understanding between it and the Santa Fe that it would be compensated by the Santa Fe. There is nothing of record to indicate that the Santa Fe was not willing to continue to perform the service or that complainant has since that time ever requested the Santa Fe again to perform such service. Since May 1923 the Santa Fe has made an allowance of $9 per car on cars of sulphur to Galveston, Houston and Texas City for export or coastwise movement. No allowance has been made on sulphur moving all rail nor on inbound shipments of fuel oil, although substantially the same service has been and is performed on them by complainant as on the shipments of sulphur to the ports named. The record clearly indicates that complainant does not desire Santa Fe to perform any of the switching at the plant or between the plant and Gulf Hill, but only desires to receive an allowance for performing the service that this switching must be done to meet the needs and convenience of the plant; and that it would not be satisfactory to complainant for the Santa Fe to perform all or a part of the switching. HELD, the one movement of inbound and outbound cars between Gulf Hill and complainants plant, substantially similar to the service performed by the Santa Fe's road locomotives prior to April 1921 is the only transportation service which the Santa Fe may lawfully be required to perform under the line haul rates. A commercial allowance such as the $9 per car received by complainant, made wholly without regard to the cost of the service, may defeat one of the main purposes for which the act was passed. HELD, rates attacked not unreasonable or unduly prejudicial. Complainant not entitled to any allowance from G. C. & S. F., for services in respect of shipments under those rates, complaints dismissed. Allowances to Texas Gulf Sulphur Co., 96 I. C. C. 371.

(e) Texas Gulf Sulphur Co. found not entitled to allowances from the Santa Fe for switching service performed by it between Gulf Hill, Tex., and its plant. A carrier has the right to itself perform any transportation service which it may lawfully be required to perform. Atchison Railway Co. v. United States, 232 U. S. 199. When, as here, it is prevented from performing the service by the election of the industry to itself perform it, and when the service of the carrier would not meet the needs and convenience of or be satisfactory to the industry, as is also here the case, the carrier's duty to perform the service is discharged, and consequently there is no obligation resting upon the Santa Fe to make an allowance to the sulphur company for performing the service. Allowances or Divisions Received by the Texas Gulf Sulphur Co., 96 I. C. C. 371.

§11. Transportation Facility.

See Supra §10; Tap Lines §3 (1), §4; Transportation §1.

(a) A carrier has the right to itself perform any transportation service which it may lawfully be required to perform. When it is prevented from performing the service by the election of the industry to itself perform it, and when the service of the carrier would not meet the needs and convenience of or be satisfactory to the industry, the carriers duty to perform the service is discharged, and consequently there is no obligation resting upon the carrier to make an allowance to the industry for performing the service. Allowances to Texas Gulf Sulphur Co., 96 I. C. C. 371, 376.

(b) As to the question whether the service performed by complainant at its plant at Gulf and between that plant and Gulf Hill, Tex., or any of it, as a service of transportation covered by the line-haul rates, FOUND, that one movement of inbound and outbound cars between Gulf Hill and complainant's plant, substantially similar to the service performed by the Santa Fe prior to a certain date, is the only transportation service which the Santa Fe may lawfully be required to perform under the line-haul rates. Allowances or Divisions Received by Texas Gulf Sulphur Co., 96 I. C. C. 371, 376.

V. REASONABLENESS OF ALLOWANCES.

See Common Carrier §9; Tap Lines.

§13. In General.

(a) Conceding that the line haul rates cover ordinary terminal services within switching limits, including receipt and delivery of shipments upon carrier or private sidings or spurs conveniently adjacent to industrial plants, the tracks laid within the confines of such plants, placed for the furtherance of industrial operations, used largely or principally for intraplant switching, and usually within the exclusive control of the industries, are not, ordinarily at least, to be considered in any fair sense as parts of the line haul carriers terminal facilities. While a carrier may by its own practices have assumed a general obligation to render such an extended service, the fact should satisfactorily appear, in the absence of other appropriate evidence, in order to justify a finding that a failure or refusal to perform the service in a particular case is violative of section 1 of the act. Jackson Iron & Steel Co. v. Director General, 91 I. C. C. 201, 205.

(b) Southern, A. C. L., N. S., and S. A. L., proposed to amend their tariff so as to require shippers in Norfolk Harbor to load outbound less carload shipments on carriers barges. Cottrells I. C. C. No. 301 provides that outbound less carload shipments aggregating 20,000 pounds will be received at private wharves or warehouses on the water front in Norfolk Harbor when such freight is assembled by the shipper on the apron of the wharf adjacent to the berth of the barge. Proposed, shipper will be required to load less carload freight on carriers barges. There is probably a merit in the contention of respondents that conditions are materially changed since the inauguration of the present practice of loading less carload freight, and that at the present time there is not sufficient of this business to warrant the employment of men solely for this purpose, but the fact remains that the rates on less carload freight from Norfolk were made while this service was provided for in respondents tariffs. In the absence of proof to the contrary it must be presumed that the rates so made include this service. HELD, respondents have failed to justify the increased rate which will result from the decrease in carrier service performed for that rate, suspended schedule not

justified. Loading of less than carload freight, 91 I. C. C. 394.

(c) Respondents proposed to reduce the charges for handling fertilizer and fertilizer materials, cement, and salt between ship side and cars, ship side and storage, and storage and cars, at south Atlantic ports and Gulf ports in Louisiana and east thereof, except Gulfport, Miss., from 50c to 30c per ton. The handling charges under consideration are in issue in 93 I. C. C. 609. While it is true that the Congress has expressed a policy of looking to the development of public terminals at port cities, it has not delegated to the Commission authority to enforce that policy. The scope of the activities of the Commission is limited by the terms of the act. It follows that unless the proposed charges are found to be in contravention of some provision of that act it is beyond the power of the Commission to condemn them. The proposed charge is not unreasonably high. Neither does the Commission find any warrant for holding that it is unduly prejudicial. It is published for uniform application upon the commodities in question and no shipper is complaining. The fact that reductions are proposed on only three commodities does not establish undue prejudice. Whether the proposed reduction will result in a sufficient increase in business to more than offset the loss in revenue which it would entail on the amount of business which would be handled whether the reduction is made or not is of course a question to which only actual operation under the reduced charge can furnish a satisfactory answer. HELD, schedules justified. Handling charges on cement, fertilizer and salt, 93 I. C. C. 640.

(d) Allowance by C. & N. W. Ry. Co., to Laona & Northern Ry. Co., of a maximum absorption of $3 per car out of switching charges on interstate traffic moving between Laona and Snyders, Wis., found not inadequate or otherwise unreasonable. In dealing with similar short lines not parties to The Tap Line Case, 31, I. C. C. 490, the commission has found that they should not receive from connecting carriers more than $3 per car, the maximum therein fixed, for distances of 1 mile or less. While the Laona has operated at a deficit, to sanction increased absorption sought would result in according that line a preferred position over other lines operated under similar circumstances and conditions. Laona & Northern Ry. Co. v. C. & N. W., 92 I. C. C. 23.

(e) Based upon study showing out-of-pocket cost of performing the service, 25 cents per ton found to be a reasonable maximum allowance for services rendered and instrumentalities furnished by complainant in transferring coal to barges, boats, or other vessels at New Orleans. Defendant authorized to make retroactive allowance of that amount, the commission having in several similar cases approved allowances of this character for retroactive application. See 49 I. C. C. 85 and 50 I. C. C. 543. New Orleans Coal & Bisso Towboat Co. v. L. & N., 92 I. C. C. 333.

(f) Allowance made to complainant was made wholly without consideration of the cost of the service to complainant, but solely to place complainant more nearly on a parity with its competitor which at that time had a lower rate on the same commodity to Sabine, Tex., from Brimstone Junction, La., but this rate has since been canceled and the same rate now applies from Sulphur Mine, La., to Sabine and other Gulf ports as that from Gulf Hill to other Gulf ports. A commercial allowance such as the $9 per car received by complainant, made wholly without regard to the cost of the service, may defeat one of the main purposes for which the act to regulate commerce was passed. Allowances or Divisions Received by the Texas Gulf Sulphur Co., 96 I. C. C. 371, 376.

ALL OTHER CITATIONS

Terminal Allowances to St. Louis Coke & Iron Co., 85 I. C. C. 591.

§13½. Retroactive application.

(a) Commission is without jurisdiction to compel carriers to make a retroactive increase in allowance. Buckeye Steel Castings Co., 58 I. C. C. 500. Rutherford-Brede Co., 61 I. C. C. 515; Cambria Steel Co., 64 I. C. C. 737. New Orleans Coal & Bisso Towboat Co. v. L. & N., 92 I. C. C. 333, 334.

(b) Defendants authorized to make retroactively an allowance to complainant for unloading shipment of cottonseed cake, in bulk, at Port Arthur, Tex., Section 15 authorizes carriers subject to its provisions to pay to the owner of property transported reasonable allowances for services rendered by him in connec-

tion with common-carrier transportation, and an allowance for similar services was contemporaneously made at Galveston. Galveston Export Co. v. T. & F. S., 96 I. C. C. 141.

VI. DAMAGE AND REPARATION.

See Claims; Reparation.

§14. In general.

(a) Finding in original report, 57 I. C. C. 745, that complainant has not shown damage due to practice of defendants in spotting cars or making allowances therefor at plants of competitors in the Buffalo rate district, while refusing to spot cars or make allowances at complainant's plants, affirmed on further hearing. It was not shown that competitors controlled the market, that complainant was forced to meet prices fixed by them, or that undue prejudice had any definite influence on market conditions. Prices on steel and products were fixed by the Government and complainant's position would not have been altered had there been no switching services performed or allowances paid competitors. Fact that competitors were in a more favorable position than complainant does not, in and of itself, establish that complainant was damaged. Donner Steel Co. v. D., L. & W., 92 I. C. C. 595.

ALTERNATIVE RATES.

I. ESTABLISHMENT AND REASONABLENESS.

See Released Rates.

(ab) Carriers have frequently established alternative commodity rates, based on different c. l. minima, and commission has approved such rates, Strawboard and Other Paper Articles, 85 I. C. C. 470, but they have consistently declined to introduce into the classification the principle of alternative ratings and minima, and commission has never heretofore prescribed such ratings. Aluminum Goods Mfg. Co. v. A. & V. Ry., 92 I. C. C. 346, 351.

(c) Rates on China-wood oil from Pacific coast points to Cleveland, Ohio, found not unreasonable or in violation of the aggregate-of-intermediates clause of section 4 of the act. Applicable import tariff provided for alternative application of domestic tariff if lower, and domestic tariff, in turn, provided for aggregate-of-intermediate rates whereever found lower than joint rates. Under these double alternatives no fourth-section violation existed, but lower combinations applied on two of the shipments involved, resulting in overcharges. Refund of such overcharges directed and complaint dismissed. Glidden Co. v. E. R. R. Co., 100 I. C. C. 331.

(d) To avoid certain undesirable and unlawful results which would follow uniform application of a system of through interterritorial rates governed by southern classification, particularly in southern border territory provision should also be made for the alternative application of rates made by combining local rates in official territory to gateway points with certain differential rates south thereof. Southern Class Rate Investigation, 100 I. C. C. 513, 666.

(e) It is not the commission's policy or that of carriers ordinarily to make alternative rates based on different minima but a few instances may be found where carriers have departed from the rule. Lafayette Box Board & Paper Co. v. A., C. & Y., 101 I. C. C. 273, 274.

ANALOGOUS COMMODITIES

See Classification §17.

ANTI-TRUST ACT

See Evidence §10.

(a) Statement in decree, rendered in contempt proceedings for violation of decree under Sherman Anti-Trust Act (Comp. St. §§8820, 8823, 8827, 8830), that terminal railway association and its subsidiaries are not acting in good faith as the impartial agents of the various proprietary lines, HELD too general and vague, when considered by itself to constitute specification of facts amounting to contempt of court. Terminal R. Ass'n of St. Louis v. United States, 45 Sup. Ct. 5.

(b) Anti-Trust Act July 2, 1890 (Comp. St. §§8820, 8823, 8827, 8830), HELD inapplicable to contract negotiated in certain state for sugar to be delivered from a refinery in such state and shipped to other point in state; such contract pertaining only to intrastate commerce. A. B. Small Co. v. Lamborn & Co., 45 Sup. Ct., 300.

(c) Carriers affected by any order made by the commission pursuant to section 5 (2) of the act are under the provisions of paragraph (8) of that section relieved from operation of antitrust laws, and of other State or Federal laws, in so far as may be necessary to enable them to do anything authorized or required by such order. The relief is not granted for the benefit of any railroad, particular industry, or community, and benefits to be derived or injury which may be suffered because of a proposed acquisition of control of one carrier by another, may be considered only in so far as it relates to general public interest. Clinchfield Ry. Lease, 90 I. C. C. 113, 120, 121.

(d) Monopolies are odious, alike by common law and under Federal statute. The commission can not consider with favor a proposition to create of an unregulated favored class of already favorably circumstanced producers, a complete monopoly by compelling carriers to violate principle of equality of treatment which it is the right of every citizen to demand. Rules Governing Ratings of Coal Mines, 95 I. C. C. 309, 333.

(e) Industrial despotism is contrary to American ideals, and forbidden by the law which the commission is under obligation to obey. Rules Governing Ratings of Coal Mines, 95 I. C. C. 309, 333.

(f) The commission doubts if it would be in the public interest to give to the high-grade, favorably circumstanced coal fields and mines a monopoly of production, even if lower costs to consumers would follow. Such a course would result in first completely exhausting the best portion of a natural resource and weaken our national position by compelling utilization in even greater degree of the poorer, less economical raw products, until in the end the country would have nothing left but the lowest grade, most costly, bituminous coal, with none of the higher grades for any of the special purposes which are so dependent upon such fuel. Widest possible equable use of coal of all qualities, rather than forced use of most readily accessible highest grades, is that which is consonant with public good. Rules Governing Ratings of Coal Mines, 95 I. C. C. 309, 334.

(g) Railroads are monopolistic in many respects, and because of that fact are subject to public regulation. In this public regulation cost of service and hence distance are factors which must be taken into consideration. But railroads are also subject to competition with respect to much of their traffic, and it has been and is the policy of public regulation to allow them considerable latitude in meeting this competition. This accounts for many inconsistencies in the rate structure and also for many instances where distances are disregarded. Maritime Asso., Boston Chamber of Commerce v. A. A. R. R., 95 I. C. C. 539, 566, 567.

ANY QUANTITY RATES

I. REASONABLENESS AND APPLICATION.

See Advanced Rates §3 (q); Blanket Rates §6 (a); Class Rates §2 (3k); Express Companies §10 (i).

(a) In the past the maintenance of any-quantity rates on cotton has been almost universally considered as being so well adapted to the peculiar manner in which this commodity is handled and marketed as not to warrant its being superseded by c. l. and l. c. l. rates. Mississippi Railroad Commission v. A. & V. Ry. Co., 89 I. C. C. 47, 52.

(b) It is necessary, in determining whether c. l. rates to supersede any-quantity rates on cotton, should be established, to consider commercial and economic aspects of the question and determine whether the arrangement, if established, would be in the public interest. Taylor Dry Goods Co., 28 I. C. C. 205. Mississippi Railroad Commission v. A. & V. Ry. Co., 89 I. C. C. 47, 54, 55.

(c) Present any-quantity system of rates on cotton from points in Mississippi to eastern, northern, and southeastern destinations, found not unreasonable or otherwise unlawful, and establishment of c. l. and l. c. l. rates on such traffic found not justified on the record. Mississippi Railroad Commission v. A. & V. Ry. Co., 89 I. C. C. 47, 60.

(d) Complainant attacked any-quantity rates on unmanufactured tobacco, in hogsheads, from Ohio River cities and points in central and western Kentucky and central northwestern Tennessee to Charleston, S. C., and Savannah, Ga., for export as unreasonable and unduly prejudicial in favor of Norfolk and New-

port News, Va., and New Orleans, La., Mobile, Ala., and Pensacola, Fla., and attacked transit arrangement of L. & N. at Nashville, Tenn., as unreasonable. The origin territory is served by the I. C., L. & N., N. C. & St. L., and T. C. The two lines first mentioned extend directly to the Gulf ports, while the other two do not reach any port, but they can secure a much longer haul on traffic to the south Atlantic ports than to the Gulf ports. The export tobacco is generally shipped to prizing points in the interior where it is prized into hogsheads and then shipped to the ports. Only the rates for the latter movement are an issue. The present adjustment of rates is based on a rate of 54.5c from Louisville, which is applied to all of the ports from Baltimore to New Orleans. This is the rate from Cincinnati to Baltimore, which the eastern carriers extended to Louisville, although that point usually takes higher rates; and it is met by the lines serving the south Atlantic and Gulf ports. The same rate is applied from Owensboro and Henderson to the Gulf ports, while a rate of 47.5c applies from Paducah to those ports; but the rate from those points to the Virginia and south Atlantic ports is 66c, except that a rate of 54.5c applied from Paducah to the south Atlantic ports over the N. C. & St. L., and its connections. The rates from the river cities are generally observed as a maximum at intermediate points on traffic to the Gulf ports, also on traffic to the south Atlantic ports over the Southern or N. C. & St. L., and connections; but the rates from interior points on the I. C., and L. & N., to Atlantic ports are generally combination rates. The rates from most of the origin points range from 7 to 49c higher to the south Atlantic ports than to the Gulf ports. The rates to the south Atlantic ports and Virginia ports are the same from many points, while from some points they are higher to the south Atlantic ports, and from other points lower; but on the whole there does not appear to be much difference in the general level of the rates to these ports. The present adjustment gives the Gulf ports an undue advantage over the south Atlantic ports, but the Commission is not convinced that the latter are entitled to a parity with the former. It would be impracticable to prescribe a uniform differential from all points, because points in the extreme western part of Kentucky, which take the lowest rate to the Gulf ports, are the most distant from the south Atlantic ports. The transit arrangement at Nashville allows shipments originating on the L. & N., to be warehoused at that point for not exceeding 12 months and reshipped over the same line to Gulf or north Atlantic ports but not to south Atlantic ports, at the through rate plus a transit charge. Similar arrangements of the N. C. & St. L., and T. C., include the south Atlantic ports. No reason is shown which justified the L. & N., discrimination against those ports. HELD, rates unreasonable and unduly prejudicial to extent rates to Charleston, Savannah and Jacksonville exceed rates to New Orleans, Mobile and Pensacola, by more than 3c for differences not over 75 miles, 5c over 75 miles and not over 150 miles, 7c over 150 miles and not over 200 miles and 9c over 200 miles; the transit arrangement unduly prejudicial to south Atlantic ports to extent it applies to Gulf ports and not to south Atlantic ports. Charleston Traffic Bureau v. A. G. S. R. R., 89 I. C. C. 501.

(e) Complainant attacked any quantity rates on two shipments of denims Dec. 15 and 17, 1919, from Little Rock, Ark., to Beloit, Wis., as unreasonable and in violation of the fourth section. Shipments moved via M. P., to St. Louis., thence Wabash to Chicago and C. & N. W., charged first class, any quantity. Combination rate was 50c from Little Rock to Cairo, Ill., and class rate of 54.5c beyond, but the shipments did not move through Cairo. Combination of 98c was in effect from Little Rock to St. Louis, and third class 41.5c beyond. HELD, rate attacked unreasonable to extent it exceeded 98c, reparation awarded. Rosenblatt & Sons v. Director General, 91 I. C. C. 18.

(f) Complainant attacked combination any quantity and class rates on less carloads of cotton piece goods between Jan. and Oct., 1918, from New York, N. Y., Boston, Mass., to Kansas City, Mo., as unreasonable, unduly prejudicial and in violation of section 4. Shipments moved rail and water through south Atlantic ports and Memphis, Tenn., charged any quantity rates of $1.07 from Boston and $1.04 from New York between Jan. and May, 1918, and $1.105 between June 1 and 24, 1918, and $1.38 between June 25 and Oct. 4, 1918 from Boston and New York rate points, the bases of these rates were the official classification R 25 rates to Chicago, Ill., or the Mississippi river

crossings, including Memphis, and commodity rates or third class rates provided by exceptions to the western classification beyond. Over the route of movement there was contemporaneously in effect intermediate rates aggregating $1.00, between January and June 1918, consisting of fourth class of 50c to Memphis and 50c beyond. On Oct. 10, 1919, the joint rates on shipments through Memphis were reduced to basis of the rates to and beyond that gateway. HELD, rates attacked unreasonable to extent they exceeded $1 prior to June 25, 1918 and $1.25 subsequent thereto, reparation awarded. Lee Mercantile Co. v. Director General, 91 I. C. C. 618.

(g) Complainant attacked official and western classification ratings on harness and harness parts, halters and halter ties, leather and steel collars, bridles, and saddlery in their application to shipments tendered in carload quantities as unreasonable and unjustly discriminatory. Ratings charged any quantity. Effective August 30, 1923 a rating was established of second class on horse collars, n. o. i. b. n and harness and saddlery, n. o. i. b. n., carloads, minimum 24,000 pounds and a rating of first class in less carloads. The departure from the any quantity ratings on harness and saddlery appears to have resulted from the application of a single southern manufacturer for a carload rating. Little evidence was introduced by complainant which merits discussion. HELD, rates attacked prior to August 30, 1922, as unreasonable or otherwise unlawful, complaint dismissed. United States Farm Sale Company v. A. T. & S. F. Ry., 92 I. C. C. 19.

(h) Complainant attacked rates charged any quantity, on cotton in bales between August 26, 1920 and April 23, 1921 from Texas and Oklahoma to Galveston, Tex., for export, as unreasonable, the prayer being for reparation only. The evidence was limited to cotton and cotton linters compressed in transit at carriers expense and only those rates will be considered. The rates on cotton from Texas to Galveston are generally on a mileage basis up to 210 miles. The maximum rate reached at that distance is blanketed from all points in Texas common point territory. About two thirds of the cotton produced in Texas originates at points taking the maximum rate and substantially the remainder is produced at points generally less than 210 miles from Galveston, taking rates less than the maximum rate. Prior to August 26, 1920, the maximum or common point rates were 66c for city delivery and 71c for export. The wharfage charge, separately published in the tariffs of the wharf company as collectible from vessels making use of the wharf facilities, was merely added to the domestic rate, not applicable to ship side, and the whole published as a through export rate. It is and was the practice of shippers, including complainants members, to pay the wharfage charge to the agent of the vessel upon which the cotton is loaded and the remainder of the ship side rate to the line haul carriers. The rates from Texas points were and for many years have been made with relation to the domestic rates. That is, the export rates were constructed by adding to the domestic rates an amount equal to the cost of moving cotton from city warehouses to ship side, which covered drayage or switching, unloading and wharfage charges. This amounted to 5c during the period covered by the complaint and included 2c wharfage and 3c for the other services. HELD, rates attacked unreasonable to extent they exceeded 95c from Texas common points and exceeded an increase of 35 per cent in the rates less the wharfage charge from other points in Texas and Oklahoma to Galveston for export, reparation awarded. Houston Cotton Exchange v. A. & S. Ry., 92 I. C. C. 365.

(i) Complainant attacked any quantity rates charged on cotton from Phoenix, Ariz., and other Arizona points to Columbus, Eatonton, Macon and Thomaston, Ga., and other points in Alabama, Georgia, North Carolina and South Carolina as unreasonable, unjustly discriminatory, unduly prejudicial and in violation of the fourth section. Phoenix and the other points of origin are grouped with California producing points in publishing rates on cotton to points in Georgia and other states east of the Mississippi river. Generally, speaking, these rates, as to destinations, are graded according to distance. But to the Georgia points here considered the rates are higher than to more distant points north and east thereof. The minima on compressed and uncompressed cotton are 37,500 pounds and 20,000 lbs., respectively. The light loading of uncompressed cotton justifies somewhat higher rates than those applicable on compressed cotton. HELD, rates attacked to points of des-

tination are unreasonable to extent they exceeded prior to July 1, 1922 on compressed cotton $1.735, subsequently $1.56, on uncompressed cotton, with privilege to carrier of compression prior to July 1, 1922, $1.935 subsequently $1.74, on uncompressed cotton prior to July 1, 1922, $2.235, subsequently $2.01, reparation awarded. Southwest Cotton Co. v. A. E. R. R., 92 I. C. C. 563.

(j) Any quantity rates are both carload and less carload rates. Southwest Cotton Co. v. A. E. R. R., 92 I. C. C. 563, 565.

(k) Complainant attacked any quantity rate prior to July 1, 1922 of $1.745 and $1.57 on and after that date on unfinished cotton hosiery in compressed bales, from Rockford, Ill., to Philadelphia and Germantown, Pa., as unreasonable and unjustly discriminatory to extent it exceeded 92.5 carloads and $1.30 less carloads prior to July 1, 1922 and 84c carloads and $1.175 less carload on and after that date. The official classification rating on hosiery, in bales or boxes, is first class, and no distinction is made between finished and unfinished hosiery. In 39 I. C. C. 494, the Commission found that the first class any quantity rate of 85c then in effect on undyed and unfinished cotton hosiery from Rockford to Philadelphia was not unreasonable. HELD, rates attacked not unreasonable or unjustly discriminatory, complaint dismissed. Burson Knitting Co. v. B. & O. R. R., 92 I. C. C. 607.

(lm) A narrow spread between the carload and less car load rates tends to the waste of transportation facilities without adequate compensating advantages to the general public and is not to be encouraged. In any quantity rates the spread is reduced to nothing. Booth Fisheries Co. v. Amer. Ry. Express Co., 92 I. C. C. 653, 657.

(n) Complainant attacked any quantity rate charged of $1.15 on cotton goods cut into shirt forms, less carloads, from Baltimore, Md., to Washington, D. C., since Oct. 31, 1922 as unreasonable to extent it exceeded 65c. On Oct. 31, 1922 commodity rate of 65c was canceled and an any quantity first class rate of $1.15 was established. Defendants admit that the rate on shirt forms from Baltimore to Washington should not exceed the rate on finished shirts in the opposite direction, but urge the 60c rate on the finished shirts was subnormal. This rate was canceled Oct. 15, 1924 and the first class rate now applies in both directions. HELD, rate charged not unreasonable, complaint dismissed. Flowers & Stell v. Norfolk Southern R. R. 93 I. C. C. 388.

(o) Respondents proposed to increase the rates on cotton piece goods, any quantity, and on scrap iron and junk, carloads, from Texas, Louisiana, and Oklahoma to St. Louis, Mo., and other points in defined territories, and on oyster shells, in carloads, from Memphis, Tenn., to Kansas and Missouri. **Cotton piece goods.** While cotton piece goods, any quantity, are rated first class in western classification, by exception a third class rating is applicable from Texas and Oklahoma points. Specific commodity rates substantially lower than third class are in effect from Texas and Oklahoma points to points in defined territories, but respondents proposed to cancel these commodity rates, allowing third class rates to apply. To certain parts of the destination territory no joint class rates are in effect, and combinations of class rates would become applicable. Respondents made no attempt to justify the proposed increased rates, and state they were forced to make the revision to comply with fourth section order denying them relief in their rates from Texas and Oklahoma. **Junk.** It is proposed to increase the rates on scrap iron and cotton tie clippings, carloads, from Texas to defined territories. The rates on both scrap iron and cotton tie clippings from Texas points are upon a group basis and the average distance from Texas common points to St. Louis, is said to be about 800 miles, present rate on scrap iron 32.5c, proposed 38c. **Oyster Shells.** Respondent proposed to eliminate whole or crushed oyster shells from the list of fertilizer or materials on traffic from Memphis to Kansas and Missouri. They would represent an increase of 7.5c on shells over rates on fertilizer. Suspended schedules not justified. Commodity rates from southwestern points, 93 I. C. C. 394.

(p) Complainant attacked any quantity rates charged on cotton goods in the original piece between Philadelphia and Bridgeton, N. J., as unreasonable and unduly prejudical in that they exceeded rates between Philadelphia and Millville and Mays Landing, N. J. Rates to

Bridgeton from Walnut Street Wharf and Oakford Street prior to July 1, 1922 were 25c and from Washington Avenue Wharf 25.5c. These rates applied in the reverse direction. They were reduced 10c on July 1, 1922. The rates to Millville and Mays Landing were 12.5c and 25.5c. On June 7, 1923 the rate from Walnut Street Wharf to Bridgeton was reduced and that to Millville was increased, each becoming 17.5c. The rate to Mays Landing remained unchanged. In June 15, 1923 the rate of 17.5c was made applicable from Bridgeton and Millville to Walnut Street Wharf, distance 67 miles. HELD, rate attacked not unreasonable or otherwise unlawful, complaint dismissed. Berkman v. Pennsylvania R. R. 95 I. C. C. 685.

(q) Complainant attacked any quantity rate charged on cotton, uncompressed, from Pine Bluff, Ark., to Galveston, Tex., as unjust and unreasonable. Cars moved over St. L. S. W., to Tyler, Texas, via Texarkana, Tex., and I. G. N., beyond, 542 miles. Charged combination on Texarkana. At this time the rate on cotton, with carriers privilege of compression in transit, from Pine Bluff to Galveston was 91.5c reduced on May 31, 1923 to 90c. In 46 I. C. C. 451 rates generally throughout the Southwest on uncompressed cotton were made 10c higher than on cotton to be compressed in transit. HELD, rate attacked not unreasonable, complaint dismissed. McFadden v. St. L. S. W. Ry., 96 I. C. C. 267.

(r) The fact that the rate attacked is an any quantity rate does not in itself prove that it is unreasonable as applied to carload shipments. Viscose Company v. Penn. R. R., 98 I. C. C. 97, 100.

(s) Complainant attacked first class rating on cigars in any quantity prior to April 2, 1924 as unjust and unreasonable in the official, southern and western classifications. Defendants introduced no evidence. HELD, carload rating on cigars maintained by defendants unreasonable to extent it is higher than second class, minimum 30,000 pounds. Tobacco Merchants Asso. v. Pennsylvania R. R. 98 I. C. C. 319.

(t) Complainant attacked any quantity rates charged on flat cotton shipped between May 2, 1919 and Jan. 9, 1920 to Galveston, Tex., from Fouke, Womble, Amity and Gurdon, Ark., as unreasonable and unduly preferential and that rates from Fouke to Galveston between Oct. 8, 1918 and Jan. 23, 1919 unreasonable and in violation of the fourth section. Charged first class of $1.55 from Gurdon, Womble and Amity and $1.375 from Fouke. Effective Dec. 30, 1919 a commodity rate of 75c was established from Fouke to Galveston, to which basis reparation is sought on the shipments from that point. There were in effect to both Galveston and New Orleans, at time of movement rates of 80c from Womble and Amity and 75c from Gurdon on cotton compressed in transit at carriers option. The contemporaneous rate on uncompressed cotton from Gurdon to New Orleans, 437 miles, was 85c and from Womble and Amity, 497 and 476 miles, 90c. HELD, rates charged unreasonable to extent they exceeded 90c from Womble and Amity, 85c from Gurdon and 75c from Fouke, reparation awarded. Moody Cotton Co. v. Director General, 98 I. C. C. 643.

(u) Complainant attacked class rates charged on two cars of barrack bags, Dec. 1922 and Jan. 1923 from Jeffersonville, Ind., to New York City, as unreasonable. Barrack bags are made of coarse cotton fabrics. The bales were new and were shipped in machine pressed bales. When these shipments were made there was no specific description or rating in the classification for barrack bags. The first class any quantity rating then applicable in all three territories on bags, bedding, blanket or clothing, in boxes applied. Under rule 5, section 3c which provides penalties for failure to comply with the packing requirements, the rating on such bags, when shipped in machine pressed bales, was one and one fourth times first class. A rate of $1.775 was assessed computed at first class rate of $1.42. Effective March 22, 1923 the classification description in the above item was charged to cover shipments in bales or boxes, which represented a reduction as applied to shipments in bales. HELD, rating for future unreasonable to extent it exceeded second class, any quantity, reparation withheld until submission of proof as to paying and bearing of freight charges. Triad Corp. v. Erie R. R., 100 I. C. C. 402.

(v) Official and western classification any-quantity ratings on harness and saddlery articles found not unreasonable

as compared with ratings on other commodities of higher value. Evidence submitted is too conflicting to indicate fair average values of harness and saddlery or of the other commodities, and no showing was made as to other classification or transportation characteristics of such commodities as compared with harness and saddlery. U. S. Farm Sales Co. v. A. T. & S. F., 92 I. C. C. 19.

(w) Fact that rates assailed are any-quantity rates applicable to l. c. l. as well as c. l. traffic does not prove that such rates are unjustly discriminatory when applied to carloads. Burson Knitting Co. v. B. & O., 92 I. C. C. 607, 609.

(x) Following Burson Knitting Co., 39 I. C. C. 494, any-quantity rate on unfinished cotton hosiery, in compressed bales, found not unreasonable or unjustly discriminatory. No distinction is made between finished and unfinished hosiery, but complainant contended that unfinished product should take a rate lower than the finished for reasons that it occupies smaller space in the car, is less valuable, and not as subject to damage as the finished product. However, volume of movement is insufficient to warrant establishment of c. l. commodity rates, class rates, as such, were not shown to be too high, and fact that rates assailed are any-quantity rates applicable to l. c. l. as well as c. l. does not prove that they are unjustly discriminatory when applied to carloads. Burson Knitting Co. v. B. & O., 92 I. C. C. 607.

(y) Any-quantity express rates on oysters, in cans, in iced boxes or barrels, c. l., from Atlantic seaboard points to western destinations, found not unreasonable, discriminatory, or unduly preferential of shippers in l. c. l. quantities. Under present rates small and large shippers alike have same privileges. No compensating advantages would result from lower c. l. rates, under which boxing would be done at origin instead of distributing points on traffic intended for reshipment, thus imposing an additional burden and expense on both c. l. shipper and carrier due to necessity of hauling containers for entire carload from source of supply to distribution points, where none are now hauled in c. l. movements. Moreover, such lower rates would restrict markets of l. c. l. shippers, without apparent benefit to anyone. Booth Fisheries Co. v. Am. Ry. Exp. Co., 92 I. C. C. 653.

(z) On certain classes of traffic, where normal transportation unit is small, any-quantity rates rest upon sound public policy. They counteract a tendency toward monopoly by enabling small shippers to compete on fairly equal terms with powerful competitors. This is particularly desirable where source of supply is confined to limited areas of the country. Booth Fisheries Co. v. Am. Ry. Exp. Co., 92 I. C. C. 653, 660, 661.

(aa) Proposed increased rates on cotton piece goods, any quantity, from Texas and Oklahoma points to St. Louis and points in defined territories, published to comply with order entered in connection with Memphis-Southwestern Investigation, 77 I. C. C. 473, denying fourth-section relief, found not justified. Respondents made no attempt to justify the increases but merely stated that they were forced to make the revision to comply with the fourth-section order. However, such compliance does not require substantial increases proposed, and respondents' revenues would not be reduced to any extent by application from intermediate points of present rate from Texas producing points. Commodity Rates from Southwestern Points, 93 I. C. C. 394, 396.

(bb) Proposed increased rates on cotton and cotton regins, uncompressed, any quantity, and on cotton linters, uncompressed, l. c. l., both with carrier's privilege of compressing, from Cairo, Brookport, Gale, and Thebes, Ill., to eastern points, for purpose of restoring the relationship with rates from St. Louis, disturbed when the St. Louis rates were increased but through oversight no similar changes were made in rates from the Illinois points, found not justified. Respondent made no reference to rates under which traffic actually moves to demonstrate reasonableness of the proposed rates, and since the St. Louis rates are paper rates, most of the cotton movement being through Memphis, they have little, if any, probative force in that connection. Cotton, Linters, and Regins to Eastern Cities, 93 I. C. C. 453.

(cc) On artificial silk, in carloads, from Roanoke, Va., to Marcus Hook, Pa.; complainant seeks a commodity rate which is the same as that applicable on artificial-silk waste, based on released

value, in lieu of the first-class rate, any quantity based on released value. FOUND: That the first-class rate assailed is not unreasonable and that there is no justification for requiring the same rate on artificial silk as on artificial-silk waste. Artificial silks is a high grade article and the freight charges bear a small ratio to its value and the present rates are not shown to discourage the movement or to impose an undue burden on traffic, which is of a special character between two of complainant's plants. The fact that the rate assailed is an any-quantity rate does not in itself prove that it is unreasonable as applied to carload shipments. U. S. Farm Sales Co., 92 I. C. C. 19. Viscose Co. v. P. R. R. Co., 98 I. C. C. 97.

(dd) First-class any-quantity ratings on cigars in official, southern and western classifications, found unreasonable on carloads to extent it is higher than second class with a carload minimum of 30,000 pounds, which is prescribed as reasonable for future. Tobacco Merchants Asso. of U. S. v. P. R. R. Co., 98 I. C. C. 319.

(ee) Following 73 I. C. C. 396, and other cases cited, proposed cancellation of numerous l. c. l. and any-quantity commodity rates from points in southeastern and Carolina territories to destinations in Mississippi Valley, leaving effective generally higher class rates, found justified, except as to such rates on marble, granite, and stone. This adjustment will place l. c. l. shippers on an equality and at same time correct fourth section departures. Commodity Rates Between Points in Southern Territory, 98 I. C. C. 627.

(ff) First-class rating on barrack bags in official classification found unreasonable to extent it exceeded or exceeds second-class, any quantity, which is prescribed as reasonable rating for future. Charges collected on such shipments from Jeffersonville, Ind., to New York, N. Y., at first-class rate found unreasonable to extent they exceeded those which would have accrued at second-class rate. Opportunity afforded complainant to prove its right to reparation. Triad Corp. v. E. R. R. Co., 100 I. C. C. 402.

(gg) There are probably few, if any, circumstances under which commission would be justified in requiring maintenance or establishment of any-quantity ratings in southern territory. But in eliminating them carriers will err if they proceed on the assumption that in all cases the change should be accomplished by assigning a higher rating to the article when it moves in l. c. l. quantities, allowing the present any-quantity rating to stand as the carload rating without reduction. Southern Class Rate Investigation, 100 I. C. C. 513, 642.

(hh) Any-quantity commodity rate on cotton fabrics or cotton piece goods, in the original piece, from certain points in Maine, New Hampshire, Massachusetts, Rhode Island, and Connecticut to Lynchburg, Va., found unreasonable to extent it exceeded the fourth-class rate contemporaneously in effect and subsequently made applicable from and to the same points. Reparation awarded. Traffic Bureau-Chamber of Commerce v. M. & M. T. Co., 101 I. C. C. 424.

(ii) Complainant attacked any quantity rates charged from Providence, Md., and Wilmington, Del., to Richmond, Va., on printing paper, carloads, as unjust and unreasonable to extent they exceeded 19c. Providence is local to the B. & O. Shipments moved B. & O. to Potomac Yard, Va., and R. F. & P., beyond, 212 miles. Distance from Wilmington to Richmond is 227 miles. Charged 28.5c and 40.5c, any quantity, on shipments in bundles and boxes, respectively. A sixth class rate of 30c was in effect from Wilmington. Sixth class rates apply generally on printing paper from trunk line producing points to Richmond. The class rates from Wilmington to Richmond are the same as those in effect from Philadelphia and represent a group adjustment. Defendants expressed their willingness to cancel the any quantity rates in effect from Providence and to publish in lieu thereof a commodity rate of 30c. HELD, rates attacked unreasonable to extent they exceeded 28.5c reparation awarded. Jessup & Moore Paper Co. v. B. & O. R. R., 112 I. C. C. 174.

(jj) Respondents proposed to increase their all rail rates on cotton fabrics, any quantity, from Monticello, Ark., to Boston, Mass., New York and Philadelphia by cancelling the present joint rates making applicable combinations on Memphis. Monticello is apparently the only point in the southwest from which there are joint all rail rates on cotton fabrics to the Atlantic seaboard cities.

They were established to meet the rail and ocean rates through the Gulf ports from Texas and Oklahoma points to the same destinations. In view of the rates available by rail and ocean routes the proposed rates are practically prohibitive and virtually mean that the all rail lines desire to abandon the traffic to the rail and ocean lines. HELD, proposed schedules justified. Cotton fabrics to Atlantic ports 112 I. C. C. 280.

(kk) Complainant attacked charges on cotton, any quantity, moving interstate during two years prior to Nov. 12, 1924 from stations on the L. & N., south of Montgomery, Ala., concentrated at Montgomery and reshipped to Mobile, Ala., Pensacola, Fla., and New Orleans, La., as unreasonable. L. & N., proposed to increase the rates on cotton, cotton linters and regins from stations south of Montgomery to and including Sanford and Evergreen, Ala., and stations on its Camden branch, concentrated at Montgomery and Selma and reshipped to the ports. No. 16744. Cotton originates on defendants lines south of Montgomery, moving to that point under a concentration and after compression at that point is reshipped to the ports over all or a portion of the rails traversed on the inbound movement. Almost all of this cotton is intended for movement beyond the ports by water in connection with which high density compression is desirable. Under a carriers privilege provision defendant absorbs the charge of 15c for standard compression at Montgomery and for high density compression the shippers pay an additional charge of 7c. The arrangement here considered was voluntarily established for the benefit of Montgomery and is of marked advantage to that point. It is noteworthy that it represents one of the few exceptions to the general practice of defendant to decline to permit transit on cotton where back hauls are necessitated. Under these circumstances any attempt to obtain a lower basis of rates than that ostensibly provided for application in connection with the transit arrangement should be closely scrutinized, and the Commission should not permit such a result unless it is clearly necessitated under a reasonable construction of the terms of the tariff. Such necessity does not exist here. The Commission is of the opinion that the transit tariff sufficiently specified the basis for charges to be used in connection with the transit arrangement and that that specification had the effect of excluding the application of the combination rule. HELD, rates attacked not unreasonable, complaint dismissed. I. & S. docket 2535. Montgomery cotton dealers may go south on defendants line, toward the ports, and buy cotton, which is shipped through the ports via Montgomery with transit at that point under carriers privilege rates, in connection with which defendant absorbs the expense of standard compression at Montgomery. Dealers at the ports may go north on defendants line toward Montgomery and buy cotton, which moves direct to ports uncompressed at the local rates, the compression of which at the ports has no connection with the transportation and is at the shippers expense. The result is that notwithstanding the considerably greater distance via Montgomery than via the direct movement, and the additional service and expense incident to the transit arrangement at Montgomery, dealers can buy cotton at stations south of that point and deliver it compressed at the ports at charges which are actually less in some instances, and only slightly higher in others, than the rates for direct movement from the same points to the ports plus the charge for compression there. While the necessity for back hauls may be regarded as a disability due to the location of these points and may properly be reflected in some difference in rate as compared with points from which no back hauls are necessary, the Commission is of the opinion that disturbance of relations to the extent that would be produced by the proposed rate is not warranted and would result in undue prejudice to points from which the increases are proposed. HELD, suspended schedules not justified. Montgomery Cotton Exchange v. L. & N. R. R. 112 I. C. C. 325.

ALL OTHER CITATIONS

American Mills Co. v. C. R. R. Co., 85 I. C. C. 214; Royall & Borden Mfg. Co. v. A. C. L. R. R. Co., 85 I. C. C. 715; Armacost & Co. v. M. & M. T. Co., 88 I. C. C. 185.

APPEAL

See Courts II; Interstate Commerce Commission VII.

APPLICATION OF RATES

See Absorption of Charges I; Accounting II, §5; Basing Points and Lines I; Bills of Lading III; Class Rates I; Classification §3½, V; Commodity Rates I, II; Differentials II; Long and Short Hauls III; Minimums I; Proportional Rates I; Released Rates II; Through Routes and Joint Rates §18.

ARBITRATION

(a) A receiver of freight and a carrier submitted a dispute concerning demurrage charges to arbitration by the Interstate Commerce Commission. The Commission ruled against the railroad, which refused to abide by the award. HELD, it was bound and the courts would enforce the agreement. Pennsylvania R. R. v. Tozzi, 207 N. Y. S. 16.

(b) It was no defense to action on arbitration award, made by Interstate Commerce Commission in voluntary proceedings, that oath was not taken by arbitrators or waived, since every security given by arbitrator's oath was afforded by constitutional oaths of individual members of Commission, required by U. S. Comp. St. §3218. Davis v. Rochester Can Co. (Dec. 1924) 207 N. Y. S. 33.

ASSIGNMENTS

See Loss and Damage §5¾; Overcharges (b); Reparation §6 (gg).

ASSOCIATION

See Reparation §6 (hh).

(a) Defendants argue that complaints, filed by traffic bureaus, should be dismissed because of lack of interest on part of complainants, since freight charges are not paid by them or their members. HELD, Such complainants found to have legitimate interest in securing an adjustment of rates that will not prefer other ports over their own. Moreover, section 13 of the act provides that no complaint shall be dismissed because of absence of direct damage to complainant. Charleston Traffic Bureau v. A. G. S. R. R. Co., 89 I. C. C. 501, 502.

(b) Pending a decision on merits of case, members of complainant association did not offer detailed evidence as to particular shipments and payment and bearing of freight charges thereon. Upon further hearing, such details and proof having been submitted by claimant members of association on whose behalf complaint was filed, reparation awarded to basis found reasonable in original report. National Preservers & Fruit Products Asso. v. Director General, 91 I. C. C. 221.

(c) Complaint was filed by associations on behalf of their members, but no evidence was introduced with respect to any shipments made for or in their behalf. Such members, in event shipments were made by them, authorized to file reparation statements under Rule V of Rules of Practice, accompanied by proof in the form of affidavits that shipments were made and unreasonable charges were paid and borne by them, with understanding that if defendants object to proof in affidavit form such shippers may request further hearing with respect to subject of reparation. Houston Cotton Exchange v. A. & R. R. R., 92 I. C. C. 220, 222, 223.

(d) Informal complaint filed within statutory period showed an association as claimant. Formal complaint subsequently filed named a corporation as complainant. Upon contention that informal filing was not on behalf of the corporation, and that claim of latter is barred because first presented in the formal complaint filed after the statutory period had elapsed. FOUND, failure of the association to comply with Rule III (e) of the Rules of Practice which provides that informal complaint contain a statement of the capacity or authority in or by which complaint is made, if recovery is sought on behalf of others than complainant, was not fatal to the corporation's claim, since filing by the association was, in fact, on behalf of the corporation, and for express purpose of tolling the statute. Thaxter & Co. v. Director General, 95 I. C. C. 693, 694, 695.

(e) Complainants and their shipments were identified by reason of the fact that none but members of the Chicago Live Stock Exchange were permitted to do business through the stockyards, participant in the transportation, where all such members were known

and where their shipments were matters of record. Chicago Live Stock Exchange v. A. T. & S. F., 100 I. C. C. 266, 267.

(f) Claimant organization made no shipments in its own name, failed to name as cocomplainants any of its members, and complaint filed by it does not state definitely on whose behalf reparation is sought. None of its members intervened at the hearing, although several manufacturers and dealers offered testimony, general in character, with respect to sources of their competition and their business methods in payment of freight charges. Their evidence, however in view of defects in pleadings, can not be regarded as constituting valid claims for damages or reparation. Northeast Mississippi Traffic Bureau v. A. & V., 102 I. C. C. 611, 616.

ASSORTING PACKAGES

See Additional Charges and Services; Proportional Rates IV.

AUTOMATIC TRAIN CONTROL

(a) Following investigation made under section 26 of the act, automatic train-stop system of the Miller Train Control Corporation installed on Chicago Division of C. & E. I. Ry., and as a result of inspection and test thereof, the installation found to meet requirements of commission's specifications and order in original case, Automatic Train-Control Devices, 69 I. C. C. 258, and is therefore approved, with certain exceptions which have been called to carrier's attention with instructions as to corrections to be made in certain specific respects. In the Matter of Automatic Train-Control Devices, 96 I. C. C. 345.

(b) This report is made after inspection and test of the automatic train control system of the Union Switch & Signal Company on the Shenandoah division of the Norfolk & Western Ry. The installation inspected and tested was completed on Nov. 10, 1924 and placed in service Feb. 15, 1925. It extends from the south end of Shenandoah passenger station to the northward two arm interlocker signal at the Hagerstown Junction interlocker, a distance of 106.1 miles. This portion of the division is single track. There are 41 locomotives equipped with the device. HELD, it was found that the installation meets the requirements of the specifications of the Commission with certain exceptions to which the attention of the officials of the N. & W., was called. Automatic train control devices 107 I. C. C. 65.

(c) This report is made after inspection and test of the automatic train stop system of the Sprague Safety Control & Signal Corporation on the Creston division of the Burlington in Dec. 1924. The installation inspected and tested was completed on July 14, 1925. It extends from Creston, Iowa, to Pacific Junction, Iowa, a distance of 82.1 miles, of which 24.4 miles is single track and 57.7 miles double track. HELD, with a few exceptions the device was approved. Automatic Train Control devices 107 I. C. C. 367.

(d) O. W. R. R. & N., and D. L. & W., petitioned to reopen Automatic Train Control Devices, 101 I. C. C. 487, 496, L. & N., and N. & W. and Atlantic City R. R., intervened, question being that whether "provision must be made requiring enginemen to acknowledge at succeeding stop signals" is in accordance with 69 I. C. C. 258, 280. This requirement was made so that in no case would it be possible for an engineman to pass a stop indication point without taking action to show that he was alert by forestalling an automatic brake application, or, in other words, acknowledging that he knew that he had received a stop indication. The devices under consideration give a continuous visual indication of danger condition, and if the locomotive is permitted to exceed the low speed maximum, the device will cause an automatic application of the brakes, which will bring the train to a stop. HELD, provision eliminated. Automatic Train control devices 109 I. C. C. 66.

(e) The report is made after inspection and test of the two speed continuous induction train control system of the Union Switch & Signal Co. on the fourth subdivision of the Wyoming division of the Union Pacific. The installation inspected and tested was completed on June 1, 1925. It extends from Sidney to Cheyenne, Neb., a distance of 102 miles of double track. HELD, with certain suggestions the apparatus meets the requirements of 69 I. C. C. 258. Automatic Train Control Devices 109 I. C. C. 147.

(f) This report is made after inspection and test of the automatic train stop system of the National Safety Appliance Co. on the Central Kansas division of the Missouri Pacific. This device was first placed in service for test purposes on the M. P., in August 1923 at the grade crossing of the Frisco and K. C. S., at Hytex with five equipped locomotives in regular service. In August 1924 a 20 mile single track test section was completed between Leeds, Mo., and Stillwell, Kas. The installation now inspected and tested was completed on July 3, 1925. It extends from Leeds, Mo., to Osawatomie, Kas., distance 50 miles, single track. HELD, M. P., is expected promptly and currently to inform the Commission as to the progress made in conforming to the requirements prescribed. Automatic Train Control devices 109 I. C. C. 199.

(g) This report is made after inspection and test of the automatic train control system of the Union Switch & Signal Co. on the Atlantic City Railroad of the Reading Company. The installation inspected and tested was completed on Dec. 31, 1924 and placed in regular service April 1, 1925. It extends from Camden, N. J., to Atlantic City a distance of 55.5 miles of which 52.6 miles is double track and 2.6 miles three track. There are 52 locomotives equipped with the device. HELD, except for certain recommendations the device is approved. Automatic train control devices 109 I. C. C. 667.

(h) This report is made after inspection and test of the automatic train control system of the Union Switch & Signal Co. on the New Jersey Southern division of the Jersey Central. The installation inspected and tested was completed on Oct. 28, 1925. It extends from Red Bank, N. J., to Winslow Junction, N. J., a distance of 65.5 miles single track. There are 30 locomotives equipped. HELD, except for certain recommendations device approved. Automatic Train Control devices 109 I. C. C. 680.

AUTOMOBILES

See Act to Regulate Commerce I (g).

(a) Laws 1923, c. 154, regulating passenger traffic by automobiles, of which section 10 provides that the act shall not apply to commerce among the states, except as permitted by the Constitution of the United States and the acts of Congress, applies to interstate commerce so far as the Constitution and the acts of Congress permit. Interstate Transit Co. v. Derr Co. (Mont. 1924), 228 Pac. 624.

(b) A motor truck, owned by a resident of Wisconsin, and used in commercial freighting on a time schedule and over a regular route between points in Wisconsin and points in Minnesota, is subject to the motor vehicle tax imposed by chapter 418, L. 1923. State v. Oligney (Minn. 1925), 202 N. W. 893.

(c) Motor vehicle tax, imposed by Laws 1923, 418, on motor trucks used in interstate commerce, is not contrary to Const. U. S. art. 1, §8, giving Congress power to regulate interstate commerce. State v. Oligney (Minn. 1925), 202 N. W. 893.

(d) Motor vehicle tax, imposed by Laws 1923, c. 418, on motor trucks used in interstate commerce, does not violate Const. U. S. art. 1, §8, giving Congress power to establish post offices and post roads. State v. Oligney (Minn. 1925) 202 N. W. 893.

(e) Motor vehicle tax, imposed by Laws 1923, c. 418, on motor trucks used in interstate commerce, is not unconstitutional as denying due process of law, or equal protection of laws or abridging privileges or immunities of citizens of United States, contrary to Fourteenth Amendment. State v. Oligney (Minn. 1925), 202 N. W. 893.

(f) Motor vehicle Tax Law does not, in attempting to impose tax on foreign motor vehicles, violate Constitutions of either United States or state of Minnesota. State v. Oligney (Minn. 1925), 202 N. W. 893.

(g) That proposed compulsory motor vehicle insurance act did not exempt from its operation motor vehicles or trailers, engaged wholly or in part in interstate commerce, HELD insufficient to render it unconstitutional, if enacted. In Re Opinion of the Justices (Mass. 1925) 147 N. E. 681.

(h) Contention that attempt to require operator of auto stage in interstate commerce, to obtain certificate of convenience, under St. 1917, p. 333, § 5, would constitute the imposition of a burden on interstate commerce, is a question arising under federal Constitution

and laws as to which the decisions of the Supreme Court of the United States is the ultimate authority. People v. Yahne (Calif. 1925) 235 Pac. 50.

AVERAGE DEMURRAGE PLAN

See Demurrage §13.

BACK HAUL

See Evidence §5½; Facilities and Privileges §7.

BAGGAGE SERVICE

See Distance Rates §3 (4q); Express Companies §10 (t); Mails (n); Passenger Fares and Facilities §10 (c) (d) (e).

BARGE SERVICE.

See Water Carriers §6½.

(a) Proposed rule requiring shippers on water front in Norfolk, Va., harbor, to load l. c. l. freight on carriers' barges for outbound movement found not justified. Present rates on l. c. l. freight from Norfolk were made to include this service, and it would be unfair to shippers to require them to assume entire burden and still pay carriers for doing work. Loading of L. C. L. Freight, 91 I. C. C. 394.

(b) Carriers compare barge service on water front in Norfolk, Va., harbor with trap-car service on belt lines at that point and insist that the two services are similar. In trap-car service shippers are required to perform initial loading and it is carriers' contention that there is no reason why shippers on water front should be accorded special privilege of having their freight loaded for them onto carriers' barges. HELD: This contention is not convincing. Shippers accorded trap-car service can not use barge service and those accorded barge service can not use trap cars. There can be no discrimination since services rendered are dissimilar. Loading of L. C. L. Freight, 91 I. C. C. 394, 396.

(c) Upon further hearing, original report 77 I. C. C. 317, basis of just, reasonable, and equitable divisions of joint rail-barge-rail-rates on sugar from points in Louisiana to northern destinations prescribed. U. S. War Dept. v. A. & S. Ry., 92 I. C. C. 528.

(d) Upon further hearing, original report 77 I. C. C. 317, FOUND: That establishment of additional through routes and joint rail-barge-rail rates on sugar from points in Louisiana to points in c. f. a. territory east of Indiana-Illinois line, Kentucky, Tennessee, northern Arkansas, northern Kansas, Missouri, Nebraska, and the Dakotas, is desirable in the public interest. Rates and basis of divisions prescribed. U. S. War Dept. v. A. & S. Ry., 92 I. C. C. 528,

(e) No rail-barge-rail route should be established where portion of such route exceeds two-thirds of distance from point of origin to destination over most direct all-rail route, nor where all-rail distance via two ports of interchange exceeds by more than one-third the most direct all-rail route. U. S. War Dept. v. A. S. Ry., 92 I. C. C. 528, 551.

(f) Where connecting rail lines participate in all-rail through routes and joint rates in which intermediate rail carriers operating between a barge line's ports also participate, the commission has power to require establishment of a through route in connection with the barge line and to prescribe a joint rail-barge-rail rate which is differentially lower than the corresponding all-rail rate, provided the differential fairly reflects the lower cost and value of the barge line's service. U. S. War Dept. v. A. & S. Ry., 92 I. C. C. 528, 547.

(g) The Mississippi-Warrior River barge line is owned and operated by the Government "not necessarily as a permanent governmental undertaking, but to test possibilities of transportation by barge upon inland waterways." In view of this experimental status factor of financial weakness ought not to be given weight in fixing divisions. The barge line is not, as yet, an established part of the National transportation system upon which communities are dependent, and it furnishes no service where means of transportation would otherwise not exist. It is rather a supplement to the rail service, which, it is hoped, will add to and render more nearly adequate the sum total of transportation facilities. According weight to factor of financial weakness, under such circumstances, would end to cloud results of the experi-

ment. U. S. War Dept. v. A. & S. Ry., 92 I. C. C. 528, 536.

(h) Upon complaint, the N. Y. C. ordered to furnish transportation service between the Erie Basin barge-canal public terminals, Buffalo, and points located on its line and lines of its connections, and perform upon terminal tracks the operating service necessary to an interchange of traffic with barge-canal lines at the terminal, all with motive power and other equipment of the N. Y. C., the services to embrace all traffic, interstate and intrastate, that may be transported to or from the terminal over that rail carrier's line. State of N. Y. v. N. Y. C., 95 I. C. C. 119.

(i) Rates from New Albany to other points in Indiana on bituminous coal originating in Kentucky and West Virginia and barged to New Albany down the Ohio River, found unreasonable as compared with rates from Cincinnati, a competing point shipping to the same destinations and to which traffic moves under similar transportation conditions. Moreover, rates for the short intrastate movement are on too high a level as compared with intrastate rates on bituminous coal prescribed by the commission in 66 I. C. C. 338, and numerous other cases. Reasonable distance scale of rates prescribed for the future. Slider v. B. & O., 96 I. C. C. 65.

(j) On further consideration, reasonable divisions of joint barge-and-rail rates on traffic handled jointly by Warrior River Barge Line and L. & N., including transit arrangements and terminal service, between New Orleans, La., and Mobile, Ala., on one hand, and inland points on L. & N., on other hand, interchanged with the latter at Mobile, Tuscaloosa, or Birmingham, Ala., prescribed. U. S. War Dept. v. A. & S. Ry. Co., 100 I. C. C. 491.

(k) Special proposal of Warrior River Service Barge Line, which is fully outlined, for division of joint class rates on traffic through the port of Birmingport, Ala., interchanged with L. & N. at Birmingham, Ala., believed to be fair, and will result in just, reasonable, and equitable divisions to the barge line and its intermediate rail connections, on one hand, and to L. & N. on other. U. S. War Dept., v. A. & S. Ry. Co., 100 I. C. C. 491, 506, 507.

(l) Basis for divisions found reasonable is predicated on the understanding that joint barge-and-rail rates are to be made differentially under the all-rail rates in an amount, generally speaking, not to exceed 20 per cent of the port-to-port rates. U. S. War Dept., v. A. & S. Ry. Co., 100 I. C. C. 491, 510.

BASING POINTS AND LINES

I. APPLICATION.
§1. In general.
II. ESTABLISHMENT.
§2. In general.
III. REASONABLENESS.
§3. In general.

CROSS REFERENCES

See Blanket Rates §16; Classification II; Crimes §25; Discrimination §14; Evidence I, §5; Passenger Fares and Facilities §3, §4½; Percentage Rates; Routing and Misrouting §4, §8; Through Routes and Joint Rates §13 (v), §15; Undercharges §5; Weights and Weighing IV.

I. APPLICATION.

See Application of Rates.

§1. In General.

(a) A locality has no inherent right to demand that rates break thereon. Helena Traffic Bureau v. M. P. R. R., 89 I. C. C. 405, 415.

(b) When an article is produced in two separate classification territories and there is competitive interterritorial distribution of the article, the base rates should be the same in opposite directions. See Houston Packing Co., 37 I. C. 584. Salt Cases of 1923, 92 I. C. C. 388, 422, 423.

(c) At many points sugar is sold on basis of lowest rate from nearest cane refinery, and to meet this competition other refineries must absorb the difference in freight rates. Sugar from Macon Territory, 92 I. C. C. 275, 276.

(d) The present method of making rates on the Jacksonville combination to and from the Florida peninsula is merely an arbitrary device for enhancing revenue. Commission is of the opinion that rates to and from points in Florida pen-

insula for the present may well be on a somewhat higher level than in other parts of southern territory. Southern Class Rate Investigation, 100 I. C. C. 513, 624, 625.

II. ESTABLISHMENT

§2. In General.

(a) Memphis, Tenn., is a rate-breaking point because it is connected with the important grain regions of the country by numerous powerful trunk lines. Helena Traffic Bureau v. M. P. R. R. Co., 89 I. C. C. 405, 415.

(b) Complainant attacked commodity rates charged on iron pipe and oil well supplies from Pittsburgh, Pa., to Drumright and Oilton, Okla., between May 25, 1920 and May 22, 1922, as unreasonable and unduly prejudicial. Oilton is 5.5 miles north of Frey. Drumright is 2.6 miles south of Frey on a spur. Shipments all moved through Cushing. The rates to that point, except from Memphis, were the same as to Jennings. The rates charged were made by adding to commodity rates to Jennings class A differentials on the shipment of gas engines and fifth class differentials on the other shipments. When the Santa Fe took over the line it provided that all traffic to or from points thereon should be routed through Cushing in order to secure to it a longer haul than if routed through Jennings. The rates were made differentials over Jennings because on much traffic the rates to Jennings were lower than to Cushing. Rates to Jennings and Cushing from Pittsburgh and other northern points were applicable to a large rate group, including southern Kansas, most of Oklahoma, and northern Texas; Drumright and Oilton, are within these group areas. To destination on other branch lines within these groups having much lighter traffic density than this branch no differentials were added to the main line rates. HELD, rates attacked unreasonable to extent they exceeded rates to Cushing, reparation awarded. Prairie Oil & Gas Co. v. A. T. & S. F. Ry. 91 I. C. C. 37.

(c) Complainant attacked commodity rates charged on lumber, carloads from Flinn, Va., to destinations in central trunk line and New England territories as unreasonable and unduly prejudicial. Flinn is on the branch of the C. & O., extending in a northeasterly direction from Covington, Va., the junction with the main line, to Virginia Hot Springs, Va. Complainants contention is that rates from Flinn as compared with rates from Potts Creek branch and Greenbrier division as unreasonable and unduly prejudicial. Stations on the Flinn branch 24.7 miles long are grouped for rate making purposes, and are accorded rates somewhat higher than those from Covington. Stations on the Potts Creek branch generally take higher commodity rates on lumber than Covington, but the difference in rates are generally less. From the Greenbrier division commodity rates on lumber to the east are made 1c higher than rates from the main line junction, and rates to the west are made the same as those from the main line junction. On classes and commodities generally Greenbrier division points take rates the same as those applying at the junction with the main line. HELD, rates attacked not unreasonable but are unduly prejudicial to extent they exceeded rates applicable from points on the Greenbrier division, reparation denied as complainant has not shown it has been damaged. Freehold Lumber Co. v. C. & O. Ry., 92 I. C. C. 699.

(de) When practical rates through important grain markets should break into definitely known inbound and outbound components. Grain from western trunk lines, 100 I. C. C. 745, 748.

(f) Joplin, Mo., originally the key point for spelter rates, has ceased to be a smelter point. Spelter from this territory is sold on the East St. Louis basis; that is, regardless of destination purchaser deducts from invoice price freight charges on basis of the rate from origin to East St. Louis. Spelter from Arkansas, 92 I. C. C. 136, 137.

(g) The commission has consistently refused to extend the rate-breaking system to communities which alleged that they were unduly prejudiced because of rate breaks at other points with which they competed. Sioux City Terminal Elevator Co., 23 I. C. C. 98, 27 I. C. C. 457, and other cited cases. Mississippi R. R. Comm. v. A. & V., 93 I. C. C. 435, 444.

(h) The Commission has in several recent rate cases condemned, expressly or in effect, the practice of basing interterritorial rates upon the combination of local rates to and from border points. Caruso & Co. v. C. & E. I. Ry. 102 I. C. C. 619, 621.

(i) Complainant attacked class rates charged on eight cars of automobiles shipped between Jan. 17 and Nov. 19, 1922 from Omaha, Neb., to Roswell, N. M., as unreasonable. Roswell is on the Santa Fe 108.5 miles south of Clovis, N. M., the junction with the main line of that carrier. Shipments moved to Kansas City over either the Rock Island, M. P., and beyond that point over Santa Fe, charged first class rate of $3.335 prior to July 1, 1922 and $3 thereafter applicable from Omaha to Deming, N. M. The fair and reasonable conclusion to be drawn from the tariff is that branch line points, including Roswell, were placed upon the main line basis only in connection with the alternate application of the rates to Deming. HELD, rates attacked applicable and not unreasonable, complaint dismissed. Roswell Auto Co. v. A. T. & S. F. Ry. 107 I. C. C. 555.

(j) Respondents proposed to change their rates on fresh meats and packing house products from western trunk line territory to points in Arkansas, western Louisiana and southern Missouri. In many instances the proposed rates reflect the present differentials over Kansas City or St. Louis, but in others the differentials would be increased. It is this disturbance of relationships as among the packing centers in western trunk line territory that is the principal ground for protest. From Omaha the differentials proposed are 14c on fresh meats and 9c on packing house products over the rates from Kansas City. From Mason City, a northern Iowa point, the present differential on fresh meats is generally 26c, although in a few instances it is 32.5c over St. Louis, whereas the differential on packing house products is generally 14.5c, a differential of 15.5c applying to a few points in Louisiana. No change is proposed in the differentials on fresh meats, but on packing house products a uniform differential of 16c is proposed. This appears excessive and should not exceed 14.5c. HELD, proposed schedules justified, except from Mason City. Fresh meat and packing house products 109 I. C. C. 95.

(k) Respondents proposed transcontinental rates on lumber, carloads, from western producing points to Manchester and Ripley, O., 5c higher than the group bases applicable to Trinity and South Ripley, Ky. Territory of origin comprises groups in California, Nevada, Oregon, Washington and other western states. One of these is reflected in connection with the present and proposed rates from the group which embraces most of California, south coast. Other rate situation is reflected in connection with rates from north coast. Ripley and Manchester are situated on the north bank of the Ohio river. They are not on the rails of any carrier. Both points are named in the C. & O., list of stations. C. & O., operates ferries between South Ripley, Ky., and Ripley and between Trinity, Ky., and Manchester. The schedules under suspension provide that the proposed rates shall apply only via Trinity, Ky. Applicable rate is 88.5c, proposed basis would make rate of 93.5c to Ripley and Manchester from south coast. At present a joint rate is not named from the north coast to Ripley and Manchester, and combination of 95c based on East St. Louis applies to those points. Rate of 88.5c is applicable from north coast to South Ripley and Trinity. Proposed basis would make a through rate of 93.5c to Ripley and Manchester, or increase of 5c from south coast to Ripley and Manchester and reduction of 1.5c in the rate from the north coast to those points. HELD, proposed rates not justified, rates to Ripley and Manchester unduly prejudicial to extent they exceed rates on basis of rate basis 12 from north coast. Lumber from Pacific coast points 109 I. C. C. 140.

ALL OTHER CITATIONS

North Carolina Pine Asso. v. A. C. L. R. R. Co., 85 I. C. C. 270; Grate Bars to Memphis, 88 I. C. C. 701.

III. REASONABLENESS.

See Blanket Rates §13 (b); Discrimination; Reasonableness of Rates.

§3. In General.

(a) Complainant attacked commodity and class rates charged on carbon black, carloads, since April 1, 1921 from Lem, Ky., to Akron, O., as unjust and unreasonable and unduly preferential of Elk View, Turner, W. Va., and Akron, O. Lem is on the C. & O., 9.4 miles from Beaver Creek Junction and 93.6 miles from Catlettsburg. Usual route of movement from Lem to Akron is over the C. & O., to Columbus, O., and Pennsylvania beyond, 353 miles. Carbon black, carloads, is rated fourth class.

Prior to August 1, 1922 there was no commodity rate and fourth class rates were paid. On that date a commodity rate of 54.5c was established by the Pennsylvania was not shown as a party until May 10, 1923. The rate from St. Paul, a point beyond Lem was 60c which applies as a maximum from Lem. The establishment of a commodity rate from Lem to Akron was considered by the carriers prior to July 1, 1922 and it was agreed that the rate should be made by adding to the Elk View rate the difference between the fourth class rates to Akron from Elk View and Lem, subject to any reduction the Commission might order, which would make 60.5c. HELD, rates attacked unreasonable to extent they exceeded 60.5c prior to July 1, 1922 and 54.5c thereafter to August 1, 1922, reparation awarded. Goodyear Tire & Rubber Company v. A. C. & Y. Ry., 89 I. C. C. 401.

(b) Combination rates on cottonseed cake and meal from Texas common points to points in eastern trunk-line and New England territories intermediate to and ordinarily grouped with New York, N. Y., Boston, Mass., and other eastern basing points, found unreasonable to the extent they exceeded joint rates from Texas common points to such basing points. Originally joint rates reflect lowest combinations, but carriers failed to revise them so as to reflect changes brought about following Increased Rates, 1920, 58 I. C. C. 220. Moreover, it has been the custom of defendants to publish joint commodity rates lower than combinations on all commodities moving in large volume. Reparation awarded. Larrowe Milling Co. v. A., T. & S. F. Ry. Co., 89 I. C. C. 439.

(c) Complainant attacked commodity rates charged on various materials used less carloads, shipped from points in mine construction, in carloads and the Pittsburgh, Pa., district to Lynch, Ky., between May 1918 and August 1, 1919, as unreasonable, unjustly discriminatory and unduly prejudicial to extent they exceeded rates to Benham, Ky., subsequently established to Lynch. Up to May, 1918, Benham was the end of a branch of the L. & N. At that time complainant built an extension of the track 1.25 miles beyond Benham to a point called Lynch, opened a coal mine there, the L. & N., operating over the extension. Benham rates were seasonably made applicable to Lynch. HELD, rates attacked unreasonable to extent it exceeded rates to Benham, reparation awarded. U. S. Coal & Coke Company v. Director General 91 I. C. C. 6.

(d) Complainant attacked commodity rates on cypress lumber, carloads, from Hebardville, Hopkins, and Waycross, Ga., to southeast and northwest as unreasonable and unduly prejudicial. The Waycross & Southern extends 20 miles from Hopkins north to Hebardville, connecting at Waycross 2 miles from Hebardville with the A. B. & A., and A. C. L. With few exceptions through routes and joint rates are maintained from Hebardville and Hopkins to the same extent as from Waycross. Rates from Hopkinsville and Hebardville are equal, and are ordinarily from 1 to 2c higher than from Waycross. Complainant ships under a milling in transit arrangement under which the logs are transported from Hopkinsville to Hebardville and the lumber beyond at the through rates. So radical change as desired by complainants in a distance tariff would not properly be adopted upon a record of this limited and comparatively narrow scope. This record affords no basis for disturbing the conclusions reached in 85 I. C. C. 270. Rates between particular points or sections in the southeast have been established from time to time under the influence of competitive conditions existing between producers and markets, between rail lines, and between rail and water lines, and of relatively low bases required by State authorities on intrastate traffic, without especial regard to the maintenance of a generally harmonious and consistent rate structure. To central territory Waycross is grouped with main line stations, embracing the entire Georgia territory south of Macon and including Jacksonville. Rates from Hebardville and Hopkinsville are from 1 to 1.5c higher than from Waycross. The Commission is unable to approve a wholesale disruption of the present group adjustment upon the present record. The record contains no satisfactory justification for the extensive blanketing of the rates from the points of origin here under consideration to the Virginia cities back over substantially the entire state of North Carolina, nor for the material spread between rates to points on either side of the North Carolina-South Carolina state line; nor for the

spread between the rates from these points and Varnville to the Virginia cities; nor for the existing difference in the level between the rates from these points to destinations in South Carolina and Florida on the one hand and the intrastate rates on the other. The Carolinas and Florida, the carriers have expressed willingness to work out a more consistent adjustment and they will be permitted to do so. Hebard Cypress Co. v. A. & R. R. R. 91 I. C. C. 343.

(e) Respondents proposed to increase the class and commodity rates from El Paso, Tex., points in eastern transcontinental groups, and points in California, Oregon, Washington, Nevada and Utah to Mesa, Ariz. Respondents proposed the suspended rates to comply with the order in 81 I. C. C. 134. Prior to this decision most of the rates to points on the Globe division were made by combination on Bowie, Ariz., the junction of the Arizona Eastern with the main line of the S. P., or by adding arbitraries somewhat lower than the local rates from Bowie to the rates to that point, while, generally speaking, the rates to Mesa and Phoenix were and are the same as those to Maricopa, Ariz., the junction of the Phoenix division of the A. E., with the S. P. The junction points rates were likewise applied at Nogales in numerous instances, but not to the same extent as at Phoenix or Mesa. Mesa. The rates to Mesa and Phoenix were originally made by adding arbitraries, or local rates from Maricopa, to the rates to that point. As early as 1904 the arbitraries or local rates to Mesa were in most instances practically the same as those to Phoenix, and since 1904 the rates to both points have been reduced to the Maricopa basis. Thus Mesa and Phoenix have had practically the same rates for at least 20 years. Rates to points on the Globe division have always been relatively higher than those to Mesa and Phoenix. Nogales, 66 miles south of Tuscon, Ariz., is located on the international border between the United States and Mexico and is served by a line of the S. P., extending south from Tuscon and the S. P., of Mexico. The rates to Nogales under the adjustment resulting from the findings in 13139, supra, became effective Dec. 11, 1923. If the Commission should modify its findings affecting rates to Nogales, the carriers propose to continue the reduced rates to that point resulting from the adjustment of Dec. 11, 1923 and to reduce the increased rates which became effective on that date to their former basis. The record on further hearing now shows that the circumstances and conditions surrounding the transportation to Mesa and Nogales are not wholly comparable with those in connection with the transportation to points on the Globe division and are so different as to warrant the finding that relatively lower rates to Mesa and Nogales than to points on the Globe division does not cause undue prejudice or preference. HELD, suspended schedules not justified. HELD, further, maintenance of class and commodity rates from points in California, Oregon, Washington and eastern transcontinental groups to Mesa and Nogales, Ariz., relatively lower than those to points on the Globe division of the Arizona Eastern does not unduly prefer Mesa and Nogales or result in undue prejudice to points on the Globe division. Class and commodity rates to Mesa, 92 I. C. C. 512.

(f) Complainant attacked commodity rates charged on yellow pine timber, lumber, and other forest products, carloads from Frost and Verdun, La., to New England, trunk line, central, and western trunk line territories, and in Oklahoma, Texas, Kentucky, and Tennessee as unreasonable, unjustly discriminatory and unduly prejudicial. Frost and Verdun are local points on the Garyville Northern, 7 and 11 miles, south of Livingston, La. The G. N., extends 35 miles from Livingston, its northern terminus and junction with the Y. & M. V., south through Frost and Verdun to Garyville, La., its southern terminus and junction with the Y. & M. V., and L. R. & N. The joint rates attacked are constructed by adding certain differentials to the rates from Livingston. On Jan. 5, 1922, subsequent to the hearing, the differentials from Frost & Verdun were made the same and reduced to 2.5c where the rates from Livingston exceeded 32c and to 3.5c where the rate was 32c or less. The lumber rates from Garyville are the same as those from Livingston to Ohio river crossings and beyond, being the group rates applicable on yellow pine lumber from certain short line points and all trunk line points east of the Mississippi river and south of Vicksburg, Jackson and Meridian, Miss. The M. & O., and certain other carriers

extend the group rates to mills on their independent short line connections. The practice of the trunk lines of applying practically the same rate from the vast majority of southern milling points has the effect of making a blanket of this southern territory. The I. C., does not extend the group basis to its seven short line connections other than the Garyville Northern. The differentials over the junction point rates, applicable to shipments from points on those short lines, vary from 1 to 3c. The G. N., participates in the joint group rates from Garyville. HELD, rates attacked from Frost unreasonable to extent they exceeded the rates from Livingston: to Tennessee and Kentucky other than Ohio river crossings, 2.5c; to other destination 2c, reparation awarded. HELD, further, rates attacked from Frost and Verdun to destinations covered by complaint to which the rates are blanketed from points producing yellow pine on the I. C., south of Jackson and Vicksburg and on the L. R. & N., east of the Mississippi river, unduly prejudicial to extent they exceeded the blanket rates maintained from Livingston and Garyville. Fleming Bros. v. G. N. Ry., 92 I. C. C. 582.

(g) Complainant attacked class and commodity rates from all territories to Virginia, Minn., as unreasonable, unjust, unjustly discriminatory and unduly prejudicial as compared with rates to Duluth, Minn. Virginia is served by four railroads each of which also serve Duluth, distances from Duluth being via D. M. & N., 73 miles, via D. W. & P., 78 miles, via D. & I. R., 92 miles, via G. N. 111 miles. Class and commodity rates from all points in western trunk line, central and trunk line territories are made by using the aggregate of intermediates through Duluth. The rates to Duluth are either class or commodity rates and the rates from Duluth to Virginia are the Minnesota intrastate class rates for a distance of 73 miles. The Commission is asked in this case to order a readjustment of the entire rate structure to Virginia which would necessarily entail a similar readjustment at Hibbing and perhaps other points in the iron range territory. Complainants evidence consists largely of a showing of percentages of rates, distances, and ton mile earnings as between Duluth and Virginia. The results shown are more or less inherent in any basis of rates constructed on a combination basis. The only undue preference complained of is that alleged in favor of Duluth. The location of Duluth at the head of the lakes, as the principal gateway of lake and rail traffic has brought about a competitive rate situation at that point which is not applicable to Virginia. HELD, class and commodity rates, except those from California not unreasonable or unduly prejudicial. HELD, further, rates attacked from California, class and commodity, to Virginia are unreasonable and unduly prejudicial to extent they exceed rates to Duluth. Virginia Chamber of Commerce v. A. T. & S. F. Ry., 92 I. C. C. 722.

(h) Complainant attacked class rates charged on solvent naptha between January and December 1922 from Minnequa, Colo., to Johannesburg, Calif., as unreasonable, unjustly discriminatory and unduly prejudicial. Applicable third class which prior to July 1, 1922 was $2.97 and thereafter $2.675. Distance 1,225 miles. Johannesburg, the terminus of a branch line, is 29 miles from Kramer, Calif., the junction with the Santa Fe. Complainant sought benefit of carload rate on petroleum naphtha to Kramer, the junction point. An arbitrary is also applied to the rates on petroleum naphtha. HELD, rates attacked not unreasonable or otherwise unlawful, complaint dismissed. California Rand Silver v. C. & W. Ry., 93 I. C. C. 197.

(i) Complainant attacked commodity rates charged on agricultural implement, sleigh, and vehicle material, from Fort Smith, Ark., after March 18, 1922 to Boise, Ida., and other points in Idaho, Oregon and Montana as unreasonable and unduly prejudicial. The basis of the complaint is defendants failure to accord Fort Smith the Group 1, Mississippi river, basis of rates which applies from Alton East St. Louis and Quincy, Ill., Burlington, Fort Madison, Keokuk and Montrose, Iowa, and Canton, Hannibal, Louisiana and St. Louis, Mo. To Boise the present commodity rate from these points is 91.5c, representing a rate of $1.015 reduced by the general reduction of 1922. HELD, rate attacked unreasonable to extent it exceeded the rate from St. Louis, reparation awarded. Fort Smith Rim & Bow Co. v. K. C. S. Ry., 95 I. C. C. 1.

(j) Complainant attacked combina-

tion rates charged on lumber in carloads from Knoxo and Kokomo, Miss., to Illinois, Indiana, Michigan, Kentucky, Ohio and Missouri as unjust and unreasonable to extent they exceeded rates from Fernwood, Tylerton and Foxworth, Miss. Knoxo and Kokomo are small lumber producing points on the F. C. & G., and east and west short line in south central Mississippi connecting with the north and south lines of the I. C., at Fernwood, the N. O. G. N., at Tylertown and Foxworth and the G. & S. I., at Columbia, Miss. The present rates from Knoxo and Kokomo are and since Feb. 1, 1924 have been the same as the rates from the junctions. Prior to that time the rates from these points were arbitraries over the junctions. HELD, rates attacked not unreasonable, complaint dismissed. Stanley Lumber Co. v. A. & V. Ry., 100 I. C. C. 249.

(k) Complainant attacked combination commodity rates charged on coal, carloads, from mines on the Indian Creek Valley Ry., which connects with the B. & O., at Indian Creek, Pa., to eastern and New England destinations as unduly prejudicial. Rates not in excess of those maintained from mines in the Meyersdale region are asked. In 30 I. C. C. 32 the Commission approved rates from points on the Valley Ry. to eastern destinations, based on a differential of 10c over the Meyersdale group rates. In 81 I. C. C. 251 the Commission found that the rates from Melcroft to Baltimore, Philadelphia and other points on the B. & O., taking the same rates, for local track delivery, and to Baltimore for transshipment to barges for local harbor delivery as unduly prejudicial to extent they exceeded rates on like traffic from the Meyersdale region of that carrier to the same destinations. In complying with the order the Valley Ry. and B. & O., the only defendants, established the Meyersdale basis from all points on the initial line referred to and the rates herein attacked are uniformly 10c higher than the Meyersdale group rate, except where such group rate is observed on traffic delivered on B. & O., rails. The record establishes that the rates from the Cumberland-Piedmont and Meyersdale regions to the destinations here considered are depressed to meet the rates applying over the Pennsylvania and its connection from the Clearfield region; also that while coal operations on the Valley Ry. are of comparatively recent origin the present rate relationships are between the various regions are of long standing. HELD, adjustment attacked not unduly prejudicial and complaint will be dismissed. Indian Creek Coal & Coke Co. v. A. C. R. R., 100 I. C. C. 375.

(l) The commission has consistently refused to extend the rate-breaking system to communities which alleged that they were unduly prejudiced because of rate breaks at other points with which they competed. Sioux City Terminal Elevator Co., 23 I. C. C. 98, 27 I. C. C. 457, and other cited cases. Mississippi R. R. Comm. v. A. & V., 93 I. C. C. 435, 444.

(m) Contention of defendants that basis of making rates upon combination should in no event be disturbed not sustained. Indiana State Chamber of Commerce v. A., T. & S. F., 96 I. C. C. 485, 495.

(n) Complainant attacked rates on bar iron, including angle and channel bar, carloads and less carloads, from Knoxville, Tenn., to destinations on the L. & N., in Louisville and Kentucky, and to Ohio and Mississippi river crossings and points in central territory as unreasonable, unjustly discriminatory, unduly prejudicial and in violation of the fourth section. Complainant attacked as unreasonable, unjustly discriminatory and unduly prejudicial rates on bar iron, carloads, from Knoxville to points on the Ohio & Kentucky Ry. in Kentucky. The bar iron that complainant manufactures is unfinished or semifinished and is used mostly in the manufacture of wagons, agricultural implements and the like. It moves in carloads at commodity rates applying on special iron, which includes a large variety of rough semifinished articles. The separation and rerating of articles included in the special iron list, if it properly should be done at all, presents many intricate and difficult problems which deserve much more adequate study and consideration than is possible upon present record. Less carloads ordinarily move at sixth class rates. Class rates from and to the points under consideration will be determined in 100 I. C. C. 513 and when they become effective will adequately dispose of the present controversy in so far as less carload rates are concerned. On July 1, 1923 there was a general readjustment of rates on manufactured iron and steel

articles between points in the south to bring about an adjustment on fourth section principles. Prior to that time the rates reflected the well known basing point system under which radical departures from the long and short-haul provisions of the fourth section obtained. Prior to July 1, 1923 the Knoxville rates were 17c on bar iron and 21.5c on angle and channel bars to Louisville and Cincinnati. The rates to local and junction points south of the river were much higher in nearly all instances. Under the readjustment of that date the 29c rate established to Louisville and Cincinnati were blanketed back along the L. & N., main line, and on various branches, to within about 100 miles of Knoxville, and then graded down. It is this situation which gives rise to complainants dissatisfaction with the carload rates to the L. & N., local points. L. & N., now proposed a new adjustment grading up northbound from Knoxville so as to reach the 29c rate at a distance of about 200 miles, which rate is blanketed the balance of the way to the river, with corresponding readjustment of branch line rates. HELD, rates attacked, when modified in accordance with defendants proposals, will not be unreasonable, unjustly discriminatory or unduly prejudical. Shipments in 16247 moved over L. & N., to O. & K. Jct., Ky., and O. & K. Ry. beyond, charged 65.5c made up of 29c to Winchester, Ky., and 36.5c beyond. The O. & K., is a so called short line road operating in the eastern mountains of Kentucky. Most of its traffic consists of coal and forest products which it originates. It publishes no interstate rates from O. & K. Jct., but maintains a local intrastate scale from that point under which bar iron, in carloads, may move to Vancleave and Wilhurst on a rate of 14.5c. Vanclave is 8 miles from the Junction and Wilhurst 1 mile farther. The haul from Knoxville to the junction is 250 miles. Winchester is 196 miles from Knoxville. On Feb. 5, 1925 after this complaint was filed, reductions were made to O. & K., stations of which the rate to two points which these shipments moved is typical. This rate is 46.5c based on a scale proposed by the fourth section committee of the southern carriers, which would produce a rate of 32c for the haul to O. & K. Jct., plus the O. & K., local intrastate rate of 14.5c beyond HELD, present rates not unreasonable but rates charged unreasonable to extent they exceed 46.5c reparation awarded. Knoxville Iron Co. v. L. & N. R. R., 107 I. C. C. 627.

(o) The policy of the southwestern carriers serving New Orleans, La., has been generally speaking, to apply the Galveston, Tex., rates to New Orleans on traffic moving from or to all points west of the Mississippi River, except points in Texas south of a certain line. Such an adjustment necessarily disregards distance and commercial instead of natural advantages control. The commission has consistently refused to condemn such an adjustment where it is shown to serve the best interests of the public, but where, as here, it builds up one port at the expense of another equally favored by natural advantages from the origin territory here considered, line must be found beyond which distance may not be disregarded. Galveston Commercial Asso. v. G. H. & S. A. Ry. Co., 100 I. C. C. 110, 121, 122.

(p) Proposed increased basing rates on paving brick from Jacksonville, Fla., to points in Florida, on traffic originating at Robbins, Tenn., resulting in rates higher than rates between same points on shipments originating at other southern producing points, higher than rates for corresponding distances from Jacksonville to points in Florida on lines of Florida East Coast Ry., and higher than rates on other articles included in uniform brick list, in violation of the order in National Paving Brick Mfrs. Asso., 68 I. C. C. 213, found not justified. Basing Rates on Paving Brick, 100 I. C. C. 390.

(q) Contention that basing rates to and from Jacksonville, Fla., on traffic to Florida are, in effect, through rates which must be considered in their entirety, and that, so considered reduction in the rate north of Jacksonville, coupled with proposed increase in rates south of that point, results in no change in the through rates, not sustained, only the rates south of Jacksonville being in issue. Commission is continually dealing with proportional rates without reference to other factors used in constructing through rates. Basing Rates on Paving Brick, 100 I. C. C. 390, 392.

(r) It is significant that many of the commission's early cases originated in the South, and that they resulted in a series of Supreme Court decisions with respect to the provision of the fourth

section which prohibits, with certain qualifications, a higher charge for a shorter than for a longer distance over same line or route in same direction. These cases made it clear that the commission could not deal effectively with the basing-point system so long as the words "under substantially similar circumstances and conditions" remained in that section. Southern Class Rate Investigation, 100 I. C. C. 513, 521.

(s) The commission has condemned, expressly or in effect, in several recent important rate cases cited, the practice of basing interterritorial rates upon the combination of local rates to and from border points. Southern Class Rate Investigation, 100 I. C. C. 513, 661.

(t) Rates on grain, grain products, hay and straw, and related articles taking same rates or rates basing thereon between Oklahoma, on one hand, and Kansas and Missouri, on the other hand, found unreasonable, to extent they exceeded rates made by applying distance scales set forth herein to short-route distances. Reasonable maximum rates prescribed for future. Oklahoma Corp. Comm. v. A. & S. Ry., 101 I. C. C. 116.

(u) Rates on grain, grain products, hay and straw, and related articles taking same rates, or rates basing thereon, from Oklahoma to specifically designated Texas territory, found unreasonable to extent they exceeded distance scale of rates set forth herein, with the application of certain differentials to that portion of Texas not herein otherwise provided for, including a designated section of Texas Panhandle. This distance scale of rates and differentials is prescribed as reasonable for future. Oklahoma Corp. Comm. v. A. & S. Ry., 101 I. C. C. 116.

(ua) It is more desirable to operate under a rate break than under transit; but rate breaks do not necessarily constitute undue preference of the market enjoying such an adjustment nor subject transit points to undue prejudice. See 78 I. C. C. 209 and cases cited at page 213 thereof. Kansas City Board of Trade v. A. & W. Ry., 102 I. C. C. 285, 301.

(v) Complainant attacked combination rates charged on fish scrap, carloads, from Port St. Joe, Fla., to southern, central and trunk line territories as unreasonable, unjustly discriminatory and unduly prejudicial. The report will deal only with unjust discrimination and undue prejudice. Commodity is shipped in bags and moves generally in carloads, and is used principally as an ingredient in the manufacture of commercial fertilizer. Port St. Joe is served by the A. N. This line connects, at River Junction, Fla., with the L. & N., S. A. L., and A. C. L. Rates complained of are constructed by adding to the rates from River Junction an arbitrary or the local rate of the A. N., to that point. To southern territory the rates are about on the scale prescribed in 50 I. C. C. 34. HELD, rates attacked not unjustly discriminatory or unduly prejudicial complaint dismissed. Southern Menhaden Corp. v. A. N. R. R. 112 I. C. C. 108.

BILLS OF LADING

I. CONTROL AND REGULATION.
- §1. Jurisdiction of Commission.
- §1a. Federal legislation.
- §2. Recommendation of certain forms.

II. DUTY OF CARRIER TO ISSUE.
- §2½. In general.
- §3. Rail-and-water transportation.
- §4. At transit points.
- §5. One lading for several shipments.

III. CONSTRUCTION.
- §6. In general.
- §7. Statement of weight.
- §8. Statement of shipping point.
- §9. Conflicting provisions.
  - (½) In general.
  - (1) Between rate and route.
  - (2) With tariff.
  - (3) With shipping ticket.
- §9½. Inspection.
- §10. Route designated by shipper.

IV. LIMITATION OF LIABILITY.
- §11. In general.
- §11½. Miscellaneous provisions.

V. ORDER-NOTIFY SHIPMENTS.
- §12. In general.

VI. REPARATION AND DAMAGES.
- §13. In general.

§14. Correction of bill of lading.

CROSS REFERENCES

See Classification §16 (q); Export Rates and Facilities II; Water Carriers §5½.

I. CONTROL AND REGULATION.

See Control and Regulation.

§2. Recommendation of Certain Forms.

(a) Failure of carriers to have a provision in bill of lading whereby all freight and other charges were to be collected from consignee without recourse to consignor, found not an unreasonable practice in violation of section 1 of the act. Carriers are obliged to collect and shippers to pay the legally published charges, and it is not within commission's purview to pass upon question of liability of consignors or consignees therefor. See Conf. Ruling 314; Wilson case, 50 I. C. C. 571, and American Smelting & Refining Co., 62 I. C. C. 583, 589. Wuille & Co. v. M. H. R. R., 92 I. C. C. 299.

II. DUTY OF CARRIER TO ISSUE.

§2½. In General.

See Through Routes and Joint Rates §12.

(a) The obligation lawfully rests upon the carrier's agent to refrain from executing a bill of lading which contains provisions that can not lawfully be complied with or provisions which are contradictory and therefore impossible of execution. Clark Lbr. Co. v. A., B. & A., 102 I. C. C. 252, 254.

(b) The freight rule as filed with the Interstate Commerce Commission, offered in evidence by the plaintiff carrier in connection with the lawful posted rates, provided that "when freight is loaded in a car by shipper and such car is not fully loaded but is tendered as a carload shipment, and the car is forwarded without other freight therein, the shipment will be charged for as a carload." The consignee testified that the car contained only his goods. The bill of lading described the goods shipped as "Car H. H. goods—shippers load & count—weight (subject to correction) 12,000." While it does not thus necessarily appear from the bill of lading itself that the goods were tendered and shipped as a carload lot at the rate applicable thereto, and parol evidence by the carrier and the shipper was admissible to establish the actual agreement with reference to the class of shipment and the actual weight of the goods shipped, nevertheless the carrier's evidence was such as to establish its case as laid by the petition, and it was error to direct a verdict for the defendant. The issue raised by the plaintiff carrier's evidence on the one hand, and the defendant's evidence on the other hand to effect that the defendant had asked for the "cheapest rate" as between the carload lot and the less than carload lot, taken with his rather indefinite evidence to support his contention that the actual weight of the shipment was only 4,200 pounds, should have been submitted to the jury. Western & A. R. R. v. Legg (Ga., 1924), 123 S. E. 31.

III. CONSTRUCTION.

§6. In general.

See Loss and Damage §2¼.

(a) To ascertain what contract was entered into, bill of lading must be examined, bearing in mind that it serves both as a receipt and as a contract. Louisville & N. R. Co. v. Central Iron & Coal Co., 44 Sup. Ct. 441.

(b) Shipment of lumber from Picayune, Miss., to the Thirty-seventh Street Station of the Pennsylvania New York City, was diverted under authority of the commission's service order No. 1, to the Twenty-seventh Street station of the Lehigh Valley. Delivering carrier endeavored unsuccessfully to notify shipper and finally shipment was sold to pay accrued charges. Under all the circumstances, the Twenty-seventh Street station was the practical point of delivery and changes were made in routing rather than destination, the real difficulty arising from failure of shipper to receive notice, due primarily to the fact that he was shown as both consignor and consignee and could not be reached by mail at origin or destination. National Lumber Co. v. N. O. & N. E. R. R. Co., 100 I. C. C. 334, 336.

(c) Shipment of scrap iron, originally billed as such but assessed the iron bar rate due to change in bills of lading made by inspector of the Southern Weighing & Inspection Bureau, found overcharged. Burden of proof to justify change in billing rested upon defend-

ants and vague evidence of inspector as to condition of material found insufficient to justify change in billing. Refund directed. Knight Iron & Metal Co. v. G. M. & N., 101 I. C. C., 623.

(d) Where a bill of lading is accepted and signed by the representative of complainant on latter's behalf it is binding on the parties. See Unrep. Op. 2224; 52 I. C. C. 671, 681; and 82 Fed. 681. Crown Cork & Seal Co. v. S. P. Co., 102 I. C. C. 331, 332.

ALL OTHER CITATIONS

Mifflin Hood Brick Co. v. Director General, as Agent, 88 I. C. C. 205.

§9. Conflicting Provisions.

(1) Between Rate and Route.

(a) Following its usual practice, initial carrier forwarded shipments upon receipt of instructions by telephone from shipper, confirmed by written instructions before shipments left its possession, without issuance of bills of lading. Instructions called for certain routing with specific rate not available over such routes; carrier forwarding as routed and assessing higher rate applicable. HELD: In view of practice to initial line, principle of Conf. Ruling 474 (c) as to duty of initial carrier when rate and routing inconsistent with each other are inserted by shipper in bill of lading, is equally applicable here. Shipments found misrouted, and reparation awarded to basis of rate applicable over route specified by shipper. Brownell Improvement Co. v. B. & O. C. T. R. R. Co., 85 I. C. C. 461.

ALL OTHER CITATIONS

Howe v. C. & N. W. Ry. Co., 85 I. C. C. 760.

§10. Route Designated by Shipper.

See Routing and Misrouting §7.

(a) Complainant attacked commodity rate charged of $1 on a car of potatoes shipped Nov. 15, 1921 from Sears, Mich., to Norton, Va., as unreasonable and unduly prejudicial to extent it exceeded 75.5c, the applicable rate over route specified in the bill of lading. Bill of lading showed routing N. & W., which carried the lower rate. It actually moved via Cumberland Gap, Tenn., and L. & N. Defendant claimed he was orally instructed by complainant to route car via route it moved but complainant denied it. This is essentially a question of fact as to what instructions actually were given the railroad agent. In view of the conflicting statements, which are irreconcilable, the specifications on the bill of lading must control. HELD, shipment misrouted, reparation awarded. McClintick & Company v. P. M. Ry., 93 I. C. C. 69.

(b) Bill of lading was written, at request of complainant's agent, by station agent of originating line, and showed routing via "N. & W." Carrier's agent asserted that complainant's agent orally requested routing via a higher-rated route, that routing "N. & W." was erroneously inserted by him on bill of lading, and that car was waybilled according to oral instructions. Complainant's agent denies specifying any other routing than that shown on bill of lading. HELD, in view of conflicting statements, which are irreconcilable, specifications on bill of lading must control. Shipment found misrouted and reparation awarded. McClintick & Co. v. P. M., 93 I. C. C. 69.

(c) Consignors specified certain carriers in bills of lading without stating that such specification was with reference merely to delivery. In connection with originating lines, carriers so named formed a through route to destination. Contention that initial carrier should have sent shipments over cheaper intrastate routes. HELD, where consignor specifies routing by naming a carrier which, in connection with originating line, forms a through route to destination, initial carrier can not be charged with misrouting if it bills shipment over that route instead of selecting a cheaper route in which those carriers participate but with a third carrier intervening. It was customary to use interstate rather than intrastate routes necessitating use of a third carrier, and carriers were justified in assuming movement over usual route was desired. Shipments found not misrouted. Wright & Wimmer v. C., T. H. & S. E., 93 I. C. C. 183.

IV. LIMITATION OF LIABILITY.

See Limitation of Liability.

§11. In General.

(a) Complainant attacked the failure of defendant to have a provision in the bill of lading whereby complainant, as consignor could have absolved itself from liability for the transportation

charges on four cars of boxed apples shipped between Nov. 1921 and January 1922 from Oregon and Washington to Laredo, Tex., as an unreasonable practice in violation of section 1. Complainant specified routing, shipments being consigned to complainant, order notify Morris Novich, and there was stamped on the bills of lading "Deliver only upon surrender of shippers written order without surrender bill of lading". On the dates on which the respective cars were shipped complainant wrote the destination carrier as follows: "Upon payment of all freight and other charges this is your authority to deliver car containing apples to Morris Novich Company without surrender of original bill of lading." Freight charges were collected from Morris Novich based upon rate of $1.50, but subsequently discovered that the applicable rates were $1.645 from Hood River and White Salmon and $1.725 from Odell. Norvich referred defendants to complainants, which was billed for outstanding undercharges amounting to $280.18. By a subsequent rule carriers consented in certain instances to forego their common law right to hold the consignor primarily liable for the payment of freight charges. No good reason appears of record why this specific provision should be made retroactive. HELD, complaint dismissed. Wuille & Company v. M. H. R. R., 92 I. C. C. 299.

§11½. Miscellaneous Provisions.

(a) Stipulation indorsed on bill of lading covering cotton shipment, in words "to be compressed in transit," HELD void as to intrastate shipment, in view of Code 1907, §5531, and void as to interstate shipment, in view of U. S. Comp. St. §8597, as attempted discrimination in favor of particular shipper. Louisville & N. R. Co. v. A. H. Cleaver & Co. (Ala., 1924) 101 So. 597 (State Shipment).

V. ORDER—NOTIFY SHIPMENTS.

See Demurrage §7.

§12. In General.

ALL CITATIONS

U. S. Steel Products Co. v. Director General, as Agent, 88 I. C. C. 57.

VI. REPARATION AND DAMAGE.

See Loss and Damage; Reparation.

§13. In General.

(a) Conference ruling 474 (c) provides that if a carrier accepts a bill of lading containing provisions which are conflicting or impossible of execution it is liable for all damage directly flowing from that act. Such rule found applicable in connection with reconsigning orders where carriers, acting as agents or director general, err in accepting instructions to reconsign to embargoed points. Empire Lumber Co. v. Director General, 88 I. C. C. 425.

BLANKET RATES

I. CONTROL AND REGULATION.
§1. Jurisdiction of Commission.
II. LEGALITY OF GROUP RATES.
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CROSS REFERENCES

See Classification §20; Differentials; Discrimination; Distance Rates; Express Companies §11 (4); Long and Short Hauls; Percentage Rates; Switch Tracks and Switching IV; Through Routes and Joint Rates.

I. CONTROL AND REGULATION.

See Control and Regulation.

§1. Jurisdiction of Commission.

See Jurisdiction of Commission.

(a) An expressed desire of shippers and carriers for the continuance of a group adjustment does not relieve commission of duty of considering whether its continuance would result in unjust and unreasonable rates or in undue prejudice. C., H. & D. Ry. Co. v. I. C. C., 206 U. S. 142. Lime from Eastern Trunk Line Points, 93 I. C. C. 617, 632.

II. LEGALITY OF GROUP RATES.

See Legality of Rates.

§2. In General.

(a) Where a commodity moves in considerable volume and carriers prefer to move them on class rates instead of providing commodity rates, they must provide an application of class rates that is reasonable and non-prejudicial in view of all circumstances and conditions surrounding the traffic. The class-rate basis can not be justified by a mere showing that rates are group rates, when the group is extensive and the particular commodity considered moves from only one point in the group, compensation being with a point a few miles away and outside of that group. Virginia Can Co. v. A. & V. Ry. Co., 89 I. C. C. 558, 564.

(b) The Commission has approved the group or blanket system of rate making, particularly when applied to limited areas containing natural resources. Hebard Cypress Co. v. A. & R. R. R., 91 I. C. C. 343, 348.

(c) The expressed desire of the eastern producers and of the respondents for the continuance of a grouping does not relieve the Commission of the duty of considering whether its continuance would result in unjust and unreasonable rates or in undue prejudice. Lime from eastern trunk line points, 93 I. C. C. 617, 632.

(de) The Commission has consistently refused to condemn a group adjustment where it is shown to serve the best interests of the public but where it builds up one port at the expense of another equally favored by natural advantages from origin territory, a line must be found beyond which distance may not be disregarded. Galveston Commercial Asso. v. G. H. & S. A. Ry., 100 I. C. C. 110, 121.

(f) Grouping is generally more justifiable and has been more extensively employed in making rates on export and import traffic than on domestic traffic. Galveston Commercial Asso. v. G. H. & S. A. Ry., 100 I. C. C. 110, 122.

(gh) The Commission has often approved blanket or group adjustments especially where all industries in the district are included with the group. Somerville Iron Works v. C. R. R. of N. J., 101 I. C. C. 683, 686.

(i) Reasons for the original establishment of the Texas common-point blanket are well known, and in the days of unlimited carrier competition may have been entirely sufficient to warrant its establishment; but under the minimum and maximum rate powers which have since been lodged with the commission, and in the absence of forceful water competition through the Gulf ports, affecting many of the commodities as to which the blanket still prevails, the continuance of the Texas common-point grouping is no longer warranted. Oklahoma Corp. Commission v. A. & S. Ry. Co., 98 I. C. C. 183, 213.

(j) The commission has repeatedly approved blanketing of rates at both origin and destination points where such plan met requirements of commercial conditions and did not result in undue prejudice, but the extensive grouping of rates in the Southwest under the plan proposed in instant case would result in prejudice at both origin and destination points because of severe rate jumps from one group to another, particularly for the shorter hauls, and can not be approved. However, points in destination territory beyond the Southwest may be grouped in lieu of publishing rates based strictly upon distance scales herein prescribed, provided that rates are published in such manner as to produce sub-

stantially same revenue as would result from strict application of the scales. Furthermore, if shippers and carriers can agree upon a plan of grouping points of origin in the Southwest, the commission will interpose no objection to publication of rates subject to last-mentioned condition. Oklahoma Corp. Commission v. A. & S. Ry. Co., 98 I. C. C. 183, 251.

(k) Respondents proposed to increase the rates on salt, carloads, from Ohio producing points to Kansas, Minnesota, southern Missouri, Nebraska, other than Missouri river points, North Dakota, South Dakota, Colorado, Montana, New Mexico and Wyoming in the amount of 2c over the rates from Detroit, Mich. Effective May 23, 1925 respondents published certain rates on salt from Ohio and Michigan points to points in western trunk line territory purporting to be in compliance with 92 I. C. C. 388. Before the tariffs became effective respondents discovered that the rates from Ohio points had been made the same as those from eastern Michigan to all destinations, whereas it was not intended to make the rates the same to destinations west of the Missouri river. Considering the wide area of salt production and the influence which keen competition has had upon the rate structure, it is reasonably certain that reductions in the rates from Ohio producing points to the territory in question would give rise to demands for readjustments elsewhere. Respondents do not here propose a new adjustment of rates, but simply to restore the relationship which existed prior to May 23, 1925. The present record does not establish the impropriety of the proposal. HELD, schedules justified. Salt to western trunk line territory 104 I. C. C. 101.

(l) Group rates are largely the result of voluntary action on the part of the carriers serving the group points in disregarding, for competitive reasons, the element of distance. The Commission can not compel them to disregard distance unless in their rate adjustments they commit some violation of the act. Louisville Cement Co. v. Southern Ry. 104 I. C. C. 455, 458.

(m) There are limits of reasonableness in making rates which admit of a certain degree of flexibility, and blanket rates or groups are not unlawful provided they are well balanced and the advantages and disadvantages fairly distributed. Presumably a group long maintained is fair and should not be disrupted unless there is some very good reasons for doing so. Missouri Portland Cement Co. v. A., T. & S. F., 101 I. C. C. 454, 463.

(n) Where rates are blanketed over large areas there must be some hauls which are materially longer than others, or which are attended by more difficult and more costly operating conditions. Group rates must be judged by average conditions. Lumber from Pacific coast points, 109 I. C. C. 140, 142.

ALL OTHER CITATIONS

Cotton Mfgrs. Association of S. C. v. C. C. & O. Ry., 85 I. C. C. 131.

§3. Justification.

(a) There is no hard and fast rule by which points of origin or destination are grouped, and each case must be considered in the light of its particular circumstances. The Commission has recognized some groups as defensible or even advisable; in fact, in some instances the Commission has prescribed grouping of points. Measured merely by the relative transportation services rendered, it is obvious that as between the nearest and the farthest points in a group an equality of rates may present an aspect of prejudice and preference in some degree, but to fall within the ban of the act the prejudice and preference must be found to be undue. St. Louis Chamber of Commerce v. A. & V. Ry., 98 I. C. C. 29, 32.

(b) The grouping of rates over extensive areas is particularly adapted to the lumber industry, and so long as this method of constructing rates on lumber from points in the southeastern yellow pine belt is adhered to the Commission shall not, without convincing proof therefor, disturb or disrupt one group by taking the near points out of it and making them the far points in another lower rated group. Northeast Mississippi Traffic Bureau v. A. & V. Ry. 102 I. C. C. 611, 616.

§4. Public Benefit.

See Evidence §44½.

(a) The benefits derived by the public from extensive grouping of coal mines are well known and are generally much greater than benefits derived from des-

tination grouping. Southwestern Interstate Coal Operators' Asso. v. A. W. Ry. Co. 89 I. C. C. 73, 85.

(b) Blanket or group rates are often of great advantage to the public, without serious injustice to any interest, although there is of necessity more or less disregard of distance and varying degrees of any equality. The Commission has frequently approved the blanketing of rates at both origin and destination points where the group plan has met the requirements of commercial conditions and has not resulted in undue prejudice. Where there is a limited producing area and a large consuming territory, group rates promote competition and the freedom of commerce. Oklahoma Corporation Commission v. A. & S. Ry., 98 I. C. C. 183, 251.

(c) Where a group adjustment is one of long standing, and is generally satisfactory to great majority of shippers of same commodity in same general territory, it may not be lightly set aside at behest of an individual shipper. Hebard Cypress Co. v. A. & R. R. R. Co., 91 I. C. C. 343, 351, 352.

(d) An expressed desire of shippers and carriers for continuance of a group adjustment does not relieve commission of duty of considering whether its continuance would result in unjust and unreasonable rates or in undue prejudice. C., H. & D. Ry. Co. v. I. C. C., 206 U. S. 142. Lime from Eastern Trunk Line Points, 93 I. C. C. 617, 632.

(e) There is no hard and fast rule by which points of origin or destination are grouped, and each case must be considered in the light of its particular circumstances. The commission has recognized some groups as defensible or even advisable; in some cases it has prescribed grouping of points. Measured merely by the relative transportation services rendered, it is obvious that as between the nearest and the farthest points in a group an equality of rates may present an aspect of preference and prejudice in some degree, but to fall within the ban of the act, the preference and prejudice must be found to be undue. St. Louis Chamber of Commerce v. A. & V. Ry. Co., 98 I. C. C. 29, 32.

III. EXTENSION OF ZONE.

§6. In General.

(a) Respondents proposed to increase their interstate rates on boots and shoes from various New York points to trunk line and New England territories. At present the Erie publishes any quantity commodity rates on boots and shoes from the Binghamton district to various points in trunk line territory, and both the Erie and D. L. & W., publish carload commodity rates to Boston, Mass., and Providence, R. I. It is not proposed to cancel these any quantity commodity rates and to apply class rates in lieu thereof to all points except, to New York City for export, and to West End for storage, to which points it is proposed to continue in effect the present carload commodity rates only. Under the proposed adjustment the first class rates will become generally applicable on less carload traffic, and the second class rates on carload traffic, resulting substantially increases to all points. The principal reason for the cancellation is that the New England lines, as far back as 1922, requested that this be done, while the cancellation of the commodity rate to such points as Philadelphia, Richmond and Norfolk is proposed in order to satisfy the Baltimore complaint and remove the discrimination complained of, and no effort was otherwise made to justify the proposed rates. The fact that rates have been so long in effect, and have evidently been satisfactory to carriers, and because their cancellation will affect manufacturers whose production is of a known magnitude the cancellation of the commodity rates, and the application of class rates in lieu thereof, can not be justified by the reasons shown, in view of the admittedly heavy movement under them. HELD, schedules not justified. Boots and shoes from New York points, 91 I. C. C. 591.

(b) Complainant attacked commodity rates of 59.5c charged between August 10 and Sept. 22, 1921 on numerous tank carloads of crude and fuel oils shipped from Gainesville, Tex., to Miami, Ariz., as unreasonable. Miami is on the A. E., 1,013 miles from Gainesville via the short line route of the G. C. & S. F., to Fort Worth, Tex., the T. & P., to El Paso, Tex., S. P., to Bowie, Tex., and A. E., beyond, charged commodity rate of 59.5c. Effective Nov. 15, 1921 that rate was reduced to 50c. The primary reason actuating complainant in filing this complaint appears to be the fact that the 50c rate was established on August 10,

1921 from 23 south Texas points to Miami and was not extended to north Texas producing points until Nov. 15. HELD, rate attacked not unreasonable, complaint dismissed. Miami Copper Co. v. A. E. R. R., 93 I. C. C. 221.

(c) Complainant attacked fifth class rates charged on gasoline, in tank cars, from Hubball, W. Va., and Alkol, W. Va., to Point Breeze, Philadelphia, between Oct. 1921 and July 1923 as unreasonable. Hubball is on the C. & O., 24 miles south of Barboursville, W. Va., and Alkol 30.8 miles south of St. Albans, W. Va. Charged from Hubball fifth class 61c prior to July 1, 1922 and 54.5c thereafter. Charged from Alkol commodity rates of 49c prior to Jan. 1, 1922, 48c from that date to July 1, 1922 and 47c thereafter. Complainant requested the establishment of commodity rates from Hubball and Alkol prior to the movement and apparently these rates would have been established at a much earlier date except for the congestion in defendants general offices. HELD, rate attacked unreasonable to extent they exceeded 45c and 43.5c, reparation awarded. Atlantic Refining Co. v. C. & O. Ry., 95 I. C. C. 629.

(d) D. & R. G. W., respondent, and other carriers proposed changes in the rates on potatoes and onions, carloads, from western Colorado, Utah, and Wyoming to destinations in California. Respondents justification of the proposed rates rests largely upon its general practice of grouping points on its main and branch lines in western Colorado in making rates on products of the soil and products of the orchard. Respondent states that the proposed rates are compensatory, and while it does not admit that the present rates are unreasonably high, it states that there can be no substantial movement under them. It feels that in the circumstances the rates proposed are fair and would correct what it considers to be an unduly prejudicial adjustment against western Colorado producers as compared with the rates enjoyed by producers in Oregon and Idaho. HELD, schedules justified. Potatoes and onions to California, 100 I. C. C. 49.

(e) Relative distances alone are not controlling. Commercial competition and the interests of consumers are also pertinent considerations. Carriers may not disregard all differences in distances. Groups can not be extended indefinitely, and the discrimination inherent in all group adjustments must not be undue. Groups long maintained, however, are presumably fair and are not to be disrupted unless substantial justice clearly requires it. Dissatisfied products deprived of the benefit of their proximity to common markets must show that they are actually injured and by an unjust and unlawful discrimination. Oakland Chamber of Commerce v. S. P. Co., 100 I. C. C. 55, 62.

§8. Proximity to Established Group.

(a) Fifth-class rates assessed on fresh apples from Fort Sumner, N. Mex., to Omaha, Nebr., found unreasonable to extent they exceeded lower commodity rate contemporaneously in effect from the Roswell group, which lower rate was subsequently extended to Fort Sumner. Reparation awarded. Gilinsky Fruit Co. v. Director General, 92 I. C. C. 242.

(b) The relatively wide disparity, distance considered, between the rates from or to the farthest distant point in one group or zone, on the one hand, and the rates from or to the nearest point in the zone or group just beyond, on the other, is a typical feature of a zone or group adjustment. There is no showing that the zone or group adjustments are improper in the instant case. Prince & Co. v. S. P. Co., 98 I. C. C. 615, 617.

§9. Grading Rates.

See Distance Rates.

(a) Complainant attacked commodity rates charged on potatoes, carloads, from Naples and Lily, S. D., to points in Iowa as excessive, unjust and unreasonable to extent they exceed 39c. A rate of 34c applies from the extreme eastern part including a few stations in South Dakota. Just west of this 34c group there is a narrow blanket which a rate of 36c applies. Then by a graduation of 37, 38, 39, and 40c the origin territory is graded as far west as a line running north and south through Mitchell, Redfield and Aberdeen, S. D. Lily and Naples are within the 39c group. It is customary to apply specific commodity rates on potatoes in carloads, from this territory somewhat lower than the prevailing class C rates. The question of a reduction in the rates had previously been taken up with the St. Paul line, and, as a result the 39c rate was established

to Cedar Rapids. At the time of movement as at present the St. Paul participated in other joint rates from South Dakota with other socalled short lines and such rates were the same as in effect to and from points on its own line in the same territory. Two shipments were consigned to points on the St. Paul and one to a point on the Cedar Rapids and Iowa City. This latter point, under the ordinary basis of class rates, takes the same rates from South Dakota as do points on the St. Paul in the same vicinity. Because of the fact, however, that the destinations involved are not strictly intermediate with Illinois points taking the Chicago group rate, the Chicago rate does not apply as maximum at these points, but the higher class C rate applies. HELD, rate to Cedar Rapids, DeWitt and Coralville, are for future unreasonable to extent they exceed 39c, reparation awarded. Naples Potato Growers Asso. v. C. M. & St. P. Ry., 102 I. C. C. 649.

§10. Differentials.

See Differentials.

(a) Complainant attacked as unreasonable and unduly prejudicial rates on grain and grain products from Kansas City, Mo., and Missouri to Helena, Ark. Original report 89 I. C. C. 405. Upon petition of defendant order modified. HELD, that the maintenance of or participation in by the M. P., over its west side route of rates on grain and grain products from Kansas City, Mo., from points in Kansas from which the rates make on Kansas City Combination, and from points in Missouri from which rates are made with relation to Kansas City to Helena more than 2.5c on wheat and 1.5c on coarse grains higher, and from points in Nebraska and Iowa, and Missouri except St. Louis, from which rates base on St. Louis, to Helena more than 6c on wheat and 4.5c on coarse grains higher, than the rates to Memphis are unduly prejudicial to Helena. Helena Traffic Bureau v. M. P. R. R., 93 I. C. C. 456.

(b) Complainant attacked commodity rates charged on chatts, from Joplin-Galena mining district in Jasper County, Mo., and Cherokee County, Kas., to destinations in Crawford County, Kas., as unreasonable. The Frisco and Joplin and Pittsburgh published rates on the basis of the existing Kansas intrastate rates. The M. P., declined to do so. Chatts is a cheap commodity and necessarily can move only on low rates. HELD, rates attacked from Joplin, Webb City and Oronogo to Crawford County on M. P., from 48 to 69 miles distant from Joplin over the M. P., are unreasonable to extent they exceeded 4c to those destinations not over 60 miles distant from Joplin over defendants line and 5c to those destinations over 60 miles but not over 70 miles distant from Joplin over defendants line. Reparation denied. Crawford County Commissioners v. St. L. S. F. Ry., 93 I. C. C. 502.

(c) Complainant attacked commodity rates on canned goods, from Wisconsin points and St. Paul, Minn., to Mississippi Valley, as unjust, unreasonable, unjustly discriminatory, unduly prejudicial and preferential. Memphis, Tenn., Helena, Ark., Greenville, Vicksburg and Natchez, Miss., New Orleans, La., Mobile, Ala., and Pensacola, Fla., are representative destinations. Joint rates from Milwaukee territory are about 10c under the lowest combinations and 2 to 3c higher than the rates from Chicago. North and west of this group the joint rates published are based substantially on the lowest combinations with the St. Paul rates as maxima. From points in Wisconsin still farther north no joint rates are published and the lowest combinations apply. Middleton is 6.6 miles west of Madison on the C. M. & St. P., present rates being from 8 to 12c higher than from Madison. HELD, rates from Middleton unreasonable to extent they exceed rates from Madison by more than 2c per 100; that the rates from St. Paul and from points basing on St. Paul are unreasonable to extent they exceed rates which are 5c less than present rate, that rates throughout the balance of the territory not unreasonable or otherwise unlawful, except that where existing joint rates exceed those based upon the lowest combination, using St. Louis, Mo., Milwaukee, Wis., and Chicago and Cairo, Ill., as basing points, are unreasonable to the extent of their excess over such combinations. Carnation Milk Products Co. v. A. & W. Ry. 96 I. C. C. 208.

(d) In 87 I. C. C. 740, the Commission found not justified the proposed revision of rates on naval stores from all producing points in the southeast and Mississippi valley territory to destinations on and beyond the Ohio and Mississippi rivers and to Nashville, Tenn.; and prescribed reasonable rates to representa-

tive destinations from the Jacksonville and New Orleans groups therein described. The A. T. & N., seeks authority to establish on naval stores, carloads, rates from Calvert, Ala., on the trunk line basis, and from local stations on its line between Calvert and York, Ala., rates differentially higher than the trunk line basis in the same amounts as permitted to other short lines in the original report. The line of the A. T. & N., is in the direction of the movement from Calvert to these destinations. Its financial condition is such that it can ill afford either to abandon the revenues from divisions on any traffic it may originate at Calvert, or to sustain the loss in revenues which would result if it met the trunk line basis and maintained no higher rates from intermediate points. HELD, rates on naval stores from points on the A. T. & N., will be reason not exceeding the rates in effect from junction points of that line with the trunk lines by more than 3c on rosin and 6c on turpentine, higher rates to be maintained from local points on its line subject to lowest combinations as maxima. Naval stores from southern points, 96 I. C. C. 417.

(e) Rates on printing paper from Hamilton, Ohio, in Cincinnati, Ohio, rate group, and on strawboard from Peoria, Ill., in Chicago, Ill., rate group, to San Antonio, Tex., found unduly prejudicial as compared with rates from Fox River, Wis., group, and unreasonable to extent they exceeded lower rates subsequently established. Rates from these groups to Texas common points have always been based upon differentials under Fox River rates. Reparation awarded. San Antonio Paper Co. v. C. & A. R. R. Co., 91 I. C. C. 589.

(f) Following Swift Lumber Co., 61 I. C. C. 485, rates on lumber, timber, and other forest products from Frost, Ala., a local point on the Garyville Northern R. R., to destinations in official and western trunk-line territories, and in Oklahoma, Texas, Kentucky, and Tennessee, found unreasonable to extent they exceeded by more than certain differentials the corresponding blanket rates contemporaneously maintained from Livingston and Garyville, La. Reparation awarded. Fleming Bros. v. G. N. R. R., 92 I. C. C. 582.

(g) The commission has repeatedly held that joint-line arbitraries are inconsistent with group or blanket rates, and that even if a two-line haul were more expensive than a one-line haul, the additional expense, if slight, should not be reflected in the rate in a general group adjustment. Orange Chamber of Commerce v. A. & W. Ry. Co., 98 I. C. C. 101, 107.

(h) Through rates on coal from complainants' mines on Kanawha Central in the socalled Kanawha district of West Virginia to interstate destinations on the lines of other defendants between June 24, 1922, and July 13, 1923, found unreasonable to extent they exceed the intrastate rate to Brouland, W. Va., the junction point, plus the district rates contemporaneously applicable beyond. Reparation awarded. Kanawha Black Band Coal Co. v. K. C. Ry. Co., 98 I. C. C. 431.

(i) Complainant attacked commodity rates on paving and roofing materials, carloads, from New Orleans, La., to points in Tex., as unreasonable, unjustly discriminatory, unduly prejudicial and in violation of the fourth section. Group rates apply to such points as Beaumont, Houston and Galveston, the port group. Group rates also apply to Corpus Christi, Devine, San Antonio, San Angelo Big Springs, Fullerville, Acme and most of the other points located between these points and the port group. Rates to points in the territory beyond the common point group, differential territory, are generally made by adding differentials, varying in amounts, to the common point group rates. The rates in issue are those from New Orleans to the common point group and points in differential territory. Paving and roofing materials, carloads, are rated fifth class in western territory, but under exceptions to the western classification these commodities from and to the points under consideration are subject to class C rates. The class C rates from New Orleans to the common point group were and are 79c. Subsequent to the filing of the complaint commodity rates a trifle lower than the class C group rates were established to a few points. The rates from New Orleans to some of the points in the common point group are in excess of the aggregate of intermediate rates to and from the port group. HELD, rates attacked to common point group unreasonable to extent they exceed 50.5c and to differential territory unreasonable to extent they exceed class E differ-

entials beyond, reparation awarded. Cameron Co. v. A. & S. Ry. 102 I. C. C. 31.

(j) Complainant attacked rates charged on pulpwood and cordwood from Virginia, West Virginia, Maryland and District of Columbia to Tyrone and Williamsburg, Pa., Piedmont, W. Va., and Luke, Md., Philadelphia, Wilmington, Del., Elkton, Md., Lock Haven, Roaring Spring and Spring Grove, Pa., and from Ravensford, N. C., to Parsons, W. Va., as unjust and unreasonable. Generally speaking the rates from this origin territory apply from and to specific points. The Pennsylvania by schedules filed to become effective May 24, 1924 proposed to restrict the application of its rate of 12.5c on pulpwood, carloads, from Washington, D. C., to Tyrone, Williamsburg, Lock Haven and Roaring Spring to shipments reaching Washington by water, leaving higher rates in effect on such traffic originating at Washington. Pulpwood, one of the lowest grades of forest products, is the principal raw material used in manufacturing wood pulp, which in turn is converted into paper of various kinds. Approximately 3.5 tons of pulpwood are required to produce a ton of pulp. Pulpwood is not liable to damage and ooes not require expedited movement. Any kind of equipment except flat cars may be used in its transportation, and it is not essential that cars be in first class condition. The various mills when originally established were located, as has been the custom, in close proximity to their pulpwood supply. The continued repletion of that supply in contiguous territory has made it necessary for complainants to look to more remote sources for an adequate supply of wood, the nearest and most practicable, it is claimed, being in the territory from which the rates are herein attacked as unreasonable and from which they now secure a considerable portion of their requirements. The mills at Tyrone, Williamsburg, Lock Haven, Elkton, Roaring Spring, and Philadelphia are served by the Pennsylvania; Luke by the Western Maryland and B. & O.; Spring Grove by the Western Maryland and Pennsylvania; Parsons by the Western Maryland, and Wilmington by the Pennsylvania and the Reading. Under reciprocal switching arrangements the Reading makes delivery for the B. & O., at the flat Wilmington rates. HELD, rates attacked for joint line hauls on pulpwood from points on the Southern, C. & O., N. & W., and R. F. & P., and for single line hauls from points on the B. & O., W. M., and Pennsylvania to destinations here involved, are for future unreasonable to extent they exceed rates ranging from 5c single line for 20 miles and under to 12.5c for 300 miles, for joint line ranging from 9c for 120 miles to 21c for 675 miles. This scale, plus an arbitrary of 1 c will be reasonable to apply from Ela, N. C., to Parsons, W. Va., on this traffic originating at Ravensford, S. C., and that for the haul over the Appalachian Ry. to Ela, an arbitrary of 2.5c may be added to the rates prescribed from that point. HELD, further, for hauls from points on the W. & O. D., the M. & P., and W. B. & P. L., an arbitrary of 1.5c may be added to the single line rates under the above scale; while from points on the W. C., N. & A., the P. F. & P., and V. B. R., an arbitrary of 2c may be added to the joint line rates under the above scale. HELD, further, Roaring Spring, Tyrone, Williamsburg and Lock Haven may form a destination group with equalized rates under the scale from long haul points of origin. Proposed schedules not justified. West Virginia Pulp & Paper Co. v. B. & O. R. R. 104 I. C. C. 495.

(k) Complainant attacked interstate rates on lime, in carloads, from Maryland, Pennsylvania, Virginia and West Virginia to destinations in central territory and in West Virginia, and from Ohio to destinations in central territory as unreasonable. Lime is shipped in paper bags, wooden and steel barrels and in bulk. Water tight equipment is required. The record indicates that loss and damage claims are negligible. Generally speaking the points of origin in Pennsylvania, West Virginia and Maryland and those in Virginia on the B. & O., are now in the Williamsport, Baltimore or Scranton class rate groups. The Ohio producing points are also grouped. COMMODITY DESCRIPTION. The Commission is convinced that a segregation of the high grade and low grade lime could be made, but that it should follow the line of value rather than that of physical appearance. The Commission regards lime suitable for chemical and building purposes and lime having no value for such purposes, such as agricultural and fluxing lime, as different commodities. Lime is a substantial source of revenue for the carriers, which

in many instances enjoy inbound hauls of coal or coke to the kilns, as well as the outbound movement of lime. The Commission is here called upon to fix only maximum reasonable rates from producing points, whose distance from Pittsburgh ranges from 120 to 311 miles. In fixing such rates due account must be taken of transportation differences. RATES AND CARLOAD MINIMA. Present rates on building and chemical lime to the 60 and 67 per cent groups, and on all kinds of lime to other points in central territory from the eastern producing points generally exceed rates for similar distances under the Mitchell scale, 85 I. C. C. 341. Rates from Ohio points to interstate destinations in central territory are with a few exceptions the same as, or from 0.5c to 4.5c higher than, the rates for corresponding distances under that scale. Common lime, carloads, is rated sixth class in official classification and 83.33 per cent of sixth class by exceptions to the classification applicable between certain points in central territory. HELD, interstate rates on common lime, hydrated, quick or slaked, except agricultural and fluxing lime having no commercial value for building or chemical purposes, carloads, minimum 30,000 pounds, from points in Groups 1, 2 and 3 and from points in other groups to destinations in 60 and 67 per cent groups unreasonable to extent they exceed to Pittsburgh from group 1, 13.5c, Youngstown 15c; Group 2, 14.5c and 16c; Group 3, 15.5c and 17c; Bloomsburg group 16c and 17.5c; Bainbridge group 16c and 17.5c; Riverton group 16.5c and 18c; Scranton group 17c and 18.5c; Cedar Hollow group 17.5 and 19c; Trexlertown group 17.5c and 19c. Rates to other destinations in the 60 and 67 per cent groups should be revised to correspond with the rates prescribed to the destinations specified above. Interstate rates on agricultural and fluxing lime unreasonable to extent they exceed 80 per cent of the rates on higher grades. Eastern Lime Mfrs. Asso. v. A. & B. B. R. R. 112 I. C. C. 7.

IV. REASONABLENESS.

§10½. In General.

See Class Rates §2 (tt) (3b) (3k); Percentage Rates; Reasonableness of Rates.

(a) It was contended that cotton rates to New Orleans, La., from points in Mississippi do not reflect proper differences under rates from Memphis, Tenn., based upon fact that the Memphis rate is applied from Greenwood, Miss., although the distance from Memphis to New Orleans is greater. This situation, however, results from fact that rates from northern half of Mississippi are grouped to New Orleans, and in prescribing the rate from Memphis in 69 I. C. C. 318, consideration was given to average distance of points within this group. The prescribed rate was made to fit that situation and rate for average distance compares favorably with cotton rates generally in the South. Moreover, there are many advantages to this grouping, the producer within the group being given the benefit of several markets. No warrant found on the record for condemning this grouping. Mississippi R. R. Commission v. A. & V. Ry. Co., 89 I. C. C. 47, 70.

(b) Complainant attacked relationship existing between rates on potatoes and lettuce, in straight carloads, from Divide, Canon City, Villa Grove, and Antonito, Colo., to destinations in various states. Divide is on the Midland Terminal, 27 miles west of Colorado Springs; Canon City on the D. & R. G. W., and Santa Fe 41 miles west of Pueblo; Villa Grove on a narrow gauge line of the D. & R. G. W., 126 miles west of Pueblo; and Antonito on the same carrier, 105 miles west of Walsenburg, Colo., and 156 miles west of Pueblo. On potatoes to Texas common points and on both potatoes and lettuce to the Mississippi river and points east thereof the rates from these points are the same as from Colorado common points. On lettuce to Texas common points the rate from these points is 5c higher than from Colorado common points. From Divide to Texas common points the rate on potatoes is 14c and on lettuce 25c higher than from Colorado common points. To the Mississippi river and to points east thereof the rates are 3c higher on potatoes and 5c higher on lettuce from Divide than from Colorado common points. Divide is 27 miles west of the Colorado common point line, compared with distances of 41 to 156 miles different from that of Canon City, Villa Grove and Antonito. Defendants concede that from the standpoint of transportation conditions there is no reason why the relationship of Divide to the Colorado common point group should be different from that of Canon City, Villa

Grove and Antonito. HELD, rates attacked from Divide unduly prejudicial compared with rates from Canon City, Villa Grove and Antonito. Pikes Peak Co-Operative Lettuce & Produce Growers Asso. v. Midland Terminal, 89 I. C. C. 379.

(c) Obviously in rate blankets the earnings under rates from points not taking group rates will in every instance show higher. But that is by no means an indication that the rates are in themselves unreasonable. Dufur Orchard Co-Owners Co., v. A. & R. R. R. 89 I. C. C. 419, 424.

(d) Complainant attacked commodity rates charged on animal manure carloads, from Perth and Lovelock, Nev., to points in eastbound transcontinental groups A, to M, inclusive, since Jan. 2, 1921, as unreasonable. Present rates are to Group A, 85c; Group B 80c; Group C. 75c; Groups K. L. and M., 90c; Groups D, E and F, 70c, Group G and H 78c; and Group J, 73.5c. The present movement from Nevada to Group G. H. and J is negligible. There is little movement at present by rail to any of the other transcontinental groups due in part to the fact that the all rail rates are higher than the combination of rail rates from Nevada points to San Francisco, Calif., and water rates thence through the canal to the Atlantic seaboard. HELD, rates attacked to Groups A to F and K to M not unreasonable; rates attacked to Groups G, H and J unreasonable to extent they exceeded 72c to Group G prior to July 1, 1922 and 65c thereafter; 78c to Group H prior to July 1, 1922 and 70c thereafter; and to Group J, 66.5c prior to July 1, 1922 and 60c thereafter, reparation awarded. Pacific Manure & Fertilizer Co., v. A. & R. R. R. Co., 89 I. C. C. 508.

(e) In 80 I. C. C. 383, the Commission considered rates on coal from mines in the Castle Gate district in Utah and in the Rock Springs-Kemmerer districts in southern Wyoming to destinations in Idaho, Montana, Washington and Oregon. At that time the rates from Castle Gate were 22c per ton higher than those from Rock Springs. The Commission prescribed a differential of not less than 50c per ton from the Castle Gate district over the Rock Springs district. The relationships between the west bound rates from Castle Gate and Thompson, Utah and from the Cameo-Palisade district in western Colorado to western destinations were also considered. The effect of the findings with respect to rates from Thompson was to increase the former differentials of 10 and 12c per ton from Thompson over the Castle Gate district to 40c and to reduce the spread in rates between Thompson and the Cameo Palisade district. EXTENT OF ROCK SPRINGS KEMMERER GROUP. The mines in the Rock Springs district are on the U. P., in the vicinity of Rock Springs. The nearest mine is 1.25 miles from Rock Springs. The mines in the Kemmerer district are on the O. S. L., a part of the U. P., system, 85 miles west of Rock Springs. The average distance from the Rock Springs mines to McCammon, where the Utah and southern Wyoming coals meet, is shown to be 246.1 miles and from the Castle Gate mines 271.7 miles, or a difference of 25.6 miles. The separation of the group on westbound traffic would naturally result in like act on as to eastbound traffic, and would seriously disturb the relationship that has existed without complaint for a long period of years. HELD, the inclusion of the Rock Springs-Kemmerer mines in one rate group is not unduly prejudicial to the operators in Utah. As a rule the grades in the Castle Gate district are substantially greater than those in the Rock Springs-Kemmer district. HELD, former decision affirmed. The majority of the Wyoming mines are not on the main line, and this is likewise true in the Castle Gate district. The record shows that, except during 1916 and 1917, when the demand exceeded the supply in both the Utah and Wyoming districts and except during periods of strikes, there has always been a surplus of coal in Wyoming which could have been disposed of in the Northwest if purchasers could have been found. HELD, in view of the fact that the conditions of operation in the southern Wyoming district do not differ as greatly from those in Utah as the Commission had been led to believe, and that the difference between the average distances is somewhat less than was originally stated, the Commission has reached the conclusion that a differential in excess of 40c, Castle Gate over Rock Springs, is unduly prejudicial. THE THOMPSON CASTLE GATE DIFFERENTIAL. Sego is on the Ballard & Thompson, extending from Thompson 5.5 miles. There are no joint

rates from Sego. Thompson lines midway between the Castle Gate district on the west and Cameo-Palisade district of Colorado on the east. From the standpoint of distance alone, considering the similarity of transportation conditions over the 94 miles east and west of Thompson, the differential relationships which were prescribed would seem proper. HELD, The relationship of these rates are retained to be considered in a pending complaint, American Fuel Co. v. A. T. & S. F. Ry. No. 13509. ADDITIONAL JOINT RATES FROM UTAH. Complainants requested the establishment of joint rates to points on the N. P., G. N., C. M. & St. P., and S. P. & S. joint rates to points reached directly by the U. P., have been in effect for some years. HELD, no evidence was introduced tending to show the existence of any real public need for the extension of joint rates. Western Coal rates, 89 I. C. C. 666.

(f) Commission instituted an investigation into the rates, rules, regulations and practices covering the transportation of wool and mohair from the Pacific coast and intermediate territory to eastern destinations, and from said intermediate territory to and via the Pacific ports, with which are consolidated other proceedings involving some of the same questions. Under the amended applications the through rates from intermediate points adjacent to the Pacific coast would be considerably lower than the present rates, which would have the effect of reducing the disparities as between the coast cities and nearby interior points, but, on the other hand, would result in increasing the disparities as between these points and farther inland points which take considerably higher rates and in which no charge is proposed. The rail carriers secure a share of the revenues derived from the haul to eastern destinations by transporting the wool to the ports, and the steamship lines participate in the movement beyond, thus fostering and preserving both rail and water transportation. Moreover, it is not understood why the western carriers prefer to move this wool traffic eastbound all rail. The record is far from convincing that granting the applications would accomplish the results desired by the rail carriers. One of the witnesses testifying on behalf of the carriers serving the north Pacific coast points stated that they expect to secure very little additional wool tonnage under the proposed rates. Even if it be assumed that the rates proposed under fourth section relief would secure to the rail lines a substantial portion of the tonnage now moving by water, the ultimate effect, would be a further reduction in the water rates to avert loss of tonnage to the water lines, and decreased earnings for both the rail and water carriers. The record conclusively shows that, except for the financial plight which confronts the woolgrowers as the aftermath of the 1920-21 slump, the sheep industry under the prevailing conditions and prices would be on a sound basis. **History of Eastbound Rates.** The evidence with respect to the eastbound rates is confined very largely to those applicable to Boston 90% of the wool shipped from this western territory is destined to the territory north of the Potomac and east of the Buffalo-Pittsburgh line, and principally to the Boston market. The present rates on wool in the grease from this western producing territory to the north Atlantic ports, generally speaking, are on the basis of those established in conformity with 25 I. C. C. 188, as modified by the subsequent general increases and reductions. In the schedules under suspension the respondents proposed to continue rates which grade up westwardly from the Mississippi river on the present basis until a rate of $2.70 on sacked wool to Boston is reached and to blanket this rate to the Pacific coast, covering a territory of approximately 800 miles in width. A rate of $2.35 is proposed on baled wool. Substantial increases would result from the Pacific coast and interior territory from which rates at present are maintained on a low basis under fourth section relief, but material reductions would be made from a large territory of heavy production east thereof. In the interest of tariff simplification it is the opinion of the Commission that joint rates on wool be published from all wool producing points covered by this investigation to eastern destinations if practicable in one or a very few consolidated tariffs. Possibly it may also be desirable to include in such tariff or tariffs naming the joint rates all transit rules, regulations, and practices appertaining to the movement of wool. Distance usually is an element to be considered in the fixing of rates, but on the long haul traffic from

this western territory of origin under consideration, the difference in distance between the north Atlantic ports is inconsiderable, and the rates hereinafter found reasonable for the future to Boston should be published as joint rates and should not be exceeded to other north Atlantic ports south of Boston. Wool generally loads much in excess of the carload minimum, does not require special service, and claims for loss and damage are negligible. HELD, present and proposed departures from the fourth section not justified, present and proposed rates unreasonable to Boston and other north Atlantic ports all rail unreasonable to extent they exceed rates ranging from 140c for 1,500 miles to 270c for over 3,000 miles. **Scoured Wool and Pulled Wool.** No scoured wool now moves from interior points and this is also true of pulled wool, both being shipped in bales, and only from Pacific coast terminals or contiguous points. Wool is sorted at the time it is pulled from the pelts. It generally moves in small quantities, any quantity rates would be required. Pulled wool contains less dirt and grease than sheared wool and is more valuable. Practically no pulled wool is moved all rail under the present rates. The lines serving the California terminals propose to cancel these any quantity rates on both pulled and scoured wool, leaving in effect the applicable class rates which on pulled wool, are $4.43 to Chicago and $4.80 to Boston, second class. HELD, it is apparent that the class rates applicable on scoured and pulled wool are too high to permit any movement thereunder, but there is not sufficient information disclosed of record to definitely arrive at a conclusion as to what would be reasonable rates or what would be a fair and proper relation between scoured wool and pulled wool on the one hand and sheared wool in the grease on the other. **Rail Lake and Rail and Rail and Ocean Rates.** The principal wool movement via rail and lake is from Montana, North Dakota and South Dakota. The rates to Duluth are commodity rates and the proportional rate from Duluth via lake is 55% of the first class rate on wool and mohair in grease in bags or sacks, and 50% of first class on wool in grease in machine compressed bales. HELD the evidence with respect to rail and water rates eastbound is meager and general, and upon this record the Commission is not in position to prescribe any fixed differential under the all rail rates on shipments moving by rail and water route, but in view of the readjustment of the all rail rates the carriers should readjust their rail and water rates so as to bear a fair relationship to the all rail rates. **Westbound Rates.** The present rates on wool in the grease from interior territory to Pacific coast terminals are, with few exceptions, the fourth class rates, minimum 24,000 pounds on sacked wool and 32,000 pounds on baled wool. The present wool rates from interior points to north Pacific coast terminals approximate 60% of the first class rates, but from points in New Mexico and Arizona to California terminals they are much higher, in some instances 70% of the first class. Differences in transportation conditions and density of traffic justify relatively higher rates in this territory than in the east. HELD, present rates unreasonable to extent they exceed on wool and mohair in the grease 55% of first class. **Joint Rates and Through Bills of Lading via Rail and Water Through Pacific Coast Ports.** At the present time the wool shipper from the interior secures a bill of lading for the rail haul and pays the local rate to the terminal. Certain handling charges are assessed at the port, and a new bill of lading is issued to cover the water movement beyond. Most of the western wool carrying roads issue through bills of lading and publish joint rates, which include marine insurance, on traffic destined to the east when moved via the Gulf and south Atlantic ports, but none issues through bills of lading or publishes joint rates on any commodity destined to Atlantic seaboard points when moving via the Pacific coast terminals and the intercoastal steamship lines. There is no evidence to indicate that the present eastbound all rail and rail and water routes are inadequate to expeditiously handle the wool traffic under normal conditions. HELD, request for joint rates and issuance of through bills of lading denied. **Transit.** The western rail carriers now provide in their tariffs that carload shipments of wool may be stored, graded and assorted, or concentrated in transit at intermediate points on their lines at charges ranging from 2.5 to 3.5c per 100 pounds. Complainant asked that the present transit arrangements be continued and that the Santa Fe and

Milwaukee be required to establish similar arrangements at St. Louis. The present through rates to Boston from points on the Santa Fe and Milwaukee apply via Chicago, which point is reached over their own rails. Before transit can be required at any point through rates must apply via that point. There are no through routes in effect via the St. Louis gateway in connection with these carriers. Consequently the request of the St. Louis interests is two fold; first, for the establishment of through routes and joint rates; and, secondly, for transit arrangements. HELD, St. Louis has not shown upon this record that it is unduly prejudicial by the refusal of these carriers to provide joint rates and transit arrangements via that gateway. A number of the western wool carriers also have in effect arrangements whereby shipments of wool may be stopped in transit to finish loading. Under this arrangement the small grower who produces wool in less carload quantities and the larger producers who have on hand small quantities of wool after the bulk of their clip has moved may consolidate their shipments into carloads and thus secure the benefit of carload rates to eastern destinations. Transit to complete loading arrangements are more essential and of greater benefit to the wool shipping interests now than in former years because of the gradual reduction in the number of sheep in the flocks, which has resulted in diminishing the size of the clips. These transit arrangements to complete loading are beneficial also to the carriers if the means adopted are proper and nondiscriminatory; they are of benefit to the carriers because they are conducive to heavier loading and result in more economical transportation provided a reasonable charge is made for the extra service rendered. HELD, the rail carriers will be required to establish on wool and mohair in the grease, both eastbound and westbound, either arrangements for stopping in transit complete loading at directly intermediate points at a stoppage charge not to exceed $6.50 per car for each stop, or special concentration rates similar to those now in effect. **Shall Transit Be Required at Boston and Philadelphia?** If the U. P. system as a matter of policy voluntarily provides for baling in transit at points on its lines, but at a charge adequate to cover the additional service rendered, this showing alone is not sufficient to require the eastern lines serving Boston, and which do not control the policy of the Union Pacific, to grant transit for the purpose of inspection, weighing, grading, assorting, storing, change of ownership, consignee or destination, within the Boston switching district. It is shown that the eastern lines participate with the western carriers in joint rates on the eastbound wool, which include transit if authorized by the tariffs of the individual carriers, but transit is accorded only on the rails of the western or midwestern lines, and it does not appear that the carriers serving Boston grant transit on wool at any point on their lines. HELD, refusal to establish transit arrangements at Boston not unreasonable or unduly prejudicial. HELD, refusal of Pennsylvania and B. & O., to accord in Philadelphia district transit arrangements while according such transit arrangements at other competitive points on their lines unduly prejudicial to Philadelphia. Wool rates Investigation, 1923, 91 I. C. C. 235.

(g) Complainant attacked commodity rates on apples, carloads, since Jan. 1, 1916 from Idaho, Montana, Oregon, Utah, and Washington to Bisbee, Douglas and Nogales, Ariz., as unreasonable. In 73 I. C. C. 292 the Commission found the rates not unreasonable prior to August 26, 1920 but the record contained no evidence of shipments moving subsequent to that date, and prescribed rate of 140.5c, minimum 35,000 pounds for the future. HELD, during period from August 26, 1920 to Oct. 20, 1922, reparation awarded. Douglas Chamber of Commerce v. Director General, 91 I. C. C. 354.

(h) Respondents proposed both increased and reduced rates on grain and grain products in carloads (a) from southeastern Missouri to Memphis, Tenn., New Orleans, La., and other points in the Mississippi valley and (b) between points in southeastern Missouri and St. Louis, Mo., Cairo, Ill., and related points. The principal carriers involved are the M. P., Frisco and Southwestern. In (a) the points of origin are divided into grounds. The principal group lies west of Cairo but there is another important group north of this principal one. These will be referred to as Cairo and St. Louis west side groups. On the opposite side of the Mississippi river the I.

C., and other carriers have what may be called the Cairo and St. Louis east side groups, from which no rate changes are proposed, the former embracing Cairo and a few points in that vicinity, and the latter covering a considerable portion of the territory between Cairo and St. Louis. Formerly the rates of the west side lines were made with relation to the rates of the east side lines, but this relationship was disturbed by the readjustment following 64 I. C. C. 306. Respondents now propose to bring the rates from southeastern Missouri points into harmony with the rates of east side lines from southern Illinois points by increasing the rates from west side groups to the basis of the St. Louis and Cairo locals. As applied from St. Louis and Cairo proper, the local rates are practically paper rates, as substantially all the business moves out on transit arrangements or at the reshipping rates which are lower than the locals. The distances from the points in the west side groups to Memphis and perhaps to other of the destinations in question, may be somewhat less than those from points in the east side groups, but the traffic density on the western lines is lighter, the operating conditions less favorable, and the service apparently involves more branch line hauls, so that for all practical rate making purposes the respective east side and west side groups may be taken as comparable with each other. The present rates to Memphis and other points on the Mississippi river south thereof are much lower than those to intermediate points in Arkansas and Louisiana. The maintenance of higher rates to Arkansas points than to Memphis via the Southwestern in connection with the Frisco through Jonesboro, led to the filing of a formal complaint, Docket, 14846, in which the carriers agreed to increase the rates to Memphis to extent here proposed and to reduce the rates to intermediate points to that basis. The proposed adjustment is for the purpose of keeping the rates to St. Louis, Cairo and related points properly aligned with those to Memphis. Where the rates between St. Louis and southeastern Missouri points are applicable in connection with the east side lines via East St. Louis, making East St. Louis an intermediate point, St. Louis and East St. Louis would be accorded a common rate, whereas at present as to traffic moving to or from East St. Louis a higher rate applies than to or from St. Louis, resulting in a departure from the long and short haul rule. HELD, respondents have justified proposed schedules except rates on coarse grains to New Orleans in so far as they exceed 10% less than those herein proposed on wheat from same points to New Orleans; rates from Oran and Jackson, Mo., to Cairo, Ill. Fourth section relief denied. Grain and grain products, 91 I. C. C. 666.

(i) Complainant attacked commodity rates charged on pickled fish, salted fish and pickled herring, carloads, from Seattle, Wash., and other Puget Sound points, to destinations in transcontinental groups A, B, C and D, as unreasonable to extent they exceeded rates subsequently established. Shipments moved to Chicago, Ill., Detroit, Mich., Cleveland, O., New York and Philadelphia. Rates subsequently established, 85c to Chicago, 90c to Detroit, 95c to Cleveland and New York. The rates of 81.5c and $1.085c to Chicago represent the general increases of 1918 and 1920 over a rate of 65c. The subsequent reduction to 85c followed representations made by the Pacific Coast Cured Fish Association, which urged that there was need for a lower rate if the transcontinental lines expected to participate in this traffic to the same extent as formerly. HELD, rates attacked not unreasonable, complaint dismissed. Bortz Company v. A. A. R. R., 92 I. C. C. 11.

(j) Complainant attacked fifth class rate of $1.215 charged on two cars of apples shipped in September, 1919, from Fort Sumner, N. M., to Omaha, Neb., as unjust and unreasonable. Fort Sumner is on the Santa Fe through Belen and Clovis, N. M., where that line crosses the Pecos River, about 60 miles west of Clovis and 80 miles east of Belen. At Clovis a branch of the Santa Fe extends south to Pecos, Tex., and serves Roswell, N. M., and a number of other fruit and vegetable producing points in southeastern New Mexico on the Pecos river. Shipments moved over the Santa and Burlington, distance 871 through St. Joseph, Mo., 915 miles through Kansas City, Mo. When shipments moved a commodity rate of $1.175 was in effect to Omaha from Las Cruces, N. M., on the Santa Fe running south from Belen to El Paso, Tex. This rate applied through Fort Sumner and under

the intermediate clause of the tariff it became applicable on traffic from Fort Sumner to Omaha. There was contemporaneously in effect a rate of 66.5c on apples from Clovis to Omaha, which in combination with the fifth class rate of 26.5c from Fort Sumner to Clovis made the combination 93c. Effective Feb. 21, 1921 the Santa Fe voluntarily established a rate of 90c from Fort Sumner to Omaha, which is the Roswell branch group rate of 66.5c increased under Ex Parte 74. HELD, rate attacked unreasonable to extent it exceeded 66.5c, reparation awarded. Gilinsky Fruit Company v. Director General, 92 I. C. C. 242.

(k) Complainant attacked fifth class rate of $1.085 charged on one car of wrought iron pipe, shipped March 3, 1922 from Columbia, La., to Howard, Kans., as unreasonable to extent it exceeded 67.5c. Columbia is on the M. P., Howard on the Santa Fe, 612 miles from Columbia. Rate of 67.5c applied from Lake Charles, La., to Howard, Lake Charles being 167 miles south of Columbia. The rate from Lake Charles applied generally to points in the so-called Kansas City group. HELD, rate attacked unreasonable to extent it exceeded 67.5c, reparation awarded. Transcontinental Oil Co. v. A. T. & S. F. Ry., 92 I. C. C. 285.

(l) Complainant attacked commodity rates charged in 1921 and 1922 on fresh meats and packing house products, in straight or mixed carloads, from Austin, Minn., to Dallas and other Texas points, as unreasonable. In 81 I. C. C. 79, the Commission prescribed rates on these commodities from South St. Paul, Minn., and Sioux City, Iowa, to Oklahoma and Texas points. These rates consisted of specific amounts north of Kansas City, Mo., and south thereof the so called 1716 scale prescribed in 22 I. C. C. 160, subjected to the general increases of 1918 and 1920 and the general reduction of 1922. This resulted in rates to Dallas of $1.20 on fresh meats and 93c on packing house products from South St. Paul and $1.095 and 84c from Sioux City. On March 15, 1924 the defendants established rates from Austin on fresh meats 0.5c below the South St. Paul basis and on packing house products the same as those from that point. HELD, rates attacked unreasonable to extent they exceeded rates subsequently established, reparation awarded. Hormel & Company v. C. M. & St. P. Ry., 92 I. C. C. 613.

(m) Respondent, B. & O., proposed to cancel a provision for the application of third class rates plus 3c on common black blasting powder, carloads, from Fairchange and Evans, Pa., and Rita, W. Va., to stations on its line in Pittsburgh group, and east thereof, and thereby to make applicable the first or second class rating or rates. The basis generally applicable on this commodity in the territory governed by the official classification is first class. By exceptions respondent provided for the application of second class rates from and to certain points on its line. Respondent proposes now to establish from all points of origin to all destinations here considered the second class rating and rates inasmuch as that basis now applies from Quaker Falls and other more distant points to those destinations. HELD, second class justified. Exceptions to official classification on blasting powder 93 I. C. C. 451.

(n) Complainant attacked combination commodity rates charged on 19 cars of gas coke between June 1, 1918 and July 25, 1919 from Segundo, Colo., to Delta, Utah, as unjust, unreasonable and unduly prejudicial. Delta is on the L. A. & S. L., 134 miles southwest of Salt Lake City and Segunda is on the C. & W., 13 miles west of Trinidad, Colo., shipments moving via C. & W., D. & R. G., and L. A. & S. L. and also via C. & W., C. & S., U. P., O. S. L., and L. A. S. L., charged 36c composed of 28.25c to Salt Lake City and proportional rate of 7.75c beyond, prior to June 25, 1918 and thereafter 39.75c. Complainants plant was the only one of about 25 beet sugar factories in Utah and Idaho which did not enjoy the rates contended for. No substantial difference is shown between the transportation conditions, encountered from Segunda to Delta and to the other sugar producing points to which the blanket rates applied. HELD, rates attacked unreasonable to extent they exceeded 28.25c prior to June 25, 1918 and 32c thereafter, reparation awarded. Delta Beet Sugar Corp. v. Director General, 93 I. C. C. 551.

(o) Complainant attacked class rates between Chicago, Ill., district, on the one hand, and Michigan City, Valparaiso, La Porte, and Crown Point, Ind., and intermediate points, on the other, as un-

reasonable and unduly prejudicial of the latter and unduly preferential of competing cities in central territory. Class rates between points in central territory are based on 45 I. C. C. 254. It is claimed rates are not based on actual mileage but on an arbitrary distance of 70 miles. For one line hauls of distances up to and including 70 miles in other parts of central territory, the class scale is strictly applied, that is, in accordance with actual distance. Defendants are not warranted in maintaining rates between the Chicago district and the complaining group on any basis except the actual average distance over the direct routes. On that basis, the farther distant points in the group would have rates below the scale, while the nearer points would have rates higher than the scale, but this is characteristic of a group adjustment. HELD, class rates attacked unreasonable to extent they exceed first class 47c, second class, 40, third class 31.5c, fourth class 23.5c, fifth class 16.5c and sixth class 13c. Indiana State Chamber of Commerce v. A. T. & S. F. Ry., 95 I. C. C. 177.

(p) Complainant attacked carload rates on prepared roofing asphalt shingles, building and roofing paper, roofing cement, and related commodities from East St. Louis, Ill., and Kansas City, Mo., to points in southern Missouri, Arkansas, Louisiana, Oklahoma, Texas and eastern New Mexico as unreasonable, unjustly discriminatory and unduly prejudicial. Commodity rates are generally effective on the articles under consideration from East St. Louis, Kansas City and New Orleans to Oklahoma. In publishing rates from East St. Louis and Kansas City, Oklahoma is divided into small destination groups, but the grouping is not the same from both points. From New Orleans practically the entire state is placed in one group. From Port Neches there are some commodity rates to Oklahoma, but generally fifth class rates apply. In 52 I. C. C. 84, 63 I. C. C. 65, 73 I. C. C. 82 and 77 I. C. C. 444 the Commission prescribed the same rates on prepared roofing and asphalt shingles as on building and roofing paper. With certain exceptions the commodities under consideration take class C rates from East St. Louis, Kansas City and New Orleans to Texas, while from Port Neches there is an extensive line of commodity rates. To a large part of Texas common point territory the class C rate from both East St. Louis and Kansas City is 88c, but to certain points in the northern part of the state, the class C rates from Kansas City are 7c lower than those from East St. Louis. Points in eastern New Mexico are grouped from both East St. Louis and Kansas City, a rate of 96c applying from both points, except that to certain points in the northern part of the state the rates are somewhat lower, having apparently been made with relation to the rates to Colorado, formerly in effect. The record in this case discloses no differences in transportation conditions which would warrant any different level or basis of rates for the future than that prescribed in 77 I. C. C. 473. HELD, carload rates from East St. Louis and Kansas City to Oklahoma unreasonable to extent they exceed rates ranging from 8c single line and 10c joint line for 5 miles up to 52c single and joint line for 800 miles. HELD, further, rates from East St. Louis and Kansas City to Texas common point territory, except from Kansas City to Dallas Fort Worth group and Amarillo, Tex., unreasonable to extent they exceed 52c; and that rates from Kansas City to latter territory unreasonable to extent they exceed 45c. HELD, rates from East St. Louis and Kansas City to Texas other than Texas common points unreasonable to extent they exceed rates constructed by adding to the rates prescribed to Texas common points amounts equal to the amounts by which the class C rates to such points exceed class C rates to Texas common points. HELD, rates attacked to points in New Mexico east of the line of the Santa Fe from the Colorado line to El Paso unreasonable to extent they exceed 70c from East St. Louis and 60c from Kansas City. Complainant sought reparation from East St. Louis to Fort Smith on and after Mar. 26, 1921. Rates charged 67.5c in March 1921, 62c in May 1922, 56c in July 1922, and 55.5c thereafter. Short line distance 416 miles. Rates to Little Rock, Texarkana and Shreveport for 346 and 562 miles considerably lower. HELD, rates attacked unreasonable to extent they exceeded 59.5c from March 25, 1921 to 53.5c after July 1, 1922, reparation awarded. Certain-Teed Products Corp. v. A. & L. M. Ry., 95 I. C. C. 273.

(q) In 83 I. C. C. 737, the Commission found the rates on coal, carloads,

from complainants mines on the Greenbrier & Eastern R. R., in West Virginia to interstate destinations unreasonable to extent they exceed the group rates maintained from branch line points on the C. & O., in the New river district in West Virginia to the same destinations. Greenbrier extends from Marfrance, W. Va., 10.8 miles to G. & E. Junction, W. Va., where it connects with the Sewell Valley R. R. Traffic to and from points on the Greenbrier moves over the Sewell Valley line between G. & E. Junction and Meadow Creek, W. Va., 21 miles where the latter connects with defendant. The district rates were made applicable from G. & E. Junction and other points on the Sewell Valley during federal control, 58 I. C. C. 261. The record clearly indicates that the hauls from a number of mines on the Virginia and on defendants Piney Creek branch to the main line of defendants are as great and some greater than that of the longest haul from mines on the Greenbrier to defendants main line at Meadow Creek. It is equally clear that nothing upon this record indicates that the present rates from the New River district to interstate destinations are less than reasonable. HELD, rates on coal from complainants mine on the G. & E. R. R., to interstate destinations are unreasonable and unduly prejudicial to extent they exceed group rates maintained from branch line points on the C. & O., in the New River district in West Virginia to the same destinations, reparation awarded. Nelson Fuel Co. v. C. & O. Ry., 96 I. C. C. 124.

(r) Complainant attacked commodity rates charged on petroleum and its products, carloads, from Kansas, Missouri, Oklahoma, Arkansas, Louisiana and Texas to Indiana destinations as unjust, unreasonable, unjustly discriminatory and unduly prejudicial as compared with rates to Illinois, Wisconsin, Missouri, Kansas, Nebraska, Iowa and Minnesota. Joint rates are maintained to destination territory west of the Illinois-Indiana state line, including points in northwestern Indiana within the Chicago switching district. The rates to Indiana are composed usually of the separately established proportional rates to and beyond East St. Louis, St. Louis, or other Ohio and Mississippi river crossings, the lowest combination applying although in a few instances joint rates are in effect. The record is persuasive that the separate factors of the rates for local application are reasonable. It was not until June 25, 1921 that the rates from the midcontinent field were restricted to routes west of the Illinois Indiana state line; lack of specific routing in the tariffs theretofore having made the Chicago rates applicable intermediately to points in Indiana, although in some instances by circuitous routes. Without weighing this circumstance, it serves to indicate that the central territory carriers operating in Illinois and also in Indiana, participating in joint rates from the midcontinent field to points in the former state, had to provide restrictive routing to prevent the same joint rates from being applicable over their lines or routes to points in Indiana. HELD, rates attacked from Tulsa, Okla., and grouped points in Oklahoma to destinations in Indiana unreasonable to extent they exceeded 42c on refined and 35.5c on fuel oil to points in Indiana on and west of the Pennsylvania extending through Crown Point and Logansport, Ind., to Anderson, Ind., and Big Four thence to Louisville, Ky., and 45.5c and 39c to Indiana east of the territory so described, rates to be adjusted from other points of origin accordingly. Indiana State Chamber of Commerce v. A. T. & S. F. Ry., 96 I. C. C. 485.

(s) Respondents proposed increased rates on petroleum and its products from Gates and Port Arthur, Tex., Ardis, La., and other points to Kansas groups 1, 2 and 3 and also to certain destinations in Oklahoma on the Rock Island and Northeast Oklahoma R. R. Present rates to Oklahoma are 34c from Gates 32.5 from Ardis and Shreveport and 42c from Port Arthur. From Gates the proposed rates range from 37.5c to 47c, average being 41.2c and corresponding increases from the other points. Present rates to Kansas are likewise 34c from Gates, 32.5c from Ardis and Shreveport and 42c from Port Arthur. Respondents concede that the proposed rates may be too high, that is to say, higher than they would be if the carriers were given an opportunity to establish rates to this territory upon a proper basis. They express willingness to establish rates on these articles to the destinations to which there is a movement. HELD, schedules not justified, but carriers may establish reasonable

rates properly related to the rate adjustment on these articles in this territory. Petroleum from southwest, 98 I. C. C. 321.

(t) Complainant attacked rates on apples, carloads, from the Yakima valley of Washington to Portland, Ore., as unreasonable and that the relationship between these rates and the rates from the valley to Seattle and other Puget Sound points subjected Portland to undue prejudice. The rates from the valley to Portland apply over the Oregon-Washington direct, the N. P., via Seattle, and N. O., in connection with the S. P. & S. The rates to Seattle apply over the N. P., direct and over the Oregon-Washington in connection with the N. P. Short line distances to Portland are 300 miles from Yakima and 231 miles from Pasco, and to Seattle 161 miles from Yakima and 351 miles from Pasco. The average distance from the valley is 199 miles to Seattle and 276 miles to Portland. Complainants attack is centered on the main line rates and it does not assail the differentials as such. The record will not support a finding that rates from branch line points, where now higher than rates from main line points, may not continue to be maintained on that basis. At time complaint was filed rates to Portland were 40c from Attalia, Pasco and Kennewick, and 42.5c from all main line points thence west to Yakima and the rates to Seattle were 42.5 from Attalia and 28.5c from the remainder of the valley. The main line rates from the valley are both graded and blanketed to some extent. The rates on cantaloupes and vegetables were at the time the complaint was filed, and are at the present time, blanket rates of 28.5c to Seattle and 35.5c to Portland from all main line points in the valley except that from Pasco and Kennewick to Portland the rate is 31c on cantaloupes and 32c on vegetables. HELD, present rates on apples, carloads, from Carroll, Wash., and main line points in the Yakima valley west thereof to Portland unreasonable and a maximum reasonable rate on apples from all main line points in the valley to Portland will be 38.5c; and present blanket rate of 35.5c on cantaloupes and vegetables from main line points to Portland not unreasonable. Further HELD, rates on apples, cantaloupes and vegetables from the valley to Portland unduly prejudicial to extent they exceed rates from main line points in the valley to Seattle by more than 10c. Portland Traffic & Transportation Asso. v. N. P. Ry., 98 I. C. C. 345.

(u) Complainant attacked commodity rates charged on silica sand, carloads, from Ottawa, Ill., to Cincinnati, O., as unreasonable. In 85 I. C. C. 412, the Commission found rates attacked unreasonable to extent they exceeded $2.78 prior to July 1, 1922 and $2.50 thereafter, awarding reparation. The only carrier east of the Illinois-Indiana state line named as a defendant is the Pennsylvania, and the $2.50 rate was, of course required only in connection with that line. In publishing the rate the tariff agent did not restrict its application and it became effective from the entire producing district in the vicinity of Ottawa in connection with the Big Four and B. & O. Shippers and carriers are agreed that a common rate should apply over all the routes from the producing points in question, not only to Carrel Street station, but to the entire Cincinnati district. The rate from Ottawa to Cincinnati is more or less of a key rate and the reduction required therein jeopardizes the whole fabric of silica sand rates in official classification territory. Already the carriers have had a number of requests for reductions based on the rate to Cincinnati. HELD, rates attacked not unreasonable and increased rate proposed in suspended schedules justified, complaint dismissed. Boldt Glass Co. v. C. B. & Q. R. R., 98 I. C. C. 481.

(v) Rates to and from points on Monongahela Connecting R. R., South Buffalo Ry., Union R. R., and Newburg & South Shore Ry., common-carrier short lines, found unjust and unreasonable to extent they exceeded rates to and from points in same rate districts which are located on trunk lines. Reparation awarded. Jones & Laughlin Steel Co. v. P. & L. E. R. R. Co., 91 I. C. C. 300.

(w) Complainant attacked commodity rate of $5.18 per long ton charged on phosphate rock, carloads, from Dunnellon and other points in Florida to Knoxville, Tenn., as unreasonable, unjustly discriminatory and unduly prejudicial. The hard rock district begins about 45 miles southwest of Jacksonville and extends about 100 miles south through the western side of the state. The pebble rock district lies in the southwestern part of

the state, east of Tampa. Both districts are served exclusively by the S. A. L., and A. C. L. In establishing rates from Florida the carriers have included both of these producing districts in a single rate group. Phosphate rock loads heavily. Loss and damage claims are negligible, and it moves in great volume. Shipments moved from near Bartow, and from Prairie both in the pebble rock district. Bartow is a junction of the A. C. L., and S. A. L., 771 miles by the former and 726 miles by the latter over routes of movement to Knoxville. Prairie is on the A. C. L., about 25 miles southwest of Bartow. Before and after shipments moved complainant requested carriers to publish a commodity rate of $5.25. At that time a rate of $5.75 had been in effect since Nov. 10, 1921. The present rate is $5.18 which has been in effect since the 10% reduction of July 1, 1922. HELD, rates attacked from Dunnellon, Bartow Prairie and other points in Florida taking the same rates to Knoxville unreasonable as compared with rates to the Carolina group to extent they exceeded $5.25 prior to July 1, 1922 and $4.73 thereafter, reparation awarded. Knoxville Traffic Bureau v. A. C. L. R. R., 101 I. C. C. 165.

(x) Rates on pickled and salted fish and pickled herring from Seattle and other Puget Sound Points to destinations in transcontinental Groups A, B, C, and D found not unreasonable as compared with lower rates subsequently established by transcontinental lines in order that they might secure some of the traffic in competition with water routes. Bortz Co. v. A. A. R. R., 92 I. C. C. 11.

(y) Rates on cotton from Phoenix and other Arizona points to Columbus, Eatonton, Macon, and Thomaston, Ga., eastbound transcontinental Group L. points, found unreasonable to extent they exceeded rates to Pittsburgh, a transcontinental Group B point. Geographically, Group L is an extension into southern territory of Group B, and commodity rates from Phoenix to points in Groups B and L are usually the same. Reasonable maximum rates prescribed and reparation awarded. Southwest Cotton Co. v. A. E. R. R., 92 I. C. C. 563.

(z) Rates on lumber, timber,. and other forest products from Frost and Verdun, Ala., local points on the Garyville Northern R. R., to destinations in official and western trunk-line territories, and in Oklahoma, Texas, Kentucky, and Tennessee, found unduly prejudicial to extent they exceed the corresponding blanket rates contemporaneously maintained from Livingston and Garyville, La. Fleming Bros. v. G. N. R. R., 92 I. C. C. 582.

(aa) Rate on tanbark from Ross Spur (Wild Cat Spur), Wis., to Sheboygan, Wis., during Federal control, found not unreasonable as compared with lower rates contemporaneously applicable from Star Lake group points in same general vicinity. Shipments were sporadic, request for a through rate was not made until movement had ceased, and traffic moved during period when operating conditions on the branch were rendered difficult by heavy snowfall. Moreover, rate assailed compares favorably with those found reasonable on similar traffic in 58 I. C. C. 217 and 87 I. C. C. 322. American Hide & Leather Co. v. Director General, 93 I. C. C. 265.

(bb) Proposed establishment of commodity rate lower than prevailing class basis on insulators from Emeryville, Calif., and other western points to transcontinental Groups F to J, inclusive, found justified. Considering extensive areas of the respective groups, proposed rate is not materially out of line with rates from Macomb, Ill., and other eastern producing points. Eastbound Transcontinental Rates on Insulators, 93 I. C. C. 282.

(cc) Rates on lumber from Group 12 points on the Guyandotte branch of the C. & O. in West Virginia to destinations in c. f. a. territory and in Canada found not unreasonable or unduly prejudicial as compared with lower rates to same destinations from points in Groups 11 and 13 on the Coal River branch. While through distances from the respective groups are substantially the same, differentials over junction point rates to Group 12 are higher than those to Groups 11 and 13, but it can not be found that rates assailed are unreasonable because of present variations. Peytona Lbr. Co. v. C. & O., 93 I. C. C. 363.

(dd) Rates assessed on oranges from points in California to Virginia, Minn., found inapplicable and applicable rates, based upon combinations of the blanket rate to Duluth and third-class beyond, found unreasonable to extent they exceeded the transcontinental Group F rates contemporaneously in effect to Duluth. Reparation awarded. Hansen-

Peterson Co. v. A., T. & S. F., 93 I. C. C. 596.

(ee) Class rates on automobile wheels without hubs, tires, or ball or roller bearings, from Portland, Ind., to Los Angeles, San Francisco, Tacoma, and Seattle, found not unreasonable, discriminatory, or unduly prejudicial as compared with lower commodities rates contemporaneously maintained from other points in transcontinental Group C to Pacific coast destinations, which lower rate was subsequently established from Portland. Complainant failed to show that any point accorded the lower rate was in direct competition with Portland, or that there was any movement under the lower rates from the alleged preferred points. Bimel Spoke & Auto Wheel Co. v. L. E. & W. R. R., 95 I. C. C. 9.

(ff) Rate on sweet potatoes from Dardanelle, Ark., to Spokane, found unreasonable to extent it exceeded the contemporaneous Group E commodity rate applicable over another route, and subsequently established via route of movement. Reparation awarded. Ft. Smith Commission Co. v. Director General, 95 I. C. C. 149.

(gg) Rate on wine grapes from Madison, Calif., located on the Rumsey branch of the Southern Pacific to Portland and East Portland, Ore., found not unreasonable, as compared with group rates contemporaneously maintained on like traffic to these destinations from South Vallejo, Napa, and points on the Southern Pacific company's San Ramon and Walnut Grove branches they are unduly prejudicial. New Italian Importing Co. v. S. P., 95 I. C. C. 611.

(hh) Following Lakewood Engineering Co., 88 I. C. C. 588, commodity rate on portable railway track from Tullytown, Pa., a transcontinental Group A point, to Phoenix, Ariz., found not unreasonable as compared with rates on rail and crosstie fastenings, and on various iron and steel articles. In the cited case the commission found not unreasonable the commodity rate applying from transcontinental Group B points to Phoenix and Pacific coast points and record herein fails to show that level of the Group A rate is improper as compared with that from Group B. State of Arizona v. A. E. R. R., 95 I. C. C. 658.

(ii) Proposal to correct error in schedules originally published on the Peoria basis, by increasing to the Chicago group basis the proportional rates on grain and grain products from Kansas City, Mo.-Kans., to points in Iowa on the Chicago & North Western, found not justified. Present adjustment is in harmony with rates from Omaha, Nebr., to same points and Peoria basis is that maintained to same territory by other lines for both single and joint line hauls. Moreover, respondents have not shown that the present adjustment is improper or the present rates too low, nor have they offered any justification for a different basis over their lines from Kansas City to destination territory. Grain from Kansas City, 96 I. C. C. 154.

(jj) Rates on bituminous coal from Group 2 mines on the Carolina, Clinchfield & Ohio to destinations in Alabama, Florida, Georgia, North Carolina, South Carolina, and Tennessee found not unreasonable, but rates from mines north of Steinman, Va., to and including Elkhorn City, Ky. (Group 2 points), which exceed rates contemporaneously maintained from Steinman and Moss, or Clincho, Va. (Group 1 points), are, and for the future will be, unduly prejudicial to Group 2 points. Craney Island Coal Co. v. C., C. & O. Ry., 96 I. C. C. 322.

(kk) Rates on bituminous lump coal from Duluth and West Duluth, Minn., to Ladysmith, Wis., found not unreasonable or unjustly discriminatory. Coal rates in Wisconsin are not constructed primarily with regard to distance, but the controlling consideration is the equalization of ports and grouping of destinations. Original order vacated and complaint dismissed. Great Western Paper Co. v. M., St. P. & S. S. M. Ry. Co., 96 I. C. C. 444.

(ll) For the purpose of applying rates prescribed for the transportation of manufactured iron and steel articles from points in the Pittsburgh, Pa., district to St. Louis, Mo., and points in Illinois and Indiana, reasonable groupings of the origin and destination points may be employed, provided the rates from and to each of such groups and in the aggregate average substantially the same as if made from and to each point separately under the scale prescribed. Jones & Laughlin Steel Corp. v. B. & O., 96 I. C. C. 682, 696.

(mm) Present commodity rates on

sewer pipe from St. Louis, Mo., and points grouped therewith, to Mississippi Valley destinations, found not unreasonable, but these rates and corresponding rates from southeastern producing points to same destinations found to embody a maladjustment of rates due to the revision of rates from the St. Louis group pursuant to commission's decision in 64 I. C. C. 306. Defendants notified to make equitable readjustment of rates by June 1, 1925, record being held open for such further action or proceedings as may be necessary or appropriate. St. Louis Chamber of Commerce v. A. & V. Ry. Co., 98 I. C. C. 29, 34, 35.

(nn) Present rates, established subsequent to movement of shipments here in issue, on lumber from Gantt and Sports, Ala., to Pensacola, Fla., via Andalusia, Ala., found not unreasonable, but group rates assessed on shipments under consideration found to have been in contravention of the aggregate of intermediates clause of the fourth section and unreasonable to extent they exceeded lower combination on Andalusia contemporaneously in effect from origin points to destination. Reparation awarded. Pensacola Creosoting Co. v. C. of G. Ry., 98 I. C. C. 36.

(oo) The commission has repeatedly found, in dealing with group rates, when the propriety of the group is not in question, that distance and ton-mile earnings between selected points can not be regarded as controlling. However, when the near edge of a group is on such a high basis as to produce rates in excess of the aggregate of intermediate rates, this general principle is not adequate justification and there is a strong presumption that the group principle of rate making has been carried beyond reasonable limits, particularly where no compelling necessity is shown for an extensive group. Pensacola Creosoting Co. v. C. of G. Ry., 98 I. C. C. 36, 37.

(pp) There is a commercial necessity for permitting grain produced in Group G to move eastward to the Missouri River cities for transit before being shipped to California. Indeed, this necessity appears to extend to points more than 150 miles west of the Missouri River cities. Provided reasonable charges are assessed for the total transportation, the commission is of the opinion that grain should be permitted to move from all of Group G via the Missouri River cities to California, and that carriers should not be permitted to increase their charges to an unreasonable basis which will prohibit, or nearly prohibit, that movement. Grain to Pacific Coast, 98 I. C. C. 158.

(qq) Evidence in support of rates to Washington as compared with those to Baltimore, is merely an explanation of how the differences grew up, without going into the merits of such differences and a contention that Baltimore is at the farthest edge of a group. Evidence does not show that rate to Baltimore was ever determined on group basis; on the contrary, the only conclusion possible from the record is that rates to New York, Philadelphia, and Baltimore were established upon consideration bearing on those ports alone and not relating to inland points. Washington Publishers' Asso. v. B. & O. R. R. Co., 98 I. C. C. 339, 343.

(rr) Rates on lump coal from northern Colorado to grouped destinations in northwestern Nebraska and western South Dakota found not unreasonable except that rate to Northport, Nebr., on this traffic will be unreasonable for future to extent it may exceed $3.40 per net ton. Colo. & N. Mex. Coal Operators Asso. v. D. & R. G. W. R. R. Co., 98 I. C. C. 377, 391.

(ss) Rate on canned goods from Hayward and San Leandro, Calif., to Oakland, Calif., for reshipment by water to interstate destinations, found not unreasonable. This rate on both intrastate and interstate movements is blanketed over considerable territory and is a commodity rate substantially less than fifth class. Complaint dismissed. Prince & Co. v. S. P. Co., 98 I. C. C. 615.

(tt) Complainant attacked commodity rates on cast iron soil pipe and fittings, carloads, from Somerville, N. J., a local point on the Jersey Central to Flatbush Avenue in the Borough of Brooklyn Long Island City, East New York, Jamacia, and Flushing, all local points on the Long Island R. R., on Long Island, N. Y., as unreasonable unjustly discriminatory and unduly prejudicial. It further alleged that the Long Island subjected complainant to undue prejudice by joining the Pennsylvania in rates on cast iron pipe, carloads, from Hainesport and Bridgton, N. J., Norristown, Pa., and Baltimore, Md., to destinations which are lower, distances considered,

than the joint commodity rates of the Jersey Central and the Long Island. The $2.60 rate attacked is a group rate. It applies not only from Somerville and the points shown in complainants exhibit but from other points including Newark, which is only 8 miles from Jersey City and intermediate on traffic from Somerville. The rate also is blanketed as to destinations on the Long Island. The division accruing to the Long Island is the sixth class rate, collected by that carrier out of all joint rates on cast iron pipe from trunk line territory. HELD, rates attacked not unreasonable or otherwise unlawful, complaint dismissed. Somerville Iron Works v. Long Island R. R. 102 I. C. C. 511.

(uu) Complainant attacked commodity rates on fibreboard and pulpboard, carloads, from New Iberia, La., to Lovefield, Tex., as unreasonable. Shipments made between Dec. 3, 1923 and Feb. 2, 1924, charged 56c, the 40c rate becoming effective Feb. 13, 1924. The contemporaneous rate on fibreboard from New Iberia to Dallas, 463 miles was 40c. Lovefield is a suburb of Dallas, 6 miles more distant from New Iberia. It was evidently the intention to make this rate effective to Lovefield at the same time as to Dallas, on Nov. 28, 1923. HELD, rate attacked unreasonable to extent it exceeded 40c, reparation awarded. Boldt Paper Mills Co. v. N. I. & N. R. R. 102 I. C. C. 682.

(vv) Complainant attacked a combination rate charged on horseshoes, toe calks, and parts shipped between Dec. 8, 1920 and Feb. 8, 1923 from Duluth, Minn., to Rochester, N. Y. as unreasonble, unjustly discriminatory and unduly prejudicial. Charged 77.5c prior to July 1, 1922 and 69.5c thereafter. Seven of the shipments moved from Duluth over the N. P., and were routed NP-CB&Q. Eight of the shipments originated on the Omaha and were routed over C. & N. W. No rate was inserted in the bills of lading. On Aug. 6, 1923 a rate of 51c was made applicable from Duluth and it is to this basis that reparation is sought. The rate from Steelton, within the Duluth switching limits was 51c, due to the inclusion of these commodities in the list of iron and steel articles. A shipment from Steelton can move through Duluth although that is not the usual operating route. HELD, rate attacked unreasonable to extent it exceeded 56c prior to July 1, 1922 and 51c thereafter, reparation awarded. Diamond Calk & Horseshoe Co. v. N. P. Ry. 102 I. C. C. 701.

(ww) In all cases of blanket or group rates there is of necessity more or less disregard of distance and varying degrees of inequality, but such inequalities are not necessarily unreasonable or unjust when the situation is viewed from every standpoint and all the circumstances and conditions are taken into account. In the absence of tangible proof of tangible injury to complainants or of positive evidence that rates are unjustly discriminatory or unduly prejudicial a group adjustment should not be disturbed. Wortham Publishing Co. v. Director General 102 I. C. C. 729, 734.

(xx) Respondents proposed a revision of the rates on fruits and vegetables between California and Oregon, Washington, Utah, Idaho and Montana. In order to remove the undue prejudice found by the Commission in 95 I. C. C. 611, the carriers increased the rate from Madison, Calif., from 55 to 60c, reduced the rates from Micke from 99 to 85c, and in addition, proposed a general revision of the rates. Resulting in increases and reductions. The rates on citrus and deciduous fruits, vegetables and melons from group 1 to Portland are increased from 49.5c to 60c. To Seattle from 81.5c to 85c; on melons from 70 to 79c; on fifth class vegetables, from 78 to 85c; and on class C vegetables from 70 to 79c. While it may be true that some of the rates on fruits and, to a smaller extent, the rates on vegetables between California and Oregon and Washington are, because of active water competition lower than they might otherwise be the earnings produced by the present rates do not show that they are unremunerative to the respondents. The testimony of the protestants shows that the economic condition of the deciduous fruit industry is such at the present time that it can ill afford an increase in rates. Respondents have taken advantage of the orders of the Commission in two cases, in each of which the rate on a single commodity from one point of origin to one destination was in issue, to propose a general revision of the rates between Pacific coast states. This proposed revision was published without giving to the shippers interested a public hearing at which they might have had an opportunity to express their

views. HELD, proposed rates not justified. Fruits and vegetables between Pacific coast states 104 I. C. C. 66.

(yy) Complainant attacked commodity rate of 64c charged on 16 cars of corn and oats shipped from group G in Nebraska to Portland Ore., between June 25 and Oct. 14, 1918 as unjust, discriminatory, exorbitant, unsound and destructive to the extent it exceeded the subsequently established rate of 61c. Group G embraces eastern Kansas and Nebraska, exclusive of certain Missouri river crossings. Prior to June 25, 1918 the applicable rate on wheat from part of this territory to Portland was 58c. This included the points at which these shipments originated. But a special wheat rate of 55c was in effect from many, if not most, of the group G points. G. O. 28 of the director general, increased wheat rates a maximum of 6c and rates on other grain to the wheat rate basis. The above named rates thereby became 64 and 61c, and a rate of 50c from group G points on corn and oats, became 64c. But on Aug. 30, 1918 the latter was reduced to 61c from the points from which the special wheat rate applied and on Oct. 14, 1918, the same rate was made applicable on both wheat and coarse grain from the remaining group G points, including those here involved. In 64 I. C. C. 461 the Commission awarded reparation on basis of 61c. HELD, rate attacked unreasonable to extent it exceeded rate of 61c, reparation awarded. Albers Bros. Milling Co. v. Director General 104 I. C. C. 330.

(zz) Complainant attacked rates on baled hay, carloads, from hay producing points in Arizona to California, New Mexico, Texas, Oklahoma, Missouri, Arkansas, Louisiana, Tennessee, Mississippi, Alabama, Georgia, North Carolina, and South Carolina, as unjust, unreasonable, unduly prejudicial and in violation of section four. Principal points of production are in the vicinity of Phoenix, Thatcher and Yuma. The Phoenix group is in the Salt river valley, and is irrigated from the Roosevelt dam, 80 miles north of Phoenix. This group is served by the S. P., and Santa Fe. The Thatcher group in the eastern part of the state, tributary to the Gila river, has 35,000 acres under cultivation, served by the S. P. Yuma group is served by the S. P. Generally speaking the rates on hay throughout the western group district are extensively grouped. The attacked rates are no exception. Rates the same as those to Los Angeles apply for much shorter distances. The rate of 25c from Lovelock and Fallon to San Francisco is blanketed from Nevada points as far west as Fernley, 276 miles from San Francisco, and the rate of 19.5 from Reno from points as far west as Gorge, 158 miles from San Francisco. Fallon is on a branch line of the S. P. The rate from Fallon to Los Angeles 656 miles, is 54c; and from Utah common points to Los Angeles 801 miles is 44c. From Winnemucca, Nev., to San Francisco, 417 miles rate is 31.5c. Particular complaint is made of the rate of 37.5c from the Thatcher group to Fort Bliss, Tex., which is made by combination of a rate of 28c to El Paso and 9.5c beyond, an additional haul of 4.83 miles. From New Mexico over the Santa Fe to Fort Paso is 6.5c as compared with 9.5c via the S. P., from Arizona points. Defendants expressed willingness to remove this inconsistency by increasing the arbitrary over the Santa Fe. The Santa Fe maintains rates on hay from New Mexico but not from Arizona to Texas which are less than the lowest combinations. The S. P., maintains a rate of 52.5c from the Thatcher group to all points in Texas on its lines where the haul in Texas is 300 miles or more. To Texas points on lines other than the S. P., and Santa Fe the usual basis is the combination on El Paso, which, for hauls in Texas of 300 miles or more, is 65c. The common point rates over these respective routes apply to Fort Worth, a representative Texas common point, 1,215 miles over the S. P., and 859 miles over the T. & P. To Clifton, Ariz., the rates are 45.5c from the Phoenix group, 353 miles, and 39c from the Thatcher group, 166 miles as compared with 35.5c and 28c, to El Paso, 460 and 244 miles. Rates from San Francisco and intermediate points to Kansas City, St. Louis, and southeastern points are graded with regard for distance, while the rates from Arizona points to the same destinations reflect very little regard for distance. The general line of rates on hay to eastbound transcontinental groups are the same from intermediate Arizona and Nevada points as from more distant points in California, except to Groups E. G. and H. The Commission in a number of cases has prescribed rates to or from points in Arizona which are higher than

the rates prescribed for like distances between points in the south west east of Texas differential territory. HELD, attacked rates on baled hay, carloads, from Arizona to El Paso and from Yuma to Los Angeles not unreasonable or otherwise unlawful; rates attacked unreasonable to extent they exceed from Alhambra, Glendale, and Peoria Ariz., to El Paso via Phoenix, Ariz., and S. P., 1c over the rates from Phoenix; from Thatcher, Phoenix and Yuma groups and over S. P., beyond Phoenix from Alhambra, Glendale, and Peoria to Fort Bliss, 4c over rates to El Paso. Attacked rates to river crossings Memphis and south unduly prejudicial to extent they exceed rates from El Paso by more than 6c from Thatcher group, 10c from Phoenix group and 13c from Yuma group. Arizona Hay Traffic Asso. v. A. E. R. R. 107 I. C. C. 591.

(3a) Combination rates to Petaluma, Calif., composed of commodity rates to San Francisco, plus local commodity rates beyond, assessed on shipments of grain and grain products from certain points in Utah, Idaho, Montana, Wyoming, and Oregon, on the Oregon Short Line, found not unreasonable, but failure to accord Petaluma the San Francisco basis of rates while contemporaneously maintaining that basis to San Francisco Oakland, San Jose, South Vallejo, Stockton, Woodland, and Marysville, Calif., found to be unduly prejudicial to Petaluma and unduly preferential of San Francisco, Oakland, San Jose, South Vallejo, Stockton, Woodland, and Marysville, points with which Petaluma comes into competition. Undue prejudice ordered removed by the establishment of rates on the San Francisco basis from same points of origin to Petaluma. Golden Eagle Milling Co. v. B. E. R. R. Co., 100 I. C. C. 41.

(3b) Rates on deciduous fruits from California points to Groups D. to J, inclusive, found not unreasonable as compared with lower rates maintained on fresh vegetables in packages, melons, and cantaloupes from and to same points, and with Class C rates to various eastern groups. Principal market for fresh vegetables and an important one for cantaloupes is in Group D, Chicago territory, while the average haul on deciduous fruits is considerably beyond Chicago, rates being blanketed to large destination groups in the East. Moreover, the classification ratings for fresh fruits are generally higher than on fresh vegetables and melons. See Phoenix Chamber of Commerce, 62 I. C. C. 368. Calif. Growers' & Shippers Protective League v. S. P. Co., 100 I. C. C. 79, 85, 86.

(3c) Rates on fresh deciduous fruits, other than apples, from California points to eastern transcontinental groups, found not unreasonable as compared with rates on grapes, peaches, and strawberries, for shorter hauls from points in the East and South. Differences in length of haul and other conditions surrounding the transportation weaken the force of comparisons made. Moreover, rates from California are blanketed to a destination territory extending more than half across the country, while other rates are more or less graded with respect to distance. Calif., Growers' & Shippers Protective League v. S. P. Co., 100 I. C. C. 79, 87.

(3d) Rates on liquid and solid asphalt from Port Neches, Tex., and points taking same rates, to Tulsa, Okla., found not unreasonable. The record does not justify Tulsa being accorded a lower basis of rates than that which the existing group basis affords. Standard Paving Co. v. A., T. & S. F., 100 I. C. C. 233.

(3e) Upon general investigation, on commission's own motion, of interstate class rates and l. c. l. commodity rates within southern territory and between southern and official territories, all-rail and rail-water, FOUND: That in adjustment between central and southern territories Portsmouth and Ironton, Ohio, Ashland, Ky., and Kenova and Huntington, W. Va., shall be included within a single group, distances to and from basing on Ashland. Southern Class Rate Investigation, 100 I. C. C. 513, 706.

(3f) Upon further hearing finding in original report, 85 I. C. C. 373, that rates on lumber to New Orleans and Mobile, from Lyman, Miss., on the near edge of the blanket of the Gulf & Ship Island origin points, were not unreasonable or unduly prejudicial, affirmed. Evidence amply supports original conclusions that blanket method of making rates on lumber has long been satisfactorily employed in this territory and that it should not be here disturbed. Obviously some shippers will be farther from a given point than others in the

same blanket, but the record shows that whereas Lyman is the nearest shipping point to Mobile and New Orleans it is among the farthest points to destinations in other directions. A blanket rate structure in existence since inception of the sawmill industry in this territory should not be lightly set aside for a rate adjustment in which distance would be the sole factor determining the measure of the rates. Ingram Day Lbr. Co. v. G. & S. I., 101 I. C. C. 287.

(3g) Presumably a group long maintained is fair and should not be disrupted unless there is some very good reason for doing so. Missouri Portland Cement Co. v. A., T. & S. F., 101 I. C. C. 454, 463.

(3h) Group or blanket rates on cast-iron soil pipe from Sommerville and Newark, N. J., to points in New England, found not unreasonable or otherwise unlawful. The commission has often approved blanket or group adjustment especially where, as here, all industries in the district are included within the group. Rates in issue are not shown to subject complainant to undue prejudice in favor of competitors located in the same group, and if complainant is under any disadvantage by reason of the fact that its inbound rates on raw material are higher than those of its competitors in the group, that disadvantage may not properly be offset by reducing the rates on the outbound product unless such outbound rates are themselves in violation of the act. Somerville Iron Works v. C. R. R. Co. of N. J., 101 I. C. C. 683.

(3ha) Contention by complainants that present rate adjustment on coal from mines located on the Monongahela West Penn Public Service Co. unduly prefers competitors in immediate vicinity and all other mines on lines of defendants and their connections accorded the Fairmont district rates, or the same or lower rates to eastern and western markets; relying largely upon fact that group rates apply from certain independent short lines in the general territory here considered, and further fact that commission has in numerous cases prescribed group rates from mines on such lines, not sustained, following Big Mandy Coal & Mining Co., 78 I. C. C. 455, in which commission found that "in cases of this character no rule of general application can be followed, but each situation must be judged in accordance with its particular facts and circumstances." Hook Coal Co. v. M. V. T. Co., 101 I. C. C. 719, 725.

(3hb) Rate on coal from certain mines in the Illinois group to Hoopeston, Ill., over an interstate route, found not unreasonable or unduly prejudicial in their relation to the rates from same origin points to Chicago, Ill., and Indianapolis and Vincennes, Ind. While complainants are entitled to reasonable rates, in considering the level, their relationship from other Illinois group points, and rates from other groups in the same general territory of which they are a part, can not be ignored. Conditions affecting rates to Chicago are not comparable with those affecting rates to Hoopeston, and the record does not justify condemnation of the rate from the southern Illinois group to Hoopeston or application to that point of lower rates from points of origin named than those from the group. Hoopeston Grain & Coal Co. v. C. & E. I., 102 I. C. C. 269.

(3hc) Rates on lumber from Golden, Miss., group points to St. Louis and Buffalo-Pittsburgh territories found not unreasonable or unduly prejudicial as compared with lower contemporaneous rates on like traffic from Corinth, Miss., and other points in same general territory to same destination territories, and rates from and to a number of other points for comparable distances. Northeast Mississippi Traffic Bureau v. A. & V. Ry., 102 I. C. C. 611.

(3hd) Class rates applied on potatoes from Naples and Lily, S. Dak., to points in Iowa found unreasonable to extent they exceeded commodity rates contemporaneously in effect from other points in group in which Naples and Lily are located and as compared with lower rates in effect from and to other points in same general territory. Reasonable rates prescribed and reparation awarded. Naples Potato Growers Asso. v. C., M. & St. P., 102 I. C. C. 649.

(3i) Respondents proposed to increase the class rates and rates on grain and grain products and other commodities between certain points in Iowa and South Dakota on the one hand and points in Colorado and Utah on the other. The points in Iowa are in the western portion of that state between the Missouri river and the line of the Northwestern

extending from Hawarden, Iowa to Arion, Iowa, and north of the Milwaukee, extending from Council Bluffs to Manilla, Iowa. The South Dakota points are Elk Point, Jefferson and McCook on the Milwaukee, from 17 to 30 miles northwest of Sioux City, Iowa. At present the Iowa and South Dakota points involved are grouped with the Missouri river crossings, such as Omaha, Neb., and Sioux City, Ia., and take the same basis of rates on classes and on certain commodities to points in Colorado and Utah. Respondents proposed to eliminate certain Iowa and South Dakota points from the Missouri river rate group and place them in a higher rated group. It is proposed to increase the rates on grain and grain products to a basis of the lowest local rate from any point to Sioux City plus the present rate from Sioux City, such basis to be held as maximum over a large part of the origin territory. Present rates are 36.5c and 33c on wheat and coarse grain, suspended schedules generally representing increases of 6.5c per 100 pounds on wheat and 6c on coarse grain from the Iowa points. From a few points in Iowa on the Milwaukee the proposed increases are from 9.5c to 11c on wheat and from 8.5c to 10c on corn. From South Dakota from 9 to 9.5c on wheat and from 6.5c to 8.5c on coarse grain. The record does not show the extent of the proposed increases in the class rates or the rates on commodities other than grain and grain products between the Iowa point and the western destinations. Respondents' evidence related almost exclusively to the proposals to increase the rates on grain and grain products. Practically no reference was made to the increases proposed in the class rates and the rates on commodities other than grain and grain products, but they point out that the protests were directed against the proposed rates on grain and grain products. HELD, proposed schedules not justified. Grain and grain products from Iowa and South Dakota 109 I. C. C. 27.

(3j) In 85 I. C. C. 425, Commission found rates charged on 28 cars of asphalt, in barrels, from Richmond and El Segundo, Calif., to El Paso, Tex., between March 1, 1920 and Nov. 20, 1921 as unreasonable to extent they exceeded 44c prior to August 26, 1920 and 55c on and after that date, or the same as to Albuquerque, N. M., and Denver, Colo. El Segundo is 18 miles southwest of Los Angeles. Richmond is near San Francisco, Calif. Some moved entirely over S. P., and that carrier participated in the haul of the others. Shipments from Richmond moved over the so called valley route via Los Angeles. They originated on the Richmond Belt Ry., maintained partly by the S. P., and partly by the Santa Fe, the maintenance and operating expenses amounting to about 20c per ton. In addition defendants pay the Richmond Belt a rental charge of 5c per ton. The cars originating at Richmond were twice classified before reaching El Paso. The cars originating at El Segundo were classified at Los Angeles, where the yard expense is unusually heavy. HELD, rates from Richmond not unreasonable, rates from El Segundo unreasonable to extent they exceeded 44c prior to August 26, 1920, and 55c thereafter, reparation awarded. El Paso Bitulithic Co. v. E. & S. W. Ry. 109 I. C. C. 42.

(3k) Complainant attacked commodity rates charged between July 1 and Sept. 11, 1922 on lumber and other forest products in carloads from Washington, Oregon, Idaho, Montana, and British Columbia to Lincoln, Neb., Omaha and other Missouri river points, and to intermediate territory in Nebraska, Kansas, Missouri, Iowa and South Dakota taking the same rates as unjust and unreasonable to the extent they exceeded rates established effective Sept. 11, 1922. The rates to Omaha and the Twin Cities were on a parity except during the complaint period. On traffic generally to and from Pacific coast territory the rates to Omaha and the Twin Cities are either on a parity or else those to Omaha are lower. HELD, rates attacked not unjust or unreasonable, complaint dismissed. Adams Kelly Co. v. A. T. & S. F. Ry., 109 I. C. C. 241.

(3l) Complainant attacked commodity rates on fresh meats and packing house products, in straight and mixed carloads, from Mason City, Waterloo, Des Moines, Cedar Rapids, and Ottumwa, Iowa, and Sioux Falls, S. D., to Texas and Oklahoma as unreasonable. Traffic from Iowa points to the southwest generally moves over the short line routes through Kansas City and not through St. Louis, average distance to Oklahoma City is 623 miles as compared with 543 miles from St. Louis. Fourth

section departures are not protected by applications and should be corrected at once. It is obvious, and is admitted by the parties, that there is not and has not been any consistency in the rates from the points in issue. Each has had a different basis and the relationships to each other and to other competing points have not been well defined. HELD, since July 1, 1922, rates attacked unreasonable on fresh meats, straight carloads and packing house products, straight carloads, to extent they exceed to Oklahoma and Texas destinations, charges on mixed carloads of fresh meats and packing house products to be computed at their respective weights and carload rates subject to minimum of 21,000 pounds at the fresh meat carload rates to be published as arbitraries over the rates from Kansas City, from Sioux Falls, fresh meats 29.5c, P. H. P., 16c; Mason City 28c and 15.5c; from Waterloo, 27c and 15c; from Cedar Rapids 26c and 14c; from Des Moines, 21.5c and 10c; from Ottumwa, 18.5c and 9c reparation awarded. Decker & Sons v. C. R. I. & P. Ry., 109 I. C. C. 261.

(3m) Complainant attacked commodity rate of 45.5c charged on 114 cars of cottonseed shipped between Oct. 15, 1923 and Jan. 15, 1924 from Arthur City and other points in Texas to Memphis, Tenn., as unreasonable and in violation of section four. Average distance from eight of the principal points of origin to Memphis is 545 miles, the 45.5c rate also applying from Texas common points to St. Louis an average distance of about 749 miles. HELD, rates attacked unreasonable to extent they exceeded rates prescribed in 98 I. C. C. 183, reparation awarded. Dixie Cotton Oil Co. v. Ft. W. & D. C. Ry., 112 I. C. C. 1.

(3n) Complainant attacked joint fifth class rate of $1.145 charged on wrapping paper from Orange, Tex., to Hutchinson, Kas., as unreasonable. In 95 I. C. C. 457, this rate was found unreasonable to extent it exceeded 66c. Complainant attacked 66c rate from and to the same points as unreasonable unjustly discriminatory and unduly prejudicial. Shipment moved as routed T. & N. O., to Fort Worth, Rock Island & Gulf to Terral, Okla., and Rock Island beyond 861 miles. Applicable rate was $1.145, the 66c rate being the combination on Wichita, Kas. The rate prescribed in the former report, which yields ton mile earnings of 15.3 miles, compares favorably with other rates on the same commodity in the southwest. HELD, rate of 66c not unreasonable. Hutchinson Paper Co. v. T. & N. O. R. R. 112 I. C. C. 49.

(3o) In a general investigation covering rates from grouped origin territory to related destinations, allowance must be made for balancing of advantages and disadvantages in different routes. Some hauls are longer than others; roads differ in respect of curves and grades; and expense of assembling loaded cars varies with different districts in group. Yet these apparent inequalities do not deter carriers from freely employing method of grouping point of origin or destination for rate-making purpose or of blanketing rates over wide areas; which method has repeatedly received approval of the commission, in absence of showing of circumstances and conditions making such groups lawful. Cotton Mfrs. Asso. of S. C. v. C. C. & O. Ry., 85 I. C. C. 131, 135.

ALL OTHER CITATIONS

Coal from Tennessee R. R. Stations, 85 I. C. C. 25; Cities of Marshall and Jefferson v. T. & P. Ry. Co., 85 I. C. C. 115; Express Publishing Co. v. G. H. & S. A. Ry. Co., 85 I. C. C. 203; Decker & Sons v. Director General, as Agent, 85 I. C. C. 389; Barnsdale Refining Co. v. A. T. & S. F. Ry. Co., 85 I. C. C. 685; Texas Farm & Ranch Publishing Co. v. A. & W. Ry. Co., 88 I. C. C. 417; Indiana Public Service Commission v. A. T. & S. F. Ry. Co., 88 I. C. C. 709; Dixie Portland Cement Co. v. N. C. & St. L. Ry., 88 I. C. C. 147.

§11. Reasonableness of Group.

See Reasonableness of Rates.

(a) Complainant attacked blanket rates charged on coal from Group 2 mines to destinations in Alabama, Florida, Georgia, North Carolina, South Carolina and Tennessee as unreasonable and unduly prejudicial to extent they exceeded rates from Group 1 points to the same destinations. Complainants real desire is that their mines be included in Group 1. There is nothing in the record to indicate that the rates under attack are unreasonable. The rates from Group 1 mines are the result of orders of the Commission and are not here in ques-

tion. The average extra haul from Group 2 mines over the haul from Group 1 mines is about 30 miles, and the differential in rates since Sept. 1, 1922 has been and is 12c per ton. The rates in issue have not been, since Sept. 1, 1922, and are not now unjust or unreasonable. Group 1 rates apply from all other mines served by defendant and have been extended, for competitive and traffic considerations, to mines served by other carriers in southwestern Virginia, so that the group now covers a territory extending for about 50 miles east and west and for more than 30 miles north and south. HELD, rates attacked not unreasonable but prejudicial to extent they exceed rates from Group 1 mines. Craney Island Coal Co., v. C. C. & O. Ry. 96 I. C. C. 322.

(b) Complainant attacked commodity rates on cement, carloads, from Sugar Creek, Mo., to Kansas and Dewey, Okla., as unreasonable, unjustly discriminatory and unduly prejudicial. Complainant also attacked commodity rates on cement, carloads, from Iola, Kans., to western trunk line territory as unreasonable, unjustly discriminatory and unduly prejudicial. The mill at Sugar Creek is on the Santa Fe about 13 miles from its station at Kansas City, Mo. It is 14.5 miles from Cement Spur to Kansas City, Kas., and 16.5 miles to Kansas City, Mo. It is about 30 miles from Sugar Creek to Bonner Springs. In 69 I. C. C. 644 the Commission provided that these two mills should take the same basis of rates for line hauls in all directions, both to take Kansas City distances. The question is as to the propriety of continuing the grouping of the mills in the Kansas gas belt. The grouping of the gas belt mills was voluntarily established by the carriers, and appears to have been generally satisfactory to all the mills in the group until the mill at Iola was purchased by a company which operates numerous other mills at various points throughout the country. All of the other mills in the group are opposed to breaking it up. The Santa Fe serves all of the mills except Mildred, Kas. Kansas City, one of the most important markets for cement in this territory, is 108 miles from Iola over the short direct line, and 101 miles using the short three line distance. Kansas City is 127 miles from Chanute by the short direct line and 118 miles over the short line three line route. The average mileage from all points in the gas belt to Kansas City is computed at 134 miles, although the short three line distances vary from 87 miles, Mildred to Kansas City to 194 miles from Dewey to Kansas City. The use of individual mileages would not change the rate from Iola to Kansas City. The gas belt is not generally grouped to points within a radius of 70 miles of the mill points. All of the intrastate rates in Kansas appear to be on the basis of the rates prescribed in 69 I. C. C. 644 except those from the gas belt to Argentine, Rosedale, and Glen Park, Kas., which are within the Kansas switching district. The intrastate rates to these points are 8.5c, minimum 60,000 pounds and 11.5c minimum 30,000 pounds, and the interstate rate is 11c, minimum 50,000 pounds. Bonner Springs favors putting each mill on its own mileage but if the gas belt group is continued it desires to have its grouping with Sugar Creek or Kansas City mileages continued. No reason has been shown for disturbing that situation. The record does not indicate that the Sugar Creek complainant would benefit from a breaking up of the gas belt group, and any benefit the Iola complainant might gain would be to only a limited territory, whereas some of the other mills in the group would be seriously injured, and all of them are strongly opposed to breaking up of the group. HELD, rates attacked not unreasonable, unjustly discriminatory or unduly prejudicial except the rate from Sugar Creek to Forty First St., in Kansas City is unreasonable to extent it exceeded 8.5c and the rates from the gas belt mills should be readjusted so as to confine the group basis to interstate destinations beyond 80 miles from Chanute. Missouri Portland Cement Co. v. A. T. & S. F. Ry., 101 I. C. C. 454.

(ba) Rate on cast-iron soil pipe and fittings from Somerville, N. J., to destinations on Long Island, N. Y., found not unreasonable or otherwise unlawful. Rate assailed is a group rate and is also blanketed as to destinations on Long Island. Manifestly in a group adjustment distance is in a measure disregarded, and ton-mile earnings necessarily will be higher to or from nearer border-line points than to or from those farther distant, which is the situation here presented. Somerville Iron Works v. L. I. R. R., 102 I. C. C. 511.

(bb) Grouping of rates over extensive areas is particularly adapted to lumber industry, and so long as this method of constructing rates on lumber from points in southeastern yellow-pine belt is adhered to commission will not, without convincing proof of necessity therefor, disturb or disrupt one group by taking near points out of it and making them far points in another lower-rated group. Northeast Mississippi Traffic Bureau v. A. & V. Ry., 102 I. C. C. 611, 616.

(c) Complainant attacks the lawfulness, under sections 1 and 3 of the act, of the rates on bituminous coal from coal mining districts in Ohio and from the socalled Inner Crescent and Outer Crescent regions embracing certain portions of Pennsylvania, Maryland, Virginia, West Virginia, Kentucky and Tennessee to Elkhart, Ind., Grand Rapids and Kalamazoo, Mich., and six other Michigan points in the same general vicinity, to which the coal rates are the same as to one or the other of the points named. The history and propriety of the general adjustment of the coal rates from and to the origin and destination territories here under consideration, and of the particular rates which form the subject matter of this proceeding have been very carefully considered and exhaustively discussed in several previous cases. 46 I. C. C. 66, 80 I. C. C. 663, and 83 I. C. C. 591. All of the rates and relationships here in issue have been either prescribed or approved by the Commission and there is scarcely an argument or contention of the complainants here which is not specifically considered in the reports in one or more of the cases cited. The Commission is here dealing with a group adjustment which, especially as concerned the origin group, is of long standing and to which business has accustomed itself. The Commission has approved this adjustment and has recognized the Ohio rates as the pillar upon which the entire structure rests. Neither the rates to Toledo, Detroit or Jackson nor the spreads between them furnish an adequate measure of the reasonableness of the rates to the complaining points, nor are the conditions affecting the two groups of points so similar that the failure to accord them substantially identical treatment would necessarily warrant a finding of undue prejudice. HELD, rates attacked not unreasonable or unduly prejudicial, complaint dismissed. Kalamazoo Chamber of Commerce v. C. & O. Ry., 107 I. C. C. 291.

§12. Reasonableness of Individual Rate.

See Reasonableness of Rates.

(a) The Commission does not intimate that a shipper whose rates are part of a group adjustment may not successfully attack his individual rates, but it does say that where the group adjustment is one of long standing and is generally satisfactory to the great majority of shippers of the same commodity in the same general territory, it may not be lightly set aside at the behest of an individual shipper. Hebard Cypress Co. v. A. & R. R. R., 91 I. C. C. 343, 351.

(b) When the rates from a point on the border of a group is under attack the fair measure of distance is not the distance from or to that point but the average distance from or to points throughout the entire group. Chapel v. Pennsylvania R. R. 92 I. C. C. 662, 665.

(c) Complainant attacked commodity rate charged on 66 cars of fire brick from Vandalia, Mo., to Pearson, Ark., from Feb. 3 to Sept. 15, 1923 as unreasonable. Vandalia is on the C. & A., 130 miles northwest of St. Louis. Pearson is on the El Dorado & Wesson, about 1 mile from El Dorado, Ark. Charged 33c prior to July 24, 1923 and 23.5c thereafter. On July 24, 1923 Pearson was included in the El Dorado switching limits and thereafter the same rates were applicable to both points. On Nov. 27, 1923 the rate attacked from Vandalia was reduced to 21.5c following 77 I. C. C. 473. The rate of 33c to Pearson was 9.5c higher than the rate to El Dorado, Shreveport, and Monroe, La., and Texarkana, Ark., and from 6.5c to 8c higher than the rates to certain points in Louisiana and Oklahoma for equal or greater distances. HELD, rate charged of 33c unreasonable, to extent it exceeded 23.5c, reparation awarded. Walsh Fire Clay Products Co. v. C. & A. R. R., 98 I. C. C. 458.

(d) Reasonableness of a blanket rate is not properly tested by a consideration of its earnings to a point on the nearest edge of the blanket. Bush v. Director General, 95 I. C. C. 661, 663.

(e) Complainant attacked commodity rates on coal, car loads, from Trini-

dad, Walsenburg, Canon City, Bowie-Somerset, Crested Butte, Denver, Minnequa, Crested Butte-Baldwin, and Cameo-Palisade Colo., and from Raton-Dawson district in New Mexico to local points in Kansas on the Frisco, MKT and Midland Valley as unreasonable and unjust. At the present time the rates to most of the local points are made ful! combination over the nearest junction, and joint rates are desired. HELD, rates on lump coal from Walsenburg district unjust to extent they exceed $4.60 to local points on the Frisco between Ellsworth and Augusta, $4.85 to points between Augusta and Arkansas City and to local points on the M. V., between Wichita and Arkansas City, and $5 to MKT stations in Kansas and Frisco stations in Kansas other than points referred to. From Canon City to extent they exceed rates from Walsenburg. From other districts to extent they exceed rates from Walsenburg by more than existing differences between Walsenburg and the other districts. Kansas Public Utilities Commission v. A. T. & S. F. Ry. 112 I. C. C. 235.

(f) Complainant attacked commodity rates on petroleum and its products from midcontinent field, from California and from Galveston and El Paso Tex., to Arizona and New Mexico. Generally speaking, these cases bring in issue the rates on refined oil, such as gasoline, kerosene and distillate, and on fuel oil, a residum. The term refined oil will mean gasoline or kerosene, and distillate referred to by name. FUEL OIL. The movement of fuel oil into New Mexico is inconsequential. Under certain intermediate provisions the rates on fuel oil from the midcontinent field into New Mexico are the same as those to farther distant points in Arizona. No evidence was introduced covering fuel oil from California into New Mexico. With the possible exception of El Paso as a point of origin it will be unnecessary to consider fuel oil rates into New Mexico and this report will deal primarily with destinations in Arizona in respect of that commodity. It is reasonably certain that if rates from the California and midcontinent fields into Arizona were to be constructed strictly according to distance, as California would have them, the only logical result would be to deprive the midcontinent producers from competing in this territory, provided the price of fuel oil in the two fields is anywhere near the same. Considering the adjustment as a whole and all the circumstances surrounding it, the Commission does not find that the rates attacked are unlawful under section 3. There are two important exceptions, however, to this general finding, and they concern the rates to Bisbee and Douglas. From southern California to these points for distance of 628 and 643 miles, respectively, the rate is 38.5c which is based upon the rate of 30c approved in 1916. From north Texas points for average distances of 923 and 893 miles the rates are 39 and 37.5c respectively. These Texas rates also apply from Galveston, 1,125 and 1,095 miles respectively. Clearly this relationship of rates does not accord sufficient weight to the factor of distance. The rate from Kansas and Oklahoma to both Bisbee and Douglas is 46c. The record does not show why the normal grouping was departed from in these particular instances. REFINED OIL. The rates on refined oil are in issue in all of the complaints and the California complainants make the same contention as to preference of the midcontinent field as they do in respect of the rates on fuel oil. They did not stress the rates to New Mexico and the findings will be limited accordingly. Generally speaking rates on refined oil from the midcontinent field and from California into Arizona and New Mexico found their origin in the intermediate application of transcontinental rates. A rate established by the rail lines from the Atlantic to the Pacific coast to meet water competition might well be near the border line of confiscation for that movement and still be unreasonable as a maximum when applied to the small proportion of the total movement which occurs from the midcontinent field to Arizona. DIFFERENTIAL AS BETWEEN FUEL OIL AND REFINED OIL. No reason appears of record for any fixed relationship in the rates on these commodities in this territory. The records, considered as a whole, establish quite clearly that a fixed relationship should not exist. The fuel oil rates into Arizona were established primarily to meet the competition of coal mined in northern New Mexico. Arizona is wholly dependent upon outside fuel and the fuel oil consumed there for the generation of heat and power does not compete with refined oil, which is used almost wholly in auto-

mobiles. If the Commission were to establish a fixed relationship which would have the effect of increasing the fuel oil rates the inevitable result would be a loss to the carriers of the long hauls now enjoyed on this traffic. On the other hand, a drastic reduction of the refined oil rates to force a fixed relationship would result in a heavy depletion of carrier revenue and would serve no useful purpose such as increasing the movement. DISTILLATE. The testimony is vague and conflicting as to the proper description of distillate and the purposes for which it is used. The principal use for distillate in Arizona is in pumping engines used for purposes of irrigation. The present rates on distillate from the midcontinent field vary in their relation to the refined oil rates but on the whole seem to be less than 80 per cent of the latter rates. The records will not warrant any change in the existing relationship which should be continued in respect of the rates on refined oil herein prescribed. RATES FROM EL PASO. El Paso is not included in the same rate group with other producing points in Texas in respect of rates into Arizona and New Mexico. It is situated in the extreme western part of Texas near the New Mexico state line and as a refining center draws its crude oil principally from the mid-continent field. The evidence of record does not warrant the prescribing of specific rates on fuel oil. HELD, rates on fuel oil, carloads, from southern California, Kansas, Oklahoma and Texas other than El Paso not unreasonable or unduly prejudicial, with the exception that the rates from Galveston and other points in Texas to Bisbee and Douglas are unduly prejudicial to southern California. This should be corrected by increasing the rates from Galveston and other points in Texas to Bisbee and Douglas to 46c which is the rate applicable from other points in the midcontinent field. HELD, further, rates on refined oil, from midcontinent field to all main line and branch line destinations in Arizona unreasonable to extent they exceed 103.5c prior to July 1, 1922 and 93c subsequent that rates from southern California to all main line and branch line destination in Arizona. Bowie, Flagstaff and west unreasonable to extent they exceed 80c, and rates from midcontinent field to Vaughn Las Vegas, Belen, Albuquerque and Deming, N. M., unreasonable to extent they exceed 65, 70, 80 and 85c. HELD, rates on distillate from southern California and from midcontinent field to destinations in Arizona and New Mexico should bear the same relationship to the rates on refined oil herein prescribed as is maintained in respect of the present rates. HELD, rates from El Paso unreasonable, reparation awarded. Associated Oil Co. v. A. E. Ry., 112 I. C. C. 350.

§12½. Relativity of Group Rate.

See Relative Rates.

(a) These cases bring into issue, broadly, the rates, commodity descriptions, and minimum weights on salt, in carloads, from all producing points in New York, Ohio, Michigan, Kansas, and Louisiana to points on and east of the Missouri river, in Iowa-Missouri territory, central, trunk line, Carolina, southeastern and Mississippi valley territories. The existing adjustment of commodity rates on salt is the outgrowth of keen competition between widely separated producing fields in the sale of this article in the large consuming centers and of competition between many carriers for the revenue derived from the heavy tonnage of this cheap, low grade commodity. Rates from the points of origin in the separate fields have been generally grouped to the larger cities. The relationships of rates from the several competing fields to common markets have been created often without regard for the relative distances. This practice has given rise to numerous complaints. Commodity descriptions. The term salt, will mean sodium chloride, generally termed common salt. The consolidated classification provides carload ratings on salt, common, (sodium chloride) of sixth class in official, class A in southern, and class C in western, in packages, in blocks, or in bulk, C. L., minimum 40,000 pounds. There is practically no division of opinion between the complainants, defendants, and interveners, that there are no transportation or traffic conditions which warrant any distinction in the rates or tariff descriptions between rock salt and evaporated salt. The term rock salt refers to the condition of the salt as it is mined and not to the condition in which it is shipped. The term evaporated salt is used to designate dry salt produced by the solar and steam methods from brine pumped from the ground as distinguished from rock salt that is blasted from

a solid, crystalline state. There is no chemical distinction between rock and evaporated salt. Rock salt is produced in New York, Michigan, Kansas and Louisiana. Evaporated salt is produced chiefly in New York, Michigan, Ohio and Kansas, HELD, any difference in rates resulting from differentiation in commodity rates descriptions between rock salt and evaporated salt, between coarse salt and medium or fine salt, or between table salt and common salt is, unduly prejudicial and preferential, and that such differentiation is an unreasonable practice. **Carload Minima.** Present minimum generally 37,500 pounds and complainants attack this minimum as unreasonable to extent it was less than 45,000 pounds uniformly. The preponderance of opinion among shippers and carriers is that there should be one rate and one minimum on all kinds of common salt, carloads, whether in bulk or in containers. Most of the producers of salt favor the proposed uniform minimum of 45,000 pounds. Carload shipments of rock and evaporated salt, in bulk and in bags, to the packing plants average about 88,000 pounds, and in bulk are ordinarily loaded 10% in excess of the marked capacity of the car. HELD, respondents have justified the reasonableness of the proposed carload minimum of 45,000 pounds for uniform application throughout the United States east of the Rocky Mountains. **Detroit to Chicago.** Rates to Chicago are the most important in the salt rate structure. The eastern and western Michigan producing points by reason of their great advantage in distance to Chicago, as compared with other producing fields, dominate that market. The rates from the Michigan fields are 11.5c, minimum 60,000 pounds, on bulk salt, and 13c minimum 37,500 pounds, on package salt, from Detroit to Chicago. The rock salt plant at Detroit is on the main line of the Wabash, 272 miles from Chicago. This line is practically a water level route, and the salt traffic furnishes loading for box cars which would otherwise move westbound to Chicago and the grain fields. The present rates from Detroit to Chicago are not excessive under section 1 of the act and, in view of the unusuallly favorable operating conditions between Detroit and Chicago, can not be regarded as noncompensatory, but, under the circumstances, the present rate of 11.5c would be unreasonably low for the future. HELD, present rates on salt, carloads, from Detroit to Chicago, will be unreasonably low for the future, and that 13c, minimum 45,000 pounds, would be a reasonable minimum rate for the future. **From Eastern and Western Michigan Points to Chicago.** The distance from some of the other eastern Michigan producing points to Chicago are, Bay City 306 miles Marine City 326 miles, and Port Huron 334 miles. The distances to Chicago from Ludington and Manistee, in western Michigan, are 299 and 298 miles by rail and 185 and 229 miles by car ferry across the lake to Milwaukee, Wis., and by rail beyond. The distances from the eastern and western Michigan points, all rail, warrant the continuation of the same rate from all of them to Chicago, but the car ferry rail distances from Ludington and Manistee justify rates lower than over the all rail routes. The average distances over the all rail route are about 141% of those by the car ferry route. The rates over the car ferry route may be maintained upon the same basis as prescribed as a minimum over the all rail lines. HELD, rates on salt from producing points in eastern Michigan, other than Detroit, to Chicago, less than the rates maintained from Detroit to the same destination, would be unreasonably low. The present grouping of origin points and the relationship of Ohio points to Michigan points should be preserved. HELD, further, rates on salt, carloads, from Ludington and Manistee all rail to Chicago are unreasonable low to extent they may be less than 13c, or less than rates maintained from Detroit and other eastern Michigan producing points to the same destination; and that the rates on salt from Ludington and Manistee to Chicago over the car ferry routes for the future will be unreasonably low to the extent they may be less than 12c. **From New York Points to Chicago.** The rate of 19c on coarse salt, in bulk from Halite and other New York points is attached. Halite is about 30 miles south of Rochester, N. Y., and Retsof is about 3 miles from Halite. The short line from Retsof, the near point in the group, to Chicago is 560 miles and from Halite 563 miles. Present rate to Chicago is 26.5c. HELD, rates from Halite and Retsof to Chicago unreasonably low, and unduly prejudicial to Detroit to extent they may be less

than 21c, minimum 45,000 pounds, and unduly prejudicial to Halite and Retsof to extent they exceed by more than 8c the rate maintained from Detroit to Chicago. **Kansas Group to Chicago.** In 69 I. C. C. 745, prior to the 10% reduction, the Commission found that the rates from Little River, within the Kansas group, to East St. Louis, Ill., and Chicago, 501 and 674 miles, should not be higher than the then existing rates from Louisiana mines of $4.59 per net ton to East St. Louis and $5.13 to Chicago and would be unreasonable to that extent. The finding there that the rates from the Kansas field should not exceed the rates from the Louisiana field is amply supported upon this record. Present rate from the Kansas group to Chicago about 675 miles, is equivalent to 23.1c. The rates from the Kansas mines to Chicago should be related to the prescribed minimum rate of 13c from Detroit to Chicago. The haul from Kansas to Chicago is mostly through an area of lighter traffic density than from Detroit to Chicago, and includes additional cost incident to the crossing of the Missouri and Mississippi rivers. HELD, Rates on salt carloads from Lyons, Little River, Kanopolis, Anthony, Hutchison and Sterling, the producing points in the Kansas group, to Chicago, for future unreasonable low to extent they may be less than 24c, and that the maintenance of rates on a basis lower than 24c, on and after the date that the rates from Detroit and Halite to Chicago are increased to the minima prescribed, will be unduly preferential of Kansas producers, and subject the shippers of salt from the Michigan group and from Halite to undue prejudice and disadvantage. **From Louisiana to Chicago.** The present rate on salt from the Louisiana mines to Chicago is $4.615 per ton. The distances to Chicago from the producing points, Anse La Butte, Avery, Salt Mine, and Weeks Island, on the Southern Pacific lines, and Jefferson Island, on the Gulf Coast lines, average about 1,004 miles. Under present rates Detroit has an advantage of $2.315 per ton over Louisiana in the Chicago market. Defendants, which form the through routes from Louisiana to Chicago, do not serve the New York, Ohio, Michigan or Kansas fields, and ordinarily do not participate in the transportation of salt from those fields to Chicago, although they concur in the tariff publications. The central and eastern trunk lines contend that the I. C., does participate in salt traffic from the eastern fields to Chicago, but the record does not support a specific finding to this effect, and the southern lines deny this is a fact. There is no adequate basis for a finding of undue prejudice. The low rates from Louisiana have been far reaching in their consequences. Retaliatory reductions have been established from other fields, and the truce in the salt rate war which now exists is due almost entirely to the fact that these proceedings are pending. The rates from all the fields to certain highly competitive points, such as Chicago and St. Louis, have reached so low a level that many shippers are asking that the rate level be raised in order that the revenue may be sufficient to make the tonnage attractive to the carriers, and in order that the service may be improved. HELD, a minimum rate of 27c from the Louisiana mines to Chicago will protect the salt rate structure. **To Other Important C. F. A. Points.** The rates from Halite to Cincinnati, Louisville, and Indianapolis, 486, 598 and 527 miles, are $4.60, $5.30 and $4.90 per ton, which are not unreasonably high; and to the two latter destinations a rate of $4.56 applies from the Louisiana mines and $4.92 to Cincinnati for distances of 848, 960 and 960 miles. HELD, rates on salt, carloads, from Halite to Cincinnati, Louisville and Indianapolis not unreasonable as maxima; but rates from Louisiana mines are unreasonably low to extent they may be less than 25c to Louisville and 26.5c to Indianapolis and Cincinnati. **To Other Illinois Points.** To La Salle, Bloomington, Danville, Decatur, and Champaign, rates are $5.71 from Louisiana mines and $3.70 per ton from Detroit. The distances from Louisiana mines range from about 830 to 934 miles, and from Detroit about 301 to 399 miles. The rate from Louisiana is higher than that prescribed herein as a minimum to Chicago. The rates from Halite to Bloomington, 687 miles, Champaign 752 miles, and Decatur 730 miles, are $5.80 over certain routes and $6.20 to the same points over other routes and to La Salle, Ill., 658 miles. These rates are all in excess of the rate from the Louisiana mines. The rate from Halite to Danville, 683 miles, is $5.30 per ton. HELD, rates on salt, carloads from Halite to La Salle and Bloomington are

unjust and unreasonable to extent they exceed 26.5c and 27.5c, respectively. The rates to the other named points in Illinois are not unreasonably high. The rates from the Louisiana mines to the same destinations are not unreasonably low. **To St. Louis.** The present rates to St. Louis from the four principal groups of origin are equivalent to 31c, 779 miles from Halite; 18.5c on bulk and 22c on package salt, 488 miles from Detroit; 20.65c, 497 miles from the Kansas field; and 20.65c, 768 miles, from the Louisiana mines. HELD, present rates to St. Louis from Detroit and from the Kansas field are not unreasonably high or low, but recommend that defendants in revising rates as required under the conclusions herein increase the rates on all salt from Detroit and the eastern Michigan group to the present package basis of 22c, and the rate from Kansas group to 23c. HELD, rate from Halite to St. Louis unreasonable to extent it exceeds 29c, and should not exceed the rate from Detroit by more than 7c. HELD, further, that the rate from Louisiana mines to St. Louis unreasonably low to extent it is less than 24c. Upon this record there is no adequate proof which warrants the Commission in prescribing specific commodity rates from Halite to other points in central territory. To all points in Ohio, Indiana and Illinois to which salt now moves in carload quantities and as the necessity arises therefor defendants should publish such maximum rates fairly aligned with those above prescribed from Halite. **From Ohio and Michigan to Lower and Upper Mississippi River Crossings.** The salt producing points, Michigan City, Ind., points in northern Ohio and the southern Peninsula of Michigan, are largely grouped with respect to the rates to different points on the Mississippi river. The distances from points in these groups to Burlington range from 262 to 560 miles, and average 492 miles. The average distances from the same points of production to St. Louis, Quincy and Hannibal are 521, 548, and 545 miles. Like rates apply to Burlington on salt both in bulk and in packages, namely 25c. The rate on package salt to Burlington also applies to all Mississippi river crossings, Keokuk, Iowa to Dubuque, Iowa, but a rate of 22.5c applies on salt in bulk from these groups to Dubuque, Clinton and Davenport, Iowa, and defendants have offered to establish a like rate on bulk salt to Burlington. A rate of 18.5c applies on bulk salt from the eastern Michigan and Ohio groups to St. Louis over all lines except the Burlington, over which line the rate is 22c, in bulk and in packages. HELD, rates on salt, carloads, from Michigan City and producing points in Ohio and eastern Michigan to the upper Mississippi river crossings, Keokuk to Dubuque, are unjust and unreasonable to extent they exceed 22c, and unduly prejudicial to extent they exceed rates on like traffic from the same producing points to the lower crossings, St. Louis, Hannibal and Quincy. In publishing rates from the eastern Michigan and Ohio groups to Mississippi river crossings and points west thereof defendants should make corresponding changes in the rates from Chicago to the same destinations, preserving existing relationship. **Ohio and Michigan to Iowa, Missouri and Nebraska.** There is no destination territory in the salt rate structure, which has been the source of such prolific strife, as the territory where the distances from Michigan and Kansas producing points are about equal. In this destination territory the salt rate structure is unjustifiedly complicated. There are different rates on different kinds of salt or on salt in different containers, and there are different groupings of destinations under one minimum than under another. The rates from the Ohio and eastern Michigan points have been grouped for many years to the Mississippi river points, but the points beyond the river the Ohio group has taken a differential higher than the Detroit or eastern Michigan group. This inconsistency should be removed by grouping Ohio with eastern Michigan to points west of the Mississippi river. The much shorter distances from Ludington and Manistee, in western Michigan to interior points in northern Iowa, particularly than from eastern Michigan or Ohio, warrant a lower basis of rates and a disruption of the grouping of western with eastern Michigan. HELD, rates on salt from Ludington and Manistee, by car ferry and rail, to the upper Mississippi river crossings, Dubuque to Keokuk, inclusive, are unjust and unreasonable to extent they exceed 20c, and to the lower crossings, Quincy to St. Louis, unjust and unreasonable to extent they exceed 22c, and unduly prejudicial to extent

they exceed rates from eastern Michigan and Ohio producing points to St. Louis. HELD, further, rates on salt, carloads from Ludington and Manistee, by car ferry and rail, and from producing points in eastern Michigan and Ohio to jobbing and packing points in Iowa and Missouri west of the Mississippi river crossings, such as Cedar Rapids, Ottumwa, Fort Dodge, Mason City and Des Moines, and points in Nebraska on the Missouri river, such as Omaha, to which salt moves in carloads are unjust and unreasonable to extent they exceed maximum rates constructed in the following manner: Add 0.5c for each successive distance block of 20 miles to rate up to the nearest upper or lower crossing, using short line routes via existing connections. This finding respecting the rates from eastern Michigan and Ohio is based on the recommended rate of 22c to St. Louis and other crossings. Where circuitous lines desire to meet the rates of the direct lines at competitive points they may, where necessary file applications for relief from the long and short haul provision of the act. The Commission recommends that any rates covered by the above conclusions which are less than the maximum basis herein prescribed by increased to that basis. Like changes should be made in the rates from the Louisiana mines over the I. C., to points in Illinois and Iowa. The record does not warrant a finding with respect to the allegation of undue preference of Louisiana in the rates to Iowa-Missouri territory, or with respect to the rates to Lincoln from the Ohio and Michigan groups. **Kansas to Iowa, Missouri, Illinois and Upper Crossings.** The present rates from the Kansas group to Des Moines and Ottumwa, 25.65c, are the same as from the Michigan and Ohio groups, although the distance from Kansas to Des Moines is about 231 miles less than from the east. The rates from Kansas to Mason City and Fort Dodge 32.5c are higher than from the east to the same destinations, 29c, although the distances from the Kansas group are 72 and 162 miles, less than from the Michigan and Ohio groups to Mason City and Fort Dodge. These disadvantages against the Kansas producers exist in favor of eastern Michigan and Ohio, even though the carriers have failed to make the reductions from the east to Mason City which the Commission recommended in I. & S., 1624. HELD, rates on salt, carloads, from Kansas unjust and unreasonable to extent they exceed 15.5c to Kansas City, 21.5c to Des Moines, 22.5c to Ottumwa, 24c to Fort Dodge, 24.5c to Waterloo, 25c to Cedar Rapids and Dubuque, 25.5c to Mason City and 27.5c to St. Paul. The general basis for the maximum rates prescribed from the Michigan and Ohio fields to this territory is 22c, and from the Kansas group 24c for 500 miles, observing the average distances from the groups to important base points and using the short routes via existing connections. **From Central Territory to Trunk Line Territory.** The rate from Syracuse to Chicago is 7c lower than the rate from Detroit to New York through common territory, although the distance of 652 miles from Syracuse to Chicago is a little greater than that of 632 miles from Detroit to New York. HELD, base rate on salt, carloads, from Chicago, to New York is unjust and unreasonable to extent it exceeds 33.5c; and the rates from Detroit, Saginaw, Akron and Cleveland to points in trunk line territory unjust and unreasonable to extent they exceed the rates resulting from the application to the base rate of 33.5c of the fixed percentages under the so-called Chicago-New York adjustment from the producing points to the respective destinations. HELD, further, rates attacked from Ohio-Michigan producing points to trunk line territory are not shown to be otherwise unlawful. The scope of this record does not warrant consideration of rates to specific points in trunk line territory, and complainants claim for reparation is denied. **Ohio to Washington and Old Dominion Stations.** The present rates from Akron and Cleveland to points in Virginia on the Washington & Old Dominion, and electric line, are based upon the rate of 27c to Potomac Yard, Va., which is the rate to Baltimore, Md., plus arbitraries of 10.5c to stations Alexandria Junction to Herndon, and 12.5c to stations Sterling to Bluemont. The distance from Akron to Potomac Yard is 439 miles and from Watkins 319 miles. The rates from Akron to these stations are too high in comparison with other rates on salt in official territory, higher even than the base rate of 33.5c prescribed herein for the much greater distance of about 912 miles from Chicago to New York. HELD, rates on salt, carload, from Akron and Cleveland to points on the Washington

& Old Dominion Railroad, are unreasonable to extent they exceed 31c and 33c The rates from Akron and Cleveland would become relatively lower than the rate of 32c from New York producing points to the same destinations, resulting in undue prejudice to producers in New York state. While not directly in issue, the rates from the New York points to these Virginia stations should be reduced at the same time to 28.5 and 30.5c, based upon 20.5c to Potomac Yard for 319 miles plus the arbitraries of 8 and 10c beyond. **To Bristol Tenn.-Va.** The applicable rate from Akron to Bristol is 39c. Apparently there is no opposition to the maintenance of the rate parity from the Ohio and New York fields to Bristol. Defendants will be expected to publish rates on salt from the Ohio fields on a commodity basis no higher than those from producing points in New York. **Ohio and Michigan to Carolina and Southeastern Territories.** Many years ago the rates from Ohio and Michigan to Carolina territory were adjusted to equal rates from New York producing points. The rates from New York were published as joint through rates, while those from Ohio and Michigan were made combinations over the Virginia cities. This parity was disturbed by the general percentage increases, and the rates from Ohio and Michigan became higher than from New York. The parity of Ohio and New York producing points at destinations in Carolina territory was restored by agreement between carriers and shippers on Jan. 5, 1922, by taking the rates from Syracuse as a basis and establishing them as specific commodity rates from Akron with slight differentials from producing points in Michigan. Complainants are satisfied with this adjustment. The present rates from Ohio and eastern Michigan to Pensacola, Fla., New Orleans and Mobile, Ala., are 38c and to Memphis, Tenn., 25.5c; the rates to McKenzie, Humboldt, and Clarksville, Tenn., intermediate to Memphis, are 31.5c; to Birmingham and Montgomery, intermediate to Pensacola and Mobile, 42.5c and to Eufaula, Ala., 45c. HELD, rates attacked from Ohio and Michigan producing points to points in Carolina territory not unreasonable or unduly preferential of New York points of origin. Commission is not warranted in making a finding with respect to the rates to southeastern territory, and defendants will be given additional time to remove the fourth section departures in connection with the general revision of rates to and from points in the southeast, or until such reasonable time as they may agree with the salt shippers upon a satisfactory and harmonious adjustment of these rates. **To Mississippi Valley Territory.** The rates to New Orleans and Mobile are 38c from Detroit and Akron, and 31.5c from Chicago; to Memphis, 25.5c from Detroit, and 23.5c from Chicago. The difference, Detroit over Chicago, at Memphis is 2c, and at the farther distant Gulf ports, 6.5c. The rates to McKenzie and Humboldt are 30.5c from Detroit and 20.5c from Chicago. The rates from Detroit to McKenzie and Humboldt, which are based on the Cairo, Ill., combinations, are higher than to Memphis, a farther distant point. The distances from Detroit, Akron and Cleveland to Louisville, 376, 360, and 359 miles, are practically the same as from Milwaukee to St. Louis, 367 miles. There is no apparent reason why the rates from Ludington and Manistee to Memphis, New Orleans and Mobile should be any higher than from the eastern Michigan fields to the same destinations. While the rates from Ohio Michigan producing points to Memphis, New Orleans, Mobile and points throughout Mississippi Valley territory are apparently too high, the evidence is insufficient to warrant the prescription of maximum reasonable rates. The evidence also indicates that the relationship between the rates from the Ohio Michigan producing points and from Chicago is improper, but a strict interpretation of the complaint constrains the Commission from making a finding in this respect. Defendants are now undertaking a revision of commodity rates from central to southern territory generally. It is expected that they will, within a reasonable time, establish rates on salt from Ohio, Michigan producing points and from Ludington and Manistee to the Mississippi Valley on a reasonable basis and properly related to rates from Chicago. **Ohio, Michigan to Interior Florida.** The present rates are based upon triple combinations, composed of the rates from points of origin to Ohio river crossings, such as Cincinnati, the rates from the river crossings to Jacksonville, and class O rates under the Florida classification, from Jacksonville to the interior points in Florida, based

upon a distance scale, with certain groupings of destinations, except to Pensacola, which takes the same rates as New Orleans, and except to Tampa and St. Petersburg. From Jacksonville the difference in favor of interstate shipments as compared with interstate movements is 4.1c. HELD, interstate rates on salt, carloads, from Jacksonville and other Florida basing points to interior points in Florida, for application on through shipments from Ohio and Michigan producing points are not unjust and unreasonable, but are unduly prejudicial to extent they exceed the intrastate rates to the same destinations, except Pensacola, Tampa, and St. Petersburg; and those rates to that extent, cause undue, unreasonable and unjust discrimination against interstate commerce. Salt cases of 1923, 92 I. C. C. 388.

(b) Complainants attacked commodity rates charged on bituminous coal, carloads, from Ohio, West Virginia, Kentucky, and Tennessee to Huntington, Gary, Michigan City, Anderson, Fortville, Yorktown, Muncie, Pendleton, Ben Davis, Union City, Winchester, Snow Hill, Sheridan, Horton, Farmland, Kirkland, Carmel, Parker City, Middletown, Oakville, Wabash and Sulphur Springs, Ind., as unjust unreasonable, unjustly discriminatory and unduly prejudicial. The territories of origin comprise mines in the Inner and Outer Crescents and in Ohio. The destinations are in groups which have been fixed as a result of 46 I. C. C. 66, 80 I. C. C. 663 and 83 I. C. C. 591. HELD, rates attacked not unreasonable following decisions in the cases just mentioned above. Bash & Company v. B. & O. R. R., 96 I. C. C. 178.

ALL OTHER CITATIONS

Ingram Day Lumber Co. v. G. & S. I. R. R. Co., 85 I. C. C. 373; Corona Coal Co. v. St. L. S. F. Ry Co., 85 I. C. C. 723; Wickwire Spencer Steel Corp. v. Director General, as Agent, 88 I. C. C. 54; Dixie Portland Cement Co. v. N. C. & St. L. Ry., 88 I. C. C. 147; Texas Farm & Ranch Publishing Co. v. A. & W. Ry. Co., 88 I. C. C. 417.

V. DISCRIMINATION.

See Blanket Rates §6 (a); Discrimination.

§13. In general.

(a) Complainant attacked class rate charged on gasoline, carloads from Porters Falls, W. Va., to Philadelphia, Pa., as unreasonable, unjustly discriminatory, unduly prejudicial and in violation of the fourth section. Shipments moved between December 9, 1919 and Jan. 27, 1920, over the B. & O. to Wilmington, Del., and Pennsylvania beyond. Fifth class rate of 29c was charged. Commodity rates on petroleum and petroleum products from the territory in which Porters Falls is located were at the time of this movement generally 2c lower to Philadelphia than to Bayonne, N. J., Philadelphia being intermediate, distance 450 miles to Philadelphia and 531 to Bayonne. From points in all directions around Porters Falls a rate of 26c applied to Philadelphia when these shipments were made. HELD, rate attacked unreasonable to extent it exceeded 26c, reparation awarded. Atlantic Refining Company v. Director General, 89 I. C. C. 391.

(b) Complainant attacked commodity rates on grain and grain products carload from Western trunk line territory to Helena, Ark., destined to Mississippi valley territory, as unreasonable, unjustly discriminatory and in violation of section four. Helena is a jobbing point on the west bank of the Mississippi river 66 miles south of Memphis over the Y. & M. V. It is also served from the west by the M. & N. A., and by a branch line of the M. P., extending east from Barton and southeast from Latour, Ark. Typical purchasing points are McGehee, Watson and Elaine south of Helena and Clarendon and Brinkley west of Helena. It competes with Memphis to points in the Mississippi valley. **Rates to Helena.** Grain and grain products move to Helena on both local and proportional rates, the latter applying for the most part on traffic from important market points, the former on grain from country points. Effective April 1, 1922 defendants established rates to Memphis of 12.5c on both wheat and corn from St. Louis, and 25c and 26c on wheat and 23.5c on corn from Kansas City and Omaha. In 57 I. C. C. 11 the Commission directed that rates on grain and grain products should be aligned in accordance with the rates fixed therein on classes. The rates to Memphis are lower than if made in strict accordance to a first class percentage relationship with New Orleans; rates to Corinth which are the same as to Memphis on most commodities from St. Louis

and beyond, are higher than to Memphis; and rates to Helena from St. Louis are lower than to some of the points in the eastern portion of the Helena rate group, although the same as to intermediate points on the Y. & M. V. The rates from St. Louis to Memphis can not be considered as a proper measure of reasonable rates to Helena. The M. P. the rate making and direct route to Helena is a west side line. In reaching Helena it passes through points in western territory to which rates have been fixed by the Commission. The rates to Arkansas and to the Mississippi valley represent the ordinary level of proportional grain rates to this territory. The rates to Memphis are extraordinary, and made to fit a peculiar situation, in no way parrallelled by the situation at Helena, or for that matter at any point in southern or southwestern territory.

Memphis has long been what is termed a primary market. Rates have been made to break thereon. The adjustment is of long standing. These rates have been maintained at a low level consistent with that of other proportional rates from the Missouri river. Proportional rates both from the Missouri river and from St. Louis to Memphis are among the lowest rates in the country on high grade traffic. To maintain rates to Helena, on a lower level than to other interior Arkansas points would create violations of the fourth section and disturb the interior Arkansas adjustment generally. **Rates From Helena.** The rates from Helena are local rates; those from Memphis reshipping or proportional rates, and are the balance of the through rates after deducting the applicable charge for movement from given point of origin to Memphis. There are also local rates maintained from Memphis which are seldom used, but which are on a level comparable with the local rates from Helena. **Rates Via Helena To the Mississippi Valley.** From two points, Omaha and Kansas City, joint rates apply via Helena to points on the Mississippi Valley on the Y. & M. V. Under these joint rates traffic may be halted at Helena, and then moved out within one year either in its original form or in representative amount of products, which contain specified ingredients. Defendants have established joint reshipping rates from St. Louis to a large number of points in the Mississippi valley applicable over the M. P., to Helena and Y. & M. V., and connections beyond, the same in amount as apply over the east side routes, with transit at Helena. **Request that Helena Be Made a Rate Breaking Point.** Memphis is a primary grain market and a rate breaking point. Helena is neither. Memphis is a rate breaking point because it is connected with the important grain regions of the country by numerous powerful trunk lines. There is no similarity between Memphis and Helena from a transportation standpoint. Helena is off the direct route of any important carrier. There is no bridge at Helena and operating conditions across the Mississippi at that point are very unfavorable. Memphis is the gateway for all kinds of grain and grain products to the south. Helena is only a jobbing point dealing chiefly in mixed live stock feed. Helena is doing no more business than may other jobbing points in the south and southwest. HELD, rates attacked not unreasonable, unjustly discriminatory or unduly prejudicial, except that the participation of the M. P., on grain and grain products from Kansas, Kansas City, Mo., and from points in Missouri from which rates base on Kansas City Helena more than 2.5c on wheat and 1.5c on coarse grain higher, and from points in Nebraska and Iowa, and from Missouri except St. Louis, to Helena more than 5c higher on wheat and 3.5c on coarse grains higher than to Memphis is unduly prejudicial. Helena Traffic Bureau v. M. P. R. R., 89 I. C. C. 405.

(c) Following Swift Lumber Co., 61 I. C. C. 485, failure of defendant to accord blanket or group rates on apples from Dufur, a local point on the Great Southern R. R., an independent short line, to Denver, Colo., and to destinations east or west of Missouri River, or taking rates applicable to such territory, while according blanket or group rates to all stations on its main line, branch lines, and proprietary lines, and to Odell, Oreg., a point on the Mount Hood R. R., an independent short line, found not unreasonable but unduly prejudicial of competitors located on such main, branch, and proprietary lines. Dufur Orchard Co-Owners Co. v. A. & R. R. R. Co., 89 I. C. C. 419.

(d) Complainant attacked commodity rates charged on fresh apples, carloads, from Dufur, Ore., to Denver, Colo., and to points east of the Missouri river, as unreasonable and unduly prejudicial to

extent they exceeded rates from The Dalles, Ore., to the same destination. The Dalles is on the Oregon-Washington, the Great Southern Ry. is an independent short line having no rail connection except with the O-W at The Dalles, and extending thence through Dufuer 30 miles, to its terminus at Friend. The difference of 16.5c in the rates from Dufur and The Dalles was the local class C rate between the two points. On April 24, 1922 rates from Dufur were made 10c over the rate from The Dalles, and July 1, 1922 this arbitrary became 9c. To destinations west of the Missouri river, the Oregon-Washington accorded blanket rates to practically all points on its branch and proprietary lines, although on such traffic no independent short line is accorded the benefit of group rates. HELD, to destinations east of the Missouri river rates from Dufur prejudicial to extent they exceed rates from points on branch lines of the Oregon-Washington. As complainants concede for the purposes of this case that the group rates are reasonable, it is clear that any unreasonableness they claim in the Dufur rate is of a relative rather than an inherent nature, rates not unreasonable. Dufur Orchard Co-Owners Co. v. A. & R. R. R., 89 I. C. C. 419.

(e) Complainant attacked commodity rates charged on pipe, in carloads, from McKeesport, Pittsburgh, Woodlawn, and Ellwood City, Pa., Lorraine, and Youngstown, O., and Wheeling, W. Va., to Taft, Calif., since Feb. 5, 1921 as unreasonable and unduly prejudicial. Taft is on the Sunset Ry. 48 miles from Bakersfield, where the Sunset connects with the S. P., and Santa Fe. The rates to Pacific coast points were $1.665 and were held as maximum at intermediate points, including Bakersfield. No joint through rates are in force from group B to Taft, rates being $1.665 to Bakersfield and 17.5c beyond. The usual basis for making rates on various commodities, including pipe, which move from eastern points of origin to points in California or Arizona on branch or short lines, is by combination over junction points with such branches or short lines. HELD, rates attacked not unreasonable or unduly prejudicial, complaint dismissed. Standard Oil Company v. A. T. & S. F. Ry., 89 I. C. C. 425.

(f) Inclusion of Rock Springs and Kemmerer mines in Wyoming in one group found not unduly prejudicial of operators of coal mines in Utah. The commission has on former occasions declined to separate the district into two rate groups on traffic to southern Idaho on ground that grouping both as to shipments westbound and eastbound had existed for many years and should not be interfered with unless a service more acceptable to the public, and at the same time just to carriers, could be established. Moreover, separation of the group on westbound traffic would naturally result in like action as to eastbound traffic, and would seriously disturb the relationship that has existed without complaint over a long period of years. Western Coal Rates, 89 I. C. C. 666, 668, 669.

(g) Complainant attacked combination rates charged of 99c on five cars of apples from Chelan, Wash., to San Francisco, Cal., in Oct. and Nov. 1922, and Jan. 1923 as unreasonable and unduly prejudicial. Chelan is on the G. N., 39 miles north of Wenatchee, Wash. Shipments moved via G. N., to Portland, Ore., S. P., beyond, charged fifth class of 20c to Wenatchee and commodity 79c beyond. Contemporaneously a commodity rate of 79c applied to San Francisco from many important apple shipping points in the same general territory on the G. N., and O. W. R. R. & N., including Spokane, Yakima, Wenatchee, Wash., and Lewiston, Ida., and local points on the Yakima Valley Transportation line, an electric line operating from Yakima. HELD, rate attacked unreasonable to extent it exceeded 79c, reparation awarded. Jacobs Malcolm and Burtt v. G. N. Ry., 89 I. C. C. 723.

(h) Complainant attacked commodity rates charged on grain, carload from Humboldt, Neb., to St. Louis, Mo., since April 1, 1921 as unjust, unreasonable and unduly prejudicial. Humboldt is on Burlington 21 miles west of Falls City, Neb., a junction point between defendants line and the M. P. From Falls City both defendant and M. P., have direct lines to St. Louis. Prior to June 25, 1918 the rate on wheat from Humboldt to St. Louis was 15.5c, increased on that date to 19.5c, increased on Aug 26, 1920 to 28.5c, reduced on Jan. 2, 1922 to 24.5c and on April 20, 1923 reduced to 22.5c. Distance from Humboldt to St. Louis direct through St. Joseph is 398 miles. In 73 I. C. C. 347 and 80 I. C. C. 607 the Commission prescribed for single line hauls rates of 29c for this distance. HELD, rates attacked not unreasonable

or unduly prejudicial, complaint dismissed. Cooper-Company v. C. B. & Q. R. R., 91 I. C. C. 50.

(i) Complainant attacked commodity rates on coal, from complainants mine at Johnston City, Ill., to interstate points as unreasonable and unduly prejudicial. In 88 I. C. C. 111, the Commission found the rates attacked unreasonable and unduly prejudicial to extent they exceeded joint rates from mines on the Southern Ry. in the southern Illinois group to the same destinations. It now appears that the Southern Ry. does not serve the Southern Illinois group. HELD, rates attacked on coal from the Clogo mine at Johnston City unduly prejudicial to extent they exceeded rates from competing mines in the southern Illinois group. Slogo Coal Corporation v. M. P. R. R., 91 I. C. C. 217.

(j) Complainant attacked commodity rates charged on bituminous coal, carloads, from Kanawha district, Group E W. Va., to New Boston, Yorktown, O., between July 1917 and February 1918 as unreasonable, unjustly discriminatory and unduly preferential and prejudicial. Complainant demanded reparation only to the basis of $1 per ton its grievance being that the rate from the Kanawha district to New Boston had been increased 15c while rates to East Ashland and Ashland, Ky., and to Ironton, O., had been increased but 10c thus widening the spread between the rates to its disadvantage. During the entire period the C. & O., maintained a rate of 80c from Kanawha district to Ironton. HELD, rate of $1.05 charged unreasonable to extent it exceeded $1, reparation awarded. Whitaker Glassner Co. v. C. & O. Ry., 91 I. C. C. 339.

(k) Respondents proposed both increased and reduced rates on grain and grain products from Kansas, Missouri, Nebraska, Iowa, Illinois, Minnesota and South Dakota, to Texas, Arkansas, Oklahoma, Colorado and Kansas. The increases range from 1.5 to 6c, but generally are about 4 or 5c. To a considerable extent, rates on grain and grain products in the Middle West have been adjusted to equal the combination of locals into so-called primary markets such as Chicago, Minneapolis, Omaha, Kansas City and St. Louis plus outbound proportionals to destination. Prior to 1918 most of the rates on those commodities from the territory of origin involved to Texas destinations were equal to the combination on St. Louis or Kansas City, whichever made lower. Via the gateways through which the lowest combinations were made such combinations usually applied, but through other gateways through one factor rates equal to the lowest combination on any gateway were generally published in order to permit the traffic to flow through the various markets and gateways. Transit was and is permitted on the one factor through rates, so that even where such rates were or are less than the combinations grain may be stored or milled in transit or given other market privileges at intermediate markets upon the same through charge as shipments moved direct from point of origin to destination. The application of the general increases during and after federal control resulted in the combination becoming in many cases higher than the published through one factor rates, and in recent years in many instances different rates have applied via some lines or gateways than via others. The underlying purpose of most of the rates under suspension is to equalize the various markets, gateways and routes. This it is proposed to do in almost all cases by bringing up the one factor through rates to rates no lower than the lowest combination, usually upon St. Louis or Kansas City. The principle has been quite generally recognized that increases in grain rates designed to place the rates upon the full combination upon market points will not be found justified unless clearly shown to be reasonable in themselves, free from undue prejudice or unjust discrimination, and otherwise lawful. Manifestly, while one of the principal grounds for the proposed increases is the desire to place the primary markets upon a combination basis, thus making the use of transit on one factor rates unnecessary, the rates under suspension will not accomplish this purpose, for in many instances through one or more of the markets, Omaha, Kansas City and St. Louis, through rates lower than the combination through such gateways are proposed. Where points of origin and markets are situated such as are those here involved, it is extremely difficult—well nigh impossible—to bring about an adjustment which will enable the rates to be made combinations on all the markets without so greatly disregarding distance and transportation conditions as to make the rates of extremely doubtful propriety. RESTRICTION IN ROUTING. No. 2085 involves

restriction of routing on grain and grain products originating upon the M. P., in Kansas and Nebraska and destined to Texas. At present the routing south of Kansas City is in most instances unrestricted and grain may move without rate penalty from points on the M. P., into that market and thence to Texas over the M. P. through Arkansas, over the Frisco or M. K. & T., through Kansas and Oklahoma over the K. C. S., and over certain other routes. It is proposed to limit the application of the through one factor rates so that they will not apply south of Kansas City via the Frisco, M. K. & T., or K. C. S., leaving, generally speaking, only the routes of the M. P., through Arkansas to Texarkana and thence into Texas, and certain routes of the M. P., via Oklahoma junctions in connection with the M. K. T., and K. O. & G. HELD, proposed schedules providing routing restrictions south of Kansas City on grain and grain products originating on the M. P., justified, in all other respects not justified. Grain from western trunk line points, 91 I. C. C. 632.

(l) Complainant attacked rates on freight generally, other than cement, packing house products, livestock and lumber, between El Paso and points in New Mexico on the Santa Fe by way of Pecos, Tex., as unreasonable unjustly discriminatory and unduly prejudicial. Complaint is narrowed to class rates applicable to less carload traffic. Traffic between the points of destination and El Paso may move over the route by way of Pecos, in which case the haul between that point and El Paso is over the T. & P., or it may move wholly over the Santa Fe through Belen, N. M. Over the Santa Fe route joint class rates are maintained and over the Pecos route a materially higher basis of combination rates apply, the lowest combination generally basing on Pecos. The distance is 582 miles via Santa Fe and 366 miles over the Pecos route. It appears that the granting of complainants prayer would not result in a lower basis of charges than now applies in connection with the Santa Fe route, as the rates over that route are the rates which complainant seeks to have established over the Pecos route. Undoubtedly the combination rates are on a high level, but the record affords no basis for a finding as to what the level should be, if, in fact, it demands the establishment of joint rates. At least the first class rates now available to complainant over the Santa Fe are on a lower basis than would result from the application of the Shreveport-Texas joint line differential scale at the mileage over the shorter route and the establishment of joint rates over the Pecos route is not shown to be necessary in the public interest. HELD, rates attacked not unreasonable, unjustly discriminatory or unduly prejudicial, complaint dismissed. El Paso Chamber of Commerce v. A. T. & S. F. Ry., 92 I. C. C. 75.

(m) Railroads serving Baltimore, Philadelphia, Jersey City and New York, and Poughkeepsie, N. Y., except the New Haven, proposed a revision of the rates on lumber and forest products, carloads, from those cities to destinations in Pennsylvania, York and New Jersey. Rates from Poughkeepsie became effective April 25, 1924, but rates from other points were suspended. Proposed rates cover practically all kinds of lumber and are intended mainly for application to water borne lumber which originates on the Pacific coast. The purpose of the revision was to establish a relationship between the rates from the ports on the one hand and from Poughkeepsie on the other which would permit Poughkeepsie to reach that territory in competition with the port cities. Over the route of the N. & Y. C., the rates on lumber to the anthracite region are the sixth class rates, while over the New Haven, which is the short line to most destinations in the Erie, N. Y. O. & W., and L. & N. E., more commodity rates less than the sixth class rates. Respondents also proposed certain advances and reductions from Poughkeepsie, Baltimore and Philadelphia to destinations in northern New Jersey. Respondents admitted that they would have attempted no changes in the level of the rates from the ports at this time except in order to establish the relationship between the rates from Poughkeepsie and from the ports above referred to. The distance from Poughkeepsie to Scranton, a typical point in the anthracite region and the point around which the adjustment was built, is 139 miles over the New Haven and connections, and about 216 miles over the N. Y. C. The attempt to base the entire revision of the rates from the ports and from Poughkeepsie on the long mileage and expensive service in the congested New York tribunals is unjustified. The proposed revision appears to be primarily an attempt of the N. Y. C., to

obtain a share, if not a major part, of the lumber traffic from Poughkeepsie to the anthracite region. HELD, proposed rates from Baltimore, Philadelphia, Jersey City, New York and Poughkeepsie and from Baltimore to New Jersey not justified, but reduced rates from Baltimore, Philadelphia and New Jork to New Jersey justified. Lumber between points in trunk line territory, 92 I. C. C. 144.

(n) Complainant attacked combination rates charged of 52.5c on 11 cars of lumber shipped during July, August and October, 1921 from Ranger, Tex., to Drumright, Burbank Copan, Deer Creek, and Temple, Okla., as unjust, unreasonable and unduly prejudicial. Ranger is not in a lumber producing territory, it is on the T. & P., about 95 miles west of Fort Worth, Tex., 64 miles west of Weatherford and 20 miles east of Cisco. Points of destination, except Temple, which is on the Rock Island are on the Santa Fe. A group rate of 39c applied, from numerous points in Texas in the vicinity of Ranger, including Weatherford and Cisco and from Louisiana and Arkansas points to the above destinations as well as to other points in Oklahoma and Kansas. On Jan. 25, 1921 complainant requested the establishment of a rate of 39c which was established. Distance over route of movement 611.6 miles, whereas distance via Fort Worth is 400 miles. Charged class D rate of 13.5c to Cisco plus commodity rate of 39c beyond. HELD, rates attacked unreasonable to extent they exceeded 39c, reparation awarded. Prairie Oil & Gas Company v. A. T. S. F. Ry. 92 I. C. C. 248.

(o) Complainant attacked combination rates charged on seven cars of caustic soda shipped from Painesville, O., and Detroit, Midland and Wyandotte, Mich., to Ardmore, S. D., between June 1921 and December 1923, as unreasonable, unduly prejudicial and preferential, and in excess of those applicable. Shipments moved from Midland through Manitowoc one from Painesville one from Wyandotte and two from Detroit moved through Chicago, distance from 1,254 to 1,367 miles, applicable rates to Chicago 21c from Wyandotte and Detroit and 23c from Painesville, and 21c from Midland to Manitowoc, plus 95.9c beyond both gateways. Caustic soda is rated sixth class in official and fifth class in western. By exceptions to the official the factors to the gateways named were 85% of sixth class. Factors beyond were commodity rates, lower than fifth class. Ardmore is a local point on the Burlington about 400 miles from Billings, Mont. Directly south of Ardmore but on the other Billings line are Bayard, Scotts Bluff, and Mitchell, Neb., 942 to 961 miles from Chicago and still farther south are Denver, Colorado Springs, Pueblo and Trinidad, Colo., 1,018 to 1,081 miles from Chicago. Billings is about 400 miles beyond Ardmore, and rates lower than to Billings were and are maintained on the same traffic to points in the immediate vicinity of Ardmore. The movement to Ardmore has been regular in the past and there appears to be reasonable prospect of its being resumed presently. HELD, rates attacked unreasonable to extent rates from Chicago and Manitowoc exceeded 93c July 6, 1921 to June 30, 1922 and 83.5c thereafter, reparation awarded. Refinite Company v. C. & N. W. R. R., 92 I. C. C. 266.

(p) Complainant attacked commodity rates on paper stock, in bales, carloads, from points in the harbor of New York to destinations in New England and west thereof as unreasonable, unjustly discriminatory, and unduly prejudicial to extent they exceed rates from New York (Manhattan) stations. The N. T. C., is the only line which handles freight to and from New York direct over its own rails. From its stations, other than pier stations, to destinations reached by it no service by water is involved. A water service is necessary on the part of other carriers in connection with all shipments originating in New York. On shipments originating in Brooklyn or at New York lighterage points such service is required in all instances. N. Y. C., has commodity rates lower than sixth class to meet canal competition, while normal basis via other carriers is sixth class. To some destinations the rates from Brooklyn or New York lighterage, or both, are higher than those applicable from New York stations proper. In 51 I. C. C. 163 the Commission found sixth class rating from and to certain points in official classification territory on waste paper was not unreasonable. HELD, rates attacked not unreasonable or otherwise unlawful, complaint dismissed. Chase & Norton v. A. A. R. R., 92 I. C. C. 322.

(q) In 60 I. C. C. 5, the Commission prescribed maximum reasonable rates on classes and commodities between Meridian, Miss., and certain points in Alabama. To remove the undue prejudice

against Meridian therein found to exist, defendants were ordered to cease and desist from maintaining between Meridian and points in Alabama not more than 200 miles distant higher rates on like traffic for like distance than those in effect between Mobile, Selma, Montgomery, Birmingham, Demopolis and Tuscaloosa, Ala., on the one hand, and points in Alabama within 200 miles of Meridian, on the other. COTTON. Rates were prescribed between Meridian and Alabama over the Southern and A. G. S., which were the same as the Alabama intrastate rates on the same lines. The rates fixed for the M. & O., were 10% higher, as were those on all classes and commodities. On Nov. 7, 1923, the Alabama Commission entered an order, revising intrastate rates on cotton and prescribing scales for this commodity which had previously been adopted for application in Georgia. Defendants say that these scales are lower than they might reasonably be, but they are nevertheless willing to apply them between Meridian to Alabama, and complainant does not oppose their substitution for the current rates. The M. & O., is willing to establish the same rates on cotton and clay, concrete and shale products as those proposed for the Southern and A. G. S. HELD, proposed rates would be reasonable maximum rates between Meridian and points in Alabama involved in these proceedings. **Clay, Concrete and Shale Products.** Defendants also desire to substitute the scale of rates on sewer pipe and other clay, concrete, and shale products prescribed by the Alabama Commission for the rates on these commodities which have resulted from the order in 9560. HELD, proposed rates would be reasonable rates between Meridian and points in Alabama involved. **Hay.** The Alabama Commission has not made any general revision of hay. Hay in machine compressed bales, carloads, minimum 20,000 pounds, is rated class D in southern classification and moves in the South principally on class rates. No commodity rates on hay were prescribed in the previous reports in these proceedings. Hay is not shipped from Meridian to points in Alabama in important amounts. The evidence does not warrant a finding that the present rates are unreasonable, but it indicates that the maintenance of these rates between hay shipping stations in western Alabama and Birmingham may impose a handicap on Alabama growers who market their hay at the latter points in competition with those in Mississippi. HELD, rates on hay, carloads, between points in Alabama and Meridian are not so related to the intrastate rates on the same commodity within Alabama as to require the continued operation of prior orders with respect to such rates. **Gravel.** In Jan. 1924, the Alabama Commission ordered reductions in rates from Burnsville to Southern stations which made them somewhat lower than the Meridian scale rates in effect from Demopolis. Gravel is not produced at or distributed from Meridian. HELD, rates on gravel, carloads, between Alabama and Meridian not so related to the intrastate rates on that commodity to and from Demopolis and other points in Alabama as to require the continued operation of the prior orders with respect to such rates. Meridian Traffic Bureau v. Southern Ry., 92 I. C. C. 439.

(r) Complainant attacked commodity rates charged on sulphuric and nitrating and muriatic acid, in straight or mixed carloads, from Kansas City, Mo., to Kansas, Oklahoma and Texas as unreasonable, unjustly discriminatory and unduly prejudicial. Argentine, Kans., is on the Santa Fe, within the switching limits of Kansas City. **Rates to Kansas and Texas.** No substantial showing was made that the rates to Kansas are unreasonable or otherwise unlawful. About 80% of the complainants shipments to Kansas points are intrastate. The Santa Fe, the only carrier serving complainant plant, maintains the intrastate routes to a majority of the destinations in Kansas named in the complaint at which consumers of sulphuric acid are located. The intrastate rates are not in issue. **Rates to Oklahoma.** Complainant is mainly interested in rates from Kansas City to Oklahoma, where 70% of its output is consumed. On March 24, 1923, the carriers published a readjustment, making the St. Louis rates, except as noted, a differential of 7.5c and the Chicago rates a differential of 8c over St. Louis and 15.5c over Kansas City. Rates from Illinois producing points in the Peoria group were also reduced, and were made 4c over St. Louis. To a small group of points in northeastern Oklahoma, of which Bartlesville is representative, the St. Louis differential was made 10.5c and the Chicago differential 18.5c. To Ardmore and a few near by points in southern Oklahoma

the spread between Kansas City and St. Louis was made 8c and between the former and Chicago 16c. HELD, rates attacked to Kansas and Texas not unreasonable, unduly prejudicial or otherwise unlawful, but rates to Oklahoma not unreasonable per se but unduly prejudicial to complainant to extent they exceed rates lower than the rates from St. Louis by the following differentials: Under St. Louis, 12.5c, under said points in Illinois, 12.5c plus differentials of said points over St. Louis. National Zinc Co. v. A. T. & S. F. Ry., 92 I. C. C. 587.

(s) Complainant attacked commodity rates charged on feldspar, in carloads from New England to Trenton, N. J., and nearby points in New Jersey and Pennsylvania, as unreasonable, unduly prejudicial and in violation of fourth section; and that maintenance of same rates on crude and ground feldspar subjects complainant to unreasonable disadvantage. Prior to Nov. 14, 1913 the Buffalo, N. Y. sixth class scale rate of 15c applied on feldspar from points in the Brunswick group to trunk line destinations east of a line extending northward from Perryville, Md., through Harrisburg and Williamsport, Pa., to Buffalo. On that date the Pittsburgh sixth class scale rate of 17c was made applicable on this traffic via the Barlem River, N. J., gateway only, the 15c rate continuing in effect by way of Mechanicville, N. Y. The rate parity via the two gateways was restored later by the establishment of a commodity rate of 15c. By reason of the general increases and reductions the commodity rate became 28.5c on July 1, 1922, reduced to 22.5c on Nov. 27, 1922 to meet the rate from Keene. Commodity rates to Trenton of 25c from Keene and 24.5c from northern New Hampshire were established on Jan. 1 and July 17, 1922. The rate from Keene was reduced to 22.5c the contemporaneous rate from the Connecticut group, on July 1, 1922 and on Dec. 10, 1922 increased to 23c. On Sept. 10, 1923 following the reduction of the Brunswick group rate to 22.5c, the northern New Hampshire and Keene rates to Trenton were reduced to 22.5c and 21c. The commodity rate from the Connecticut group to Trenton, established at 12c in 1902, became 22.5c on July 1, 1922, reduced to 21c on Jan. 7, 1924. Trenton is intermediate over direct open routes from New England to 60% territory. The fourth section violation resulting from the maintenance from the Brunswick group of a rate to Trenton which exceeded that to 60c points was removed on Nov. 27, 1922. HELD, rates attacked to Trenton since July 17, 1922 unreasonable and unduly prejudicial to extent they exceeded on crude feldspar, 19c from Brunswick and northern New Hampshire groups, 18c from Keene, and 16c from points in Connecticut groups; on ground feldspar, 21c from points in the Brunswick group and 20c from Keene. Reparation awarded. Ceramic Traffic Assn. v. Me. Central Ry. 92 I. C. C. 675.

(t) Complainant attacked commodity rate charged on wine grapes, carloads, from Madison, Calif., to Portland and East Portland, Oreg., as unreasonable and unduly prejudicial. Madison is on the S. P., 11 miles north of Winters and 27 miles north of Elmira. A commodity rate of 49.5c applied during the period in question and now applies from Winters to Portland on fresh fruits and vegetables and prior to Dec. 15, 1923 the rate charged and applicable from Madison was a combination rate of 58.5c basing on Winters. On that date the rate was reduced by establishment of joint rate of 55c. The real issue is whether Madison is subjected to undue prejudice by reason of the fact that it is denied the group rate, while that rate is maintained from the extensive blanket. HELD, rate attacked not unreasonable but unduly prejudicial, reparation denied. New Italian Importing Co. v. S. P. Co., 95 I. C. C. 611.

(u) Complainant attacked combination rates charged of $1.08 and 99c on 19 cars of grapes shipped in 1920, 1921 and 1922 from Micke, Calif., to Seattle, Wash., as unreasonable, unjustly discriminatory and unduly prejudicial. Micke is on the Central California Tract on Co. 1 mile from Lodi the interchange point with the S. P. Distance Micke to Seattle is 897 miles, rates charged from Lodi was 90.5c August 26, 1920 to Dec. 31, 1921 but on Jan. 1 1922 was reduced to 81.5c. The factor from Micke to Lodi is third class rate of 17.5c. Lodi is in a group which, in connection with California-Oregon-Washington traffic is known as Group 2 and takes the San Francisco rate. HELD, rate attacked not unreasonable but unduly prejudicial to extent it exceeds rate from San Jose,

Stockton and Lodi, reparation denied. Pioneer Fruit Co. v. C. C. T. Co., 95 I. C. C. 690.

(v) Rates on lumber and forest products from points on Puget Sound & Cascade Ry., in Washington to eastern destinations, higher than coast-group basis of rates contemporaneously maintained on like traffic from competing points in Washington and Oregon situated on defendants' own branch lines, proprietary branch lines, or independent short-line connections, found not unreasonable, but unduly preferential and prejudicial. Reparation awarded for undue prejudice found to have existed prior to subsequent establishment of coast-group basis from points on Cascade Ry. Puget Sound & Cascade Ry. Co. v. Director General, 91 I. C. C. 467.

(w) Rates on printing paper from Hamilton, Ohio, in Cincinnati, Ohio, rate group, and on strawboard from Peoria, Ill., in Chicago, Ill., rate group to San Antonio, Tex., found unduly prejudicial as compared with rates from Fox River, Wis., group, and unreasonable to extent they exceeded lower rates subsequently established. Rates from these groups to Texas common points have always been based upon differentials under Fox River rate. Reparation awarded. San Antonio Paper Co. v. C. & A. R. R. Co. 91 I. C. C. 589.

(x) Complainant attacked commodity rates charged on cast iron soil pipe, carloads, from Somersville, N. J., to New England as unreasonable, unjustly discriminatory and unduly prejudicial. Somerville is on the Jersey Central. Newark is on that line and on the Pennsylvania, 26 miles north of Somerville. Traffic to New England from Somerville and Newark may move either via New York or over the Poughkeepsie bridge route. From Somerville the rates to New England are the same over both routes. From Newark the rate over the bridge route is the same as from Somerville, but via New York it is generally 1.5c less. These rates are shown as applying also from Baltimore, Md., and Lansdale, Linfield and Boyertown, Pa. Baltimore is the most distant point in the origin group and Somerville the nearest. Portland, Me., is the most distant point in the destination group and Bridgeport the nearest. It is not apparent that the rates in issue subject complainant to undue prejudice and unduly prefer its competitors in the group. If complainant is under any disadvantage by reason of the fact that its inbound rates on raw material are higher than the rates of its competitors in the group, that disadvantage may not properly be offset by reducing the rates on the outbound product unless outbound rates are themselves in violation of the act. HELD, rates attacked not unreasonable or otherwise unlawful, complaint dismissed. Somerville Iron Works v. C. R. of N. J., 101 I. C. C. 683.

(y) Rates on lumber, timber, and other forest products from Frost and Verdun, Ala., local points on the Garyville Northern R. R., to destinations in official and western trunk-line territories, and in Oklahoma, Texas, Kentucky, and Tennessee, found unduly prejudicial to extent they exceed the corresponding blanket rates contemporaneously maintained from Livingston and Garyville, La. Fleming Bros. v. G. N. R. R., 92 I. C. C. 582.

(z) An expressed desire of shippers and carriers for the continuance of a group adjustment does not relieve the commission of duty of considering whether its continuance would result in unjust and unreasonable rates or in undue prejudice. C., H. & D. Ry. Co. v. I. C. C., 206 U. S. 142. Lime from Eastern Trunk Line Points, 93 I. C. C. 617, 632.

(aa) Rate on grapes from Micke, Calif., a local point on the Central California Traction Co., to Seattle, Wash., found not unreasonable but unduly prejudicial as compared with group rates contemporaneously maintained from San Jose, Stockton, and Lodi, Calif., main line points. Pioneer Fruit Co. v. C. C. T. Co., 95 I. C. C. 690.

(bb) Present commodity rates on iron and steel articles from St. Louis, Mo., to Mississippi Valley points, adjusted in harmony with commission's decision in 64 I. C. C. 306, found not unreasonable as compared with lower rates from Louisville, Ky., to same destinations or, as applied from Louisville and other points in the St. Louis-Louisville group, unduly prejudicial in relation to corresponding rates from competing points in central territory, on the Ohio River, and in the Southeast, to same destinations. St. Louis Chamber of Commerce v. A. & V. Ry. Co., 98 I. C. C. 29.

(cc) Class rates and commodity rates bearing a direct relation thereto, between points in Lower Peninsula of Michigan north of main line of Michigan Central R. R. from Detroit, Mich., to Chicago, Ill., and points in central territory on and south of that line found unreasonable, unduly prejudicial to persons and localities in Lower Peninsula of Michigan north of said line, and unduly preferential of persons and localities in central territory on and south of said line. Reasonable and nonprejudicial basis of rates prescribed and former report, 85 I. C. C. 47, modified accordingly. Michigan Traffic League v. A. A. R. R. Co., 98 I. C. C. 660.

(cca) Rates on paving and roofing materials from New Orleans to Texas common-point group and all other points in that portion of Texas lying between these points and the port group and related points found unduly prejudicial and unreasonable to extent they exceeded lower contemporaneous class E rates applicable on roofing slate, paving slate, and hard asbestos shingles from and to same points and on similar articles from New Orleans to points in Texas differential territory to extent they exceeded above-mentioned rates, plus class E differentials. Reasonable rates prescribed for future and reparation awarded. Cameron & Co. v. A. & S., 102 I. C. C. 31.

(dd) Complainant attacked commodity rates on soft coal, carloads, from Pittsburg-Youghiogheny, West Virginia, Meyersdale, Cumberland-Piedmont and Clearfield groups to Union Bridge, Md., as unreasonable and unduly prejudicial in that they exceed the rates from the same territory of origin to Security and Hagerstown, Md., Martinsburg, W. Va., and Harrisburg, Pa. Union Bridge is served directly by the Western Maryland and by a branch line of the Pennsylvania. The B. & O., does not serve Union Bridge directly, but connects with the Western Maryland at Cherry Run, W. Va. Union Bridge is on the Western edge of the $2.84 destination group, which includes Baltimore, Washington, Wilmington, Chester and Philadelphia and extends to points in New Jersey. Security is on the B. & O., and Western Maryland, 3 miles east of Hagerstown proper and 39 miles west of Union Bridge on the W. M. It is not served by the Pennsylvania. In 74 I. C. C. 341 the rates to Hagerstown and Security were reduced to $2.33 from the Cumberland-Piedmont and Meyersdale regions. Complainant sought to have this rate made applicable to Union Bridge. The Pennsylvania does not serve Security and has not published the $2.33 rate to Hagerstown. It can not be required under a finding of undue prejudice to establish the same rate to Union Bridge as that applicable to Security from mines on the B. & O., and W. M. The origin groups here described have been in existence for a great many years, and there is no evidence of record to show that the relationship between the groups is improper. There is no justification for a rate of $2.84 from the Cumberland-Piedmont and Meyersdale regions to Union Bridge as long as a rate of $2.33 is in effect from the same origin territory to Security, 39 miles less distant than Union Bridge. The latter point, which is competition with Security in the sale of cement, is undoubtedly under a serious handicap by reason of the disadvantage of 51c in the rates on coal. HELD, rates to Union Bridge unduly prejudicial to extent that over the B. O., and W. M., via Cherry Run, W. Va., and Over Western Maryland direct they exceed the rates to Security, Md. Rates to Union Bridge found not unreasonable. Tidewater Portland Cement Co. v. C. & P. R. R. 102 I. C. C. 391.

ALL OTHER CITATIONS

Cities of Marshall and Jefferson v. T. & P. Ry. Co., 85 I. C. C. 115; Slogo Coal Corp. v. M. P. R. R. Co., 88 I. C. C. 111.

VI. REMEDY FOR UNLAWFUL GROUPING.

§14. In general.

See Distance Rates §1 (o).

(a) Respondents proposed to increase the rates on lumber and shingles, carloads, from Spokane, Wash., and other points to Arona, Pa. Arona is 41 miles southeast of Pittsburgh, Arona being on the Pittsburgh basis. Effective June 6, 1922 joint rates were established to points in Pennsylvania east of Pittsburgh. This adjustment substituted the Philadelphia basis for the Pittsburgh basis and resulted in increased rates to all points east of Turtle Creek, Pa., a point on the Pennsylvania 13 miles east of Pittsburgh, and 27 miles west of Latrobe, except Arona and points intermediate thereto over both direct and indirect

routes. Respondents proposed to increase the rates to Arona to the Philadelphia basis. Generally speaking, class and commodity rates from the Pacific northwest to points in Pennsylvania as far east of Pittsburg as Latrobe are in the Pittsburgh blanket. HELD, schedules not justified. Lumber from northwest to Arona, Pa., 91 I. C. C. 457.

VII. EVIDENCE.

See Evidence.

§15½. In General.

(a) Complainant attacked commodity rate of 39.5c charged on 87 cars of rough oak and gum staves and headings shipped between April 1 and Oct. 31, 1921 from Bonita, La., to Louisville, Ky., as unreasonable, unjustly discriminatory, unduly prejudical and in violation of the fourth section. Bonita is on the M. P., 221 miles southwest of Memphis, Tenn., 40 miles north of Monroe and Rayville, La., junction points between the M. P., and V. S. & P. shipments moved over the M. P., to Memphis and L. & N., beyond, distance 601 miles, charged 39.5c constructed by application of the rule provided in Jellys I. C. D. U. S. L., to the combination of intermediate commodity rates to and from Memphis. The evidence is insufficient to justify a finding in favor of complainant. The fact that the M. P. did not participate in the group rates does not prove that the rate charged was unreasonable, nor is that conclusion warranted from the further fact that the M. P., subsequently established the 34.5c rate from Bonita. The record is devoid of evidence of unjust discrimination; and it does not follow from the fact that the 34.5c rate was in effect on yellow pine and cypress lumber from the junction points, Monroe and Rayville, that complainant was unduly prejudiced thereby in its shipment of oak and gum staves and headings from Bonita. HELD, rate attacked not unreasonable or otherwise unlawful, complaint dismissed. Louisville Cooperage Co. v. L. & N. R. R., 93 I. C. C. 593.

(b) In judging rates to or from points in the percentage groups, it has been the practice of the commission to consider earnings and transportation conditions and not the mere relationship to sixth class. See General Chemical Co. 83 I. C. C. 582 and Grasselli Chemical Co., 89 I. C. C. 383. Washington Publishers' Asso. v. B. & O. R. R. Co., 98 I. C. C. 339, 344.

(c) Manifestly in a group adjustment distance is in a measure disregarded, and the ton mile earnings necessarily will be higher to or from the nearer border line points than to or from those farther distant. Somerville Iron Works v. Long Island R. R. 102 I. C. C. 511, 513.

§16. Burden of Proof.

See Burden of Proof; Evidence I.

(a) Evidence in support of rates to Washington as compared with those to Baltimore is merely an explanation of how the differences grew up, without going into the merits of such differences, and a contention that Baltimore is at the farthest edge of a group. Evidence does not show that rate to Baltimore was ever determined on group basis; on the contrary the only conclusion possible from the record is that rates to New York; Philadelphia, and Baltimore were established upon considerations bearing on those ports alone and not relating to inland points. Washington Publishers' Asso. v. B. & O. R. R. Co., 98 I. C. C. 339, 343.

§18. Comparisons.

See Comparative Rates; Evidence §12, §13; Relative Rates.

(a) Comparisons based upon distance alone have little probative value. This is particularly true where the rates compared are group rates in the establishment of which the element of distance must be subordinate to other considerations. Louisville Cooperage Co. v. L. & N. R. R., 93 I. C. C. 593, 594.

(b) The reasonableness of a blanket rate is not properly tested by a consideration of its earnings to a point on the nearest edge of the blanket. Bush v. Director General, 95 I. C. C. 661, 663.

(c) The Commission has repeatedly found, in dealing with group rates, when the propriety of the group is not in question, that the distances and ton mile earnings between selected points can not be regarded as controlling. The reasonableness of such rates must be judged by average conditions. But this general principle is not adequate justification for this situation. When, as here, the near edge of the group is on such a high basis

as to produce rates in excess of the intermediate rates, a strong presumption is raised that the group principle of making rates has been carried beyond reasonable limits, particularly where no compelling necessity is shown for the existence of such an extensive group. Pensacola Creosoting Co. v. C. of Ga. Ry., 98 I. C. C. 36, 37.

(d) Ordinarily, in making comparison of rates from group points of origin the average distances are used, but where the great preponderance of the movement is from one point within the group, the distance from that point may be taken as fairly representative. Watertown Chamber of Commerce v. A. & W. R. R., 101 I. C. C. 427, 430.

(e) Single rates selected from large groups or averages predicated upon rates to a few points selected from extensive groups do not afford a fair comparison in measuring reasonableness of rates. Dawson Produce Co. v. Am. Ry. Exp., 93 I. C. C. 390, 392.

(f) Rate on rough oak and gum staves and headings from Bonita, La., a local station on the Missouri Pacific, to Louisville found not unreasonable or otherwise unlawful as compared with lower group rate applicable on lumber, staves, and heading, from various points to Louisville for comparable distances, and later established from Bonita via route of movement, or with rate contemporaneously applicable on yellow-pine and cypress lumber from Missouri Pacific junction points. Louisville Cooperage Co. v. L. & N., 93 I. C. C. 593.

(g) In considering the reasonableness of group rates the Commission has repeatedly found that comparisons of distance and ton mile earnings as between selected points can not be regarded as controlling. The reasonableness of such rates must be judged by average conditions. Worth Carter Publishing Co. v. Director General 102 I. C. C. 729, 734.

(h) The reasonableness of a group rate may not be measured by the distance from the nearest point in the group. The fact that the commodity rates from the group may exceed the class rates from some points in the group to some destinations is no more determinative of the unreasonableness of the rates from the group as a whole than it is of the impropriety of the grouping. Furniture from southern points 112 I. C. C. 302, 305.

§19¼. Prior Decision of Commission.

See Previous Decisions of Commission.

(a) Complainant attacked commodity rates charged on newsprint paper and certain paper articles, carloads, from Wisconsin, Michigan, Minnesota and Missouri to Oklahoma City and Guthrie, Okla., between July 9, 1920 and August 10, 1922 as unreasonable. The rates sought with the exception of the rate on newsprint from Kansas City were found reasonable from and to the points named in 66 I. C. C. 571. HELD, rates attacked found unreasonable to extent they exceeded rates established pursuant to the order in 66 I. C. C. 571, reparation awarded. Oklahoma Publishing Company v. A. T. & S. F. Ry., 95 I. C. C. 448.

(b) Complainant attacked commodity rate charged on casing head gasoline, carloads, from Burkburnett, Tex., to Hutchinson, Kas., between August 1922 and April 1923, as unreasonable and unduly prejudicial. Burkburnett is on the M. K. T., and shipments moved over that line through Woodward, Okla., and Santa Fe, 375 miles, charged rate of 34c. Prior to Oct. 8, 1922 the rate of 34c applied to the points named as well as to Wichita and Eldorado. On that date a rate of 27.5c was published to Wichita and Eldorado. In 66 I. C. C. 426, the Commission prescribed the same rates for application on crude petroleum from the Burkburnett group to all points in the Kansas group 2 within which Hutchinson, Wichita and Eldorado are located. HELD, rates attacked unreasonable to extent they exceeded 27.5c, reparation awarded. Frontier Refining Co. v. A. T. & S. F. Ry., 95 I. C. C. 454.

(c) Complainant attacked commodity rates charged on 18 cars of plain paper bags from Marinette, Wis., to Fort Worth, Dallas, San Antonio, and El Paso, Tex., between August 1920 and May 1922 as unjust, unreasonable and unduly prejudicial. Marinette is in the socalled Fox River group. In 66 I. C. C. 571 the Commission prescribed a general adjustment of rates on certain kinds of paper from Wisconsin to points in this territory. HELD, rates attacked unreasonable to extent they exceeded rates subsequently established in accordance with that decision, reparation awarded. Vic-

tory Bag & Paper Co. v. A. T. & S. F. Ry., 95 I. C. C. 677.

(d) Complainant attacked class and commodity rates on iron and steel articles and on sewer pipe, carloads, from St. Louis to points in Mississippi Valley as unreasonable and unduly prejudicial. This report will only consider commodity rates as the class rates are under investigation in No. 13494, Southern Class Rate Investigation. **Iron and Steel Articles.** Since the hearing the rates on iron and steel articles have been revised in harmony with 64 I. C. C. 306. Under the adjustment attacked, the rates are graded southward for a distance and thereafter points in the Mississippi Valley are formed into six consecutive destination groups, known as the Memphis, Helena, Greenville, Vicksburg, Natchez, and New Orleans groups. The grouping is the same as that employed in the class rate structure to this territory, and the relationship of rates on iron and steel articles between the groups is based on the relationship of the corresponding class rates. This arrangement has been retained under the present rates. Complainants attack is directed against the relationship these rates bear from Louisville and other competitive points rather than upon a question of the reasonableness of the rates per se. The disparities in distances from St. Louis and from Louisville to the Mississippi valley destinations are not large when the total hauls are considered. While the cited contrast with the adjustment of rates from those points and others in the same general territory of traffic to the southeast presents no question within the issues, it is not out of place to answer that in point of relative distances, leaving other possible considerations aside, the situations are hardly parallel. The readjustment since the hearing would appear to have taken from the competing points, including Birmingham and others in the southeast, substantially the advantages in rates which complainant has regarded as undue. HELD, present rates not unreasonable or unduly prejudicial. **Sewer Pipe.** The allegation is likewise based on the rates from St. Louis compared with other competitive points. This record does not afford the data upon which the Commission could prescribe a specific realignment of all the sewer pipe rates. HELD, rates attacked not found unreasonable or unduly prejudicial. St. Louis Chamber of Commerce v. A. & Y. Ry., 98 I. C. C. 29.

(e) Complainant attacked commodity rates on refined sulphur, carloads, from Bryanmound and Freeport, Tex., to points in Louisiana on and south of the L. R. & N., from Alexandria to New Orleans, when ground and refined at Freeport, as unjust and unreasonable, and that rates on refined sulphur, carloads, from Sulphur Mine and Mossville, La., via Texarkana, Ark., Tex., to the same destinations as unjustly discriminatory to complainant. Bryanmound is on the H. & B. V., 3 miles from Freeport. This carrier connects with the G. C. L., at Anchor, Tex., and with I. & G. N., at Anchor, Tex. Sulphur Mine and Mossville are on the Brimstone Road in southwestern Louisiana. This carrier connects with the K. C. S., at Mossville and with the S. P., at Brimstone Jct., La. Bryanmound and Freeport are grouped as to these destinations. The same is true of Sulphur Mine and Mossville. Crude sulphur produced at Bryanmound may be shipped to complainants plant at Freeport, there refined, and reshipped within a period of 12 months to points in southern Louisiana at the joint rate from point of origin on the refined product, plus an additional transit charge not here in issue. Similar transit arrangements are enjoyed at Texarkana and St. Charles by intervenor on shipments originating at Sulphur Mine and Mossville and destined to the same points in southern Louisiana. No complaint of undue preference is made against the rate and transit arrangements under which shipments move through Lake Charles. The arrangements at Texarkana and Lake Charles are also available on shipments from Bryanmound and other mining points in Texas. They are maintained by the K. C. S., and S. P., and require a back haul for which no additional charge is made. Present rate on crude sulphur from Bryanmound to New Orleans is 23c. In 60 I. C. C. 579, the Commission found justified proposed rates on refined sulphur 10c higher than on crude sulphur from Sulphur Mine, Bryanmound, Freeport and other points in Texas to various interstate destinations. HELD, rates from Sulphur Mine and Mossville to the destinations covered by this complaint and the transit arrangements at Texarkana not unduly prejudicial or otherwise unlawful HELD,

further, attacked rate of 32c not unreasonable, unjustly discriminatory or unduly prejudicial but that the other rates from Bryanmound and Freeport here attacked are unreasonable to extent they exceed 32c. Stauffer Chemical Co. v. H. & B. V. Ry., 98 I. C. C. 326.

(f) On further consideration, original report 89 I. C. C. 508, rates on animal manure from Perth and Lovelock, Nev., to certain eastbound transcontinental groups found unreasonable. Reasonable rates prescribed by taking average distance to representative points in the respective groups and applying thereto the Calivada scale approved in 73 I. C. C. 496, extended to distances in excess of 800 miles. Reparation awarded. Pacific Manure & Fertilizer Co. v. A. & R., 95 I. C. C. 430.

(g) Following Lakewood Engineering Co., 88 I. C. C. 588, commodity rate on portable railway track from Tullytown, Pa., a transcontinental Group A point, to Phoenix, Ariz., found not unreasonable as compared with rates on rail and crosstie fastenings, and on various iron and steel articles. In the cited case the commission found not unreasonable the commodity rate applying from transcontinental Group B points to Phoenix and Pacific coast points and record herein fails to show that level of the Group A rate is improper as compared with that from Group B. State of Arizona v. A. E. R. R., 95 I. C. C. 658.

(h) Upon further hearing, original report, 83 I. C. C. 737, rates on coal from mines in New River district, W. Va., on the Greenbrier & Eastern R. R., a short line, to interstate destinations, found unreasonable and unduly prejudicial to extent they exceed group rates contemporaneously maintained from C. & O. branch-line points in same district to same destinations. Factor of cost of service, unless the difference is great, should not be controlling. Reparation awarded and measure of reasonable and nonprejudicial rates prescribed. Nelson Fuel Co. v. C. & O., 96 I. C. C. 124.

(i) Shipments of hay from points in northeastern Oklahoma to points in northern Texas, which moved during the period covered by the complaint here involved, appear to have been assessed charges at group rates substantially in accord with prior decision in 69 I. C. C. 207, and the further changes that are now being made are part of a general readjustment of rates in this territory. Reparation denied. Oklahoma Corp. Comm. v. A. & S. Ry., 101 I. C. C. 116, 132.

(j) Upon further hearing finding in original report, 85 I. C. C. 373, that rates on lumber to New Orleans and Mobile, from Lyman, Miss., on the near edge of the blanket of the Gulf & Ship Island origin points, were not unreasonable or unduly prejudicial, affirmed. Evidence amply supports original conclusions that blanket method of making rates on lumber has long been satisfactorily employed in this territory and that it should not be here disturbed. Obviously some shippers will be farther from a given point than others in the same blanket, but the record shows that whereas Lyman is the nearest shipping point to Mobile and New Orleans it is among the farthest points to destinations in other directions. A blanket rate structure in existence since inception of the sawmill industry in this territory should not be lightly set aside for a rate adjustment in which distance would be the sole factor determining the measure of the rates. Ingram Day Lbr. Co. v. G. & S. I. 101 I. C. C. 287.

(k) Contention by complainants that present rate adjustment on coal from mines located on the Monongahela West Penn Public Service Co., unduly prefers competitors in immediate vicinity and all other mines on lines of defendants and their connections accorded the Fairmont district rates, or the same or lower rates to eastern and western markets; relying largely upon the fact that group rates apply from certain independent short lines in the general territory here considered; and further fact that commission has in numerous cases prescribed group rates from mines on such lines, not sustained, following Big Mandy Coal & Mining Co., 78 I. C. C. 455, in which commission found that "in cases of this character no rule of general application can be followed, but each situation must be judged in accordance with its particular facts and circumstances." Hood Coal Co. v. M. V. T. Co., 101 I. C. C. 719, 725.

§19½. Reparation.

See Reparation.

(a) Complainant attacked commodity rates and refrigeration charges on 13 cars of oranges from California to Virginia during 1921 and 1922 as unreas-

onable and illegal, in violation of sections 1, 6 and 4. Shipments moved via Missouri gateway and Duluth, Minn., and were delivered to the D. W. & P. During 1921 a blanket rate of $1.92 on oranges, carloads, was applicable from California points to the territory between the Missouri river and the Atlantic seaboard. On and after Jan. 1, 1922 it was $1.73. Rates charged were this blanket rate to Duluth and third class rate for 78 miles beyond. On and after April 7, 1921 the blanket all rail rate of $1.665 on lemons from California applied to Virginia, further reduced to $1.50 on Jan. 1, 1922. Defendants will extend the blanket rate to Virginia, Minn. The blanket rate also applied to Winnipeg, Manitoba, Virginia being intermediate. HELD, rate charged illegal, shipment overcharged, reparation awarded. Hansen Peterson Co. v. A. T. & S. F. Ry., 93 I. C. C. 596.

VIII. REGROUPING.

See Basing Points and Lines §3 (d); Evidence §66.

§20. In General.

(a) Groups long maintained are presumably fair and are not to be disrupted unless substantial justice clearly requires it. Dissatisfied producers deprived of the benefit of their proximity to common markets must show that they are actually injured by an unjust and unlawful discrimination. Indiana State Chamber of Commerce v. A. T. & S. F. Ry., 95 I. C. C. 177, 179.

(b) Respondents proposed to increase their rates on grain and grain products, carloads, from Indiana, Illinois and Michigan to Aurora, Garrettsville, and Mantua, O. Points of origin are on the Pennsylvania, such as Chicago. The destinations are on the Erie from 24 to 37 miles southeast of Cleveland, O. The rates are joint rates. The principal rate and apparently the only one that moves any traffic is the proportional rate from Chicago applicable on mixed feed originating west of the Mississippi river, present 16c, proposed 19.5c. This increase is to be effect by transferring the three destinations from the Cleveland group to the Youngstown, O., group which adjoins the former and reaches as far as Buffalo, N. Y. The three destinations are on a branch line of the Erie and to reach them the traffic must be practically backhauled from Leavittsburg over the branch line. Leavittsburg is also intermediate, although in the Youngstown group. The proposed rates would correct this situation. There are no joint commodity rates to Cleveland over respondents through routes. Respondents through routes are somewhat circuitous as compared with the direct routes via Cleveland. Over the direct routes from Chicago the three destinations are beyond Cleveland and intermediate to Youngstown. They take the Youngstown rate because they naturally fall into the Youngstown group. The present adjustment is illogical and inconsistent, and its correction is proper, but the application of rates to the three destinations higher than those to Solon and would contravene the provisions of the fourth section. HELD, schedules not justified. Grain and grain products from C. F. A., points, 101 I. C. C. 7.

(c) In 78 I. C. C. 746 the Commission found unlawful the rates applicable on lumber and other forest products, carloads from points in the north Pacific coast group to points in eastern Colorado, southern Kansas, New Mexico, Texas, Oklahoma, Arkansas and Louisiana. Defined destinations groups were prescribed for the future and reparation awarded, the new rates becoming effective Oct. 5, 1923. But it soon developed that the groups established were not satisfactory to lumber merchants in the southwest who were not parties to the proceeding, and complaints were filed and proceedings reopened for further hearing. It appears from this record that Wichita, 47 miles southeast of Hutchinson, Kans., should take the same rates as Hutchinson, Emporia and Topeka, Kas., its principal competitors. Southeastern Kansas, northern Oklahoma, western Texas and southeastern New Mexico should be on a somewhat higher basis. At present Muskogee and Okmulgee are in a higher rated group than Tulsa, although all serve practically the same territory. These hauls are generally shorter than those to middle and southern Texas and Arkansas. Southeastern Oklahoma, Fort Smith, and Texarkana, Ark., Shreveport, La., and southwestern Texas points should take the same rates as Waco, Fort Worth and Dallas. The southern boundary of the 62.5c group prescribed in the former report should be so revised as to include points in southeastern Colorado, Kansas,

western Oklahoma, northwestern Texas, and northern New Mexico on and north of the lines of the M. P., and Santa Fe from Kansas City through Osawatomie, Yates Center, Wichita, and Kiowa, Kas., Amarillo, Tex., Colvis, Vaughn and Belen to Rio Puerco, N. M. A 70c group should be constructed from the present 69 and 75c groups to include points south and east of the foregoing group to and including stations on lines of the Frisco from the Missouri-Arkansas state line south of Seligman, Mo., through Fayetteville, Ark., and Muskogee, Okla., the K. O. & G., through Dustin and Calvin, Okla., and the Rock Island through Holdenville, Okla., thence the Frisco through Ada and Scullin, Okla., to Sulphur, Okla., and Santa Fe thence to Davis, Okla., and the Wichita Valley and connections from Waurika, Okla., through Wichita Falls, Stamford, Abilene, San Angelo and Alpine, Tex., to the Rio Grande and S. P., thence to El Paso. A 77.5c group should be constructed to include the remainder of Texas and Arkansas and that part of Louisiana on and west of the K. C. S. The 85c group should comprise the remainder of Louisiana. Reparation denied. West Coast Lumbermens Asso. v. A. & S. Ry. 104 I. C. C. 695.

ALL OTHER CITATIONS

Decker & Sons v. Director General, as Agent, 85 I. C. C. 389; Lincoln Gas Coal Co. v. B. & O. R. R. Co., 88 I. C. C. 379.

BRANCH LINES

I. REASONABLENESS OF RATES.
§1. In general.
§2. Compared with main lines.
§3. As part of system.
§4. In competition with main lines.

II. DUTY TO ROUTE.
§5. In general.

III. CONTROL AND REGULATION.
§6. Jurisdiction of commission.

IV. FACILITIES.
§7. In general.

CROSS REFERENCES

See Advanced Rates §12; Cars and Car Supply §21, §21½; Class Rates §2 (7s); Evidence §37.

I. REASONABLENESS OF RATES.

§1. In general.

See Blanket Rates §10½ (e) (j); Reasonableness of Rates.

(a) Following Swift Lumber Co., 61 I. C. C. 485, failure of defendant to accord blanket or group rates on apples from Dufur, Oreg., a local point on the Great Southern R. R. an independent short line, to Denver, Colo., and to destinations east or west of Missouri River, or taking rates applicable to such territory, while according blanket or group rates to all stations on its main line, branch lines, and proprietary lines, and to Odell, Oreg., a point on the Mount Hood R. R., an independent short line, found not unreasonable but unduly prejudicial of competitors located on such main, branch, and proprietary lines. Dufur Orchard Co-Owners Co. v. A. & R. R. R. Co., 89 I. C. C. 419.

(b) Complainant attacked commodity rates charged from Omar, Christian, W. Va., and Logan, W. Va., in group 12 on the Guyandotte branch of the C. & O., to central territory and Canada as unreasonable and unduly prejudicial. Defendants Guyandotte branch extends in a southerly direction from Barboursville, W. Va., a main line point about 9 miles east of Huntington, W. Va. A number of other branches connect with the main line at points both east and west of Barboursville. Among these is the Coal River branch, extending in a southerly directions from St. Albans, W. Va., which is between Barboursville and Charleston, W. Va. Defendants lumber rates to the territories here considered are grouped both as to main line and branch line points of origin. The rates from the branch line groups, which are published as joint rates, were originally made by adding specific amounts or differentials, lower than the local rates, to the rates from the junction points. Beginning immediately south of Barboursville the points on the Guyandotte branch are divided into three groups, 10, 11 and 12. The record does not establish that the grouping of Barboursville and St. Albans and the practice of maintaining rates from branch line points which exceed the junction point rates by amounts which in general are based on the distances to the junction points are improper. It appears that the rates from the branch lines may properly be higher than those

from the junctions. Complainants evidence on the question of competition is for the most part general in character. HELD, rates attacked not unreasonable or unduly prejudicial, complaint dismissed. Peytona Lumber Co. v. C. & O. Ry., 93 I. C. C. 363.

(c) Respondent proposed to increase and reduce rates on coal from points on the Gauley branch of the C. & O., to various destinations east and west thereof. Gauley branch extends in a northerly direction from Gauley, W. Va., to Belva, W. Va., where it branches, one fork extending northeast, to Greendale and another northwest to Bentree, W. Va. Belva, Bentree and Greendale, are 7, 12 and 14 miles from Gauley. Belva and north is included in the Kanawha district, one of the Inner Crescent group of mines. The territory south of Belva is in the New River district in the Outer Crescent group. On eastbound traffic from the Kanawha district the rates are generally 10c higher than from the New River district, while on westbound traffic the rates from the Kanawha district range from 5 to 40c lower than from New River district. The applicants only justification for authority to continue to charge lower rates from points on the Gauley branch than from the New River district on westbound traffic was based upon the long continuance of the adjustment and its desire to avoid disturbance of business relations that had developed as a result of the rate adjustment. While the proposed adjustment would have the effect of removing fourth section departures, it would at the same time result in an average increase of about 20c per ton on coal from Belva and points north thereof on westbound traffic, and a reduction of 10c per ton on eastbound traffic. No change is proposed from points south of Belva. Respondent made no effort to show that the proposed rates are reasonable per se. HELD, proposed rates not justified. Coal from stations in W. Va., 93 I. C. C. 423.

(d) Rates on mine materials and supplies, chiefly cement and steel articles, from Pittsburgh, Pa., district to Lynch, Ky., a branch-line point, found unreasonable to extent they exceeded lower rates to Benham, Ky., situated on same branch which lower rates were subsequently established to Lynch. Reparation awarded U. S. Coal & Coke Co. v. Director General, 91 I. C. C. 6.

(e) Rates on iron pipe and other oil-well supplies from Pittsburgh, Pa., and other points to Drumright and Oilton, Okla., branch-line points, found unreasonable to extent they exceed rates to Cushing, Okla., the junction point with main line, which basis was subsequently established. No differentials are added to main-line rates to points in this territory on other branch lines having much lighter traffic density, and no addition, because of branch-line service, is made to distance rates applicable intrastate in Oklahoma and interstate between Oklahoma and Kansas and between Oklahoma and Texas when applied to or from points on this branch. Reparation awarded. Prairie Oil & Gas Co. v. A., T. & S. F. Ry. Co., 91 I. C. C. 37.

(f) Rates to and from points on Monongahela Connecting R. R., South Buffalo Ry., Union R. R., and Newburg & South Shore Ry., common-carrier short lines, found unjust and unreasonable to extent they exceeded rates to and from points in same rate districts located on trunk lines. Reparation awarded. Jones & Laughlin Steel Co. v. P. & L. E. R. R. Co., 91 I. C. C. 300.

(g) Rates on lumber and forest products from points on Puget Sound & Cascade Ry. in Washington to eastern destinations, higher than coast-group basis of rates contemporaneously maintained on like traffic from competing points in Washington and Oregon situated on defendants' own branch lines, proprietary branch lines, or independent short-line connections, found not unreasonable, but unduly preferential and prejudicial. Reparation awarded for undue prejudice found to have existed prior to subsequent establishment of coast-group basis from points on Cascade Ry. Puget Sound & Cascade Ry. Co. v. Director General, 91 I. C. C. 467.

(h) Respondent, L. & N., proposed to increase the rates on lumber and forest products, carloads, from station on its Clear Fork, Hog Camp and Crooked Fork branches in Tennessee and Kentucky to Lexington, Ky. Certain reductions are proposed from the same points of origin to Winchester, Ky., and other intermediate points. Carload traffic from points on these branches for Lexington, Winchester and intermediate points north of Corbin, Ky., is handled by a mine crew operating as a

work extra for points on the main line of the Knoxville division not far from its junction with the branches. At present the same rates apply to Lexington from these branch line points as from the nearby main line points. The present rates from Clear Fork and Hog Camp branches to Winchester range from 2 to 3c higher, and the rates to other intermediate destinations from 1 to 3c higher, than the rates to Lexington. The exhibits as a whole indicate that there is little uniformity in the rates on lumber in this territory so far as distance is concerned. If distance were the controlling factor the proposed reductions to Winchester should be greater than those indicated. HELD, proposed schedules not justified. Forest Products between Kentucky and Tennessee, 101 I. C. C. 469.

(i) Complainant attacked commodity rates on coal to interstate destinations reached by the B. & O., and its connections as unreasonable, unjustly discriminatory and unduly prejudicial and seeks establishment of joint rates on the basis of the rates in effect from the mines in the Gauley district on the B. & O., and that defendant be required to establish a just, reasonable and adequate daily car rating for complainants mines. The present rates are made up of the combination of a rate of 18c charged by the Strouds Creek from the mines to Allingdale, plus the district rate beyond. Mines in the Gauley district on westbound traffic takes the same rates as other points in the socalled Outer Crescent district, and on eastbound traffic 15c per long ton over the rates from the Fairmont group. The Strouds Creek files tariffs with the West Virginia commission and makes annual reports to that body. It files no tariffs and makes no reports to the Commission, does not keep its accounts in accordance with rules of the Commission and issues no bills of lading. Cars for coal loading are furnished by defendant upon request of complainant, and are turned over to the Strouds Creek at Allingdale, and hauled by the latter carrier to the mines. Shipping instructions are there made out on form cards furnished by defendant, upon which the shipper fills in the names of shipper and consignee, points of origin and destination, date of loading, and other information. The loaded cars are then hauled by the Strouds Creek back to Allingdale and delivered to defendant. The cars are then moved by defendant to weighing stations on its lines, and regular form bills of lading and waybills are thereupon issued, showing Allingdale as the point of origin. The destination of from 90 to 95% of complainants and all of interveners coal shipments is outside West Virginia. The road has a contract with the United States Government for the carrying of mail; and it is operated on a schedule of two trips per day to and from Allingdale for passengers, mail and express. It follows that the Strouds Creek is a common carrier engaged in interstate commerce. The fact that it is operating in violation of the interstate commerce act is a condition which it must correct at once. Defendant furnishes a rating to mines on the Richwood branch but refuses a rating to mines on the independent short lines connecting therewith, including those of the Strouds Creek. The record shows that the mines of complainant and intervener are entirely dependent upon defendant for their car supply. Under the provisions of the law no distinction can be made by defendant between the service given a mine on its Richwood branch and a mine on the Strouds Creek, each falling equally within the specific provision of the law requiring a carrier to furnish adequate car service, the one because it is actually located on its line and the other because it is customarily dependent upon it for car supply. Whether at the present time a condition of car shortage prevails such as would require the giving of a rating to these mines is conjectural, and the Commission shall not now enter any order on this phase of the case. Complainant and intervener are entitled to the same treatment in the matter of car service as the mines located directly upon defendants Richwood branch. HELD, Strouds Creek & Muddlety R. R., is a common carrier of interstate commerce subject to the act; rates on coal from mines of complainant and intervener to interstate destinations are not unreasonable but will be unduly prejudicial to complainant and intervener to extent they may exceed rates maintained from Allingdale to the same destinations. Tioga Coal Co. v. B. & O. R. R., 101 I. C. C. 611.

(j) In 12712 the issue is whether complainants mines, located in West

Virginia on the Monongahela West Penn Public Service Co., should be accorded the Fairmont district rates on soft coal to interstate destinations. In I. & S., 2390, whether the Monongahela is justified in canceling entirely the present interstate rates from these mines, and in eliminating the mine sidings from its official list of stations. In 73 I. C. C. 54, the Commission found that the Monongahela was a common carrier subject to the act; that the rates of soft coal from complainants mines to interstate destinations were not unreasonable or otherwise unlawful; and that the record did not justify the establishment of the through routes and joint rates sought. The lines of the Monongahela are not, generally speaking, adapted for the transportation of freight in carloads. Owing to light construction, severe grades, and sharp curves, it is impracticable, over considerable portions of the road to handle the freight equipment of the steam roads. Complainants mine sidings are located on the Monongahela between Shinnston and Bingamon Junction and within 4.5 miles of the latter point. The lands owned or leased by complainants aggregate about 60 acres. The coal produced by complainants is the socalled Pittsburgh vein, which underlies western Pennsylvania and northern and central West Virginia. It is substantially the same as that produced throughout that territory and is in competition therewith. Since 1923, when complainants ceased operation, the sidings have not been kept up. The switch to the Cava Coal Companys siding has been removed and the siding itself partly torn up. The sidings of the other complainants could not now be used without considerable repairs. In March 1925, the Monongahela served written notice on complainants, in accordance with the terms of existing contracts, that the license to use the sidings would be revoked, and that the sidings would be taken up. HELD, rates attacked not unreasonable or otherwise unlawful. From all the evidence the conclusion is unavoidable that there is little likelihood that protestants will be able to operate except under abnormal conditions. In justice to respondent it should not be compelled to maintain these switch connections and to continue the rates in effect because of the remote possibility of a return of the market conditions under which the mines have operated in the past. HELD, suspended schedules justified. Hood Coal Co. v. M. V. T. Co., 101 I. C. C. 719.

(k) Rates on lumber from Flinn, Va., a local point on the Warm Spring Valley branch of the C. & O., to destinations in c. f. a., trunk-line, and New England territories, found not unreasonable but unduly prejudicial to extent they exceeded contemporaneous rates from Marlinton, W. Va., and other competing points on the Greenbrier division. Reparation denied. Freehold Lumber Co. v. C. & O., 92 I. C. C. 699.

(l) Rates on zinc ore from points in Oklahoma on Miami Mineral Belt and Northeast Oklahoma railroads, and from trunk-line and junction producing points in Missouri, Kansas, and Oklahoma, to South Fort Smith, Ark., found not unreasonable but unduly prejudicial in favor of competitors operating zinc-smelting plants at Collinsville, East St. Louis, La Salle, Peoria, and Chicago, Ill., and Grasselli, Ind., to extent that factors of above-named carriers exceeded by more than 0.5 cent the contemporaneous factors on like traffic to the preferred plants. Nonprejudicial basis of rates prescribed. Athletic Mining & Smelting Co. v. K. C. S., 93 I. C. C. 119.

(m) Rates on solvent naphtha, a coal-tar product, l. c. l., from Minnequa, Colo., to Johannesburg, Calif., a branch-line point, based upon an arbitrary over Kramer, Calif., the junction point, found not unreasonable or otherwise unlawful. California Rand Silver v. C. & N. W., 93 I. C. C. 197.

(n) Rates on lumber from Group 12 points on the Guyandotte branch of the C. & O. in West Virginia to destinations in c. f. a. territory and in Canada found not unreasonable or unduly prejudicial as compared with lower rates to same destinations from points in Groups 11 and 13 on the Coal River branch. While through distances from the respective groups are substantially the same, differentials over the junction point rates to Group 12 are higher than those to Groups 11 and 13, but it can not be found that rates assailed are unreasonable because of present variations. Peytona Lbr. Co. v. C. & O., 93 I. C. C. 363.

(o) Proposed increased rates on cement from Ada and Hartshorne, Okla., to points in Texas on the Cisco & Northeastern; Eastland, Wichita Falls & Gulf; Wichita Falls, Ranger & Ft. Worth; and

Wichita Falls & Southern, comparatively short line carriers, found not justified. Purpose of proposed advances is to bring these rates into proper alignment with rates to other Texas points and remove existing fourth-section departures. However, new fourth-section departures in some instances would result and the proposed rates do not compare favorably with rates prescribed in 87 I. C. C. 451, for application from Ada to points in Kansas. Cement from Oklahoma to Texas, 95 I. C. C. 596.

(p) Rate on wine grapes from Madison, Calif., located on the Rumsey branch of the Southern Pacific, to Portland and East Portland, Ore., found not unreasonable, but as compared with group rates contemporaneously maintained on like traffic to these destinations from South Vallejo, Napa, and points on the Southern Pacific Company's San Ramon and Walnut Grove branches, they are unduly prejudicial. New Italian Importing Co. v. S. P., 95 I. C. C. 611.

(q) Rate on grapes from Micke, Calif., a local point on the Central California Traction Co., to Seattle, found not unreasonable but unduly prejudicial as compared with group rates contemporaneously maintained from San Jose, Stockton and Lodi, Calif., main line points. Pioneer Fruit Co. v. C. C. T. Co., 95 I. C. C. 690.

(r) Upon further hearing, original report, 83 I. C. C. 737, rates on coal from mines in the New River district, W. Va., on the Greenbrier & Eastern R. R., a short line, to interstate destinations, found unreasonable and unduly prejudicial to extent they exceed group rates contemporaneously maintained from C. & O. branch line points in same district to same destinations. Factor of cost of service, unless the difference is great, should not be controlling. Reparation awarded and measure of reasonable and nonprejudicial rates prescribed. Nelson Fuel Co. v. C. & O., 96 I. C. C. 124.

(s) Combination rates assessed on coal to specific interstate destinations, from Hot Coal, Wyco, Jonben, Tracoal, Devil's Fork, Corinne, and Fireco, W. Va., points in the Winding Gulf section of the New River district served exclusively by the Virginian Railway found unreasonable and unduly prejudicial for the future to the extent they may exceed rates contemporaneously maintained from competing points on the main and branch-line of the C. & O., in the New River district to same destinations. Wyoming Coal Co. v. V. Ry. Co., 96 I. C. C. 359.

(t) Upon further hearing, rates on Gilsonite from American and Watson, Utah, and other points on the Uintah Ry., a narrow gauge line, to interstate destinations found not unreasonable or otherwise unlawful, based upon the normal annual railway operating income of the carrier under existing conditions. Finding in former report, 85 I. C. C. 557, reversed and complaint dismissed. Utah Gilsonite Co. v. A., T. & S. F. Ry. Co., 96 I. C. C. 653.

(u) Reasonable rates on coal from Colorado and northern New Mexico producing districts to Missouri River points and destinations in Kansas, Nebraska, and Western South Dakota prescribed for the future, with suggestion that rates to other points, particularly branch-line points, should be revised, using the prescribed rates as a guide. In revising all rates defendant carriers should follow the rule for the convenient statement of coal rates announced in 80 I. C. C. 383, at page 465. Colo. & N. Mex. Coal Operator Asso. v. D. & R. G. W. R. R. Co., 98 I. C. C. 377, 398.

(v) Through rates on coal from complainant's mines on Kanawha Central in the so-called Kanawaha district of West Virginia to interstate destinations on the lines of other defendants between June 24, 1922, and July 13, 1923, found unreasonable to extent they exceeded the intrastate rate to Brouland, W. Va., the junction point, plus the district rates contemporaneously applicable beyond. Reparation awarded. Kanawha Black Band Coal Co. v. K. C. Ry. Co., 98 I. C. C. 431.

(w) In finding rates on coal from mines on the Virginia Railway in New River district of West Virginia to interstate destinations unreasonable and unduly prejudicial, the record did not warrant a conclusion that the difference in operating conditions from mines to its western terminus between the haul over the Virginia and that over the branch lines and independent short-line connections of C. & O. is in and of itself sufficient to warrant a higher level of rates from complainants' mines. The difficulty of operation as between the lines serving the west and those serving the east ap-

parently is due in a greater measure to operating practice than to physical obstacles. Wyoming Coal Co. v. V. Ry. Co., 98 I. C. C. 488, 492, 493.

(x) Proposed increased rate on grain and grain products between points in Idaho and Washington and Pacific coast points found justified as to destinations in Washington and Oregon but not justified as to destinations in California, no evidence having been offered in justification of proposed rates to points in latter State. These increases are primarily designed to raise the rates from points on branch lines, on which traffic is relatively light, to the level of rates from main line points for approximately same distances, thus preventing the anticipated necessity of eventually reducing the rates from all points of origin here considered found reasonable in the Inland Empire Case, 59 I. C. C. 321. Grain between Pacific Coast Points, 98 I. C. C. 601.

(y) Complainant attacked combination rates charged on 107 cars of petroleum products shipped between Sept. 1918 and Sept. 1919 from Alamosa, Salida and Montrose, Colo., to Colorado and New Mexico on the narrow gauge lines of the D. & R. G. W., and R. G. S., as unjust, unreasonable and unlawful. The petroleum products were all refined originally at Florence, Colo., and thence shipped over standard gauge lines of the Rio Grande to the three points named. These points are junctions of the standard gauge lines of the Rio Grande with its narrow gauge lines. On arrival at these junction points complainant unloaded the contents into permanent storage tanks and later reloaded them into narrow gauge tank cars for movement to the different destinations. The shipments were billed locally from Florence to the junction points and later rebilled to their ultimate destinations. Local rates were published for the latter movements. These were equal to the difference between the through rates from Florence to the same points and the local rates from Florence to the junction points. This equality of the aggregate of the local rates with the through rates maintained following the 25 per cent increase under G. O. 28 until director general issued his rate authority 96. In accordance with that authority an increase of 4.5 in lieu of the 25 per cent increase was added in August 1918 to each local rate, whereas one increase of 4.5c was added to the through rate. This situation was called to the attention of a traffic official of the Rio Grande and, the director general in February 1919 issued another freight rate authority which permitted elimination of the 4.5c increase from the rates over the narrow gauge lines. It is not disputed there was a break in the continuity of movement of complainants shipments from Florence to destinations on the narrow gauge lines and that the local rates in and out of the junction points, increased separately 4.5c were applicable on these movements. The reasonableness of the local outbound rate, thus increased, is a different question. Considering the conditions which led to the use of storage tanks in transferring oil at the junction points instead of by direct car to car method, the agreement between the parties in the interest of efficiency and mutual convenience, for maintainence of inbound and outbound local rates, equal to the through rates in order to carry out this arrangement, the continued maintenance of this basis except for a short period brought about by a change in the manner of levying the increase on oil rates under G. O. 28 and the fact that the transfer through the medium of the storage tanks relieved defendant of considerable expense which he would have had to meet if the shipments had been made on the lower through rates, it appears that the charges attacked were excessive for the service performed. HELD, rate attacked unreasonable to extent they exceeded rates, less increase of 4.5 subsequently established on April 15, 1919, reparation awarded. Continental Oil Co. v. Director General 102 I. C. C. 338.

(z) Complainant attacked commodity rates on coal and coke in carloads from Colorado and New Mexico, Groups 1, 2, and 4 and from Albuquerque, San Antonio and Gallup, N. M., to Tombstone, Ariz., as unjust and unreasonable. Tombstone is on a branch line of the E. P. & S. W., diverging from the main line at Fairbanks, Ariz., and 9 miles distant therefrom Gallup is a local coal producing point on the Santa Fe about 20 miles east of the Arizona-New Mexico state line. The relationship between Gallup and the other producing points concerned was prescribed by the Commission in 80 I. C. C. 383. Complainants case is based upon the contention that the rates

are unreasonable to extent they exceed the rates to Fairbanks, the main line point. It is clear from the record that defendants have not adopted as a general practice the extension of the main line rates to the branch line points similarly located and circumstanced in the vicinity of Tombstone, or that the rates to the junction points are made on a group basis and applied over a considerable territory. HELD, rates attacked not unreasonable, complaint dismissed. Macia v. A. T. & S. F. Ry. 102 I. C. C. 430.

(aa) Complainant attacked commodity rates charged on gasoline in tank cars between March 1, 1920 and March 7, 1921 from El Dorado Kas., and Yale and Grandfield, Okla., to Canon City, Colo., as unreasonable and unduly prejudicial. Canon City is on a branch line of the Santa Fe, extending 41 miles westward from Pueblo, Colo. It is also located on the D. & R. G., which extends from Pueblo to Salt Lake City. Complainant contended that the rates to Canon City should not exceed the rates to Pueblo and other Colorado common points, or should not exceed the rates to such Colorado common points by more than a reasonable differential. HELD, rates prior to August 26, 1920 from Eldorado to Canon City unreasonable to extent they exceeded the rate to Pueblo by more than 8c; on and after Nov. 25, 1920 to and including June 30, 1922 the rates from Eldorado, Yale and Grandfield to Canon City were unreasonable to extent they exceeded the rates to Pueblo by more than 10c, and on and after July 1, 1922 unreasonable to extent they exceeded the rate to Pueblo by more than 9c, reparation awarded. Jewell Co. v. A. T. & S. F. Ry. 104 I. C. C. 380.

(bb) Proposed reduced rates on potatoes and onions from certain points in Colorado, Utah, and Wyoming to destinations in California found justified. Proposed rates are in conformity with respondent's practice of grouping main and branch-line points in western Colorado in making rates on agricultural products, will remove alleged undue prejudice suffered by producers in western Colorado, and are compensatory. Potatoes and Onions from Colorado, Utah, and Wyoming to California, 100 I. C. C. 49.

(cc) Contention of the Western Pacific that the quite general practice of blanketing long-haul rates on certain commodities from branch and independent lines on the junction-point basis and of maintaining short-haul rates from such origins on an arbitrary over the junction-point rate is a sufficient justification for divisions to respondent out of the rates to Garfield different from those out of the rates to Wabuska, not sustained. Mason Valley Mines Co. v. W. P. R. R. Co. 100 I. C. C. 180, 201.

(dd) Schedules proposing readjustment of class rates, both interstate and intrastate, between points in Missouri, and between Missouri and other sections, based upon a maximum distance scale which would result in substantial increases to some points, and reductions between points where the so-called Memphis-Southwestern scale is now in effect, found not justified. Scale of maximum reasonable rates prescribed. Recognized bridge arbitraries at Mississippi River crossings may be added wherever and to extent they now apply, and rates to and from defined territories should be based on the present differentials over the river crossings. Class Rates between Missouri and Interstate Points 100 I. C. C. 274.

(ee) The plan of making through rates to and from local points on a combination or arbitrary basis is open to objection. Such rates put the territory local to the weak line or short line at serious disadvantage and tend to hamper its development. They also run counter to the theory that the financial necessities of weak lines in such cases should be met by liberal divisions of joint rates. Southern Class Rate Investigation, 100 I. C. C. 513, 653.

(ff) Rates on salt from Salduro, Utah, to main-line points on lines of defendants in Montana found to have been unreasonable to extent they exceeded rates shown in distance scale appearing in the Crystal case, 78 I. C. C. 659, 665, for the actual distance from Salduro, and rates on same commodity from Salduro to branch-line points on defendants' lines in Montana found to have been unreasonable to extent they exceeded rates herein found reasonable to main-line points by more than the amounts by which rates from north Pacific ports to said branch-line points exceeded rates to said main-line points. Reparation awarded. Capell Salt Co. v. C., M. & St. P., 101 I. C. C. 34.

(gg) Rates on beef cattle from branch-line points on defendants' line in Arizona to points in California or from other points on defendants' lines in Arizona to branch-line points on their lines in California, found unjust and unreasonable to extent they exceed rates contemporaneously maintained for corresponding distances from and to points on their main line in Arizona and California. Reasonable basis of rates prescribed. Arizona Cattle Growers Asso. v. A. Ry. Co., 101 I. C. C. 181.

(hh) Strouds Creek & Muddlety R. R. found to be a common carrier subject to the act. It holds itself out to transport interstate traffic, has a contract with the United States Government for carrying mail, and many persons avail themselves of its service, a daily schedule being maintained to and from Allingdale, W. Va., the junction point. Tioga Coal Co. v. B. & O., 101 I. C. C. 611.

(ii) Rates on coal from mines on the Strouds Creek & Muddlety R. R., a short line carrier located in the Gauley district of West Virginia to interstate destinations, found not unreasonable, but unduly prejudicial to extent they exceed the rate contemporaneously maintained by the B. & O. from Allingdale, the junction point. Nonprejudicial rates prescribed. Tioga Coal Co. v. B. & O., 101 I. C. C. 611.

(jj) Joint rates on grain and grain products from Milner, Kans., a point on the Kansas & Oklahoma Ry. Co., to interstate destination on the C., R. I & P. Ry., found not unreasonable in comparison with rates from Liberal, Kans., the junction point of the two roads. Duvall v. C., R. I. & P. 101 I. C. C. 630.

(kk) Contention by complainants that present rate adjustment on coal from mines located on the Monongahela West Penn Public Service Co., unduly prefers competitors in immediate vicinity and all other mines on lines of defendants and their connections accorded the Fairmont district rates, or the same or lower rates to eastern and western markets, relying largely upon the fact that group rates apply from certain independent short lines in the general territory here considered, and further fact that commission has in numerous cases prescribed group rates from mines on such lines, not sustained, following Big Mandy Coal & Mining Co., 78 I. C. C. 455, in which commission found that "in cases of this character no rule of general application can be followed but each situation must be judged in accordance with its particular facts and circumstances." Hood Coal Co. v. M. V. T., 101 I. C. C. 719, 725.

(ll) Rate on coal from complainant's mine at Mabie, W. Va., on the Coalton branch of the B. & O., to Port Covington (Baltimore), found unreasonable and unduly prejudicial to extent it exceeded the rate contemporaneously in effect from Mabie Mine No. 6, a farther-distant competing mine, to which complainant's mine was intermediate. Applicable tariff carried reference to rule 77 of Tariff Circular 18-A that upon reasonable request rates which would not exceed those in effect from or to more distant points would be established from or to intermediate points on one day's notice. Complainant made request for establishment of such rates but was refused. Reparation awarded. Brady v. B. & O., 102 I. C. C. 19, 25, 26.

(mm) Class and commodity rates from Jackson, Miss., to destinations in Louisiana west of Mississippi River and southern Arkansas, found unjust, unreasonable, and unduly prejudicial to Jackson and its shippers and unduly preferential of shippers at New Orleans, Memphis, and Natchez, to extent they exceed rates for like distances between points west of Mississippi River herein prescribed, plus charges for Mississippi River crossings prescribed in 93 I. C. C. 463. Reasonable and nonprejudicial rates prescribed. Jackson Traffic Bureau v. A. & V., 102 I. C. C. 129.

(nn) Combination rate to and from Perryville Junction, Mo., assessed on gasoline moving from Cushing, Okla., to Perryville, Mo., on the Cape Girardeau Northern Ry., found unreasonable as compared with lower rate contemporaneously in effect to the junction point and numerous other points in southeastern Missouri. Reasonable rates prescribed for the future and reparation awarded. Illinois Oil Co. v. C. G. N. Ry., 102 I. C. C. 154.

(oo) Shipments of petroleum products moved locally to junctions with narrow-gauge lines, there unloaded into permanent storage tanks, and subsequently reloaded into narrow-gauge

equipment for movement beyond. Plan of storage at the junction was agreed upon between complainant and carrier in interest of efficiency and mutual convenience. An equality existing between the locals and the through rates was disrupted by director general, who applied a flat increase of 4.5 cents to each of the locals but only one increase to the through rate. Subsequently equality was restored. FOUND: Considering conditions leading to use of permanent storage tanks, agreement between parties, prior and subsequent continued maintenance of equal rates, and fact that transfer through medium of storage tanks relieved carriers of expense which they would have incurred had shipments been made on lower through rates, combinations assessed, embodying the double increase, were excessive for service performed. Reparation awarded. Continental Oil Co. v. Director General, 102 I. C. C. 338.

ALL OTHER CITATIONS

Utah Gilsonite Co. v. A. T. & S. F. Ry. Co., 85 I. C. C. 557; General Chemical Co. v. Director General, as Agent, 85 I. C. C. 693; Corona Coal Co. v. St. L. S. F. Ry Co., 85 I. C. C. 723; United Verde Mining Co. v. A. T. & S. F. Ry. Co., 88 I. C. C. 5; Beaver Sand Co. v. Director General, as Agent, 88 I. C. C. 115; Phoenix Chamber of Commerce v. A. E. R. R. Co., 88 I. C. C. 250; Colorado Fuel & Iron Co. v. Director General, as Agent, 88 I. C. C. 453; Brick and Clay Products in the South, 88 I. C. C. 543.

§2. Compared with main lines.

See Comparative Rates; Evidence §57½; Reasonableness of Rates.

(a) Rates on pipe from points in westbound transcontinental Group B to Taft, Calif., on the Sunset Ry., found not unreasonable or unduly prejudicial as compared with transcontinental rates from same origin points to other California destinations, including Bakersfield, Calif., which lower rates are applicable for considerable distances beyond that point, and also apply to points on other branch lines in California and Arizona. The usual basis for making rates from eastern origin points to California and Arizona points on branch or short lines is by combination over the junction points and instances cited of the extension of such lower rates to branch and short line points were shown to be invariably due to either carrier, water, or market competition. Standard Oil Co. v. A., T. & S. F. Ry. Co., 89 I. C. C. 425.

(b) Upon further hearing, maintenance of class and commodity rates from points in California, Oregon, Washington, and eastern transcontinental groups to Mesa and Nogales, Ariz., relatively lower than those two points on the Globe division of the Arizona Eastern R. R., found not unduly prejudicial to points on the Globe division. Record on further hearing shows that circumstances and conditions surrounding transportation to Mesa and Nogales are not wholly comparable with those in connection with transportation to points on the Globe division. Original report, 81 I. C. C. 134, modified. Class and Commodity Rates to Mesa, 92 I. C. C. 512.

(c) Branch-line operation is probably somewhat more expensive than that on main lines, but there appears to be no uniform recognition of this fact in construction of livestock rates. Arizona Cattle Raisers Asso. v. A. Ry. Co., 101 I. C. C. 181, 187.

ALL OTHER CITATIONS

Phoenix Chamber of Commerce v. A. E. R. R. Co., 88 I. C. C. 250.

§4. In Competition With Main Lines.

(a) Rates on coal and coke from Colorado and New Mexico coal-producing points to Tombstone, Arizona., a branch-line point, found not unreasonable as compared with lower rates to Fairbanks, a main-line point. Carriers have not adopted as a general practice extension of main-line rates to branch-line points similarly located and circumstanced in vicinity of Tombstone, nor are rates to junctions made on a group or blanket basis. A comparison of distances, rates, and earnings to both main and branch line points for lesser and greater distances indicates that rates to Tombstone are reasonable. Moreover, volume of traffic to Tombstone is light, operating conditions on the branch are fraught with difficulties, and there is no showing that conditions under which rates were found reasonable in 80 I. C. C. 383 have changed so as to make those rates unreasonable at this time. Macia v. A., T. & S. F., 102 I. C. C. 430.

(b) Reshipping rates on logs to Louisville from stations in Kentucky and Tennessee on Scottsville-Hartsville branch of

L. & N. found unreasonable to extent they exceeded lower contemporaneous rate on like traffic from equi-distant main-line points of that carrier, which lower rate was subsequently established from branch-line points. Reparation awarded. Wood Mosaic Co. v. L. & N., 102 I. C. C. 684.

IV. FACILITIES.

§7. In General.

(a) Refusal of the B. & O. to rate mines on the Strouds Creek & Muddlety R. R. located in the Gauley district of West Virginia, and accord such mines a just and reasonable distribution of cars for coal loading, while contemporaneously furnishing such a rating to mines on its Richwood branch, located in the same district, found to result in undue prejudice to the Strouds Creek mines. The Strouds Creek mines are entirely dependent upon the B. & O. for their car supply and under the provisions of section 1 (12) of the act are entitled to same treatment in the matter of car supply as are mines located directly upon branches of the B. & O. Tioga Coal Co. v. B. & O., 101 I. C. C. 611, 616.

BREAK-BULK RATES

(a) Strictly speaking, a car ferry route is an all rail route, and ordinarily the expression "rail lake and rail route" is used to describe a rail and water break bulk route. Bergstrowm Paper Co. v. Director General, 93 I. C. C. 591, 592.

(b) Shipments of petroleum products moved locally to junctions with narrow-gauge lines, there unloaded into permanent storage tanks, and subsequently reloaded into narrow-gauge equipment for movement beyond. Plan of storage at the junctions was agreed upon between complainant and carrier in interest of efficiency and mutual convenience. An equality existing between the locals and the through rates was disrupted by director general who applied a flat increase of 4.5 cents to each of the locals but only one increase to the through rate. Subsequently equality was restored. FOUND: Considering conditions leading to use of permanent storage tanks, agreement between parties, prior and subsequent continued maintenance of equal rates, and fact that transfer through medium of storage tanks relieved carriers of expense which they would have incurred had shipments been made on lower through rates, combinations assessed, embodying the double increase, were excessive for service performed. Reparation awarded. Continental Oil Co. v. Director General, 102 I. C. C. 338.

BREAKING RATES

See Basing Points and Lines; Car Ferry; River Crossings.

BRIDGES AND TOLLS

I. REASONABLENESS.
§1. In general.
§1a. Constructive mileage.

II. DISCRIMINATION.
§2. In general.

III. CONTROL AND REGULATION.
§3. Jurisdiction of Commission.
§4. State Control.

CROSS REFERENCES

See Car Ferry; Floatage; River Crossings.

I. REASONABLENESS.

§1. In General.

See Class Rates §2 (tt).

(a) Extra expense of bridge transportation is frequently disregarded in making rates for hauls embracing a bridge crossing. Dimmitt-Caudle-Smith Live Stock Commission Co., 47 I. C. C. 287, and other cases cited. Nebraska Livestock Case, 89 I. C. C. 444, 456.

(b) Defendants authorized, in making rates under distance scale prescribed for application between points west of the Mississippi River, on the one hand, and Memphis and east-bank Mississippi River crossings south thereof, on the other, to add bridge or ferry tolls not exceeding 2 cents per 100 pounds to rate based upon the distance to or from west-bank points. No allowances should be made for crossings north of Memphis unless and until upon a more complete record the propriety of these allowances is definitely determined. The commission has never approved allowances for crossings at East St. Louis, Cairo, and Thebes Ill. Oklahoma Corp. Commission v. A. & S. Ry. Co., 98 I. C. C. 183, 250.

(c) Ferry tolls to be used with commodity rates should approximate the toll on the class to which the rate on the commodity more nearly corresponds. Natchez Frt. & Traffic Bureau v. M. P., 101 I. C. C. 476, 478.

§1a. Constructive Mileage.

(a) Commission instituted an investigation to determine the lawfulness of the present practice of the respondents in making an allowance or addition to the actual mileage of 20 constructive miles in the application of scales for the interstate transportation of articles taking class or commodity rates based on distance as compensation for crossing the Mississippi river at Vicksburg and Natchez, Miss., Angola, Baton Rouge, Harahan and New Orleans, La. There are no railroad bridges across the Mississippi river south of Memphis, Tenn. Through railroad traffic is carried across the river by car ferries. The distance across the river at these various points is about 1 mile, except in case of Angola-Naples crossing, where the distance is about 9 miles. This 20 mile addition or allowance applies only on traffic moving under class or commodity distance rates, and is added to the distance from or to the west bank points. Clearly, additional service is given, in these river crossings, which, as far as this record discloses, has no parallel or equivalent, in services performed elsewhere upon respondents lines without the inclusion of additional elements in the charges for such services. The barge service is of an unusual character, is difficult, hazardous, and expensive and in the instant proceeding some separate charge seems justified. The Commission should inquire into the cost of the service. The property used in transfer service at each crossing comprises the car ferries and the facilities on each side of the river required to move cars to and from the ferries. Considerations both of the cost of the particular services and the value thereof to the shipper lead to the conclusion that the additional cost should be borne, as nearly as may be, by the traffic accommodated, and not be imposed upon shippers elsewhere whose traffic is carried under less costly circumstances. The whole record considered the Commission is of the opinion that the method of employing arbitraries is more reasonable, and less likely to result in undue or unreasonable prejudice or disadvantages to persons, localities, or descriptions of traffic, than the method now employed of adding 20 constructive miles to the actual distance. HELD, for the transfer of service at Mississippi river the addition of 20 constructive miles to the distances from Delta Point, Vidalia, Naples, Anchorage, Avondale, Algiers, and Gouldsboro, La., in determining interstate distance class and commodity rates to and from Vicksburg and Natchez, Miss., Angola, North Baton Rouge, Harahan, and New Orleans, La., for future will be unjust and unreasonable and unduly prejudicial and that, in lieu thereof, the following ferry tolls will be reasonable: Class 1, tolls, 6.5c, class 2, tolls 5c, class 3, tolls 4c, class 4, tolls 3c, class 5, tolls 3c, class A, tolls 3c, class B. tolls 2.5c, class C, tolls 2.5c, class D, tolls 2.5c, class E, tolls 2.5c. Mileage for Mississippi crossings, 93 I. C. C. 462.

III. CONTROL AND REGULATION.

See Control and Regulation.

§3. Jurisdiction of Commission.

See Jurisdiction of Commission.

(a) Allegation, unsupported by facts, that railroad bridge across Newark Bay was in conflict with comprehensive plan for development of port of New York, adopted by Port of New York Authority, created by compact between New Jersey and New York, under Laws N. J. 1921, p. 412, and Laws 1921, c. 154, with consent of Congress under 42 Stat. 174, and approved by both states under Laws N. J. 1922, p. 25, Laws N. Y. 1922, c. 43, with consent of Congress under 42 Stat. 822, HELD insufficient to support contention that Port Authority's consent was required to construction of bridge. City of Newark v. Central R. Co. of New Jersey, 45 Sup. Ct. 328.

(b) Under Act N. J. Feb. 26, 1847 (P. L. p. 128), incorporating railroad, and authorizing it, in section 6, to construct bridges, and Laws N. J. 1860, p. 157, authorizing its successor to construct bridge over Newark Bay, the railroad had a right to replace the double-track wooden bridge first built thereunder, when such bridge became inadequate, with four-track bridge of masonry and steel, since powers granted were not exhausted by construction of such first bridge, particularly in view of authority to construct new bridge granted by Act Cong. Aug. 8, 1919, in accordance with

Bridge Act (Comp. St. §§9961, 9968), and Act Feb. 15, 1921, and approval of plans and specifications by Chief of Engineers and Secretary of War, under such Bridge Act. City of Newark v. Central R. Co. of New Jersey, 45 Sup Ct. 328.

(c) In the absence of appropriate legislation by Congress, a state had power to authorize construction of railroad bridge over navigable waters within state. City of Newark v. Central R. Co. of New Jersey, 45 Sup. Ct. 328.

(d) Laws N. J. 1914, p. 205, §4, and Laws N. J. 1915, p. 432, §§5, 13, providing for submission to board of commerce and navigation of plans for development of "water front upon any navigable waters," HELD inapplicable to construction of railroad bridge across Newark Bay, in the absence of allegations of fact showing construction of bridge to constitute plan for development of water front. City of Newark v. Central R. Co. of New Jersey, 45 Sup. Ct. 328.

(e) Railroad had right to construct railroad bridge across Newark Bay, under Laws N. J. 1860, p. 157, §§1, 2, Act Cong. Aug 8, 1919, and Act Cong. Feb. 15, 1921, pursuant to approval of plans by Chief of Engineers and Secretary of War, under Bridge Act (Comp. St. §§ 9961-9968), though not authorized to so do by Port of New York Authority, a corporation established by compact between New Jersey and New York, under Laws N. J. 1921, p. 412, and Laws N. Y. 1921, c. 154, with consent of Congress, under 42 Stat. 174, notwithstanding adoption by such corporation of comprehensive plan for development of port of New York, approved by both state and consented to by Congress, under Laws N. J. 1922, p. 25, Laws N. Y. 1922, c. 43, and 42 Stat. 822. City of Newark v. Central R. Co. of New Jersey, 45 Sup. Ct. 328.

(f) Laws N. J., 1860, p. 157, authorizing certain railroads to construct bridge across Newark Bay, and Act N. J. Feb. 26, 1847 (P. L. p. 128), incorporating railroad, conferred on the railroad, not only the powers expressly defined, but also those which fairly are incidental thereto. City of Newark v. Central R. Co. of New Jersey, 45 Sup. Ct. 328.

(g) A bridge across waters between two states and connecting such states is an instrument of interstate commerce and traffic across it is "interstate commerce." Burkburnett Bridge Co. v. Cobb (Okla., 1925) 233 Pac. 463.

§4. State Control.

See State Rates and Regulations.

(a) Whether two states can, in the absence of legislation by Congress, fix by reciprocal action rates of toll and fares over bridges connecting such states, this court does not decide in this case. Burkburnett Bridge Co. v. Cobb (Okla., 1925) 233 Pac. 463.

(b) A state has no power to regulate tolls upon a bridge connecting such state with another state. Burkburnett Bridge Co. v. Cobb (Okla., 1925) 233 Pac. 463.

BUNCHING

See Demurrage §10⅝.

BURDEN OF PROOF

See Advanced Rates §3; Discrimination §14; Evidence I; Reduced Rates §9; Through Routes and Joint Rates §13a; Undercharges §5; Weights and Weighing IV.

CABLE RATES

See Telephone and Telegraph Companies.

CANADA

See Adjacent Foreign Country; Through Routes and Joint Rates.

(a) Joint rates prescribed by the commission for transportation from points in United States to points in Canada with anticipation that Canadian carriers will concur therein on basis found reasonable. However, if they should decline to do so, the matter may again be brought to the commission's attention for appropriate action with respect to portion of the transportation subject to its jurisdiction. Grasselli Chemical Co. v. B. & O. R. R. Co., 89 I. C. C. 383, 385.

(b) The Commission is without authority to require the establishment of through joint rates to points in Canada. New Orleans Joint Traffic Bureau v. A. & A. R. R. Corp., 95 I. C. C. 77, 82.

(cd) Defendants argue that there is no provision of the act which confers upon the commission jurisdiction over joint rates from Canada to Knoxville. The rates attacked are found to be unduly prejudicial and the Commission clearly possesses the power under the act to require removal of the undue prejudice. Knoxville Traffic Bureau v. C. P. Ry., 101 I. C. C. 605, 610.

(e) Complainant attacked commodity rates charged on two cars of chestnut lumber shipped on March 11 and 13, 1922 from Camden-on-Gauley, W. Va., to Montreal, Canada, and reconsigned at the latter point to Ste. Therese, Canada, as illegal, unreasonable and in violation of the fourth section to extent it exceed 52.5c Ste. Therese is on the North Shore Line of the C. P., between Ottawa and Montreal. The shipments were originally consigned to Montreal, routed B. & O., for C. P. delivery. Upon instructions issued to the lumber agent of the C. P., at Montreal, the shipments were reconsigned at that point by the C. P., to Ste. Therese. The shipments moved over B. & O., to Toledo, O., M. C., to Windsor, Ont., C. P., beyond. Charged 60.5c, composed of 52.5c to Montreal and local rate of C. P., not on file with the Commission of 8c beyond. The shipments were transported from point of origin to Montreal under a joint through rate prescribed in and by a tariff on file with the Commission to which the B. & O., and M. C., and C. P., were parties and that tariff contained a provision to the effect that property destined to points beyond the B. & O., is entitled to such privileges and subject to such charges as are provided for in the tariffs of the carriers granting the privileges and performing the services pertaining to the privileges. HELD, rate of 52.5c to Montreal not unreasonable or in violation of the fourth section. HELD, the question, whether action taken by the C. P., upon and in connection with the reconsignment of the shipments from Montreal to Ste. Therese resulted in overcharges which entitled complainant to an award of reparation, must be determined under the laws of Canada and by some tribunal other than this Commission. HELD, complaint dismissed. Natl. Amer. Wholesale Lumber Asso. v. B. & O. R. R., 101 I. C. C. 741.

(f) Rate on newsprint from Sault Ste. Marie, Ontario, Canada, to St. Joseph, Mo., found not unreasonable as compared with lower rate subsequently established in connection with an extensive readjustment of rates prescribed in the Paper case, 66 I. C. C. 571. News Corp. v. M. P., 93 I. C. C. 381.

(g) Joint rate on newsprint paper from Thorold, Ontario, Canada, to New York City, found unreasonable as compared with rates from other newsprint-producing points and groups to same destination. Reparation awarded. Ontario Paper Co. v. C. N. Rys., 95 I. C. C. 66.

(h) On question of reparation on shipments from Canada to points in United States the reasonableness of joint rates as a whole must be considered by the commission and not merely the component for that portion of the haul from the border. International Nickel Co., 66 I. C. C. 627, 631. Ontario Paper Co. v. C. N. Rys., 95 I. C. C. 66, 72.

(i) Upon contention that with respect to both reparation on past shipments and the prescribing of a rate for the future on shipments moving from points in Canada to points in United States the commission's jurisdiction is limited to determination of the lawfulness of the amount received or to be received for transportation from Canadian border to the United States points. HELD, as to reparation, decisions in International Nickel Co., 66 I. C. C. 627, and a number of later cases, adverse to this contention, are controlling. Ontario Paper Co. v. C. N. Rys., 95 I. C. C. 66, 72.

(j) Commission is without authority to require establishment of joint through rates to points in Canada. New Orleans Joint Traffic Bureau v. A. & A. R. R. Corp., 95 I. C. C. 77, 82.

(k) The commission is unable to control acts of carriers within Canada, but can require carriers so far as they operate within United States to cease from participating in rates which unduly prefer Canadian points to the undue prejudice of points in United States. Maritime Asso., Boston Chamber of Commerce v. A. A. R. R., 95 I. C. C. 539, 573.

(l) Combination rates assessed on shipments of sisal from New Orleans, La., to Indianapolis, Ind., reshipped to Welland, Ontario, Canada, during Federal control found not unjust or unreasonable, and failure of defendant to permit storage in transit at Indianapolis, found not unjust, unreasonable, or unduly prejudicial. Capital Warehouse Co. v. Director General, 96 I. C. C. 293.

(m) Facts and circumstances surrounding the establishment of through routes between points in the United States partly over Canadian rail lines in connection with the Northern Navigation Co., Ltd., a Canadian owned and operated steamship line, covered by tariffs on file with the commission, and the matter of recognition of these routes under section 27 of the merchant marine act, 1920, considered. Proceeding discontinued. Rail-Lake-and-Rail Rates via Canada, 96 I. C. C. 633.

(n) Charges resulting from rates on sheep and lambs, in double-deck cars, from Montreal, Canada, to New York, N. Y., and Somerville, Mass., and minima provided in connection therewith, found not unreasonable. This traffic between points involved is very light in volume; the present yield per car is not excessive as compared with rates and minima on like traffic between other points for similar distances. Swift & Co. v. G. T. Ry. Co. of Canada, 98 I. C. C. 649.

(o) Although commission can not prescribe joint rates from points in Canada to points in United States, it has jurisdiction to award reparation against the lines within United States which participate in joint rates shown to be unreasonable, and it has the power to require these carriers to cease and desist from participating in such rates for the future. See 66 I. C. C. 627 and 74 I. C. C. 733. Swift & Co. v. G. T. Ry. Co. of Canada, 98 I. C. C. 649, 652.

(p) The Commission may not prescribe joint rates for the future to Canadian points, but as to rates constructed on combination, such factors as apply wholly within the United States are subject to its jurisdiction. In respect of the joint rates charged and likewise the joint rate factors used in constructing combination rates charged, the American lines over which the shipments moved are subject to its jurisdiction and all carriers parties to such rates are jointly and severally liable for any damage resulting from their unlawfulness. Washington Publishers Asso. v. A. C. & H. B. Ry., 104 I. C. C. 4, 9.

(q) Rates on newsprint paper from Shawinigan Falls, Quebec, and Canadian points taking same or related rates, to Knoxville, Tenn., via Detroit gateway, found not unreasonable, but unduly prejudicial to Knoxville and unduly preferential of Nashville, to extent they exceed rates on like traffic contemporaneously maintained from same points of origin to Nashville. Nonprejudicial relationship prescribed. Knoxville Traffic Bureau v. C. P. Ry. Co., 101 I. C. C. 605.

(r) Upon contention by carriers that no provision of the act confers upon the commission jurisdiction over joint rates from Canada to the United States, HELD: Where such rates are found unduly prejudicial the commission clearly possesses the power under the act to require its removal. Knoxville Traffic Bureau v. C. P. Ry., 101 I. C. C. 605, 610.

(s) Shipments of chestnut lumber moved from Camden-on-Gauley, W. Va., to Montreal, Canada, and at latter point were reconsigned to Ste. Therese, Canada, charges being collected based on a joint commodity rate to point of reconsignment and a local rate of Canadian carried beyond; FOUND: Rate from point of origin to reconsignment point not unreasonable or in violation of long-and short-haul clause of fourth section of the act, and question, whether action taken by Canadian carrier upon and in connection with reconsignment of the shipments from Montreal to Ste. Therese resulted in overcharges which entitle complainant to an award of reparation, does not come within the jurisdiction of commission. Natl.-Amer. Wholesale Lbr. Asso. v. B. & O. 101 I. C. C. 741.

(t) Question of whether, as alleged, overcharges were collected by a Canadian carrier in Canada on shipments of chestnut lumber from Camden-on-Gauley, W. Va., after they were reconsigned from Montreal to Ste. Therese, Canada, found not to be within jurisdiction of commission. Under section 1 (2) of the act, commission's jurisdiction over transportation applies only to such transportation as takes place within the United States. Natl.-Amer. Wholesale Lbr. Asso. v. B. &. O., 101 I. C. C. 741, 742, 743.

(u) Commission has no jurisdiction to require establishment of joint rates for future from or to a point in United States to or from a point in a foreign country or from a point in United States through a foreign country to a point in United States. See 69 I. C. C. 337, 343. San Diego Chamber of Commerce v. A. & V., 102 I. C. C. 27, 29.

(v) Rates on wood pulp from Canadian points through Rouses Point, N. Y.,

to Thompson, N. Y., found not unreasonable, but to subject complainant at Thomson to undue prejudice and disadvantage and unduly prefer its competitors at Glens Falls, N. Y., and other points. Nonprejudicial basis of rates prescribed and reparation denied. Iroquois Pulp & Paper Co. v. G. & J. Ry., 102 I. C. C. 121.

(w) Proposed cancellation of import commodity rate on clay from Montreal, Canada, to Syracuse and Solvay, N. Y., leaving applicable higher domestic rates, found not justified. No justification whatever was offered for the increased rate which would result. Moreover, import rate proposed to be canceled is same as the import rate on like traffic in effect from and to same points over other routes. Import Clay and Class Rates to New York Points, 102 I. C. C. 217.

(x) Upon reargument, original report, 95 I. C. C. 66, finding rate on newsprint paper from Thorold, Ontario, Canada, to New York unreasonable, affirmed without modification, relying mainly upon comparison of such rate with contemporaneous rate on like traffic from Niagara Falls to same destination. Ontario Paper Co. v. C. N. Rys., 102 I. C. C. 365.

(y) Combination rates assessed on shipments moving from Edmonton and Patricia, Canada, to Chicago, Ill., found inapplicable. Tariff naming rates covering one factor of the combination made reference to the combination rule which provided a method for constructing through rates made on combination, and, by express terms, limited application to continuous rail shipments. There being an original and continuing intention on part of shippers that the cattle should move through to Chicago the doctrine of the Settle case, 260 U. S. 166 is controlling, and following principle laid down in the Sligo case, 62 I. C. C. 643; 73 I. C. C. 551, the shipments were subject to rates made by application of the combination rule. Reparation awarded. Chicago Live Stock Exchange v. Director General, 102 I. C. C. 452.

(z) Rates on clean rice from Memphis to Canadian destinations found not unreasonable as compared with lower rates from New Orleans, and other farther distant producing points. Such rates, however, found to violate the long-and-short haul provision of section 4 of the act. Memphis Frt. Bureau v. A. A. R. R., 102 I. C. C. 489.

ALL OTHER CITATIONS

Pacific Coast Shippers Asso. v. Director General, as Agent, 85 I. C. C. 386; Crown Willamette Paper Co. v. Director General, as Agent, 85 I. C. C. 657; Albers Brothers Milling Co. v. Director General, as Agent, 85 I. C. C. 747; Cutler-Hammer Mfg. Co. v. Director General, as Agent, 88 I. C. C. 600.

CAR FERRY

See Across Lake Rates; Allowances §8½; Break Bulk Rates (a); Ferry Charges; Floatage; Routing and Misrouting §6½ (b).

(a) Rates on sewer pipe from Brazil, Ind., to Monitowac and Sheboygan, Wis., and Menominee, Mich., found unreasonable as compared with lower unrestricted rates applicable over car-ferry routes across Lake Michigan to more distant points in Wisconsin, Minnesota, and Michigan, and to extent they exceeded aggregate of intermediates contemporaneously in effect. Reparation denied due to lack of proof as to payment and bearing of freight charges. Chicago Fire Brick Co. v. Director General, 91 I. C. C. 755.

(b) Rates applying over car-ferry routes are considered all-rail rates. Chicago Fire Brick Co. v. Director General, 91 I. C. C. 755, 756.

(c) Rules, regulations, and practices of C. R. R. Co. of N. J., under which it refuses to float shipments of cast-iron soil pipe from Jersey City to its North River piers, Manhattan Island, N. Y., and requiring shippers to take delivery at former point, found unreasonable. Iron pipe, due chiefly to amount of time required to unload, may be undesirable traffic at pier stations, but defendant does not similarly restrict other substantially similar commodities which are bulky and difficult to handle, and nothing of record indicates that latter should be accorded more favorable rules respecting delivery than cast-iron soil pipe. Somerville Iron Works v. C. R. R. Co. of N. J., 93 I. C. C. 39.

(d) Upon investigation by commission on its own motion, FOUND, that for performing car ferry service in crossing the Mississippi River, the addition of 20 constructive miles to distances from west-bank points in determining charges

for transportation of articles taking class or commodity rates, computed on basis of interstate distance scales to and from Vicksburg and Natchez, Miss., Angola, North Baton Rouge, Harahan, and New Orleans, La., is unreasonable. Reasonable ferry tolls based upon arbitraries added to distance rates from and to westbank points, prescribed for future. Mileage for Mississippi Crossings, 93 I. C. C. 462.

(e) Considerations both of cost of performing car ferry service at lower Mississippi River crossings, and value thereof to shippers, lead to conclusion that additional cost should be borne, as nearly as may be, by traffic accommodated, and not imposed upon shippers elsewhere whose traffic is carried under less costly circumstances. Mileage for Mississippi Crossings, 93 I. C. C. 462, 475.

(f) Method of employing arbitraries is more reasonable, and less likely to result in undue or unreasonable prejudice or disadvantages to persons, localities, or descriptions of traffic, than method of adding 20 constructive miles to actual distances in computing charges for car ferry service at lower Mississippi River crossings. Mileage for Mississippi Crossings, 93 I. C. C. 462, 475.

(g) Strictly speaking, a car-ferry route is an "all-rail" route. Bergstrom Paper Co. v. Director General, 93 I. C. C. 591, 592.

(h) Complainant sought direct service from Cape Charles to Newport News, by car float, in lieu of circuitous movement through Port Norfolk. Defendant questioned the jurisdiction of the commission to require the service, the proceeding involving the lawfulness of rates and not the extension of lines. HELD, the commission is not convinced that it could under the pleadings or upon the record require the service. Newport News v. B. & O. R. R. Co., 96 I. C. C. 425.

(i) By the route shipments of second hand refrigerators from Camp Dix (Wrightstown), N. J., to Sheffield, Ala., actually moved a car-ferry transfer from Cape Charles to Norfolk, Va., was necessary, which in complainant's opinion is equivalent to a rail-and water movement. This contention not sustained, Conf. Ruling 316, and in absence of specific instructions for rail-and-water route defendants were only under the obligation to protect the rate applicable over route specified by shipper. Florence Chamber of Commerce v. N. S. R. R. Co., 98 I. C. C. 594, 595.

(j) The cost of the car-ferry service out of San Francisco, Calif., is alleged to be greatly in excess of that from Oakland, Calif. If cost of ferriage between these two points were transmuted into rail miles at average costs of rail haulage it would place them some miles apart. While origin points nearer to destination points must not be unduly deprived of the benefit of their locations and more distant origin points unduly favored, distance alone frequently is not controlling and must not be given undue weight, particularly where, as here, considerations which are largely determinative of the rates from the farther distant point exist in a markedly less degree from the nearer point. Galloway Coal Co., 40 I. C. C. 311. Oakland Chamber of Commerce v. S. P. Ry. Co., 100 I. C. C. 55, 62.

(k) Joint rates on tin plate from McKeesport, Pa., Yorkville, Ohio, and Cumberland, Md., to New London, Wis., moving via Ludington, Mich., thence by car ferry to Manitowoc or Kewaunee, Wis., thence by rail to destination, found not unduly prejudicial but unreasonable to the extent that they exceeded the combination of proportional and local factors which would have applied in the absence of joint rates. Proportional factors which would have been applicable were so restricted as to result in violations of section 4 from McKeesport and Yorkville, but not from Cumberland. Reasonable rates prescribed for the future and reparation denied. Borden Co. v. A. A. R. R. Co., 100 I. C. C. 153.

(l) Ferry tolls to be used with commodity rates should approximate the toll on the class to which the rate on the commodity more nearly corresponds. Natchez Frt. & Traffic Bureau v. M. P. 101 I. C. C. 476, 478.

CARETAKERS

See Class Rates §2 (6d); Express Companies §5 (a) (b); Live Stock Shipments; Passenger Fares and Facilities §3a, §12.

ALL CITATIONS

Miller & Lux v. Director General, as Agent, 88 I. C. C. 403.

CARMACK AMENDMENT

See Loss and Damage I.

CARS AND CAR SUPPLY

I. CONTROL AND REGULATION

A. Jurisdiction of Commission.

§½. In general.
§½a. Construction of act.
§1. Over car distribution.
§2. Car regulations.
§3. Fuel cars.
§4. Private cars.
§5. Intrastate cars.
§6. To award damages.
§6¼. Regulations in general.
§6½. Mine rating.
§6⅞. State regulations.

II. DUTY TO FURNISH CARS.

§7. In general.
§7¼. Car congestion or shortage.
§7⅜. Deposit on cars.
§7½. Inspection.
§7½a. Restriction of equipment.
§7¾. Safety appliance equipment.
§8. Size and kind ordered by shipper.
§8½. Fish cars.
§9. Form and time of order.
§9¼. Gondola cars.
§9½. Heater cars.
§9⅝. Insulated or refrigerator cars.
§9⅝a. Live stock cars.
§9¾. Peddler cars.
§9⅞. Miscellaneous cars.
(1) Station-order cars.
(2) Trap cars.
(3) Refrigerator cars.
§10. Tank cars.
§10½. Private cars.
§10¾. Pool cars.
§11. At transit point.
§11½. Leased cars.
§11¾. Rental charges.
§11⅞. Per diem charges.

III. ASSIGNMENT AND DISTRIBUTION.

A. Counting of cars.

§12. In general.
§13. Private cars.
§14. Foreign cars.
§14½. Junction point or joint mines.
§15. Railway and fuel cars.
§16. Car pools.
§17. Tank cars.
§18. Detention of cars.
§19. When counted for loading.
§20. Car shortage.
§21. Reward for prompt release.
§21½. Shippers on branch lines.

B. Rating of mines.

§21¾. In general.
§22. Coke oven basis.
§23. Commercial plus physical capacity.
§23½. Joint or junction point mines.
§24. Idle-hour system.
§25. Mine capacity plus shipments.
§26. Physical capacity less railway fuel.

C. Removal of Discrimination.

§27. Effect.

IV. CONTRACTS FOR CAR SUPPLY.

§28. In general.

V. DUTY TO TRANSPORT CARS.

§29. In general.
§30. Interchange of cars.
§31. Private cars.
§32. Rates on private cars.
§32⅛. Repair of equipment.
§32¼. Quarantine regulations.

VI. REMEDIES AND DAMAGES.

§32½. In general.
§33. Actions at law.
§34. Defenses.
§35. Res adjudicata.
§36. Evidence.

VII. LIMITATION OF LIABILITY.

§38. Open cars.
§38. Open cars.

VIII. CAR SERVICE REGULATION.

§39. In general.
§40. Filing and publication.

CROSS REFERENCES

See Allowances §8 (½) §8 (5); Boiler Inspection Act; Car Ferry; Classification §12⅞; Control and Regulation; Evidence §22; Floatage; Live Stock Shipments; Minimums §3, §5, §8; Peddler Cars; Private Cars; Safety Appliance Act; Special Rates and Services; Trap Cars.

I. CONTROL AND REGULATION.

See Control and Regulation.

A. Jurisdiction of Commission.

See Interstate Commerce Commission I.

§½. In General.

(abc) The Commission has jurisdiction over cars used in hauling railway fuel over a carriers own line, on the theory that such cars were instrumentalities of interstate commerce and could be regulated with a view to bringing about a just and equal distribution and preventing an unjust and discriminatory one. Whether the cars were used in common carrier transportation was immaterial. Assigned cars for bituminous coal mines 93 I. C. C. 701, 716.

(de) Hauling coal cars for its own use from mine by railroad, which, though intrastate as to its lines and termini, participated in interstate commerce through connection with other railroads, was "interstate commerce." Freeman v. United States, 4 Fed. (2d) 13.

(f) The provision of Transportation Act 1920, tit. 4, §402 (15), being Comp. St. Ann. Supp. 1923, §8563 (15), making the violation of the Interstate Commerce Commission's emergency priority orders punishable as a crime, HELD valid. Avent v. United States, 45 Sup. Ct. 34.

(g) The commission's authority over the distribution of cars of carriers subject to the act is to be found in sections 1, 3, and 15. Section 1 requires rules of car distribution to be reasonable, section 3 prohibits them from being unduly preferential or prejudicial, and sections 1 and 15 authorize the commission to prescribe just and reasonable rules. Provisions of these sections clearly indicate the broad scope of authority which Congress has conferred upon the commission, and important duties with which the commission is charged, to require, in time of car shortage, a just and equal distribution of cars and prevention of a distribution which is unjust and discriminatory. U. S. v. New River Co., 265 U. S. 533. Assigned Cars for Bituminous Coal Mines, 93 I. C. C. 701, 714.

(h) Upon contention that under section 1 (12) of the act the commission has no jurisdiction over distribution of cars to carrier-owned or output-contract mines which furnish railway fuel exclusively for at least six months, because such mines are not "served" by a carrier. HELD, word "served" has no judicially determined or technical meaning which would make it inapplicable to such mines. The commission believes that Congress intended to use the word in its ordinary and well-accepted meaning, i. e., to mean the furnishing of cars by a carrier at its own mines or at those the output of which it takes. As used in paragraph (12) "served" is a convenient term to show that provisions of this paragraph apply not only to mines located on a carrier's own line, regardless of ownership or contractual arrangements, but also to those mines located off its line and which it customarily supplies with cars. Assigned Cars for Bituminous Coal Mines, 93 I. C. C. 701, 714, 715.

(i) Upon contention that the commission is without jurisdiction over the distribution of special types of equipment used exclusively in hauling company fuel because such equipment has never been impressed with character of common-carrier instrumentalities, such equipment is not used in commerce at all, but only in performing private work of a railroad company. HELD, such special types were in commercial service before being put in fuel-coal service, are placed at partial-output mines selling commercial coal, are counted and distributed on a pro rata basis, and may be unloaded like ordinary coal cars. They constitute part of the available equipment of these carriers for commercial shipments, and fall within class of equipment as to which Congress requires "a just and equal distribution and prevention of an unjust and discriminatory one." Illinois Central case, 215 U. S. 452, 474. Assigned Cars for Bituminous Coal Mines, 93 I. C. C. 701, 725.

(j) Contention that section 1 (12) of the act, which was incorporated by the transportation act, 1920, limits the commission's power to change or extend by further limitation the rule of car distribution laid down in the Traer case, 13 I. C. C. 431, and Hocking Valley case, 12 I. C. C. 398, not sustained. That this was not the intent of Congress is clear. In United States v. P. R. R. Co., 69 L. Ed. 76, the court said that there was nothing in the interstate commerce act as originally enacted, or in the transportation act, or in any earlier amendment, which indicates a purpose on the part of Con-

gress either to allow a carrier to create undue prejudice by use of facilities possessed, or to narrow the commission's powers to prevent unjust discrimination. Assigned Cars for Bituminous Coal Mines, 93 I. C. C. 701, 730.

(k) Fact that large sums may have been invested in reliance upon a rule of car distribution laid down by the commission which is unreasonable and unjustly discriminatory or may become or be found so under the act does not mean that the commission is powerless to change the rule and prescribe a just and nonpreferential one. Douglass case, 21 I. C. C. 97, 101; So. Pac. Co. v. I. C. C., 219 U. S. 433; Mottley case, 219 U. S. 467. Assigned Cars for Bituminous Coal Mines, 93 I. C. C., 701, 737.

(l) The act makes it the duty of every carrier subject thereto to furnish an adequate supply of trains for the transportation of property, and confers upon the Commission authority to determine and prescribe, after full hearing what practice in this respect is or will be just, fair, and reasonable, to be thereafter followed, and to enter an appropriate order. Train service on N. P. 112 I. C. C. 191, 194.

§½a. Construction of Act.

(a) Competition is not an assential element under section 1. Assigned cars for bituminous coal mines, 93 I. C. C. 701, 717.

(b) There is no more insidious or effective way by which a carrier may discriminate between its shippers than through a regulation or practice that denies to them the equal enjoyment of its facilities. And if the rules of carriers with respect to car distribution are not included within the scope of the law, the prosperity of shippers, during periods of car shortage, largely lies in the hands of the carriers on whose lines they conduct their business enterprises, whenever such carriers are disposed to and do actually favor some shippers at the expense of others. The underlying purpose of this legislation, as will doubtless be agreed, was to put shippers on a basis of absolute equality; to assure to them not only equal rights but an impartial enjoyment of the facilities and services of interstate carriers. Assigned cars for bituminous coal mines, 93 I. C. C. 701, 718.

(c) It is important to bear in mind that the fundamental purpose of the act is equality of treatment in rates and service, and this principle may not be violated merely because the carrier in that way may operate at less expense. If this were not true a carrier in times of car shortage could restrict its car supply to a few large and well operated mines on its line and ignore the remainder. Assigned cars for bituminous coal mines, 93 I. C. C. 701, 721.

(d) The effort of a carrier to obtain more business, and to retain that which it had secured, proceeds from the motive of self interest which is recognized as legitimate; and the fact that preferential rates were given only for this purpose relieves the carrier from any charge of favoritism or malice. But preferences may inflict undue prejudice though the carriers motives in granting them are honest. Self interest of the carrier may not override the requirement of equality in rates. Assigned cars for bituminous coal mines, 93 I. C. C. 701, 721.

(e) A carriers self interest may not override the requirement of equality in car distribution. Assigned cars for bituminous coal mines, 93 I. C. C. 701, 721.

(f) The right to buy is one thing and the power to use the equipment of the road for the purpose of moving the articles purchased in such a way as to discriminate or give preference are wholly distinct and different things. Assigned cars for bituminous coal mines, 93 I. C. C. 701, 725.

(g) There is nothing in the act as originally enacted, or in Transportation act, 1920, or in any earlier amendment, which indicates a purpose on the part of Congress either to allow a carrier to create undue prejudice by the use of facilities possessed, or to narrow the Commissions powers to prevent unjust discrimination. Assigned cars for bituminous coal mines, 93 I. C. C. 701, 730.

(h) The great underlying purpose of the act, amplified and strengthened with each successive amendment and supplemental act, is to sweep away every form of favoritism based upon the personality of the shipper, or upon his relations with the carrier as a customer, and to place all, the large and small, the steady and occasional, the rich and the poor, upon a plane of equality in the right to service; and to condemn and to make unlawful every regulation, device, or subterfuge

which undertakes to give to anyone an advantage based upon conditions other than those inhering in the transportation itself and alone. If more equipment is needed to permit the railroads to service all their offering patrons with coal cars, impartially, in volume sufficient to meet the country's needs, then it is the declared policy of Congress that requires that such equipment shall be procured, and that it be used with impartiality, rather than that an indefinably smaller quantity might be turned over to the exclusive service of favored members of an industry whose past has been wayward, reckless, dissipated, and extravagant, and which lacks proper sense of responsibility. Monopolies are odious, alike by common law and under federal statute. The Commission can not consider with favor a proposition to create of an unregulated favored class of already favorably circumstanced producers, a complete monopoly by compelling the carriers to violate the principle of equality of treatment which it is the right of every citizen to demand. Rules governing ratings of coal mines, 95 I. C. C. 309, 332.

(i) The commission's authority over distribution of cars of carriers subject to the act is to be found in sections 1, 3, and 15. Section 1 requires rules of car distribution to be reasonable, section 3 prohibits them from being unduly preferential or prejudicial, and sections 1 and 15 authorize commission to prescribe just and reasonable rules. Provisions of these sections clearly indicate the broad scope of authority which Congress has conferred upon the commission, and the important duties with which it is charged, to require, in time of car shortage, a just and equal distribution of cars and prevention of a distribution which is unjust and discriminatory. U. S. v. New River Co., 265 U. S. 533. Assigned Cars for Bituminous Coal Mines, 93 I. C. C. 701, 714.

(j) Upon contention that under section 1 (12) of the act the commission has no jurisdiction over distribution of cars to carrier-owned or output-contract mines which furnish railway fuel exclusively for at least six months, because such mines are not "served" by a carrier. HELD, word "served" has no judicially determined or technical meaning which would make it inapplicable to such mines. The commission believes that Congress intended to use the word in its ordinary and well-accepted meaning, i. e., to mean the furnishing of cars by a carrier at its own mines or at those the output of which it takes. As used in paragraph (12) "served" is a convenient term to show that provisions of this paragraph apply not only to mines located on a carrier's own line, regardless of ownership or contractual arrangements, but also to those mines located off its line and which it customarily supplies with cars. Assigned Cars for Bituminous Coal Mines, 93 I. C. C. 701, 714, 715.

(k) Section 1 (12) of the act held to apply to cars placed at carrier-owned and output-contract mines, and can not be relied upon to show that Congress exempted such cars from other provisions of section 1 requiring reasonable rules of distribution, and provisions of section 3 prohibiting unduly preferential or prejudicial rules. Assigned Cars for Bituminous Coal Mines, 93 I. C. C. 701, 716.

(l) Fundamental purpose of the act is equality of treatment in rates and service, and this principle may not be violated merely because carrier in that way may operate at less expense. If this were not true a carrier in times of car shortage could restrict its car supply to a few large and well-operated mines on its line and ignore the remainder. A carrier's self-interest may not override requirement of equality in car distribution. See 263 U. S. 515, 523; 225 U. S. 326. Handling Charges on Cement, Fertilizer and Salt, 93 I. C. C. 640, 721.

(m) The question of a just and nondiscriminatory car distribution rule under provisions of sections 1 and 3 of the act is a different question from that of a rule to be prescribed in case of emergency. The distinction is recognized in section 1 (15) where it is provided that the commission may suspend car service rules at such times. Handling Charges on Cement, Fertilizer and Salt, 93 I. C. C. 640, 724.

(n) Contention that section 1 (12) of the act, which was incorporated by the transportation act, 1920, limits the commission's power to change or extend by further limitation the rule of car distribution laid down in the Traer case, 13 I. C. C. 431, and Hocking Valley case, 12 I. C. C. 398, not sustained. That this was not the intent of Congress is clear. In United States v. P. R. R. Co., 69 L. Ed. 76, the court said that there was

nothing in the interstate commerce act as originally enacted, or in the transportation act, or in any earlier amendment, which indicates a purpose on the part of Congress either to allow a carrier to create undue prejudice by use of facilities possessed, or to narrow the commission's powers to prevent unjust discrimination. Assigned Cars for Bituminous Coal Mines, 93 I. C. C. 701, 730.

§1. Over car distribution.

(a) Interstate Commerce Commission's jurisdiction with respect to regulation of distribution of cars, under Interstate Commerce Act, §1 (3), (4), (6), (10), (11), (12), (14), section 3 (1), and section 15 (1) being Comp. St. §§ 8563, 8565, 8583, is exclusive. United States v. New River Co., et al., Slab Fork Coal Co. v. Same, 44 Sup. Ct. 610.

(b) Interstate Commerce Commission Rule 4, Circular CS-31, Revised, prohibiting operators of joint mines served by two or more carriers from ordering cars on the basis of more than 100 per cent. of the gross daily rating, HELD, not an unreasonable and arbitrary exercise of the Commission's power to regulate the distribution of cars, under Interstate Commerce Act, §1 (3), (4), (6), (10), (11), (12), (14), section 3 (1), and section 15 (1) being Comp. St. §§ 8563, 8565, 8583, as against contention that such order discriminates against operators of joint mines in favor of operators of local mines. United States v. New River Co. et al. Slab Fork Coal Co. v. Same, 44 Sup. Ct. 610.

(c) Ordinarily question of discrimination, including inequitable distribution of cars in times of car shortage, are referable initially to Interstate Commerce Commission, and not to courts, under Transportation Act, §1, par. 12 (Comp. St. Ann. Supp. 1923, §8563.) Freedman v. United States, 4 Fed. (2d) 13.

(d) In absence of Interstate Commerce Commission's suspension of provision of Transportation Act, §1, par. 12 (Comp. St. Ann. Supp. 1923, §8563), making it railroad's duty to count every car furnished to mine against mine, statute create absolute duty enforcable under Elkins Act, §3 (Comp. St. §8599), in federal equity court in first instance. Freeman v. United States, 4 Fed (2d) 13..

(e) Rev. St. Mo. 1919, §§9985, 9990, prohibiting discrimination between shippers in the furnishing of cars, HELD inapplicable where usual route to intended destination was an interstate one, and shipper did not designate intrastate route, in view of Interstate Commerce Act, §1, subds. (3), (4), (6), (10), (11), (12), (14), section 3, subd. (1), section 15, subd. (1), being Comp. St. §§8563, 8565, 8583, and section 3, as amended by Act Feb. 28, 1920, §405 (Comp. St. Ann. Supp. 1923, §8565), protesting shippers of goods in interstate commerce from such discrimination. Missouri Pac. R. Co. v. Stroud, 45 Sup. Ct. 243.

§2. Car Regulations.

(a) Transportation Act 1920, tit. 4, §402 (15), being Comp. St. Ann. Supp. 1923, §8563 (15), authorizing the Interstate Commerce Commission in case of emergency to make reasonable rules as to car service, and an order of the Interstate Commerce Commission thereunder prescribing a preference in the order of purposes for which coal should be carried, are not invalid under the Fifth Amendment, and the statutes does not trench on powers reserved to the state, and are not invalid as a delegation of legislative power. Avent v. United States, 45 Sup. Ct. 34.

(b) Under Transportation Act 1920, tit. 4, §402 (15), being Comp. St. Ann. Supp. 1923, §8563 (15), authorizing the Interstate Commerce Commission in times of emergency to give preference of traffic, the power of the Commission or priority in transportation or movement is restricted to emergencies, and the only requirement is that the rules shall be reasonable and in the interest of the public and of commerce. Avent v. United States, 45 Sup. Ct. 34.

§3. Fuel Cars.

(a) Upon contention that under section 1 (12) of the act the commission has no jurisdiction over distribution of cars to carrier-owned or output-contract mines which furnish railway fuel exclusively for at least six months, because such mines are not "served" by a carrier. HELD, word "served" has no judicially determined or technical meaning which would make it inapplicable to such mines. The commission believes that Congress intended to use the word in its ordinary and well-accepted meaning, i. e., to mean the furnishing of cars by a carrier at its own mines or at those the output of which it takes. As used in

paragraph (12) "served" is a convenient term to show that provisions of this paragraph apply not only to mines located on a carrier's own line, regardless of ownership or contractual arrangements, but also to those mines located off its line and which it customarily supplies with cars. Assigned Cars for Bituminous Coal Mines, 93 I. C. C. 701, 714, 715.

(b) Upon contention that commission is without jurisdiction over distribution of special types of equipment used exclusively in hauling company fuel because such equipment has never been impressed with character of common-carrier instrumentalities, such equipment is not used in commerce at all, but only in performing private work of a railroad company. HELD, such special types were in commercial service before being put in fuel-coal service, are placed at partial output mines selling commercial coal, are counted and distributed on a pro rata basis, and may be unloaded like ordinary coal cars. They constitute part of the available equipment of these carriers for commercial shipments, and fall within class of equipment as to which Congress requires "a just and equal distribution and prevention of an unjust and discriminatory one." Illinois Central case, 215 U. S. 452, 474. Assigned Cars for Bituminous Coal Mines, 93 I. C. C. 701, 725.

§4. Private Cars.

See Common Carrier §6; Infra §31, §32; Private Cars.

(a) Fundamental principle which has governed the commission in dealing with private cars is that such cars, being paid for by carriers through allowances to their owners, are to be treated as part of the carrier's equipment, and may not be so used as to bring about unjust discrimination or unreasonable practices. Assigned Cars for Bituminous Coal Mines, 93 I. C. C. 701, 729.

(b) The act not only confers authority upon the commission to restrict the preferential use of private cars as was done in Hocking Valley case, 12 I. C. C. 398, and Traer case, 13 I. C. C. 431, but authorizes the commission to prohibit altogether such preferential use. U. S. v. New River Co., 265 U. S. 533, and cases there cited. Assigned Cars for Bituminous Coal Mines, 93 I. C. C. 701, 729, 730.

II. DUTY TO FURNISH CARS.

§7. In General.

See Bills of Lading §5; Branch Lines IV; Demurrage §6; Evidence §22.

(a) Complainant contended defendants have failed and refused to make a just and reasonable distribution of coal cars as between complainants mines and a mine operated by defendants thus unduly prejudicing complainant. Defendants operate a line of railroad, known as the Blair R. R., extending from Kregar, Pa., to Jones Mill, Pa., distance 3.7 miles. At Jones Mill the Blair railroad connects with the Indian Creek Valley Ry., which in turn connects with the B. & O., at Indian Creek near Connellsville, Pa. The Blair road was constructed primarily for the purpose of serving their lumber mill at Kregar. Prior to and during the construction of the Blair road defendants negotiated with complainants for the joint construction and operation of a railroad to be used for the transportation of lumber and logs to and from defendants mill and coal from complainants mine. Complainants mine is located on the Blair road a short distance from Kregar. Complainants coal has practically all moved to interstate points. The Blair road is not incorporated and has no charter to operate as a common carrier. It is without the power of eminent domain and its right of way was acquired by purchase or gift. They do not comply with any federal or state requirements applying to common carriers except that they pay amounts under the workmens compensation act of the state at the rates provided for employees on railroads. They do not participate in any joint rates with other carriers. Freight charges are not collected by defendants for connecting lines or by connecting lines for defendants. The distribution of coal cars between the Blair mine and the complainants mine was made by the defendants, and the complaint is directed solely against them. HELD, defendant was not and is not a common carrier subject to the act, complaint dismissed. Piper v. Blair, 96 I. C. C. 102.

(b) Complainant alleged that Southern Ry. has failed and neglected to furnish complainants at their mines served by that carrier with a reasonably adequate car supply for transportation of

coal; that it has failed to make a just and reasonable distribution of cars for the transportation of coal among the coal mines served by it; that in the case of certain favored mines served by the defendant, Interstate Railroad, it has failed to count against those mines each and every car furnished to or used by such mines; and that during 1922 and since, it has failed and neglected to furnish complainants with an equitable pro rata distributive share of available equipment, and has favored mines on the Interstate Railroad in making such distribution, thereby discriminating against complainants. Questions are, 1, whether the Interstate should any longer be charged with being customarily dependent upon the Southern for car supply for mines located on the Interstate; and 2, whether in times of car shortage it is incumbent upon the Southern to undertake to furnish the Interstate as a dependent connection, from its car supply, cars under the customarily dependent clause of paragraph 12 of section 1 of the act. Interstate has about 80 miles of track and extends from Appalachia, Va., northward to all the mines in the Appalachia region, and from Appalachia eastward, connecting with the Southern and L. & N., at Appalachia. The Southern and other connections of the Interstate deliver cars to the latter for distribution to the mines on its line on the same basis as if such mines were local to such connections; that is, the same percentage of distribution is accorded mines on the Interstate as currently accorded to mines on such other carriers. Practically all of the coal from the Interstate moves under joint rates with its connections. On coal from mines on its line and via the Southern and its connections the average division of the rates is 10% to the Interstate and 90% to the Southern and its connections. While there is clearly an obligation laid by the law upon the Southern to furnish a reasonably adequate car supply sufficient to fill all reasonable orders of mines on its line, and to satisfy its legal obligation to furnish its proper proportion of cars for the operation of the through routes to which it is a party under its joint tariffs, the Interstate owes a like obligation to the mines on its line, and to the Southern and other roads over which there are through routes and joint rates. Neither can divest itself of this obligation. HELD, Southern and Interstate are each charged with the duty of furnishing cars for transporting traffic originating on their respective lines, that the obligation to furnish cars for shipments of traffic from points on their respective lines to points upon the lines of their connections is joint with the latter, and custom between them, whereby one carrier undertakes to furnish cars that it is legally incumbent upon the other to furnish, does not relieve the latter of its liability for failure to furnish cars. Further HELD, Interstate is not dependent upon the Southern for the supply of cars for the coal mines served by it under the provisions of paragraph 12 of section 1. United Collieries, Inc. v. Southern Ry., 96 I. C. C. 338.

(c) It is the view of the Commission that each carrier subject to the act is charged with the duty of furnishing cars to the industries located upon its line. In the case of through routes composed of two or more carriers the obligation to furnish cars for transportation over such through routes, is joint upon the carriers therein. Its obligation to furnish cars for shipments between points upon the lines of its connections is joint with such connections, and it can not be relieved of its portion of such joint liability by any contract with such connections. United Collieries v. Southern Ry., 96 I. C. C. 338, 340.

(d) When joint rates are established the carrier must be prepared to comply with its obligations of furnishing a proper share of the cars needed to transport the traffic originating on its line. While the responsibility to the shipper of furnishing a proper supply of cars rests upon the road upon which the shipper is located and the traffic originates, the originating line, as between it and its connections, does not necessarily rest under the burden of supplying all the cars which may be required for transportation over through routes under joint rates. United Collieries v. Southern Ry. 96 I. C. C. 338, 340.

(e) The obligation to furnish cars rests on all carriers parties to joint rates. Wyoming Coal Co. v. V. Ry., 96 I. C. C. 359, 365.

(f) As a common carrier participating in joint rates, complainant is under an obligation to furnish its share of the

equipment. Virginia Blue Ridge Ry. v. S. Ry., 96 I. C. C. 591, 593.

(g) The obligation to furnish cars rests on all carriers parties to joint rates. Wyoming Coal Co. v. Virginian Ry., 98 I. C. C. 488, 494.

(h) If more equipment is needed to permit railroads to serve all their offering patrons with coal cars, impartially, in volume sufficient to meet the country's needs, then it is the declared policy of Congress that requires that such equipment shall be procured, and that it be used with impartiality, rather than that an indefinably smaller quantity might be turned over to the exclusive service of favored members of an industry, whose past has been wayward, reckless, dissipated, and extravagant, and which lacks proper sense of responsibility. Rules Governing Ratings of Coal Mines, 95 I. C. C. 309, 333.

(i) Duty of carrier to furnish transportation does not arise until request is made therefor. No request being made, no liability to furnish cars arose. Ayrshire Coal Co. v. S. Ry. Co., 96 I. C. C. 161, 165.

(j) Carriers are charged with the duty of furnishing cars for transporting traffic originating on their lines. United Collieries v. S. Ry. Co., 96 I. C. C. 338.

(k) Carrier's obligation to furnish cars for shipments of traffic from points on its line to points on the lines of its connections is joint with the latter; and arrangements between them whereby one carrier undertakes to furnish cars that it is legally incumbent upon the other to furnish do not relieve the latter of its obligation. United Collieries v. S. Ry. Co., 96 I. C. C. 338.

(l) The Interstate Railroad, a short-line carrier, held not to be a dependent connection of the Southern Ry. for supply of cars for the coal mines served by it under the provisions of par. (12), sec. 1 of the act. United Collieries v. S. Ry. Co., 96 I. C. C. 338, 341.

(la) Failure and refusal of defendants to serve complainant's mine on the Coalton branch of the B. & O., at Mabie, W. Va., with cars and interchange coal traffic from such mine to all interstate destinations reached by the Western Maryland and connections, and to accord such traffic the flat West Virginia region basis of rates while according such service, cars and rates to farther-distant competing mines located on the same branch found not to have resulted in undue prejudice with consequent damages to complainant. Having refused an offer of the same arrangements as were accorded competing mines under agreement, complainant can not now with propriety contend that he was damaged by any failure to receive a proper share of cars because not accorded the same status as the competing mines. Brady v. B. & O., 102 I. C. C. 19.

(m) Respondent is under obligation to furnish the equipment necessary for the transportation of traffic tendered to it, and if it does not possess such equipment the charges paid for the revenue thereof can not be considered as an item of expense which is not included in the rate. Demurrage on coal and coke, 102 I. C. C. 554, 557.

ALL OTHER CITATIONS

Colorado & Utah Coal Co. v. D. & S. L. R. R., 85 I. C. C. 547; Peerless Lumber Co. v. Director General, as Agent, 88 I. C. C. 457.

§7½. Inspection.

See Inspection.

(a) Where injury was alleged to have been caused by defect in floor of street car and not in the step, excluding report of car inspectors made a week after injury was not error. Bradley v. Lewis (Ala. 1924). 100 So. 324.

§8. Size and kind ordered by shipper.

See Class Rates §2 (k); Classification §21; Follow Lot Shipments; Minimums §3, §4.

(a) Complainant attacked commodity rates charged on flour in sacks, shipped from Hutchinson, Kas., to Los Angeles, Calif., in December, 1919, as unreasonable unjustly discriminatory and unduly prejudicial. Complainant delivered at Hutchinson to the Santa Fe 78,400 pounds of flour for one consignee loaded in two refrigerator cars, each containing 39,200 pounds. The agent of the Santa Fe signed a separate bill of lading for each car, each bill of lading bearing notation that for the railroads convenience two refrigerator cars were furnished in lieu of one car of larger capacity ordered, that the remainder of the consignment was in the other car, identified by number. Complainant ordered a

car of 80,000 pounds for each of the 78,400 pound shipments. The capacity of the cars furnished was 50,000 pounds. There is no contention that 78,400 pounds of flour, in sacks, could not have been loaded into the larger cars ordered. HELD, rates attacked unreasonable to extent they exceeded through rate of 71c less rate on wheat from Kansas City to Hutchison, reparation awarded. Larabee Flour Mills Corp. v. Director General 92 I. C. C. 745.

(b) Shipper ordered 50-foot car of 12,000 pounds minimum and carrier being unable to furnish car of that dimension furnished two smaller cars of 10,000-pounds capacity each. Charges assessed under applicable tariff which provided that such charges be based on minimum of car furnished and carrying heavier load, and on other car at basis of actual weight, found unreasonable to extent they exceeded charges which would have accrued under rule subsequently established which provided that such charges be based on minimum weight of car ordered, all freight in excess of minimum to be charged for on basis of c. l. rate. Reparation awarded. Dallas Transfer Co. v. S. P. Co., 91 I. C. C. 73.

(c) Carrier for own convenience furnished two small cars in lieu of large car ordered. In conformity with two-for-one rule shipper tendered first car loaded to capacity with balance of shipment in second car. Upon advice of carrier's agent, consignment was reloaded by dividing weight between the two cars. Separate bills of lading covering each bore notations linking them together. Subsequent shipments were tendered in accordance with advice covering initial shipment. HELD: While shipper had knowledge of published tariff and his rights thereunder, those rights may not be denied without resulting liability, and he should not suffer for failure to do what might reasonably have been considered a vain thing, especially where it occasioned wasted labor. Charges assessed found unreasonable to extent they exceeded those applicable under the two-for-one rule. Reparation awarded. Larabee Flour Mills Corp. v. Director General, 92 I. C. C. 745.

(d) Shipper ordered 50-foot cars for movement of cotton-factory sweepings and twine but carrier supplied in each instance two smaller cars. Shipments were partially loaded into one car and remainder forwarded as follow lots. Charges collected at c. l. rates and minimum weights on first cars, and at actual weights on the follow lots found not unreasonable. Cases containing cotton twine while of uniform size varied considerably in weight indicating that some were not packed as heavily as they might have been. Cars furnished could have accommodated more cases than were actually loaded, and had full loading capacity been utilized the minimum would have been exceeded. As to bales of sweepings, considerably in excess of weight loaded by complainant has been loaded in cars of dimensions equal to those furnished, and in the South a greater weight is generally loaded in equipment available. California Cotton Mills Co. v. S. Ry., 95 I. C. C. 7.

(e) Large car ordered but carrier furnished two small cars for its own convenience. Charges collected at c. l. rate, based on applicable minimum on first car, and at actual weight on second car, found illegal, as exceptions to classification provided that where carrier furnishes two small cars in lieu of larger car ordered, charges should be assessed at actual weight, subject to minimum for car ordered. Complainant's shipment exceeded this minimum and could have been loaded in car ordered. Shipment found overcharged and reparation awarded. Goodpasture v. N. C. & St. L., 93 I. C. C. 65.

(f) Shipper ordered 50-foot cars for movement of cotton-factory sweepings and twine, but carrier supplied in each instance two smaller cars. Shipments were partially loaded into one car and remainder forwarded as follow lots. Charges collected at c. l. rates and minimum weights on first cars and at actual weights on the follow lots found not unreasonable. Cases containing cotton twine while of uniform size varied considerably in weight, indicating that some were not packed as heavily as they might have been. Cars furnished could have accommodated more cases than were actually loaded and had full loading capacity been utilized the minimum would have been exceeded. As to bales of sweepings, considerably in excess of weight loaded by complainant has been loaded in cars of dimensions equal to those furnished, and in the South a greater weight is generally loaded in

equipment available. California Cotton Mills v. S. Ry., 95 I. C. C. 7.

(g) Failure of defendants operating south of the Ohio River to maintain rates on hogs in double-deck cars and to apply them to complainant's shipments under a two-for-one rule found not to have resulted in unreasonable or otherwise unlawful rates. The subsequent publication of the rate is, in itself, insufficient to establish the unreasonableness of the former rate, as applied to either single or multiple shipments. Patterson Commission Co. v. C. of G. Ry. Co., 96 I. C. C. 473, 474.

(ga) Shipper ordered stock cars but carrier furnished box cars in lieu thereof. FOUND: Since it was the duty of carrier to furnish kind of equipment ordered, or its equivalent, and it was not possible for shipper to have loaded the applicable minimum in cars furnished charges assessed based on the c. l. minimum for each car used at the applicable rate found unreasonable to extent they exceeded charges based on actual weight at the same rate. Gullikson v. Director General, 102 I. C. C. 327.

(gb) When a carrier for its own convenience furnishes a shipper a short car, which will not safely carry as much freight as a standard car, it is not necessarily entitled to same revenue as it would have received had a standard car been furnished. Florida R. R. Commrs. v. A. & R., 102 I. C. C. 677, 680.

(gc) Practice of assessing charges at the published minimum where cars furnished by carriers for their own convenience can not reasonably be loaded to the minimum, is unwarranted. See 74 I. C. C. 747. Florida R. R. Commrs. v. A. & R., 102 I. C. C. 677, 680, 681.

(h) Complainant attacked failure of classification rules in official territory to provide for the furnishing, at the carriers convenience, of two cars of less height than that of a single car ordered by the shipper, on basis of charges applicable on the one car, as unreasonable. The existence of one difficult condition under a rule of wide application ordinarily is insufficient reason for the establishment of another in the absence of undue prejudice or preference. Many sizes of automobile bodies are now shipped readily in ordinary equipment, so that this difficulty is confined chiefly to the movement of a few sizes. It would seem profitable for both carrier and shipper that the former should be able to furnish equipment most suitable for the reasonable needs of the traffic ordered. The record shows that the recent acquisition of cars 10 feet in height by the carrier serving this plant has enabled it to meet complainants demands in this respect, so that the situation now is greatly relieved. Despite the obvious disadvantage of cars of this dimension in handling numerous light and bulky commodities, it may be said that their usefulness is still somewhat in the experimental stage. The demand for cars of a type different from ordinary equipment usually should be more general than that of a single shipper before it may be said to be incumbent upon a carrier to acquire them. If in time it seems desirable or necessary for the carriers to increase the proportion of cars of this height, further consideration can be given to the application of the two for one rule, particularly for the movement of commodities weighing less in carloads than the lowest practicable minimum weight. Approximately 90% of the existing cars 10 ft. in height belong to the western roads. It is doubtful, whether, owing to the limited number of such cars, particularly on eastern lines, the two for one rule could be enforced at this time without imposing undue burden on the carriers generally. HELD, complaint dismissed. Ohio Body & Blower Co. v. A. C. & Y. R. R., 104 I. C. C. 19.

(i) Complainant attacked refusal of defendants to apply the socalled two for one rule to shipments to transcontinental territory from points on the Wabash in Indiana in group C territory as unreasonable, unjustly discriminatory and unduly prejudical. Shipments moved Feb. 5 and May 10, 1917. In each instance complainant ordered a 50 foot car, but two 36 foot cars were furnished instead. Single bills of lading were issued, with notation thereon regarding the two for sification, traffic to the Ashland divispaid on this basis. The expense bill also carried reference to the rule. The applicable tariff provides joint commodity rates on kitchen cabinets subject to 18,000 pound minimum for single cars of any size from Group C points and east. The same tariff carries a rule for application in connection with commodity rates from Group D points, and west, by which the carload rate may be applied on the actual weight of contents of the

second car if the first car is loaded to capacity. The carriers have the privilege of loading other freight in the second car. Hence, this rule is afforded shippers west of the Illinois Indiana state line, whereby manufacturers in Indiana suffer in handicap in competition with those in Illinois. Graduated minima rules for cars of different sizes did not apply to kitchen cabinets and therefore, failure to publish the rule can not be found prima facie unreasonable. HELD, failure of defendants to maintain a rule substantially similar to rule 5d of Countiss tariff I. C. C. 1036 on this traffic from points on the Wabash in Indiana in group C territory to transcontinental destinations, while applying same to shipments from Group D is unduly prejudicial, reparation denied. Wasmuth Endicott Co. v. C. R. I. & P. Ry., 107 I. C. C. 588.

(j) The two for one rule, in general, provides that, when graduated minima apply on cars according to the sizes thereof and a shipper orders a large car, but the carrier supplies two smaller cars instead, the minimum weight of the car orders shall apply to the combined contents of the two smaller cars, provided the first car thereof is loaded to capacity. The failure of the carrier to accord the rule when graduated minimum weights apply according to the size of the cars constitutes a prima facie unreasonable act. But it is not prima facie unreasonable for a carrier to fail to include a two for one rule in its tariffs, for application on a particular commodity in the absence of graduated minima for cars of different sizes. Wasmuth Endicott Co. v. C. R. I. & P. Ry., 107 I. C. C. 588, 589.

(k) Proposed increased commodity rates and increased minimum weight on tin cans, in carloads, from points in Illinois to points in Michigan, Minnesota, and Wisconsin, and proposed cancellation of the two-for-one rule wherever in effect under commodity rates, found not justified. In Wisconsin Dairy Products Co., 68 I. C. C. 307, and Armour & Co., 74 I. C. C. 709, the commission found that the commodity rate from Chicago to Stoughton, Wis., and the fourth-class rate from Chicago to Bloomer, Wis., applicable on tin cans was unreasonable to extent they exceeded the basis of commodity rates subsequently established, and these rates as modified only by general changes in rate levels are now in effect. Tin Cans from C. F. A. Points to Michigan, Minnesota, and Wisconsin, 100 I. C. C. 208.

§9. Form and Time of Order.

See Infra §36; Evidence §36.

(a) A tariff provided that orders for cars would be given in writing. Cars were not furnished in accordance with the request, which was oral. There is no claim that the rule requiring written notice was void. The contention is that the rule was waived. The transportation service to be performed was that of common carrier under published tariff. The rule was a part of the tariff. Suit dismissed. Davis v. Henderson, decided by Supreme Court of United States Oct. 27, 1924. Campbell Construction Co. v. L. C. & S. E. Ry., 95 I. C. C. 603, 605.

(b) Rule of carrier, approved by Interstate Commerce Commission, that orders for cars must be placed with local agent in writing, cannot be waived by acceptance of oral order by agent, or otherwise; rule being part of tariff. Davis v. Henderson, 45 Sup. Ct. 24.

§9½. Heater Cars.

See Heater Car Service; Protective Service.

(a) Storage charges, applicable during winter months, on Eastman heater cars, provided with artificial-heating apparatus, found not unreasonable, discriminatory, or otherwise unlawful. Such charges are contained in published tariffs, and as they are assessed against all alike, there can be no undue prejudice or discrimination. C. R. R. of N. J. v. U. S., 257 U. S. 247. Moreover, no evidence was introduced tending to show that charges are unjust or unreasonable per se, and no ambiguity exists in the tariff provision under which charges were assessed. Hunter v. N. Y., N. H. & H., 96 I. C. C. 57.

§9⅝a. Live Stock Cars.

See Live Stock Shipments.

(a) Complainant alleged that by reason of the failure of defendants operating south of the Ohio river to publish rates on hogs in double deck cars they were charged unreasonable, unjustly discriminatory and unduly prejudicial rates on hogs, carloads, from Atlanta and other points in Georgia to destinations in Ohio and Indiana. At time of ship-

ment complainants requested the southern lines to furnish double deck cars, but those lines at that time did not own any equipment of this character or publish rates to Cincinnati applicable on shipments therein. HELD, rates attacked not unreasonable or otherwise unlawful, complaint dismissed. Patterson Commission Co. v. C. of Ga. Ry., 96 I. C. C. 473.

(b) Director general cancelled "per car" rates on livestock and established rates in cents per 100 pounds. After Federal control terminated carriers restored "per car" basis. FOUND, charges on shipments moving during period when rates in cents per 100 pounds were in effect found not unreasonable. Complainants depended almost entirely upon showing that increases resulted from the change but they furnished no comparisons by which reasonableness may be judged. Even if it be granted that increased rates resulted, this alone would not prove them unreasonable for such increases might have been justified by increased cost of transportation and increased value of livestock during period under consideration. Dickerson v. Director General, 93 I. C. C. 304.

(c) Failure of defendants operating south of the Ohio River to maintain rates on hogs in double-deck cars and to apply them to complainant's shipments under a two-for-one rule found not to have resulted in unreasonable or otherwise unlawful rates. The subsequent publication of the rate is, in itself, insufficient to establish the unreasonableness of the former rate, as applied to either single or multiple shipments. Patterson Commission Co. v. C. of G. Ry. Co., 96 I. C. C. 473, 474.

§9¾. Peddler Cars.

See Peddler Cars.

(a) Failure of defendants to maintain peddler-car service on lard substitutes and vegetable cooking oils from Houston, Sherman, San Antonio, and Taft, Tex., to points in Oklahoma, Arkansas, and Louisiana, equivalent to peddler-car service maintained on lard and other packing-house products from other points to same destinations found not unreasonable or unduly prejudicial; showing that such service as maintained from certain points is inadequate to prove that failure to establish it from San Antonio and Taft is unreasonable or unduly prejudicial; and number and length of routes from other points is not of necessity a proper measure for reasonable service from Houston and Sherman. Absence of evidence on operating and commercial conditions on the different routes, existing and sought, and of comparative distances, precludes finding of undue prejudice in that particular. Moreover, peddler-car service may be reasonably required from points originating a considerable traffic in packing-house products requiring refrigeration, but not from other points. Interstate Cotton Oil Rfg. Co. v. A., T. & S. F., 95 I. C. C. 171.

(b) Rates on lard substitutes, cottonseed, and other cooking oils, in peddler cars, found unreasonable and unduly prejudicial to extent they exceed the contemporaneous rates on lard, in peddler cars, for equal distances. From transportation and commercial standpoints lard substitutes are closely related to lard and in 32 I. C. C. 192 the commission prescribed same rate on lard substitutes as applied on packing-house products, in which group lard is included. Moreover, in important particulars lard substitutes have more favorable transportation characteristics, as they do not require icing and may move in ordinary channels, whereas lard requires refrigeration. Interstate Cotton Oil Rfg. Co. v. A., T. & S. F., 95 I. C. C. 171.

(c) Upon contention that as lard substitute is but cottonseed oil, the commission should prescribe peddler-car rates on lard substitutes which are 130 per cent of the c. l. rates on cottonseed oil. FOUND, contention ignores the refining process which cottonseed oil undergoes in its manufacture into lard substitute, difference in value between the two articles, and the character of the containers. Interstate Cotton Oil Rfg. Co. v. A., T. & S. F., 95 I. C. C. 171, 175.

(d) Charges on fresh meat and packing-house products, in peddler cars, from East St Louis, Ill., to points in Indiana and Illinois, found to have been unreasonable to extent they exceeded charges which would have accrued at rates and minimum subsequently established. Furthermore, the rates and minimum charges assailed were on a basis higher than applied over all lines other than that of defendant operating in the particular territory, and throughout central territory. Reparation awarded. Armour & Co. v. I. C. R. R. Co., 96 I. C. C. 678.

(e) Complainant attacked less carload rates and minimum charges on fresh meats and packing house products, in peddler cars, from Chicago to branch line points on the Big Sandy and Logan divisions of the C. & O., in Kentucky and West Virginia as unreasonable, unjustly discriminatory and unduly prejudicial. Respondents proposed to increase the minimum charges on fresh meats and packing house products, in peddler cars, from East St. Louis, Ill., to points on the C. & O., in Kentucky and West Virginia. The peddler car traffic under consideration from both Chicago and East St. Louis is subject to the class rates. There is no contention that commodity rate should be established on this traffic, the complaints being directed against the propriety of the applicable class rates as such. The issues may be determined by considering only those points of destination on the main line of the C. & O., east of Gauley, W. V., and the Ashland, Big Sandy and Logan divisions of that carrier. Traffic from Chicago and East St. Louis to all of the points in question, except those on the Ashland division, is governed by the official classification, traffic to the Ashland division being subject to the official classification for the movement to the main line junction and the southern classification beyond. Class rates from Chicago and East St. Louis to Gauley and main line points west thereof are based upon the C. F. A., zone A scale prescribed in 45 I. C. C. 254. Virginia cities group rates apply to main line points beyond Gauley. Rates to points on the Ashland division are based upon the lowest combination on junction points. To points on the Big Sandy and Logan divisions the rates from Chicago are made by combination on Catlettsburg and Barboursville, the factors beyond the junctions being proportionals approximately 80% of the local rates from Catlettsburg and 67% to 80% of the locals from Barboursville. The combinations to points on the Big Sandy division are subject to the rates to St. Paul as maxima. Joint rates somewhat lower than the combinations apply from East St. Louis to points on the Big Sandy and Logan divisions. In some instances the aggregate of intermediate rates to and from Gauley make through rates lower than the Virginia cities group basis which applies to all main line points east of Gauley. The record shows that materially less than 80% of the locals from the junctions is added to the junction point rates to make through rates from Louisville and Cincinnati to points on the Big Sandy and Logan divisions or branches. The method of shipment and transportation services incident to the movement of articles in peddler cars are too well known to require any detailed description here. Generally speaking, peddler car traffic between points in C. F. A. territory is subject to minimum charges predicted upon the fresh meat carload rate to the final destination and a weight of 20,000 pounds. HELD, class rates on fresh meats, packing house products, and other articles in peddler cars, from Chicago and East St. Louis, Ill., to points on the C. & O., east of Gauley, W. Va., unreasonable to extent they exceed the Gauley combination; class rates on these articles from Chicago and East St. Louis to those portions of the Big Sandy and Logan divisions of the C. & O., extending in a southerly direction from the main line at Catlettsburg, Ky., and Barboursville, W. Va., unreasonable to extent they exceed rates to main line junctions plus arbitraries for hauls beyond the junctions computed as shown later; Class rates to points on C. & O. other than those described not unreasonable or otherwise unlawful; minimum charge from Chicago and East St. Louis to points on the C. & O., to Kentucky, West Virginia and Virginia unreasonable to extent it is greater or less than charges on 20,000 pounds of freight at 3c per 100 less than fourth class rates from point of origin to final destination of the car; proposed increased minimum charges from East St. Louis not justified, reparation awarded. Wilson & Company v. C. & O. Ry., 104 I. C. C. 641.

§10. Tank Cars.

See Tank Car Shipments.

(a) Charges on fuller's earth, moving in tank cars furnished by shipper because of inability of carriers to furnish adequate box-car equipment, from Georgia and Florida points to Richmond, Calif., based on combinations to and from the Mississippi River, found unreasonable to extent class rates for haul east of New Orleans, La., exceeded the contemporaneous commodity rates applicable on shipments moving in box cars. Reparation awarded. Standard Oil Co. v. A., T. & S. F. Ry. Co., 89 I. C. C. 27.

(b) Upon further hearing, rates on crude petroleum, in tank-car loads, from Irvine and Beattyville, Ky., to Blue Island, Ill., found unreasonable to extent they exceeded rates from mid-continent field. Taking into consideration the greater distance from mid-continent than from eastern Kentucky field, a parity of rates as between the two fields would sufficiently allow for mountainous character of originating territory in eastern Kentucky, for lesser volume of movement, and for lighter weight of oil. Reasonable rates prescribed and reparation awarded. Original report, 59 I. C. C. 689, reversed. Barnett Oil & Gas Co. v. Director General, 93 I. C. C. 85.

(c) On account of risk to passenger traffic, the New York Rapid Transit Corp. refused longer to permit petroleum oil, in tank cars, to be transported through its subway in Brooklyn, N. Y. Complainant was notified by the South Brooklyn Ry. Co. that it would not transport such commodity to complainant's plant after June 1, 1924. Upon complaint requesting that commission require carrier to continue such transportation after June 1. HELD, upon the record, made in March, 1924, the commission has before it no violation of the act in that regard. Huber v. C. R. R. Co. of N. J., 93 I. C. C. 539, 540.

(d) Upon contention that in determining reasonable rates on cottonseed oil consideration should be given to the high percentage of empty to loaded mileage of tank cars used in the transportation of that commodity, HELD: While the total mileage may be about twice that of the loaded mileage, this fact is to a large extent offset by the further fact that the maintenance expense to the owners of these tank cars is considerably more than twice the mileage allowance by the carriers. It is a convenience to interveners to have their own equipment but the fact remains that if this equipment, or other equipment of like serviceability, were not purchased and maintained by shippers, carrier would be put to a great deal of additional expense which is now borne by shippers. Oklahoma Corp. Commission v. A. & S. Ry. Co., 98 I. C. C. 183, 225.

(e) Respondents proposed to so restrict the term "tankcar" as to make it applicable only when the tanks thereon are permanently attached and can not be detached for filling, emptying, or storage of their contents. For about two months after the first multiple unit car was shipped cars of that type were handled by the carriers on the tank car basis, but on March 9, 1922 the official classification committee ruled that it was not a tank car, and this resulted in considerable increases in the charges and the complaint in 85 I. C. C. 728. In that case the Commission found that the multiple unit car, with the full complement of tanks securely attached to the underframe of the car when offered for transportation, fell within the undefined designation of "tank car" as used in classification. Chlorine gas has become a necessary article of commerce, and its dangerous character requires that every safeguard be used in its transportation and handling. The multiple unit car affords such safeguard, both as to transportation and the necessary handling at the loading point and destination. It would not be practicable, or even possible, for some of the consumers to use chlorine gas when shipped in single unit cars. The use of a car, the tanks of which may be removed in the interest of safety in handling, is necessary for the future development of the chlorine gas industry. If the full complement of tanks which form the superstructure of the multiple unit car is securely attacked to the underframe when offered for transportation, and also when offered for return movement after being unloaded there seems to be no good reason for the application of different rules and charges on cars of that type and the class V cars. It has not been shown that the application of the tank car basis on the multiple unit car will unjustly discriminate against shipments in tanks loaded on gondola cars owned by the railroad company and fitted by the shipper with cradles similar to those of the multiple unit car. Such a gondola car is not a private car and is not entitled to return without charge when empty nor to the private car per mile allowance. The gondola car can be made suitable for the transportation of other commodities by the removal of the cradle. HELD, schedules not justified. New schedules may be filed containing a rule defining the term "tankcar" so worded as to include within the meaning thereof specially constructed multiple unit tank cars consisting of underframe designed only for the carriage of tanks or cylinders which form the superstructure and are integ-

ral parts of the car and are securely attached when offered for transportation. Definition of tank cars 104 I. C. C. 196.

(f) Specially constructed multiple-unit tank car with full complement of tanks which form superstructure of the car, securely attached to underframe when offered for transportation, falls within undefined designation "tank cars" as used in defendants' classification and tariffs. Such cars are designed only for carriage of 1-ton tanks or cylinders without which they are not suitable for loading or transportation of any commodity. Mathieson Alkali Works v. B. & O. R. R. Co., 85 I. C. C. 728.

ALL OTHER CITATIONS

Kanotex Refining Co. v. M. V. R. R., 85 I. C. C. 200.

§10½. Private Cars.

See Infra §13, §31; Supra §4; Common Carrier §6; Private Cars.

(a) Complainant alleged that the definition of private car, as published in Fairbanks tariff I. C. C. 8, effective July 7, 1920, is unjust, unreasonable and unduly prejudicial. The cars were under bona fide lease to the complainant and were detained upon a track owned by it, but they did not bear any evidence that they were under lease to the complainant. The record in this case shows that there are upwards of 300,000 private cars in operation throughout the country; that such cars are leased under various conditions for terms as short as a single trip; and that the task of formulating a rule which would give effect to the finding of the Commission and at the same time have due regard for the interests of the carriers and the shippers, was attended by considerable difficulty. It further shows that the rule adopted was the result of mature deliberation and has worked out in practice in a generally satisfactory manner; and no better substitute has as yet been brought to the attention of the Commission. HELD, rule attacked not unreasonable or otherwise unlawful, complaint dismissed. International Agricultural Corp. v. A. & W. P. R. R., 93 I. C. C. 189.

(b) The failure to charge private cars in the distribution of available equipment has been repeatedly condemned by the Commission and the courts. Farmers Union Cooperative Business Asso. v. M. P. R. R. 112 I. C. C. 269, 274.

§11¾. Rental Charges.

(a) Complainant attacked rules and regulations and charges proposed by defendant for the use and detention of cars on its line as illegal and unreasonable. Complainant operates a switching or belt line in Rockland, Me., 5.1 miles in length. Its capital stock is owned by the Rockport Lime Corporation. The proprietary industry performs complainants accounting and other office work at a stated charge of $1,000 per annum and its general officers serve as general officers of complainant without compensation. It files tariffs and reports with the Commission. It does not participate in joint rates, but maintains switching charges on both local and interline business. It does not issue bills of lading nor make way bills for outbound shipments. Defendant is the only line haul carrier serving Rockland, that point being the eastern terminus of one of its branches. For interline business complainant depends entirely on defendant for car supply. It keeps foreign cars in repair according to the master car builders rules of the association, seals cars, and maintains a seal record. Defendant has kept a record of cars detained on complainants line and entered on its books charges for same at the uniform per diem rate of $1 per car, without switching reclaim, which is the basis fixed by the association for nonmember roads. Complainant sought establishment of the special demurrage basis prescribed in 61 I. C. C. 551, which would allow three days free time on each load interchanged. The average detention of cars on complainants line for years 1920, 1921 and 1922 was 1.86 days, HELD, detention of cars as at present in effect unjust and unreasonable, and that modified rules provide a proper basis for car hire settlement, on cars received loaded and returned empty, or received empty and returned loaded, 48 hours free time will be allowed and on cars received loaded and returned loaded, 96 hours free time. Lime Rock R. R. v. M. C. R. R., 102 I. C. C. 48.

(b) Complainant owns certain tank cars which is forwarded empty during 1920 from Kansas City, Kas., and other points to a lessee at Ranger, Tex. At time of this movement the cars were stenciled with complainants lettering,

but upon arrival at Ranger the lessee restenciled them with its own lettering. When delivered to the lessee at Ranger the cars had accrued, since the last accounting date an excess of empty over loaded movement of 32,826 miles. During 1923 the cars were turned back to complainant and restenciled with the lettering which they bore when forwarded to Ranger in 1920. The cars accrued an excess of loaded over empty movement of 23,246 miles during 1923 which complainant desires to use as a partial offset against the 32,826 miles of excess empty movement accruing in 1920. The applicable tariffs provided in substance that defendant would pay rental to the owners of tank cars of 1c per loaded or empty car mile prior to Nov. 1, 1920 and 1.5c thereafter, subject to the limitation that the empty mileage for which payment would be made must not exceed the loaded mileage. The tariffs further provided that defendant would assess transportation charges for each mile of empty movement in excess of the loaded movement. Upon instructions from complainant defendant paid the lessee for the use of the cars represented by the excess empty movement of 32,286 miles. The lessee became insolvent and defendant demands payment for the 1920 excess empty mileage from complainant. Six months is allowed after the close of the accounting year within which excess empty mileage accruing during the accounting year may be offset by subsequent loaded mileage. The granting of complainants request would require an offset by loaded mileage accruing about three years later. Carriers can not reasonably be expected to hold their books open indefinitely to permit offsets of this character. There is nothing in the record which would justify the conclusion that the rules should be changed. HELD, rules attacked not unreasonable complaint dismissed. Kansas City Structural Steel Co. v. A. T. & S. F. Ry., 102 I. C. C. 113.

(c) It is a fundamental principle that a car owner is entitled to adequate compensation for the use of his car by another carrier. Morehead & North Fork Railroad Co. v. C. & O. Ry. Co., 100 I. C. C. 45, 48.

§11⅞. Per Diem charges.

See Supra §11¾; Per Diem Charges.

(a) Per diem charges are in the nature of a reciprocal charge, not intended to yield a profit. Virginia Blue Ridge Ry. v. S. Ry., 96 I. C. C. 591, 593.

(b) Complainant attacked per diem charge of $1 per car per day demanded by defendant for the use and detention of cars on its line subjects it to unjust and unreasonable charges. Complainant operates 24.42 miles of main line railroad between Morehead, Ky., and Redwine, Ky. At Moorhead complainants line connects with that of defendant, which is its only trunk line connection; at Redwine it connects with the Lenox R. R., a line 8 miles in length which has no outlet except via the Morehead. Prior to May 1, 1921 settlements between defendant and complainant for the use and detention of freight cars on the line of the latter were made on the straight demurrage basis, which allowed two days free time on each load interchanged. Since that date defendant has rendered bills for cars delivered to the complainant, whether for its own use or for the account and use of the Lenox, on the basis of $1 per car day, which is the current per diem rate. The per diem plan with reclaims applies to carriers which perform a switching service as distinguished from a line haul. No reclaim is allowed where a short line whether industrially owned or otherwise, performs a line haul service as distinguished from a switching service. The complainant herein performs only a line haul service. To prescribe the rules laid down in 61 I. C. C. 551 to short line road haul carriers would enable them to participate in a through movement without incurring any responsibility for car hire. It is a fundamental principle that a car owner is entitled to adequate compensation for the use of his car by another carrier. The modified demurrage basis asked for in this case would lessen the incentive to hasten the loading or unloading and return of cars to its trunk line connections. In fact, it would give the short line the unrestricted use of foreign equipment to such an extent as to practically obviate the necessity of supplying itself with adequate equipment. HELD, defendants practice of requiring complainant to pay for the use or detention of freight cars while on complainants line at the current per diem rate is not unreasonable, complaint dismissed. Morehead & North Fork R. R. v. C. & O. Ry., 100 I. C. C. 45.

(c) Practice of Southern Ry. Co. of requiring the Virginia Blue Ridge Ry., a short-line originating carrier, to pay for the use or detention of foreign freight cars while on the latter's line at the current per diem rate, found not unjust or unreasonable. Complainant participates in joint rates and applies the uniform demurrage rules, and is not entitled to both free-time allowance on foreign cars it uses and divisions covering compensation for the hire of such cars. Virginia Blue Ridge Ry. v. S. Ry. Co., 96 I. C. C. 591.

(d) The per diem plan with reclaims applies to carriers which perform a switching service as distinguished from a line haul. No reclaim is allowed where a short line, whether industrially owned or otherwise, performs a line-haul service as distinguished from a switching service. Application of the modified demurrage plan prescribed in 61 I. C. C. 551 was restricted to industrial common carriers, and its purpose was to prevent undue favoritism to the proprietary industries through the payment of switching reclaims. It was not designed to govern the interchange of cars between trunk lines and independent line-haul common carriers. Virginia Blue Ridge Ry. v. S. Ry. Co., 96 I. C. C. 591, 593.

(ef) A carrier is not entitled to both free-time allowance on foreign cars it uses and divisions covering compensation for the hire of such cars. Virginia Blue Ridge Ry. v. S. Ry. Co., 96 I. C. C. 591, 594.

(g) Complainant found not entitled to the basis of settlement for the use and detention of foreign freight cars prescribed in 61 I. C. C. 551, in view of the fact that it performs a line-haul service, and not a switching service, and performs no service at all on the majority of its own shipments moving over defendant carrier's line. Were it given the demurrage basis sought it would secure practically the free use of trunk-line equipment, and its connections would have to pay per diem for the extra free time asked. Such a basis would be more favorable to complainant than straight per diem. Western Pine Lumber Co. v. Director General, 96 I. C. C. 625.

(ga) Assessment of charges for use or detention of foreign cars on the Lime Rock R. R. under per diem rules of the American Ry. Asso., found unjust and unreasonable. Establishment of special demurrage basis prescribed in Birmingham Southern case, 61 I. C. C. 551, would be too liberal to be applied here and would encourage inefficiency in car handling and unnecessary delays. Basis for settlement upon rules laid down in the cited case, as modified herein, prescribed and settlement in accordance therewith authorized. Lime Rock R. R. v. M. C., 102 I. C. C. 48.

(gb) Basis for payment by the Chaffee R. R. for use or detention of foreign cars on its line, equal to the current per diem rate, prescribed. Chaffee R. R. v. W. M., 102 I. C. C. 53.

(gc) Practice of defendant carriers in requiring the Jefferson & Northwestern Ry. Co., an industrial common carrier, to pay for use or detention of foreign freight cars while on latter's line at the current per diem rate, found not unjust or unreasonable. Complainant applies the uniform demurrage rules, participates in joint rates and divisions on traffic on which it receives a line haul, and is under obligation to furnish its share of equipment, which it may do either by purchase or rental. Jefferson & Northwestern Ry. v. M., K. & T., 102 I. C. C. 72.

(h) Complainant attacked charges exacted by defendants under the code of per diem rules of the American Railway Association for the use or detention of foreign freight cars on its line as unjust and unreasonable. The Complainant, Jefferson & Northwestern Ry. Co., operates about 40 miles of standard gauge railroad, located wholly within Texas. It connects with the M. K. & T., and T. & P., at Jefferson. From Jefferson it extends 35.45 miles to Marietta with a branch line from Givens to Linden, 4.86 miles. For interline business it is entirely dependent on connecting lines for car supply. As a nonsubscriber complainant now accounts to its immediate connections for the use of foreign freight cars, such connections under the per diem rules being directly responsible to the owners for per diem charges. If it became a subscriber it would be obliged to maintain separate accounts and make separate settlements with all owners of cars which were used on its road. Car owners would also be compelled to maintain separate accounts, and the number of settlements to be made each month would be increased. HELD, defendants practice of requiring com-

plainant to pay for the use or detention of foreign freight cars while on complainants line at the current per diem rate not unjust or unreasonable, complaint dismissed. Jefferson & Northwestern Ry. v. M. K. & T. Ry., 102 I. C. C. 72.

(i) Per diem charges are designed to represent the average cost of car ownership and are not intended to yield a profit. As a common carrier participating in joint rates, complainant is under an obligation to furnish its share of the equipment. This it may do either by purchase or rental. The per diem rental that complainant pays for the use of cars is merely equivalent to interest, depreciation, insurance ,taxes, and other car ownership costs which it would have to bear if it owned the cars used in interline traffic. The car owners incurs these costs in the first instance, and is reimbursed by complainant through the per diem or rental charges. Jefferson & Northwestern Ry. v. M. K. & T. Ry. 102 I. C. C. 72, 75.

(ia) Proposal of Tennessee R. R., a short-line carrier, to amend its rule providing for exemption from demurrage rules of empty cars placed for coal loading, and cars under load with coal, by making such exemption inapplicable to mines on its line and providing in lieu thereof for assessment of the current per diem rate on all cars held after free-time allowance after placement until released, designed apparently for no purpose except to transfer carrier's car-hire costs to coal operators, found not justified. Demurrage on Coal and Coke, 102 I. C. C. 554.

(ib) A carrier is under obligation to furnish equipment necessary for transporting traffic tendered to it, and if it does not possess such equipment charges paid for revenue thereof can not be considered as an item of expense which is not included in rate. See 42 I. C. C. 509. Demurrage on Coal and Coke, 102 I. C. C. 554, 557.

(j) Complainant, Marcellus & Otisco Ry. alleged that the charges for the use and detention of foreign cars on its line under the per diem code and car service rules of the American Railway Association were and are unjust, unreasonable and unlawful. Complainant extends from Martisco to Otisco Lake, N. Y., distance 10 miles. Complainant owns one locomotive but no other equipment. The per diem system is intended to be a reciprocal agreement, although it is extended to short lines which own few cars and interchange none. In some instances, the short line receives some return by the assessment of demurrage against shippers or consignees for a part or the full time that the car is on its rails. The per diem that complainant pays for car hire is merely equivalent to interest, depreciation, insurance, taxes, and other car ownership costs which it would have to bear if it owned the cars used in interline traffic. By renting cars from defendant on a per diem basis, complainant is relieved of the necessity of investing in equipment. HELD, defendants practice of requiring complainant to pay for the use or detention of foreign freight cars while on complainants line at the current per diem rate, without allowance of free time, not unjust, unreasonable or otherwise unlawful, complaint dismissed. Marcellus & Otisco Ry. v. N. Y. C. R. R., 104 I. C. C. 389.

(k) Charges exacted by defendant under the code of per diem rules for the use and detention of foreign freight cars on the line of Morehead & North Fork Railroad Co., found not unjust or unreasonable. It is a fundamental principle that a car owner is entitled to adequate compensation for the use of his car by another carrier. The application of the special demurrage basis, prescribed in the Birmingham Southern case, 61 I. C. C. 551, to short-line road-haul carriers would lessen the incentive to hasten loading or unloading and return of cars to trunk-line connections, and give the short line the unrestricted use of foreign equipment to such an extent as to practically obviate the necessity of supplying themselves with adequate equipment. Morehead & North Fork Railroad Co. v. C. & O. Ry. Co., 100 I. C. C. 45.

(l) The per diem plan with reclaims applies to carriers which perform a switching service as distinguished from a line haul, and no reclaim is allowed where a short line, whether industrially owned or otherwise, performs a line-haul service as distinguished from a switching service. Morehead & North Fork Railroad Co. v. C. & O. Ry. Co., 100 I. C. C. 45, 48.

III. ASSIGNMENT AND DISTRIBUTION.

A. Counting of Cars.

§12. In general.

See Demurrage §7½ (a).

(a) Complainant attacked defendants rules, regulations and practices governing the distribution and allotment of box cars to shipper at Garbutt and Wheatland, N. Y., for interstate transportation of gypsum products as unreasonable, unjustly discriminatory and unduly preferential to a competitor at Wheatland, N. Y. Defendants rule provided that the quota of each industry was fixed by taking the prior month of highest loading and shipment in 1922 from its plant over both railroads and a percentage was worked out whereby cars were to be allotted to each of the industries on the basis of such quota. Cars received by any industry from the Pennsylvania were to be charged against the percentage allotment. This rule remained in effect only one month. The complainant does not seek damages. Complainant withdrew its prayer for the establishment of a rule or regulation for the future. The rule was put in as an emergency matter, remained in effect but one month, and is not now in force. The case is purely moot. HELD, complaint dismissed. Empire Gypsum Company v. B. R. & P. Ry. 91 I. C. C. 719.

(b) Commission instituted an investigation concerning the justness, reasonableness, and lawfulness of the rules, regulations, and practices of all carriers by railroad subject to the act, with respect to the distribution of cars to coal mines, other than anthracite, for coal loading, and ratings of such mines as the basis for the distribution of cars thereto for coal loading. See 80 I. C. C. 520 and 93 I. C. C. 701. Mine ratings are the formulary basis according to which railroads make distribution of cars to coal mines for loading. Especially in times of socalled car shortage, a just and reasonable basis of mine ratings must exist in order that there may be a just and reasonable distribution of available cars to coal mines, then usually most clamorous for cars. The purpose of this proceeding is to insure that the system of rating coal mines, other than anthracite, will result in fair, just and reasonable ratings, which will measure as closely as possible the relative lawful rights of shippers tendering such coal for transportation at the mines to distributive shares of cars when enough are not available to supply all demands. Obviously the duty of the carrier to supply equipment for coal loading is based on what is recognized as a tender of coal for shipment, or, as the nature of the business of both the coal mines and the railroad make an actual tender impossible, what is equivalent to such a tender. Experience has shown that in times of car shortage the mines on a given line generally are desirous of shipping all the coal for which equipment can be obtained, as car shortages and high prices for coal have more than a casual connection. As a tender of coal physically has always been recognized as impossible, by custom systems of ratings of the mines have developed, supposed to indicate the ratios of equipment which should legally be made available at the respective mines, in carrying out the carriers duty to distribute its available car supply equitable in times when it can not meet all demands in full. Physical condition takes into consideration the character of the mine—whether a drift, slope, or a shaft mine—the number of entries, the length of the runways or haul, the grades in the runway, the number of loaders, including machines, the number of mine cars and the capacity thereof, the capacity of the shaft, and also the tipple capacity, the number of tipples, and the capacity for dumping, including screenings or preparation of the coal for certain classes of trade. There is included in addition to these the length and car capacity of the tracks under the tipple. Past performances as used here does not include the so-called commercial factor, but is developed by taking the normal working days when a mine had a full car supply and no interference with its operation, which would give it an opportunity to have an accumulation in its pit or mine cars by reason of a previous day of idleness or short car supply, breakdowns, etc. Labor supply is, under the new rules, a controlling factor, which is accorded considerable weight, since it is the factor most subject to continual change. It relates only to men who are actually occupied in the production of coal and in the necessary incidents thereto. The Commission has been given no regulatory jurisdiction with respect to the coal industry, and owe no duty to it other than to enforce, as to the

carriers within its jurisdiction, the provisions of the act, which require adequate service, and prohibit unjust discrimination and undue preferences as between shippers. Whether the coal industry may need reform was not in issue before the Commission; the record is silent upon the question and it is not within the province of the Commission to comment upon or determine it in this proceeding. The object of rating rules is to secure a just and equitable distribution of equipment among those who desire and are prepared to ship, and not to determine who shall and shall not be in a position to produce a commodity to be shipped. Congress has not authorized common carriers to make the personal qualities of the shipper or of his product the test as to whether such a carrier shall respond to a demand for cars, otherwise lawful, upon equal terms with other shippers of the same product possessing different personal or physical characteristics. The primary duty of promulgating proper ratings rests upon the carriers. The present rules represent the result of an earnest and whole hearted effort on their part, with the full cooperation and advice of the operators. Certainly the rules mark a distinct advance over what has prevailed in the past. Clearly they better reflect the actual ability or capacity of the mines to produce and load coal on cars. The rules have not yet had a true test as to their workability, reasonableness, and propriety during an extended period of car shortage, since they have only been in effect during a car surplusage. They should remain in force a sufficient length of time to give them a fair trial. The rules permit of modification from time to time to meet the practical exigencies of particular districts and particular mines, and, having been framed after joint conferences between carrier and operators, they may fairly be expected to work out satisfactorily. HELD, carriers are again admonished to maintain ratings that will be in line with both their duty and ability and the needs of the country. Rules governing ratings of coal mines. 95 I. C. C. 309.

(c) Complainant alleged defendant failed to furnish a reasonable car supply to complainants mines for loading coal; that it inequitably distributed its available equipment, and that it unduly preferred mines located on its lines in the same and other districts. The mines are on the St. Louis-Louisville division of the Southern. The report showing performance of the mine for December contains the following statement: Mine closed down Dec. 4 1922 on account of market conditions: This report was made under oath to defendant in accordance with its mine rating rules. At the hearing it was stated that the mine was shut down, not by reason of market conditions, but because of inadequate car supply, and complainant sought to hold defendant liable for losses sustained after operations ceased, on the theory that by shutting down the mine it was fulfilling its duty of lessening the amount of damage sustained. This argument is not consonant with letter to defendant and report issued to its agent that market conditions were the governing factor in the closing of the mine. Certainly the carriers duty to furnish transportation does not arise until request is made therefor. HELD, defendants practice of distributing cars during the period covered by the complaint not unreasonable or unduly prejudicial, complaints dismissed. Ayrshire Coal Co. v. S. Ry., 96 I. C. C. 161.

(d) It is the duty of a carrier to furnish a reasonable car supply and make a reasonable and equitable distribution of such cars as it has available. Ayrshire Coal Co. v. S. Ry., 96 I. C. C. 161, 169.

(e) It is not possible always for carriers to furnish particular mines their exact quota of cars during periods of car shortage, and if shortages or averages are adjusted with reasonable promptness a carrier may be said to have fulfilled its duty. Ayrshire Coal Co. v. S. Ry., 96 I. C. C. 161, 169.

(f) The Interstate Commerce Commission passed a preferential car service order known as service order No. 23 as amended July 25, 1922, regulating the furnishing of cars by interstate common carriers for the loading and carrying of coal, which put such car service into five classes, each class constituting a paragraph in itself and being followed by "and subject thereto in the order of priority." Class 2 contained clauses (a), (b), (c), and (d), and at the end of the paragraph constituting class 2 there was this language: "Note.—It is not intended by this paragraph to give any priority as between clauses (a), (b), (c) and (d)

hereof." HELD, that the language at the conclusion of each of said five classes, "and subject thereto in the order of priority," meant that each class stated in said car service order was to be given priority in the furnishing of cars over those classes following in numerical order, and that the note attached to class 2 was controlling as to the clauses in said class, and therefore there was no priority as between clauses therein (a), (b), (c), and (d). Stoner & Co. v. Blocton Export Coal Co. (Miss. 1924) 100 So. 5.

(g) Findings in former report, 80 I. C. C. 520, that practice of carriers in assigning private cars, and system or foreign-line cars for railway fuel, to bituminous-coal mines in excess of ratable share contemporaneously distributed to bituminous-coal mines upon their lines, which do not receive assigned cars, was unjust, unreasonable, discriminatory, and unduly prejudicial to mines not receiving assigned cars in favor of mines furnished such cars in excess of ratable proportion, and that cars specially placed by order of the commission under provision of section 1 (15) of the act may properly be treated as assigned cars, and need not be taken into account in determining ratable distribution when order of placement so requires, affirmed. Assigned Cars for Bituminous Coal Mines, 93 I. C. C. 701.

(h) Upon contention that under section 1 (12) of the act the commission has no jurisdiction over distribution of cars to carrier-owned or output-contract mines which furnish railway fuel exclusively for at least six months, because such mines are not "served" by a carrier. HELD, word "served" has no judicially determined or technical meaning which would make it inapplicable to such mines. The commission believes that Congress intended to use the word in its ordinary and well-accepted meaning, i. e., to mean the furnishing of cars by a carrier at its own mines or at those the output of which it takes. As used in paragraph (12) "served" is a convenient term to show that provisions of this paragraph apply not only to mines located on a carrier's own line, regardless of ownership or contractual arrangements, but also to those mines located off its line and which it customarily supplies with cars. Assigned Cars for Bituminous Coal Mines, 93 I. C. C. 701, 714, 715.

(i) Assigned-car mines which furnish their output for long periods of time to railroads are, at the end of such periods, because of lower costs and better labor conditions, in a position to undersell competing unassigned-car mines. Railroad-owned mines in many instances sell coal commercially and may not only dispose of their product commercially, but they may be leased or sold to outside interests, and thus actively engage in selling commercial coal. Moveover, there is competition in labor between railroad-owned and output-contract mines on the one hand and commercial mines on the other. The commission thinks, therefore, that it has jurisdiction to deal with the distribution of cars to all of such mines under section 3 of the act, competition not being an essential element under section 1. Penn Tobacco Co., 18 I. C. C. 197, 200. Assigned Cars for Bituminous Coal Mines, 93 I. C. C. 701, 717.

(j) Fundamental purpose of the act is equality of treatment in rates and service, and this principle may not be violated merely because carrier in that way may operate at less expense. If this were not true a carrier in times of car shortage could restrict its car supply to a few large and well-operated mines on its line and ignore remainder. A carrier's self-interest may not override requirement of equality in car distribution. See 263 U. S. 515, 523; 225 U. S. 326. Assigned Cars for Bituminous Coal Mines, 93 I. C. C. 701, 721.

(k) Storage of coal by railroads and others in periods of car surplus tends to equalize demands by operators on railway equipment throughout the year, and to prevent periods of extreme car shortage during which, because of the great demand for coal, inefficient high-cost mines spring into operation, and the public is required to pay excessive prices for coal. Assigned Cars for Bituminous Coal Mines, 93 I. C. C. 701, 724.

(l) The question of a just and nondiscriminatory car distribution rule under provisions of sections 1 and 3 of the act is a different question from that of a rule to be prescribed in case of emergency. The distinction is recognized in section 1 (15) where it is provided that the commission may suspend car service rules at such times. Assigned Cars for Bituminous Coal Mines, 93 I. C. C. 701, 724.

(m) Contention that elimination of the so-called assigned-car rule of car dis-

tribution would be an unwarranted interference by commission with carriers' rights to purchase coal where and from whom they please, not sustained following Illinois Central case, 215 U. S. 477, in which the court said "The right to buy is one thing and power to use equipment of the road for purpose of moving articles purchased in such a way as to discriminate or give preference are wholly distinct and different things." Assigned Cars for Bituminous Coal Mines, 93 I. C. C. 701, 725.

(n) In determining upon a just and workable car distribution rule, the commission must recognize fact that car shortages result from a general shortage in facilities, including terminals, motive power, etc., and that to permit private-car owners to have their cars placed at designated mines in excess of the pro rata allotment means that private-car owners will receive more than their fair share of those transportation facilities which they do not own, while to require pro rata distribution of cars is to bring about a just and nonpreferential distribution in conformity with fundamental requirements of the act. Assignment Cars for Bituminous Coal Mines, 93 I. C. C. 701, 732.

(o) Upon investigation of the rules, regulations, and practices governing the ratings and distribution of cars to coal mines, other than anthracite. FOUND, that rules established in 1923 should be allowed to remain in force for a fair trial. They mark a distinct advance over what has prevailed in the past, better reflect actual ability of mines to produce and load coal, have not had a true test as to their workability, reasonableness, and propriety during extended car-shortage periods, and, as framed, permit of modification to meet practical exigencies of particular districts and mines. Having been framed after joint conferences between carriers and operators they may fairly be expected to work out satisfactorily. Rules Governing Ratings of Coal Mines, 95 I. C. C. 309.

(p) Inflation of the rating of one mine or district while other ratings are normal, or inflated to a lesser extent, inevitably brings about discriminations or preferences forbidden by the act. Rules Governing Ratings of Coal Mines, 95 I. C. C. 309, 323.

(q) Upon contention that practices of Southern Railway in connection with distribution of coal cars to complainants' mines in Indiana during period September 1, 1922, to March 31, 1923, resulted in unreasonableness, undue prejudice to complainants, and undue preference of the Sunlight Coal Co. and other mines in same district. HELD, due to abnormal conditions following strikes of bituminous-coal miners and railway shopmen, special service orders of commision controlled distribution of equipment for coal loading from September 1 to December 20, 1922, and all rules, regulations and practices of common carriers were suspended so far as they were in conflict with the special service orders which provided for assignment of cars for special purposes in preference to use for any other purpose and required preference and priority in movement of certain specified commodities. Such unusual conditions made impossible the equalization in car supply sooner and defendant's practice of distributing cars during period covered by complaints not shown to have been unreasonable or unduly prejudicial. Ayrshire Coal Co. v. S. Ry. Co., 96 I. C. C. 161.

(r) If the Interstate Railroad had made proper arrangements with its connections for the return of its cars, there would have been available for the use of mines on its line more cars than they actually received under the existing arrangements. The Interstate should distribute cars under its rules governing distribution of cars to coal mines dependent upon it, and invoke the regulations provided for the prompt return of the cars by connections, instead of delegating these duties to the Southern. United Colleries v. S. Ry. Co., 96 I. C. C. 338, 341.

(s) Proposal of Missouri Pacific to exempt coke ovens on its line from the operation of the demurrage rules found not justified, in view of the fact that experience has demonstrated that the application of such rules at the only by-product coke oven on the line of this carrier has not worked any hardship. Proposed schedules making car-distribution rules applicable would afford its oven an undue advantage in the use of its equipment over other users of said equipment, with the exception of coal mines and coke ovens adjacent to mines and operating under car-distribution rules. Demurrage Rules on Coke, 96 I. C. C. 731.

(t) Complainant alleged that during

the period Aug. 1, 1922 to Feb. 28, 1923 defendant failed and neglected to apply just and reasonable ratings to the coal mines served by it, and to distribute cars among said mines so as to give complainants mines their just, reasonable and proper share of the cars available for coal loading, result in undue prejudice and in violation of the act. Complainants mines, known as Nos. 1 and 3, are located on a short spur which connects with the Winding Gulf branch of defendants line at Loop Junction, W. Va. The mines are on the same siding and have separate tipples, but are rated as one mine. Complainant operates another mine in the same general territory, located on the C. & O. Semibituminous or smokeless coal is produced, which is of substantially the same character as, and in competition with, that produced throughout the New River and other districts in southern West Virginia. During the period complainant of, except for about 10 days in Nov., defendant rated mines on its line in accordance with the code of rules embodied in circular CS-31, revised, promulgated by the United States Railroad Administration in Sept. 1918. The Commission is not prepared to say that, because ratings established under that circular were based largely upon the sworn reports of the operators, the carrier violation paragraph 12 of section 1. It was the general practice during this period for all bituminous coal loading carriers in the country to rate the mines served by them in accordance with that circular. A mine is entitled to its pro rata share of available cars ordered, but not to exceed its ratings. The evidence here shows that complainants mine, based on its order, received more than its pro rata share of available cars during the period in question. HELD, complaint dismissed. Winding Gulf Collieries Co. v. V. Ry. 102 I. C. C. 41.

(ta) While section 1 (12) of the act casts upon carriers the duty, during car-shortage periods, to apply and maintain just and reasonable mine ratings, it does not specify in detail the manner in which those ratings should be deduced. Winding Gulf Colliery Co. v. V. Ry., 102 I. C. C. 41, 42.

(tb) A mine is entitled to its pro rata share of available cars ordered, but not to exceed its rating. Winding Gulf Colliery Co. v. V. Ry., 102 I. C. C. 41, 42, 45, 46.

(u) Complainant alleged failure and refusal of defendant to furnish the proportion of cars to which it was lawfully entitled for the shipping of bulk grain between Sept. 16 and Dec. 31. 1922 subjected it to undue prejudice as compared with shippers at Bushton, Kas. Bushton is on the M P. Tisdale is 8 miles east of Winfield, Kans. Complainant testified that it was the practice to order a car whenever wheat enough was on hand to load. During the period of the complaint the elevator was kept as full of wheat as practicable. A severe car shortage existed during the period of the complaint and defendant was distributing its cars in accordance with the usual practice of having station agents report to the chief train dispatcher the local situation based upon the grain on hand and the orders received for cars. HELD, complaint dismissed. Tisdale Farmers Union Cooperative Asso. v. M. P. R. R., 102 I. C. C. 61.

(ua) Failure and refusal of defendants to serve complainant's mine on the Coalton branch of the B. & O., at Mabie, W. Va., with cars and interchange coal traffic from such mine to all interstate destinations reached by the Western Maryland and connections, and to accord such traffic the flat West Virginia region basis of rates while according such service, cars, and rates to farther-distant competing mines located on the same branch found not to have resulted in undue prejudice with consequent damages to complainant. Having refused an offer of the same arrangements as were accorded competing mines under agreement, complainant can not now with propriety contend that he was damaged by any failure to receive a proper share of cars because not accorded the same status as the competing mines. Brady v. B. & O., 102 I. C. C. 19.

(ub) Upon complaint alleging that practice of the C. & O. in rating mines in accordance with rules embodied in circular CS-31, revised, promulgated by U. S. Railroad Administration, resulted in an unjust, unreasonable, and unduly prejudicial distribution of coal cars to complainant's mines in the New River district of West Virginia. FOUND: Carrier did not violate section 1 (12) of the act because ratings established under that circular were based largely upon sworn reports of operators. It was the general practice to rate mines in accordance with that circular, and complainant failed to show in any instance that operators' reports,

upon which ratings were based, were erroneous. Moreover, evidence shows that complainant's mines, based on its orders, received more than its pro rata share of available cars. Winding Gulf Colliery Co. v. V. Ry., 102 I. C. C. 41.

(v) Refusal of the B. & O. to rate mines on the Strouds Creek & Muddlety R. R., located in the Gauley district of West Virginia, and accord such mines a just and reasonable distribution of cars for coal loading, while contemporaneously furnishing such a rating to mines on its Richwood branch, located in the same district, found to result in undue prejudice to the Strouds Creek mines. The Strouds Creek mines are entirely dependent upon the B. & O. for their car supply and under the provisions of section 1 (12) of the act are entitled to same treatment in the matter of car supply as are mines located directly upon branches of the B. & O. Tioga Coal Co. v. B. & O., 101 I. C. C. 611, 616.

(w) In 60 I. C. C. 569, division 5 found that the practices of defendant the director general during the period July 1, 1919 to March 1, 1920 in the distribution of coal cars between the mines as a whole on the Monongahela Ry and Morgantown & Wheeling Ry. on the one hand, and mines on the P. & L. E., south of Pittsburgh and on the Monongahela division, Southwest branch, and Pittsburgh West End division of the Pennsylvania, on the other hand, subjected operators of coal mines on the first two named roads to undue prejudice to the extent that the percentage of cars furnished the mines as a whole on the latter roads was less than the average percentage of cars furnished the mines on the other lines named HELD, previous findings modified and practices of director general during the period July 1, 1919 to March 1, 1920 excluding Nov. 1919, in the distribution of coal cars subjected complainant to undue prejudice to the extent that the percentage of cars furnished mines of complainants members was less than the percentage of cars the Mines as a whole, on all lines here considered, would have received had all the system cars placed for coal loading on those lines been equally distributed under the car distribution rules then in effect. Northern W. Va. Coal. Asso. v P. R. R. 109 I. C. C. 604.

(x) Complainant attacked commodity rates on coal, car loads, from Mabie, W. Va., to destinations in other states reached by the Western Maryland, and its connections as unjust, unreasonable and unduly prejudicial in that they exceeded the flat West Virginia basis of rates. He further alleged failure and refusal of defendants to serve his mine with cars and to interchange coal traffic from such mine to all destinations at some convenient point in the Elkins district of West Virginia, and to accord such traffic the flat West Virginia region basis of rates while according such service, cars, and rates to competing mines of the West Virginia Coal & Coke Co. as unduly prejudicial. In 102 I. C. C. 19 division 5 found rates charged on coal, carloads, from complainants mine to Port Covington, Baltimore, Md., as unreasonable and awarded reparation. Complainants mine is on a short spur leading off the Coalton branch of the B. & O., less than 0.5 mile from Mabie, W. Va., and about 6.31 miles south of Norton, W. Va. It is intermediate to Coalton mine 1 and Mabie mine 6. These mines, in addition to Arianna mine 7 of the coal company are the only coal operations on the Coalton branch. It is complainants position that the acts and practices of defendants on and after Oct. 14, 1922 when the Maryland began serving the coal companys mines on the Coalton branch, gave those mines the status of joint mines, namely, mines entitled to service by more than one carrier, and that his mine, being intermediate, was entitled to the same status and treatment. It is clear from the record that the arrangement whereby the coal companys car supply would be furnished by the Maryland and B. & O., in the proportion of 80 and 20 per cent was adapted to the needs of the coal company based upon their past shipments. It is also clear that the arrangement was the result of conference and agreement with the president of the coal company. Similar consideration was not given complainant, but he was advised that cars would be supplied by both carriers only in the proportion of 80 and 20 percent as was done with the coal company. Under the circumstances complainant should have been permitted to divide his orders for cars to the respective carriers in such divisions of 100 per cent of the rating of his mine as his judgment dictated and cars should have been accordingly furnished in conformity with

the supply of cars available on the respective roads. HELD, acts and practices of defendant unduly prejudicial to complainant, reparation awarded. Brady v. B. & O. R. R. 112 I. C. C. 244.

(y) A mine served by two carriers should not be permitted to order cars in excess of 100 of its rating from both roads serving it. It had a right to order its full rating from either of the roads, if it so desired. It also had a right to divide its orders between the two roads as desired, provided that the combined orders did not exceed 100 per cent of its rating. Brady v. B. & O. R. R. 112 I. C. C. 244, 247.

(z) It is well established that a mine served by two roads enjoys advantages not possessed by a mine served by only one road. The reasonable enjoyment of these advantages should be protected. The Commission thinks also that carriers may not, by withholding their equipment or facilities, dictate or control the markets which a particular shipper shall seek or enjoy, while adapting their services to the needs of a competing shipper. Brady v. B. & O. R. R 112 I. C. C. 244, 250.

(aa) Complainants alleged defendants failure and refusal to furnish them with their proportionate share of the available cars for the shipment of bulk grain, while contemporaneously furnishing their competitors cars in excess of their proportionate share, subjected them to undue prejudice in violation of section 3. Complainants are in competition with shippers located at the same points, particularly with the Ryan Grain Co., the Ryan Company, which has elevators at McCracken and Hargrave, and the Bushton Grain & Supply Co. at Bushton. These two companies are specifically designated as having received a preference in the number of cars furnished. Defendant is the only line serving the points in question. Cars available for grain loading during the period of complaint were distributed in accordance with defendants circular 19. This circular provided that cars would be distributed among the shippers on the basis of the amount of grain on hand, conveniently located for prompt loading, and tendered for shipment as reported to the carriers agent, in writing, when cars were ordered. This method was in accordance with 47 I. C. C. 475. Defendant admits that it was unable to furnish all cars ordered and asserts that its cars in many instances were unfit for grain loading because of its inability to place them in proper condition because of the strike of its mechanical forces. The record does not indicate the number of cars ordered by the complainants, by those alleged to have been preferred, or other grain shippers nor does it show in all instances the amount of grain the shippers had on hand at the time cars were ordered. It is impossible therefore to determine the number of cars that each shipper was entitled to, especially at McCracken, where shippers other than those named herein ordered and received cars for grain loading. HELD, complaints dismissed. Farmers Union Cooperative Business Asso. v. M. P. R. R. 112 I. C. C. 269.

§13. Private Cars.

See Supra §4, §10½; Infra §31; Demurrage §10; Private Cars.

(a) Commission instituted an investigation with respect to the reasonableness and propriety of the present car distribution rules of the respondents, i. e., all of the steam railroad carriers subject to jurisdiction of the Commission, in so far as such rules apply to privately owned coal cars and cars furnished for railroad fuel coal, with a view to prescribing such just or reasonable rules or regulations as might appear to be necessary. Former report in 80 I. C. C. 520. **Assigned Cars for Railway Fuel.** The principal contentions of the carriers are that the Commission is without authority under the act to abolish the assigned car rule as applied to cars placed at mines owned by a railroad and furnishing it their entire output for an extended period, six months or more, and to mines from which a carrier purchases the entire output for a like period, and that if it has such authority, the record shows that the rule is reasonable and not unjustly discriminatory. Assigned car mines which furnish their output for long periods of time to railroads are, at the end of such periods, because of lower costs and better labor conditions which they have enjoyed, in a position to undersell competing unassigned car mines. The record also shows that railroad owned mines in many instances sell coal commercially. Such mines may not only at any time dispose of part or all of their

product commercially, but may be leased or sold to outside interests, and thus actively engage in selling commercial coal. Moreover, while the Commission does not consider this circumstance essential to its decision in this case, the record clearly shows that there is competition in labor between railroad owned and output-contract mines on the one hand and commercial mines on the other. The Commission has jurisdiction to deal with the distribution of cars to all of such mines under section 3. Competition is not an essential element under section 1. **Private Assigned Cars.** In determining upon a just and workable rule the Commission must recognize the fact that car shortages result from a general shortage in facilities, including terminals, motive power, etc., and that to permit private car owners to have their cars placed at designated mines in excess of the pro rata allotment means that private car owners will receive more than their fair share of those transportation facilities which they do not own, while to require pro rata distribution of cars is to bring about a just and nonpreferential distribution in conformity with the fundamental requirements of the act. The fundamental problem is to determine whether differences in transportation conditions justify the inequality of treatment resulting from the assigned car rule. The evidence which has been presented as to the economic necessity of individual shippers or classes of shippers does not warrant the Commission in concluding that this inequality of treatment is justified under the provisions of sections 1 and 3 of the act. As to the contention that the use of private cars during car shortage periods releases railroad cars for commercial mines, which otherwise would have to be placed at private car mines, this overlooks the fact that particularly in time of shortage the mine operator is entitled to an equitable rationing of the transportation facilities which are at hand, and that equality is vastly more important to him than a slight addition to his allotment effectuated by giving his neighbor and competitor a better car supply. Furthermore, if private cars should be withdrawn from carrier service and the remaining supply of cars should be inadequate the Commission has power under the act to require the cars to furnish an adequate supply. In the original report the Commission did not find that the use of private coal cars should be prohibited or that they should not be placed at the mine to which they were consigned. What it did prohibit was the placement of such cars at a mine in excess of the pro rata share of available cars. Private car owners were left free to continue to use their cars and to have them so distributed to designated mines as not to exceed the pro rata share of such mines. HELD, original report, 80 I. C. C. 520, affirmed, and find and conclude that in the distribution of cars for transportation of coal among the bituminous coal mines served by the respective respondents, and each of them, whether located upon the line of a respondent or customarily dependent upon it for car supply, or whether owned or leased by or furnishing their entire output to a respondent, any rule, regulation, practice of the respondents, or any of them, whereby private cars or cars for the loading of bituminous coal for railway fuel purposes are placed at any such mine in excess of the pro rata allotment and distribution of cars for coal loading, currently made to any other of such mines which do not receive private cars or cars for railway fuel and which are on the same division or district established by such respondent for the distribution of cars, is and for the future will be, unjust and unreasonable, and unduly and unreasonably preferential of such mines receiving private cars or cars for railway fuel in excess of such allotment, and unjustly discriminatory against and unduly prejudicial to such other mines not receiving private cars and cars for railway fuel. HELD, further, that all cars should be distributed by such respondent to all mines on such district or division on a pro rata basis; and that if cars are assigned or consigned to any of such mines, and if they are placed at the mines to which they are assigned or consigned, they should be so placed that every mine on the same division or district should receive the same pro rata share of the total number of available cars, whether assigned, consigned or unassigned, which are distributed to all mines on such division or district, and that all such assigned or consigned cars should be counted and charged against the mines at which they are placed in the same manner and to the same extent that unassigned cars are counted and charged. It is not intended that this finding shall prevent the assigning of privately owned cars or cars for

railway fuel to designated mines, provided such mines are not thereby given more than their pro rata share of available cars. It is also not intended that this finding shall preclude the emergency powers conferred on the Commission from requiring the placement of cars for bituminous coal loading at any mine or mines in excess of the current percentage allotment made to mines generally upon the lines of the same carrier, or upon the same division, when the order or direction for placement shall so provide. Assigned cars for bituminous coal loading, 93 I. C. C. 701.

(b) Throughout the Commission reports it has held to the central idea that the carrier, in permitting the use of the private car, must at its peril see that the use of the vehicle does not permit, excuse, or justify a discrimination, preference, or advantage in favor of the owner of the private car, regardless of the present ability of the carrier to furnish on demand an adequate supply of equipment needed for transportation. Throughout the Commission has recognized that when the carrier permits the use of the private car upon its rails, it is responsible for the manner in which the service is conducted in that car, and that the car becomes in all respects as if it were one of the general stock of those owned by the carrier, and subject to the same liabilities and responsibilities as to the use in interstate transportation. Assigned cars for bituminous coal mines, 93 I. C. C. 701, 727.

(c) The fundamental principle which has governed the Commission in dealing with private cars is that such cars, being paid for by the carriers through allowances to their owners, are to be treated as part of the carriers equipment, and may not be so used as to bring about unjust discrimination or unreasonable practices. Assigned cars for bituminous coal mines, 93 I. C. C. 701, 729.

(de) The mere ownership of a private car gives to the owner no superior right to use the facilities of the carrier in transporting it; it gives to him no right to have his private car attached to a locomotive in preference to a system car loaded by another shipper. The ownership of a private coal car or the possession of a foreign railway fuel car can give to an operator no preferred right to other tracks as against a system car loaded by another coal operator, or to have it handled by a train crew in preference to a system car. When any of these general facilities are insufficient to move all the traffic offered, no operator has a superior right over another merely because he enjoys the advantage of owning private cars or has fuel contracts with connecting lines. And this shortage in other facilities which rarely, if ever, fails to accompany a shortage in cars, has an important bearing upon the matter of the distribution of cars, and underlies what the Commission has said on those questions in its formal decisions. Assigned cars for bituminous coal mines, 93 I. C. C. 701, 730.

(f) A private car owner is either entitled to the preference to the full extent of the carriers willingness to accept his cars, or is entitled to no preference whatsoever on account of that ownership, and a compromise is untenable. Assigned cars for bituminous coal mines, 93 I. C. C. 701, 730.

(g) Findings in former report, 80 I. C. C. 520, that practice of carriers in assigning private cars, and system or foreign-line cars for railway fuel, to bituminous-coal mines in excess of ratable share contemporaneously distributed to bituminous-coal mines upon their lines, which do not receive assigned cars, was unjust, unreasonable, discriminatory, and unduly prejudicial to mines not receiving assigned cars in favor of mines furnished such cars in excess of ratable proportion, and that cars specially placed by order of commission under provisions of section 1 (15) of the act may properly be treated as assigned cars, and need not be taken into account in determining the ratable distribution when the order of placement so requires, affirmed. Assigned Cars for Bituminous Coal Mines, 93 I. C. C. 701.

(h) Contention of private-car owners that they are entitled to unrestricted use of their cars unless this involves some preferential use of facilities other than cars, not sustained following Rail & River Coal Co., 14 I. C. C. 86, 92. Assigned Cars for Bituminous Coal Mines, 93 I. C. C. 701, 730.

(i) Private cars which are paid for by carriers for use and are used on their lines are clearly "facilities possessed," and come within broad powers conferred upon commission by the statute to prevent unjust discrimination. Assigned Cars for Bituminous Coal Mines, 93 I. C. C. 701, 730.

(j) Contention that use of private cars during car-shortage periods releases railroad cars for commercial mines, which otherwise would have to be placed at private-car mines overlooks fact that particularly in time of shortage the mine operator is entitled to an equitable rationing of the transportation facilities which are at hand, and that equality is vastly more important to him than a slight addition to his allotment effectuated by giving his neighbor and competitor a better car supply. Furthermore, if private cars should be withdrawn from carrier service and remaining supply should be inadequate, the commission has power under the act to require carriers to furnish an adequate supply. Assigned Cars for Bituminous Coal Mines, 93 I. C. C. 701, 736, 737.

§14. Foreign Cars.

(a) Findings in former report, 80 I. C. C. 520, that practice of carriers in assigning private cars, and system or foreign-line cars for railway fuel, to bituminous-coal mines in excess of ratable share contemporaneously distributed to bituminous-coal mines upon their lines, which do not receive assigned cars, was unjust, unreasonable, discriminatory, and unduly prejudicial to mines not receiving assigned cars in favor of mines furnished such cars in excess of ratable proportion, and that cars specially placed by order of the commission under provisions of section 1 (15) of the act may properly be treated as assigned cars, and need not be taken into account in determining ratable distribution when order of placement so requires, affirmed. Assigned Cars for Bituminous Coal Mines, 93 I. C. C. 701.

§15. Railway and Fuel Cars.

(a) The word "transportation" as used in paragraph 12 is not limited in its meaning to transportation for compensation, but includes also transportation of the carriers own coal over its line. Assigned cars for bituminous coal mines, 93 I. C. C. 701, 715.

(b) When a railroad company becomes a purchaser of coal upon the lines of a connection, and ships it to itself as consignee, it is entitled to the same consideration as any commercial shipper or consignee and no more, and this is true when the shipment moves partly over the rails of the carrier that is in fact the shipper or consignee. Assigned cars for bituminous coal mines, 93 I. C. C. 701, 716.

(c) It may not be doubted that the equipment of a railroad company engaged in interstate commerce, included in which are its coal cars, are instruments of such commerce. From this it necessarily follows that such cars are embraced within the governmental power of regulation which extends, in time of car shortage, to compelling a just and equal distribution and the prevention of an unjust and discriminatory one. Assigned cars for bituminous coal mines, 93 I. C. C. 701, 716.

(d) Section 1 (12) of the act held to apply to cars placed at carrier-owned and output-contract mines, and can not be relied upon to show that Congress exempted such cars from other provisions of section 1 requiring reasonable rules of distribution, and provisions of section 3 prohibiting unduly preferential or prejudicial rules. Assigned Cars for Bituminous Coal Mines, 93 I. C. C. 701, 716.

§16. Car Pools.

(a) Practice of complainant of pooling cars at one of its mines was in violation of defendant's rule and condemned in McCaa Coal Co., 33 I. C. C. 128. Ayrshire Coal Co. v. S. Ry. Co., 96 I. C. C. 161, 166.

§20. Car Shortage.

(a) A shortage in cars usually if not invariably is accompanied by a shortage in some one or more of the other facilities of carriers. Locomotives, tracks, employees, terminal facilities, etc., are so related to number of cars in service that an excessive demand for cars places an excessive burden upon such other facilities. Assignment Cars for Bituminous Coal Mines, 93 I. C. C. 701, 731.

(b) In determining upon a just and workable car distribution rule, the commission must recognize the fact that car shortages result from a general shortage in facilities, including terminals, motive power, etc., and that to permit private-car owners to have their cars placed at designated mines in excess of the pro rata allotment means that private-car owners will receive more than their fair share of those transportation facilities which they do not own, while to require pro rata distribution of cars is to bring about a just and nonpreferential distri-

bution in conformity with fundamental requirements of the act. Assigned Cars for Bituminous Coal Mines, 93 I. C. C. 701, 732.

(c) Upon investigation of the rules, regulations, and practices governing the ratings and distribution of cars to coal mines, other than anthracite, FOUND, that rules established in 1923 should be allowed to remain in force for a fair trial. They mark a distinct advance over what has prevailed in the past, better reflect actual ability of mines to produce and load coal, have not had a true test as to their workability, reasonableness, and propriety during extended car-shortage periods, and, as framed, permit of modification to meet practical exigencies of particular districts and mines. Having been framed after joint conferences between carriers and operators they may fairly be expected to work out satisfactorily. Rules Governing Ratings of Coal Mines, 95 I. C. C. 309.

(d) Especially in times of car shortage, which may be due to many causes other than a general inadequacy of the supply of coal cars available to carriers, a just and reasonable basis of mine rating must exist in order that there may be a just and reasonable distribution of available cars to coal mines, then usually most clamorous for cars. Rules Governing Ratings of Coal Mines, 95 I. C. C. 309, 310.

(e) Duty of carrier to supply equipment for coal loading is based on what is recognized as a tender of coal for shipment, or, as nature of the business of both the coal mines and the railroad make an actual tender impossible, which is equivalent to such a tender. In times of car shortage mines on a given line are desirous of shipping all the coal for which equipment can be obtained, as car shortages and high prices have more than a casual connection. As a tender of coal physically has always been recognized as impossible, by custom systems of ratings have developed, supposed to indicate the ratios of equipment which should legally be made available at the respective mines, in carrying out the carrier's duty to distribute its available car supply equitably in times when it can not meet all demands in full. Rules Governing Ratings of Coal Mines, 95 I. C. C. 309, 311.

(f) Before February 28, 1920, when paragraph 4 of section 402 of the transportation act, 1920, was enacted and became paragraph (12) of section 1 of the interstate commerce act, there was no statutory requirement that carriers rate mines as the basis for the distribution of cars thereto during periods of car shortage, although that practice had been in force for many years. Rules Governing Ratings of Coal Mines, 95 I. C. C. 309, 311.

(g) If more equipment is needed to permit railroads to serve all their offering patrons with coal cars, impartially, in volume sufficient to meet the country's needs, then it is the declared policy of Congress that requires that such equipment shall be procured, and that it be used with impartiality, rather than that an indefinably smaller quantity might be turned over to the exclusive service of favored members of an industry, whose past has been wayward, reckless, dissipated, and extravagant, and which lacks proper sense of responsibility. Rules Governing Ratings of Coal Mines, 95 I. C. C. 309, 333.

(h) Upon contention that practices of Southern Railway in connection with distribution of coal cars to complainants' mines in Indiana during period September 1, 1922, to March 31, 1923, resulted in unreasonableness, undue prejudice to complainants and undue preference of Sunlight Coal Company and other mines in same district. HELD, due to abnormal conditions following strikes of bituminous-coal miners and railway shopmen, special service orders of commission controlled distribution of equipment for coal loading from September 1 to December 20, 1922, and all rules, regulations, and practices of common carriers were suspended so far as they were in conflict with the special service orders, which provided for assignment of cars for special purposes in preference to use for any other purpose and required preference and priority in movement of certain specific commodities. Such unusual conditions made impossible the equalization in car supply sooner and defendant's practice of distributing cars during period covered by complaints not shown to have been unreasonable or unduly prejudical. Ayrshire Coal Co. v. S. Ry. Co., 96 I. C. C. 161.

(i) While section 1 (12) of the act casts upon carriers the duty, during car-shortage periods, to apply and maintain just and reasonable mine ratings, it does not specify in detail the manner in which those ratings should be deduced. Winding

Gulf Colliery Co. v. V. Ry., 102 I. C. C. 41, 42.

B. Rating of Mines.

§21¾. In General.

See Branch Lines §1 (i); Words and Phrases (r).

(a) Upon contention that under section 1 (12) of the act the commission has no jurisdiction over distribution of cars to carrier-owned or output-contract mines which furnish railway fuel exclusively for at least six months, because such mines are not "served" by a carrier. HELD, word "served" has no judicially determined or technical meaning which would make it inapplicable to such mines. The commission believes that Congress intended to use the word in its ordinary and well-accepted meaning; i. e., to mean the furnishing of cars by a carrier at its own mines or at those the output of which it takes. As used in paragraph (12) "served" is a convenient term to show that provisions of this paragraph apply not only to mines located on a carrier's own line, regardless of ownership or contractual arrangements, but also to those mines located off its line and which it customarily supplies with cars. Assigned Cars for Bituminous Coal Mines, 93 I. C. C. 701, 714, 715.

(b) Assigned-car mines which furnish their output for long periods of time to railroads are, at end of such periods, because of lower costs and better labor conditions, in a position to undersell competing unassigned-car mines. Railroad-owned mines in many instances sell coal commercially and may not only dispose of their product commercially, but they may be leased or sold to outside interests, and thus actively engage in selling commercial coal. Moreover, there is competition in labor between railroad-owned and output-contract mines on the one hand and commercial mines on the other. The commission thinks, therefore, that it has jurisdiction to deal with the distribution of cars to all of such mines under section 3 of the act, competition not being an essential element under section 1. Penn Tobacco Co., 18 I. C. C. 197, 200. Assigned Cars for Bituminous Coal Mines, 93 I. C. C. 701, 717.

(c) "Mine ratings" are the formulary basis according to which railroads make distribution of cars to coal mines for coal loading. Rules Governing Ratings of Coal Mines, 95 I. C. C. 309, 310.

(d) Inflation of the ratings of one mine or district while other ratings are normal, or inflated to a lesser extent, inevitably brings about discriminations or preferences forbidden by the act. Rules Governing Ratings of Coal Mines, 95 I. C. C. 309, 323.

(e) In determining mine ratings labor supply relates only to men who are actually occupied in the production of coal and necessary incidents thereto. Rules Governing Ratings of Coal Mines, 95 I. C. C. 309, 324.

(f) The law recognizes the right of new mines, which have never shipped coal, to an equitable share of cars when they properly make switch connection with a railroad. By section 1 (9) of the act the carrier is required "to furnish cars for movement of such traffic to the best of its ability without discrimination in favor of or against such shipper." By section 1 (1) the term "transportation" is defined as including cars and all instrumentalities and facilities of shipment or carriage. By section 1 (4) it is made the duty of every common carrier subject to the act to provide and furnish cars upon reasonable request therefor. The rights of every shipper to be protected against undue preferences of others are preserved for him by section 3. Nowhere in the act, or in any decision construing the act, is any distinction made between old and new shippers, or between economical or efficient producers, and the reverse. Rules Governing Ratings of Coal Mines, 95 I. C. C. 309, 331.

(g) Congress has not undertaken to authorize interstate common carriers to make the personal qualities of the shipper or of his product the test as to whether such a carrier shall respond to a demand for cars, otherwise lawful, upon equal terms with other shippers of the same product possessing different personal or physical characteristics. Rules Governing Ratings of Coal Mines, 95 I. C. C. 309, 332.

(h) The law has never undertaken to permit, much less require, a common carrier to discriminate between persons when they tender freight for carriage, because of efficiency of shipper or his lack of it, because he is extravagant and needs reforming or does not, or because the product is superior or inferior. With these qualities of shipper and article carried the railroad as a common carrier may not rightfully concern itself. Whether Congress might do so the commission

need not inquire, although the prohibition of personal attainders, which may well be considered as including the right to resort to services of a common carrier possessed alike by all men, is contained in the Constitution itself. Rules Governing Ratings of Coal Mines, 95 I. C. C. 309, 332.

(i) The commission doubts if it would be in the public interest to give to the high-grade, favorably circumstanced coal fields and mines a monopoly of production, even if lower costs to consumers would follow. Such a course would result in first completely exhausting the best portion of a natural resource and weaken our national position by compelling utilization in ever greater degree of the poorer, less economical raw products, until in the end the country would have nothing left but the lowest grade, most costly, bituminous coal, with none of the higher grades for special purposes which are so dependent upon such fuel. The widest possible equable use of coal of all qualities, rather than forced use of the most readily accessible highest grades, is that which is consonant with public good. Rules Governing Ratings of Coal Mines, 95 I. C. C. 309, 334.

(j) Objection of interveners to establishment of rates on coal from mines on Virginia Railway on the New River district basis due to fear that the car supply of the Virginia might be depleted, found not to be a sufficient reason for denying rates sought, following 63 I. C. C. 179. Wyoming Coal Co. v. V. Ry. Co., 98 I. C. C. 488, 494.

(k) Refusal of the B. & O. to rate mines on the Strouds Creek & Muddlety R. R., located in the Gauley district of West Virginia, and accord such mines a just and reasonable distribution of cars for coal loading, while contemporaneously furnishing such a rating to mines on its Richwood branch, located in the same district, found to result in undue prejudice to the Strouds Creek mines. The Strouds Creek mines are entirely dependent upon the B. & O. for their car supply and under the provisions of section 1 (12) of the act are entitled to same treatment in the matter of car supply as are mines located directly upon branches of the B. & O. Tioga Coal Co. v. B. & O., 101 I. C. C. 611, 616.

§23. Commercial Plus Physical Capacity.

(a) In determining mine ratings physical condition takes into consideration the character of the mine—whether a drift, slope, or a shaft mine—number of entries, length of runways or haul, grades in the runway, number of loaders, including machines, number of mine cars and capacity thereof, capacity of the shaft, and also tipple capacity, number of tipples, and capacity for dumping, including screenings or preparation of the coal for certain classes of trade; also length and car capacity of tracks under the tipple. Rules Governing Ratings of Coal Mines, 95 I. C. C. 309, 324.

(b) In determining mine ratings labor supply is a controlling factor, which is accorded considerable weight, since it is the factor most subject to continual change. It relates only to men who are actually occupied in the production of coal and necessary incidents thereto. Rules Governing Rating of Coal Mines, 95 I. C. C. 309, 324.

(c) In determining mine ratings past performance does not include the so-called commercial factor, but is developed by taking the normal working days when a mine had a full car supply and no interference with its operation, which would give it an opportunity to have an accumulation in its pit or mine cars by reason of a previous day of idleness or short car supply, breakdowns, etc. Rules Governing Rating of Coal Mines, 95 I. C. C. 309, 324.

(d) Results of experience with the commercial factor do not commend it as a universal or controlling future basis for determining mine ratings. Rules Governing Ratings of Coal Mines, 95 I. C. C. 309, 330.

(e) Advocates of the commercial-factor basis of mine ratings stated that the bituminous coal industry has been guilty of numerous economic offenses, and that the responsibility of reforming that industry rests with the commission. FOUND, the commission has been given no regulatory jurisdiction with respect to the coal industry, and owes no duty to it other than to enforce the provisions of the act, which require adequate service, and prohibit unjust discrimination and undue preferences as between shippers. It is not within the commisson's province to comment upon or determine whether the coal industry is in need of reform, that issue properly should be addressed to Congress, if at all. Rules Governing Ratings of Coal Mines, 95 I. C. C. 309, 331.

(f) Argument in favor of use of the commercial basis for mine ratings is that

thereby the public interest is best subserved by encouraging a more uniform movement of coal throughout the year, and by eliminating inefficient and high-cost mines. FOUND, point of departure between this theory and that which the commission can accept is basic. Object of rating rules is to secure a just and equitable distribution of equipment among those who desire and are prepared to ship, and not to determine who shall or shall not be in a position to produce a commodity to be shipped. Rules Governing Ratings of Coal Mines, 95 I. C. C. 309, 331, 332.

§24. Idle-hour system.

(a) Complainant alleged that during certain periods of car shortage defendants gave to the mines on the Belt lines a greater portion of available cars than was given to its mines on the West Virginia Ry., and that during these periods defendants overrated Belt mines, which resulted in those mines receiving more cars and complainants mines less cars than they were respectively entitled to and that such action resulted in unjust discrimination against complainant. The "idle hour" basis of car distribution was in effect on both the West Virginia and West Side Belt. Upon this basis it is the object to keep all mines in operation the same number of hours per day by giving each a portion of the available car supply; and if, due to car shortage, any mine is entitled to a greater or lesser number of hours than the average of all mines in a common group or unit car distribution is equalized every few weeks by giving that mine a sufficiently increased or reduced supply of cars. Upon the facts presented it is manifestly impossible to determine whether complainant failed to receive its proper share of available cars. In the instant case the same weather conditions were incurred, but it is contended that the operation of the line of the defendant west of the Ohio river was rendered much more difficult by these conditions. The line west of the Ohio river was congested with cars under load destined for the W. & L. E., while those conditions did not exist east of the river. The tunnels were blocked with ice, and the sidetracks were filled with cars loaded with coal, which had become frozen and in some instances were not unloaded for three months, because of the failure of the W. & L. E., to accept them on account of the condition of its power. There is also testimony to the effect that on several occasions no trains other than passenger, merchandise or supply trains, were moved over the line west of the river. HELD, complaint not sustained, complaint dismissed. Wayne Coal Co. v. Director General, 92 I. C. C. 3.

(b) Object of "idle-hour" basis of car distribution is to keep all mines in operation same number of hours per day by giving each a portion of available car supply; and if, due to car shortage, any mine is entitled to a greater or lesser number of hours than average of all mines in a common group or unit, car distribution is equalized every few weeks by giving that mine a sufficiently increased or reduced car supply. Wayne Coal Co. v. Director General, 92 I. C. C. 3, 5.

(c) Allegation that complainant's mines located on the Pittsburgh & West Virginia Ry. were discriminated against and that mines on the Pittsburgh Terminal R. R. & Coal Co. were preferred in the matter of car supply during certain periods of car shortage, not sustained. Distribution was made on the "idle-hour" basis but practice of advance billing indulged in by complainant during period in question, and complicated figures showing supply of cars which complainant claims it was entitled to, present a situation such as to make it impossible to determine whether complainant failed to receive its proper share of available cars. Wayne Coal Co. v. Director General, 92 I. C. C. 3.

§25. Mine Capacity Plus Shipments.

(a) In determining mine ratings past performance does not include the so-called commercial factor, but is developed by taking the normal working days when a mine had a full car supply and no interference with operation, which would give it an opportunity to have an accumulation in its pit of mine cars by reason of a previous day of idleness or short car supply, breakdowns, etc. Rules Governing Ratings of Coal Mines, 95 I. C. C. 309, 324.

IV. CONTRACTS FOR CAR SUPPLY.

§28. In general.

(a) Car distribution rules, as ordinarily in force, are expected to and do provide a penalty for detention of equipment which, while not of the same character, accomplish the same purpose as the penalty provided by demurrage rules. A

shipper who does not pay a penalty of either character is at a manifest advantage over other shippers who operate either under car-distribution rules as properly applied or under demurrage. Demurrage Rules on Coal and Coke, 89 I. C. C. 230, 232.

V. DUTY TO TRANSPORT CARS.

See Transportation II.

§30. Interchange of Cars.

See Interchange of Traffic; Through Routes and Joint Rates.

(a) In the interchange of traffic between carriers it is the ordinarily accepted practice for receiving line to designate tracks within a reasonable distance of intersection of its rails with those of a connecting carrier where cars will be received from delivering line, and latter carrier places cars on tracks so designated. Peoria & Pekin Union, 93 I. C. C. 3, 9.

(b) In accordance with usual railroad practice, matter of making and receiving deliveries of cars is the subject of mutual agreement, each line having the right within reasonable limits to designate point where cars will be received. Peoria & Pekin Union, 93 I. C. C. 3, 16.

(c) Practice of Peoria & Pekin Union Ry., in assessing charges at and in the vicinity of Peoria, Ill., for interchange service between connections with its tenants and rails of the Minneapolis & St. Louis, and St. Louis, Springfield & Peoria, an electric line, while contemporaneously performing a like service between connections with its tenants and rails of C., B. & Q., and Rock Island without charge, found unjustly discriminatory and unduly prejudicial. Peoria & Pekin Union, 93 I. C. C. 3, 23.

(d) Complainant attacked commodity rates on coal, carloads, from complainants mine at Mabie, W. Va., to interstate destinations reached by the Western Maryland and its connections as unjust, unreasonable and unduly prejudicial to complainant in that they exceed the flat West Virginia basis of rates; that the failure and refusal of defendants to serve complainants mine with cars and to interchange coal traffic from such mines to all interstate destinations reached by the Maryland, and its connections, at some convenient point in the Elkins district of West Virginia, and to accord such traffic the flat West Virginia region basis of rates while according such service, cars, and rates to competing mines of the West Virginia Coal & Coke Co., called coal company, and is unduly prejudicial. Complainants mine is located on a short spur leading off the Coalton branch of the B. & O., less than 0.5 mile from Mabie, W. Va., and about 6.31 miles south of Norton, W. Va. It is intermediate to Coalton mine No. 1 and Mabie mine No. 6 of the coal company. These mines in addition to Arianna mine No. 7 of the coal company, which is not in operation are the only coal operations on the Coalton branch. The coal from complainants mine and that of the coal company are of similar grade and complainant is in active competition with the coal company in the sale of coal. Complainants mine is and has been entirely dependent upon the B. & O., for its car supply. In 74 I. C. C. 433 the Commission found that a mine served by two carriers should not be permitted to order cars in excess of 100% of its rating from both roads serving it. It had the right to order its full rating from any one of the roads if it so desired. HELD, undue prejudice not sustained, rate attacked unreasonable to extent it exceeded $2.84 per long ton, reparation awarded. Brady v. B. & O. R. R., 103 I. C. C. 19.

§31. Private Cars.

See Supra §4, §10½, §13; Infra §32; Common Carrier §6; Private Cars.

(a) Private cars which are paid for by carriers for use and are used on their lines are clearly "facilities possessed," and come within broad powers conferred upon the commission by the statute to prevent unjust discrimination. Assigned Cars for Bituminous Coal Mines, 93 I. C. C. 701, 730.

(b) Rate on locomotive cranes, on own wheels, with overhanging or detached parts, from Gilmerton, Va., to Greystone, N. C., found not unreasonable as compared with rates from Virginia cities to destinations in North Carolina to which Greystone is intermediate. Raleigh Granite Co. v. S. A. L. Rv. Co., 96 I. C. C. 573.

§32. Rates on Private Cars.

See Supra §31; Classification §7½; §12⅞.

(a) Sixth-class rate on coal tar, in

tank-car loads, from Fairmont, W. Va., to Everett (East Boston), Mass., found unreasonable as compared with lower commodity rates contemporaneously in effect from Dunbar, Pa., and other points to same destination, and to extent it exceeded lower commodity rate subsequently established. Complainant made application for establishment of commodity rates more than five months prior to movement of shipments, but, due to inconsistencies in commodity rates on coal tar, carriers delayed their establishment. Reparation awarded. Barrett Co. v. B. & O. R. R. Co., 91 I. C. C. 53.

§32⅛. Repair of equipment.

(a) Upon investigation into classified repairs made to 115 locomotives of the Central R. R. Co. of N. J., in 1920-21, under contracts negotiated with Baldwin Locomotive Works and American Locomotive Co., FOUND: That cost of such repairs was greatly in excess of cost of similar work in respondent's own shops; that even though at end of Federal control some assistance in respondent's shops may have been necessary or expedient as an emergency, the contract work was carried beyond reasonable necessities and a large part of the excess expenditures could have been avoided; also that those expenditures would at least have gone far to provide respondents with much needed additional shop facilities. Construction and Repair of Railway Equipment: C. R. R. of N. J., 89 I. C. C. 751.

(b) Commission instituted a general investigation to determine whether common carriers by railroad have caused or are causing certain of their locomotives or other equipment to be constructed or repaired at construction or repair shops other than their own, and have purchased or are purchasing from or through such shops materials and supplies used in such construction or repairs, at costs in excess of those for similar construction or repairs in their own shops, including materials and supplies therefor, in disregard of efficient and economical management, resulting in unreasonable expenditures. Respondent, Central Railroad of New Jersey, repairs by the American Locomotive Company and Baldwin Locomotive Works during 1920 and 1921. In all, 115 of respondents locomotives were repaired by the two construction companies. 57 were sent in 1920 and 30 in 1921 to the Baldwin plant and 3 in 1920 and 25 in 1921 to the American. Since 1914 with the acquisition of new locomotives of increased size and tractive power, respondent has had some difficulty in maintaining the necessary classified repairs in its own shops. In respect of the shop burden respondents motive power conditions were somewhat less favorable at the end of federal control than at the beginning, and as early as May 1920, there was a prospect of an increasing demand for power. On the other hand, considering the good shop performance in 1918 and the material outside assistance received in 1918 and 1919, and conceding some indeterminable figure degree of inefficiency, the claimed incapacity of the shops to meet the burden to the extent of the number of locomotives repaired under the contracts is not borne out by the record. Even though some assistance may have been necessary or expedient in the beginning as an emergency step, the record strongly negatives a conclusion that it was necessary to supplement the material outside help received during federal control by contracting for the repair of so great a proportion of the total motive power. The record convinces the Commission that the contract work was carried beyond the reasonable necessities and that a large part of the excess expenditures could have been avoided. Construction and repair of railway equipment, C. R. R. of N. J. 89 I. C. C. 751.

(c) This report relates to locomotive equipment of various respondent railway companies, and is in pursuant of an investigation, instituted on motion of the Commission, to determine whether common carriers by railroad subject to the act have caused or are causing certain of their locomotives or other equipment to be constructed or repaired at construction or repair shops other than their own, and have purchased or are purchasing from or through such shops, including material and supplies therefor, in disregard of efficient and economical management, resulting in unreasonable expenditures, or otherwise contrary to law. Chicago Burlington & Quincy R. R. July 23, 1920, respondent entered into contract with the Baldwin Locomotive Works for repair of 15 locomotives and with the Davenport Locomotive Works, for the installation of new boilers on five switch engines and the repair of additional locomotives, not exceeding 15 in all. The contracts were on a cost plus basis. The primary factors which impelled the re-

sort to the outside shops were continued heavy business and a failure to make required gains in the condition of the motive power. The record does not impeach respondents good faith or establish a careless attention to its own interests in entering into the contracts. It is none the less true, however, that an excess expenditure of the character and even approaching the amount of that above mentioned is regrettable and at all times to be avoided if possible. Irrespective of the existing relationship of normal shop capacity to normal repair demands, an investment of the margin of such an outlay in increased shop facilities which would more nearly meet emergencies would make for increased efficiency and economy. C. M. & St. P. Ry. The contracts into which this respondent entered were distinctive in that they covered the conversion of so-called Vauclain compound locomotives into simple ones, in addition to the classified repairs the locomotives received. This type of locomotive embodies a faulty mechanical principle and respondent was justified in converting them into simple locomotives. The company shops were not so well equipped for conversion work as is the Baldwin plant, but it is conceded that the shops are capable of doing and have done such work. During the contract period there was a shortage of men in its shops and it appears principally to have been for this reason that the administration was asked to authorize the sending of the 20 locomotives in 1919 to the Baldwin plant. It appears that, apart from the conversion problem, respondents shops are equal to no more than normal demands, or a maximum represented by 10% of its motive power out of service for all repairs requiring more than 24 hours. In these circumstances a consistent policy of efficient expenditures as the contract work has repeatedly been shown to involve be made in the procurement of such shop enlargements or additions to or modernization of shop equipment as would enable the carrier reasonably to meet exceptional demands. P. & R. Ry. In 1920 this company entered into a contract with the Baldwin for the repair by the latter of 15 or more of respondents Mallet compound locomotives. It appears that the corporate officers were fully cognizant of the incapacity of the company shop to take appropriate care of all the Mallet compounds. The excess cost of the contract repairs on 15 Mallets would have gone far toward providing the mechanical department with the much needed facilities. The large sum paid out under the contract secured by respondent on only relatively short lived repairs, with a margin above a reasonable expenditure would have covered the major portion of an essential addition to respondents capital equipment. The practice followed could not be said to make for efficiency and economy in management. St. Louis San Francisco Ry. Under a contract five locomotives of this respondent were repaired by the Pittsburgh Boiler & Machine Co., Pittsburgh, Kas. In the light of the facts that not many locomotives were sent to either contract shop and that the work was not extended beyond the advent of the general business depression, the Commission may accept the submitted justification of those contracts as having met an emergency. On the other hand, the wisdom of rebuilding the wrecked locomotives at such high figures, which restored to service power units only partially the equivalent of new ones, is not clear. Missouri Pacific R. R. This respondent sent to outside shops for repair in 1920 and 1921 a total of 49 of its locomotives. The record affords little opportunity for a determination of the ability of respondents shops to meet power requirements in 1920, when the contract repairs were made, except by contracts with 1919, and the contracted items do not tell a very definite story. Every energy should unceasingly be bent upon a realization of the utmost production of which the company facilities and forces are capable, in the effort to minimize, and better yet to eliminate, such expensive maintenance costs. **St. Louis Southwestern Ry.** This company entered into a formal contract with the Grant Locomotive & Car Works for the repair by the latter of not less than ten or more than 20 of respondents locomotives. Whatever the true answer to the cost question in this instance may be the Commission deems it unnecessary to go farther than to accept the limitation of the contract work, as denoting a policy on respondents part, with the return of normal conditions, to utilize its own facilities in the future maintenance of its motive power and equipment. **Texas and Pacific.** Under contracts 5 of respondents locomotives were repaired by private contractors. Gratifying as is the fact that but five locomotives were repaired under the two contracts in question, the record indicates that the work

was done at a considerable excess cost. Correspondence in evidence discloses that respondents officials regarded some of the labor charges as unreasonable and sought revisions, and also were dissatisfied with the quality of the work in certain respects. The Commission deems the circumstances to justify it in assuming that in future respondents will leave nothing undone to avoid further recourse to the costlier contract work. Construction and repair of railway equipment, 91 I. C. C. 399.

(d) Commission instituted an investigation under section 15a of the act to determine whether common carriers by railroad subject to the act have paid, or are paying, excessive amounts for the repair of their locomotives or other equipment at construction or repair shops other than their own, as compared with costs for similar work in their own shops, in disregard of efficient and economical management, resulting in unreasonable expenditures, or otherwise contrary to law. Respondent, Erie R. R. Co. In 1920, respondent entered into a contract with the Baldwin Locomotive Works for the repair of locomotives on a cost plus basis, plus 120% of the direct labor cost to cover overhead expense, plus 15% of the whole for profit. The evidence justifies the conclusion that the right locomotives could have been repaired in the company's shop at a cost materially less than was paid for repairs at the Baldwin plant and would have been available for service much sooner. Clearly, economy and efficiency of operation were disregarded in making new contracts and in sending out additional locomotives while negotiations were being conducted for a final settlement with its striking employees during the latter part of September. HELD, respondent has not justified the tremendous increase in costs nor the extraordinary allowances for overhead which to a great extent made up such excessive costs. The record compels the Commission to regard these expenditures as improvident. Construction and repair of railway equipment, 93 I. C. C. 646.

(e) Upon investigation by commission on its own motion; FOUND: That in 1920 the C., B. & Q., C., M. & St. P., Philadelphia & Reading, St. L.-S. F., Missouri Pacific, St. Louis Southwestern, and Texas & Pacific, contracted for repair of locomotives in outside shops, or purchased locomotive parts, at costs which were materially in excess of cost of similar work or production in their own shops, in some instances incurred because of a want of adequate facilities which excess expenditures would have supplied or gone far to supply. Construction and Repair of Railway Equipment, 91 I. C. C. 399.

(f) Upon investigation by commission on its own motion. FOUND, that cost of repairs to locomotives and cars of the Erie R. R. at outside shops during 1920-1923 was greatly in excess of cost of similar work in its own shops, and that a large part of such excess cost was an unreasonable expenditure for maintenance of equipment, and not in the interest of efficient and economical management as required by section 15a of the act. Construction and Repair of Ry. Equipment, 93 I. C. C. 646.

(g) This is an investigation instituted upon the motion of the Commission to determine whether common carriers by railroad subject to the act have paid, or are paying, excessive amounts for the repair of their locomotives or other equipment at construction or repair shops other than their own, as compared with costs for similar work in their own shops, in disregard of efficient and economical management and resulting in unreasonable expenditures. Previous report as to the Central Railroad of New Jersey, 89 I. C. C. 751. Respondent has failed to show any necessity for incurring excess expenditures as a result of sending out locomotives in the fall of 1921. For several months prior and subsequent to the execution of the contracts of Sept. and Oct., 1921 its shops were being operated below their capacity. Instead of building up its reserve power for the winter it failed to attain its objective of 15 to 20% of its power stored, and at the end of Sept. and Dec., 1921 had only 7.21 and 7.53%, of its locomotives stored against winter demands. But even then, power conditions were better than they had been for a long time. HELD, the excess expenditures under the contract represent improvidence in management which should be considered when fixing rates intended to yield the standard return contemplated by law. Construction and Repair of Ry. Equipment 104 I. C. C. 352.

(h) This is an investigation instituted on motion of the Commission under section 15a of the act to determine

whether common carriers by railroad subject to the act have paid or are paying excessive amounts for the repair of their locomotives or other equipment at construction or repair shops other than their own, as compared with costs for similar work in their own ships, in disregard of efficient and economical management and resulting in unreasonable expenditures. This report deal with the subject of repairs to steam locomotives of the New Haven system. In all, respondent sent to contract shops, including the two outside railroad shops, between July 1, 1922 and Jan. 24, 1924, 231 locomotives and 40 additional boilers, which were repaired at a total cost of $3,733,514.44. Taking all the circumstances under consideration, no criticism is directed to the contracts with the American and Baldwin plants for outside work, notwithstanding the great cost. Whether or not any of the other contracts were justified is debatable. It is clear, however, that much of the repair work performed at excessive cost in outside shops subsequent to Nov. 1, 1922, was unnecessary and without adequate justification. Without attempting to draw the exact line, the record compels the Commission to regard a substantial portion of the extraordinary expenditures incurred by respondent in this outside repair work as improvident and of a character which should be considered when fixing rates to yield the standard return as provided by the act. Construction and repair of Ry. equipment, 107 I. C. C. 721.

VI. REMEDIES AND DAMAGES.

See Reparation.

§32½. In general.

(a) Fact that an individual is permitted to make a charge for a service which the carrier is bound under its tariff to furnish, can not deprive shippers of their right to hold the carrier responsible for the consequences of its act, and a carrier is answerable in damages for a refusal to accept cars for transportation to a certain point, resulting in shippers being put to expense of having them transported to a station where they would be accepted. Miles Lumber Co. v. C., B. & Q. R. R. Co., 89 I. C. C. 761, 764.

(b) Supreme Court holds that in computing damages resulting from discrimination by a carrier in car allotments, it is error to assume that the complaining shipper should have received cars in the same ratio to shipping requirements as was allowed his favored competitor in the making of the distribution. It was held that the plaintiff mines were entitled only to such car supply as they would have received had the available cars been equally distributed. Northern W. Va. Coal Asso. v. P. R. R. 109 I. C. C. 604, 607.

§33. Actions at Law.

See Actions at Law.

(a) District Court, in restraining discrimination by railroad in furnishing coal cars to mines in violation of Transportation Act, §1, par. 12 (Comp. St. Ann. Supp. 1923, §8563), had no power to include proviso that daily orders for cars should constitute daily rating of mine one day on which order was given, since it did not involve construction of statute, but determination from facts whether distribution was unfair, which is for Interstate Commerce Commission in first instance. Freeman v. United States, 4 Fed. (2d) 13.

§36. Evidence.

See Supra §9; Evidence §39.

(a) Assigned-car mines which furnish their output for long periods of time to railroads are, at end of such periods, because of lower costs and better labor conditions, in a position to undersell competing unassigned-car mines. Railroad-owned mines in many instances sell coal commercially and may not only dispose of their product commercially, but they may be leased or sold to outside interests, and thus actively engage in selling commercial coal. Moreover, there is competition in labor between railroad-owned and output-contract mines on the one hand and commercial mines on the other. The commission thinks, therefore, that it has jurisdiction to deal with the distribution of cars to all of such mines under section 3 of the act, competition not being an essential element under section 1. Penn Tobacco Co., 18 I. C. C. 197, 200. Assigned Cars for Bituminous Coal Mines, 93 I. C. C. 701, 717.

(b) Storage of coal by railroads and others in periods of car surplus tends to equalize demands by operators on railway equipment throughout the year, and to prevent periods of extreme car shortage during which, because of the great demand for coal, inefficient high-cost

mines spring into operation, and the public is required to pay excessive prices for coal. Assigned Cars for Bituminous Coal Mines, 93 I. C. C. 701, 724.

(c) In support of its allegation of prejudice in car distribution, complainant introduced figures from defendant's report which were inaccurate. The burden of proving its allegation held to rest upon complainant. Ayrshire Coal Co. v. S. Ry. Co., 96 I. C. C. 161, 171.

VIII. CAR SERVICE REGULATION.

§39. In General.

(a) Primary duty of promulgating proper mine ratings rests upon carriers. Rules Governing Ratings of Coal Mines, 95 I. C C. 309, 335.

(b) Upon contention that practices of Southern Railway in connection with distribution of coal cars to complainants' mines in Indiana during period September 1, 1922, to March 31, 1923, resulted in unreasonableness, undue prejudice to complainants, and undue preference of the Sunlight Coal Co. and other mines in same district. HELD, due to abnormal conditions following strikes of bituminous-coal miners and railway shopmen, special service orders of commission controlled distribution of equipment for coal loading from September 1 to December 20, 1922, and all rules, regulations, and practices of common carriers were suspended so far as they were in conflict with the special service orders which provided for assignment of cars for special purposes in preference to use for any other purpose and required preference and priority in movement of certain specified commodities. Such unusual conditions made impossible the equalization in car supply sooner and defendant's practice of distributing cars during period covered by complaints not shown to have been unreasonable or unduly prejudicial. Ayrshire Coal Co. v. S. Ry. Co., 96 I. C. C. 161.

§40. Filing and Publication.

(a) Mine rating rules are not required to be filed with the commission as are tariff publications. Winding Gulf Colliery Co. v. V. Ry., 102 I. C. C. 41, 45.

CIRCUITOUS ROUTES

See Long and Short Hauls, §4¾; Routing and Misrouting §4; Through Routes and Joint Rates §6.

CIRCUS TRAINS

See Long and Short Hauls §4, §4¾; Routing and Misrouting §4; Through Routes and Joint Rates §6.

(a) Contracts with carriers for moving circus outfits provide for transportation of agents in advance of shipments. The latter move as freight. The organization and outfit follow over the same circuit as the advance agents. There is no analogy between this service and that accorded Chautauquas. Coit-Alber Chautauqua Co. v. A. & S. R. R. Co., 85 I. C. C. 357, 361, 362.

CLAIMED SHIPMENT

ALL CITATIONS

Republic Coal Co. v. C. St. P. & O. Ry. Co., 85 I. C. C. 331.

CLAIMS

I. WHEN STATUTE OF LIMITATION RUNS.
- §1. In general.
- §1½. Under transportation act.
- §2. Claims accruing before June 7, 1924.
- §2½. Reliance for filing on carrier.
- §3. Date of delivery of shipment.
- §4. Date of payment of charges.
- §5. Date of amending claims.
- §5½. After notice to file formal complaint.
- §5¾. Interveners.

II. INFORMAL COMPLAINTS.
- §6. In general.
- §7. Formal complaint.
- §8. Requisites of informal complaint.

III. PRESENTATION TO CARRIERS.
- §9. Advisability.
- §10. Regulations.
- §11. Penalties for non-payment.

IV. PARTIES ENTITLED TO RECOVER.
- §12. In general.
- §13. Assignments.

CROSS REFERENCES

See Actions at Law; Advanced Rates VII; Allowances VI; Cars and Car Supply VI; Express Companies §30; Legal Rates; Loss and Damage; Over-

charges; Passenger Fares and Facilities IV; Reparation; Undercharges.

I. WHEN STATUTE OF LIMITATION RUNS.

See Infra §5½, §8; Crimes §28; Loss and Damage §11¼, §13½; Overcharges §7; Reparation; Statute of Limitation.

§1. In general.

(a) Original formal complaint attacking one factor of a combination rate was filed against originating carrier within statutory period. By amended complaint filed more than six months after notice that claim could not be disposed of informally and more than two years after cause of action accrued, carrier publishing other factor was brought in as an additional party defendant. HELD: Claim against originating line, whose factor only is assailed, found not barred, but claim against carrier named in amended complaint found abandoned under Rule III (g) of Rules of Practice. Inland Empire Paper Co. v. C., M. & St. P. 92 I. C. C. 29, 30.

(b) Claim for reparation on shipments delivered more than two years prior to date of filing of complaint found barred by the statute of limitations. Ash Grove Lime & Portland Cement Co. v. M. P. R. R., 92 I. C. C. 51.

(c) Overcharge claim on shipment moving during Federal control filed informally more than one year after termination thereof. Formal complaint subsequently filed brought in additional issue of misrouting. HELD: Overcharge claim, since filed within two years and six months after Federal control terminated, found not barred, but misrouting claim is barred because not filed within one year after that period had terminated. Empire Refineries v. Director General, 92 I. C. C. 59, 60.

(d) Formal complaint against director general alleging overcharges on shipments moving during Federal control, filed with commission within two years and six months' period as provided in section 206 (c) of transportation act, 1920, found not barred. Givens v. Director General, 92 I. C. C. 63, 66.

(e) Formal complaint originally received by commission within statutory period of limitations was twice returned to complainant for correction and was subsequently received after statutory period had run. HELD: Claim found not barred since original receipt constituted a filing of the claim with the commission as of that date. Marion Coal Co., 27 I. C. C. 441; Knopke Bros., 50 I. C. C. 465. Givens v. Director General, 92 I. C. C. 63, 66.

(f) Contention that filing of an informal complaint did not stop running of the statute in favor of complainant named in the formal proceeding because it did not specifically state that it was filed in his behalf, not sustained. Party filing informal complaint made no claim in its own behalf or in behalf of complainant but bills of lading and paid expense and demurrage bills accompanying the claim clearly indicated that complainant named in the formal proceeding was the real party in interest. Givens v. Director General, 92 I. C. C. 63, 66.

(g) Excluding period of Federal control in accordance with section 206 (f) of the transportation act, 1920, informal complaint covering shipments moving prior to Federal control found to have been filed within two-year statutory period and not barred. Diamond Match Co. v. Director General, 92 I. C. C. 68, 70.

(h) Informal complaint named Buffalo, Black Rock, and Niagara Falls, N. Y., as destination points. Formal complaint, specifically intended to cover same shipments, named Harriet, N. Y., as point of destination. Upon contention of director general that claims covered by formal complaint are barred because Harriet was not named as destination point therein until subsequent to time allowed by law for filing complaints for damages against him, FOUND: Freight bills on some shipments show Harriet as destination, and correspondence and final letter of rejection of informal claim from director general refer to that claim as covering shipments from that point. There is therefore no room for reasonable doubt that he was put on notice by informal complaint as to subject matter of the formal proceeding. Acheson Graphite Co. v. Director General, 92 I. C. C. 215, 216, 217.

(i) Formal complaint filed with commission within 90-days period after institution of suit by carriers in the courts for undercharges. Complaint was amended by bringing in an additional party defendant after expiration of such 90-day period. Such additional defendant was not a party to, nor did it bring an action for recovery of, undercharges within three years' period pre-

scribed by the statute. FOUND: Such additional defendant is protected by the statute of limitations, complainant having failed to bring an action against it before the commission within two years from date of delivery of shipments. Randolph Furniture Works v. E. R. R., 92 I. C. C. 245.

(j) Director general contended that because he was not named a party defendant in the informal complaint and was not so named until formal complaint was filed, in so far as he was concerned the claim was barred under section 206 (c) of the transportation act, 1920. However, informal complaint was presented to him for consideration but adjustment thereon was declined. Moreover, during pendency of the informal proceeding, with his consent the commission ordered that in proceedings paying for reparation under said section, wherein director general was not named, he be made a defendant for all interests and purposes of the section. Under this state of facts the failure to name the director general in the informal complaint is immaterial. Midland Coal Co. v. St. L.-S. F., 92 I. C. C. 283, 284.

(k) Where an informal complaint filed within statutory period specified certain shipments, and formal complaint based upon informal proceedings brings in additional shipments, such additional shipments are barred unless brought in issue within the statutory period. Whiting Plover Paper Co. v. S. Ry., 92 I. C. C. 292.

(l) Complaints involving shipments moving after termination of Federal control, filed more than two years after delivery of shipments, found barred by the statute of limitations. Monarch Cement Co. v. A., T. & S. F., 92 I. C. C. 325.

(m) Claims on shipments moving more than two years prior to date of filing of complaint found barred by the statute of limitations. Houston Cotton Exchange v. A. & S. Ry., 92 I. C. C. 363, 364.

(n) Complainant named in informal proceeding, which failed of adjustment, differed from that set forth in subsequently filed formal complaint. The former owns all the capital stock, and controls and operates the plants facilities, and business of the latter. HELD: Following Gillican-Chipley Co., 85 I. C. C. 702, the two complainants being in law separate entities the formal complaint can not be considered a continuation of the informal proceeding. Moreover, party named in the formal proceeding not having brought its complaint in its own name within the statutory period, is barred. Badger Bag & Paper Co. v. M. D. & W. Ry., 92 I. C. C. 485.

(o) Collection of an unreasonable rate constitutes a tort giving rise to a claim for damages whether that rate be collected by common carriers or by an agent of director general. Shreveport Creosoting Co. v. L. & P. Ry., 92 I. C. C. 519, 523.

(p) Complainant in its petition sought reparation down to a certain basis but at the hearing asked that damages be awarded to still lower basis. Objection by defendant that reparation can not be awarded to lower basis sought because request therefor was made after expiration of limitation period prescribed in the act, found not well taken. Request for increased damages is founded upon facts stated in original complaint, does not constitute a new cause of action, and therefore relates back to time of filing of the complaint. Shreveport Creosoting Co. v. L. & P. Ry., 92 I. C. C. 519, 520.

(q) Formal complaint relating to applicability of rates on shipments moving subsequent to Federal control, filed more than six months subsequent to closing of informal file but within three-year period provided for in amendment of June 7, 1924, to section 16 (3) of the act, found not barred. Caddo Central Oil & Rfg. Corp. v. Director General, 92 I. C. C. 627, 628.

(r) Informal complaint alleging unreasonableness on shipments moving during Federal control filed March 1, 1921. Less than two years and six months after Federal control terminated informal complaint was amended so as to bring into issue applicability of the rates. Formal complaint filed less than six months after closing of informal file. HELD: Shipments are not barred as to section 6 of the act. Caddo Central Oil & Rfg. Corp. v. Director General, 92 I. C. C. 627, 628.

(s) Complainant notified on January 24, 1922, that claim could not be adjusted informally. Formal complaint filed July 24, 1922. Contention that complaint should have been filed not later than July 23, 1922, to bring it within the six months' rule, HELD: Following West Cache Sugar Co., 87 I. C. C. 368, complaint found to have been filed within

six months after notification that claim could not be adjusted informally as provided under Rule III (g) of Rules of Practice. New Idea Spreader Co. v. Director General, 92 I. C. C. 742, 743.

(t) After shipper's right to enforce carrier's common-law liability of coercing payment of exorbitant charges has been barred by limitation, bar may be removed without violating carrier's rights. Cocke v. Morgan's Louisiana & Tex. R. S. S. Co. 4 Fed. (2) 961.

(u) Home Accident & Insurance Co. assumed direction of complainants' business and selected a general manager who paid freight charges in complainants' name on shipments consigned to him individually and to a road commissioner from funds advanced by the insurance company. Identity of complainants' company was maintained and all items of expense and merchandise charged to it. Defendants contended that complainants were not real parties in interest, so complainants' counsel moved to amend complaint by making insurance company a party complainant. This was permitted subject to defendants' objections. HELD, under facts stated complainant is entitled to reparation and since insurance company presented no adverse claim, it is unnecessary to pass upon motion to amend. Edwards Construction Co. v. J., L. C. & E., 93 I. C. C. 370, 371, 372.

(v) Formal complaint filed by same company filing informal proceeding bore signature of complainant's attorney and of the general traffic manager of another company which bought complainant's entire stock. Upon contention that formal complaint is barred because filed by successor company and does not represent a formal complaint filed by same company named in the informal proceeding. HELD, while formal complaint carries signature of general traffic manager of the successor company without showing agency, it is also signed by complainant's attorney, and as presented is properly signed and not barred. Forrester-Nace Box Co. v. Director General, 93 I. C. C. 665.

(w) Issue as to statute of limitations not being raised, the commission proceeded and rendered its decision upon complaint filed within 90 days after institution of suit by carriers in the courts for collection of undercharges, the court action having been brought after the statutory period of three years provided therefor had run. Goodrich Bros. Hay & Grain Co. v. C., C. C & St. L., 95 I C. C. 5.

(x) Informal complaint filed within statutory period showed association as claimant. Formal complaint subsequently filed named a corporation as complainant. Upon contention that informal filing was not on behalf of the corporation and that claim of latter is barred because first presented in formal complaint filed after statutory period had elapsed. FOUND, failure of association to comply with Rule III (e) of the Rules of Practice which provides that informal complaint contain a statement of capacity or authority in or by which complaint is made, if recovery is sought on behalf of others than complainant, was not fatal to the corporation's claim, since filing by the associaton was, in fact, on behalf of the corporation, and for express purpose of tolling the statute. Thaxter & Co. v. Director General, 95 I. C. C. 693, 694, 695.

(y) Claims covered by informal proceeding, held within statutory period, were not embraced in formal complaint subsequently filed. FOUND, reparation thereon can not be awarded in formal case because under rules of practice an informal complaint will not be reconsidered unless, within six months after date of mailing of notice that claim is not susceptible of informal adjustment, it is resubmitted on informal docket or formal complaint filed. Here, however, claims were recorded and complainant advised to take matter up with carrier and advise commission in event claims were denied. Failure to include shipments in formal complaint might be construed as an abandonment, but since they were held pending adjustment by the parties and a determination in the formal case, complainant has tolled the statute thereon and no reason appears why overcharges should not be refunded. Mauk Produce Co. v. Director General, 95 I. C. C. 728, 729, 730.

(z) Formal complaint originally received by commission within statutory period of limitations was returned to complainant with instructions to state with greater particularity the manner in which sections of the act were violated. As revised it was returned to commission after statutory period had run. HELD, claim found not barred in that complaint received on first date was sufficient under the law to toll the statute of limitations, and that date must be regarded as date of filing. Marion Coal Co., 27 I. C. C. 441. Quebracho Products Co. v. S. I. R. T. Ry., 96 I. C. C. 52.

(aa) Formal complaint returned for correction was received by commission after statutory period had run. Citing Rule III (g) of Rules of Practice carrier contended that complaint as originally received should be regarded as an informal complaint and that revised complaint does not bar the running of the statute since not received within six months after original complaint was returned. FOUND, rule relied upon relates to complaints on the informal docket, which can not be disposed of informally, are denied, or are withdrawn from further consideration by complainant. Quebracho Products Co. v. S. I. R. T. Ry., 96 I. C. C. 52, 53, 54.

(bb) Informal complaint covering overcharges on certain shipments moving during Federal control filed within statutory period. Additional shipments on which such period had expired included in formal complaint subsequently filed found barred. Burkhart & Co. v. Director General, 96 I. C. C. 77.

(cc) Complaint filed within 90-day period after institution of suit by carrier in the court for collection of undercharges. Oakes & Co. v. O. S. L., 96 I. C. C. 95.

(dd) Upon complaint filed more than one year after the termination of Federal control assailing rates on shipments moving and delivered during the Federal control period, the director general was not named as a party defendant. FOUND, such shipments are barred. Stailey Lbr. Co. v. P. R. R., 96 I. C. C. 175.

(ee) Upon further consideration statement in original report, 92 I. C. C. 32, that defendants not made parties to the complaint within the statutory period may join in payment of reparation, eliminated. In Phillips v. Grand Trunk Ry., 236 U. S. 662, it was held that with respect to claims not filed within the statutory period the remedy is barred and liability destroyed. Larrowe Milling Co. v. A. A. R. R., 96 I. C. C. 329.

(ff) Complaint found not barred although it failed to name as defendants the director general as agent and the L. & N., necessary parties. Complaint referred to rates published in an L. & N. tariff and thus put the director general on notice that shipments moved over the L. & N., a road under Federal control. Allen v. Director General, 96 I. C. C. 561.

(gg) Complainant, in its informal and formal complaints, sought reparation down to a certain basis, but in the presentation of the case it asks that damages be awarded to a still lower basis. Defendants argue that the only issue which may properly be presented to the commission under section 206 (c) of the transportation act, 1920, is a claim for reparation on the basis of the rate sought in the informal and formal complaints. In Shreveport Cresoting Co., 92 I. C. C. 519, and Omaha Steel Works, 87 I. C. C. 403, similar contentions were rejected. Los Angeles Pressed Brick Co. v. Director General 98 I. C. C. 45, 46.

(hh) The date upon which complaint was originally received by the commission although subsequently returned for correction and stamped as filed on a later date, is the date which tolls the statute. Walford Forwarding Corp., 87 I. C. C. 43, Hopeman Material Co. v. N. P. Ry. Co., 98 I. C. C. 361.

(ii) Petitions in intervention toll the statute from the date on which they are received by the commission irrespective of the date of the order permitting intervention. Cotton Manufacturers' Asso. of S. C., 57 I. C. C. 584. Hopeman Material Co. v. N. P. Ry. Co. 98 I. C. C. 361, 369.

(jj) Upon contention that formal complaint was barred by statute because informal complaint on which it rested was filed by New Jersey Zinc Co., as principal and not as agent for complainant, FOUND, Informal filing was, in fact, on complainant's behalf and formal complaint not barred. Tulsa Fuel & Mfg. Co. v. Director General, 98 I. C. C. 411.

(kk) Informal complaint alleged rates to be inapplicable; formal complaint referred to the informal, but alleged rates to be unreasonable and in violation of the fourth section. Upon contention that claim of overcharge was thus abandoned, FOUND, that pleadings and record were sufficient to support a finding upon the issue of overcharge. Southern Products Co. v. Director General, 98 I. C. C. 462.

(ll) Contention that informal filing of complaint by Fuller Co. was not sufficient to stop running of the statute as to the Libbey-Ownes Co., which in formal complaint is alleged to have suffered damage, found immaterial following 88 I. C. C. 492. Under the contract between the two parties, Libbey-Ownes Co. was not a party to the transportation record and no order could be entered in respect

of it. Fuller Co. v. Director General, 98 I. C. C. 468, 469.

(mm) Objection to consideration of claim based on the allegation of undue prejudice on ground that as it was not contained in informal complaint, and as formal complaint was not filed within one year after termination of Federal control, it was barred by statute of limitations, sustained. Conejos Cooperative Mills & Mfg. Co. v. Director General, 98 I. C. C. 515.

(nn) Contention that as paragraph 3 of Rules of Practice requires that where recovery is sought on behalf of other than complainant a statement of the capacity or authority in and by which complaint is made must be set forth, the complaint is invalidated so far as it concerns the rightful claimants, namely the consignors, who actually bore freight charges, not sustained, following 88 I. C. C. 492. Barse Live Stock Commission Co. v. Director General, 98 I. C. C. 539.

(oo) Fact that correspondence was conducted with the interested carrier to ascertain its attitude on the question of the reasonableness of the rates charged, resulting in a final closing of the informal file later than otherwise would have been the case, could not toll the statute of limitations, and was not in any other respect equivalent to the filing of a complaint within the meaning of the act. St. Louis Fruit & Vegetable Asso. v. L. & N. R. R. Co., 98 I. C. C. 553, 554.

(pp) Informal claim alleged overcharges on imported shipments of potato flour, billed as potato starch in error, moving during Federal control from Seattle, Wash., to New York, N. Y., the rates applicable on potato starch being collected. Formal complaint filed more than one year after the termination of Federal control, alleging the rate charged was unreasonable, found barred by statute since the issue in the informal complaint was solely one of legality. Lasker & Bernstein v. Director General, 98 I. C. C. 624.

(qq) Complainant attacked charges collected on a car of yellow pine lumber shipped from Stamps, Ark., June 1, 1921 to Carpenter, Ill., and reconsigned to Glens Falls, N. Y., as illegal. Shipment was delivered on June 27, 1921. On July 7, 1923 complaint covering the shipment was originally presented on the informal docket. On Dec. 20, 1923 complainant was advised that as the matter was not presented to the Commission within two years from the date of delivery of the shipment the claim was barred from consideration by the statute. On August 2, 1924 complainant resubmitted the claim on the informal docket, citing the amendment of June 7, 1924 to section 16 of the act which extended the time for filing claims for overcharges to three years. On Dec. 5, 1924 complainant filed a formal complaint. The shipment here considered was barred by the statute prior to the enactment of June 7, 1924 and comes within the provisions of the ruling and is barred. HELD, complaint dismissed. Milne Lumber Co. v. Wabash Ry. 104 I. C. C. 669.

(rr) In 45 Sup. Ct. 612 decided June 8, 1925 the Supreme Court held that a cause of action once barred could not be revived by subsequent legislation. Common carriers subject to the act are prohibited from paying and that the Commission is prohibited from awarding reparation on account of claims for refund of straight overcharges which were barred by statute at or prior to the date of the amendment. Sturges Co. v. A. & V. Ry. 107 I. C. C. 136, 139.

(ss) Complainant alleged misrouting of several cars of canned hominy, fruits, vegetables and hams, moving between March 15, 1918 and Feb. 19, 1919 from and to points in Indiana, Ohio, West Virginia, Virginia, Kentucky, Tennessee and Georgia in violation of section 6. HELD, complaint barred by the statute, complaint dismissed. Armour & Company v. Director General 107 I. C. C. 310.

(tt) Upon inquiries as to the effect of the decision rendered on June 8, 1925, by the Supreme Court in Wm. Danzer & Co., v. G. & S. I. the Commission construes that decision considered in connection with the decision in Kansas City Sou. Ry. v. Wolf, 261 U. S. C. 133, as prohibiting common carriers subject to the act from paying straight overcharge claims which were barred by statute at or prior to the amendment of June 7, 1924 to paragraph 3 of section 16 of the act, and as prohibiting the Commission from awarding reparation on any claim which was barred by statute at or prior to the date of that amendment.

Saxony Mills v. M. P. R. R. 107 I. C. C. 649, 650.

(uu) Upon motion of defendant to strike out amended complaints on the ground that the allegations in those complaints are equivalent to new causes of action which either are barred by the statute of limitations or must be considered to have been abandoned under Rule III (g) of the Rules of Practice, FOUND: That the original complaints were filed within six months after complainants were advised that informal adjustment had been declined by defendant and that it would be necessary to file formal complaints within six months if they desired to press the matter further. The amended complaints were filed subsequent to the expiration of those six months and of statutory period, and there is merit to defendant's motion. The amendments to the complaints are barred, and further consideration of these cases will be confined to the issues presented in the original formal complaints. Nash Spokane Co. v. Director General, 100 I. C. C. 223.

(vv) Contention of defendant that formal complaint was barred because filed after the statutory period and more than six months after notification that claim could not be adjusted informally not sustained. Notification was not properly mailed to complainant in accordance with the wording of Rule III (g) of the Rules of Practice, although received by him. Corley v. Director General 100 I. C. C. 293, 296.

(ww) Complaint received within the statutory period but returned to complainant for correction, which was not made within the statutory period, found not barred. Northern Grain & Warehouse Co. v. O. S. L. R. R. Co., 100 I. C. C. 319, 320.

(wwa) Neither informal nor formal complaint made any reference to fact that shipments received transit service and were subsequently reshipped to destinations beyond transit point, complainant having been permitted to later amend formal complaint to show this fact, and also to name additional carriers over whose rails shipments moved beyond transit point. Upon contention that claims in respect of such shipments are barred by statute of limitations. HELD: Both complaints contained sufficient information to put defendant upon notice as to the subject matter and to stop running of statute in respect of all such shipments. See 92 I. C. C. 215. Fact that all of the carriers involved were not named in original complaint can not act as a bar where shipments, as here, moved during Federal control wholly over federally controlled lines and only reparation is sought. See 80 I. C. C. 485. Farrell v. C., M. & St. P., 102 I. C. C. 455, 456.

(xx) Where a statute of limitations is of general application the burden of showing that it does not apply to a particular case is usually on the party who denies the bar to the statute. Krauss Bros. Lumber Co. v. Director General 112 I. C. C. 117, 118.

(yy) The basis of an informal claim can not be broadened or otherwise varied by a formal complaint subsequently filed unless such formal complaint itself be filed within the statutory period. Harmon & Husley v. Director General 112 I. C. C. 275.

ALL OTHER CITATIONS

Smokeless Fuel Co. v. N. & W. Ry. Co., 85 I. C. C. 395; Lilly Co. v. O. S. L. R. R. Co., 85 I. C. C. 644; International Harvester Co. v. N. Y. C. R. R. Co., 88 I. C. C. 370.

§1½. Under transportation act.

See Transportation Act.

(a) Contention that causes of action which accrued more than two years prior to date of filing of informal complaint are barred from consideration by paragraph (3) of section 16 of the act, and that in so far as section 206 (f) of the transportation act seeks to revive such causes of action it is unconstitutional, HELD: Not sustained. Section 206 (f) provides that period of Federal control shall not be computed as part of the period of limitation in claims for reparation for causes of action arising prior thereto. Thomas Iron Co. 57 I. C. C. 657. Buxton-Smith Co. v. A., T. & S. F. Ry. Co., 89 I. C. C. 373, 374.

(bc) Limitation period in the act expired prior to the filing of the claim and prior to the enactment of the transportation act, 1920. Section 206 f of the transportation act provides that the period of federal control shall not be computed as a part of the periods of limitation in claims for reparation for causes of action arising prior to federal

control. Carriers contended claim was barred. Contention not sustained. Cohn v. C. M. & St. P. Ry., 96 I. C. C. 257.

(d) Complainant attacked fifth class rate of $1.90 charged on two cars of potato starch shipped May 29 and June 24, 1918 from Seattle, Wash., to New York, as unreasonable. The claims were not filed within one year as prescribed in section 206 c of the transportation act, 1920, and are barred. HELD, complaint dismissed. Lasker & Bernstein v. Director General, 98 I. C. C. 624.

(e) Excluding period of Federal control as part of period of limitation in claims for reparation on shipments moving prior thereto, as provided in paragraph (f) of section 206 of transportation act, 1920, complaint found to have been filed within two years after accrual of cause of action and not barred. Ryan Fruit Co., 60 I. C. C. 733. Whitaker-Glessner Co. v. C. & O. Ry. Co., 91 I. C. C. 339, 340.

(f) Formal complaint against director general alleging overcharges on shipments moving during period of Federal control, filed with commission within two years and six months' period as provided in section 206 (c) of the transportation act, 1920, found not barred. Givens v. Director General, 92 I. C. C. 63, 66.

(g) Claims based upon causes of action arising prior to Federal control, which, excluding Federal control period, arose within two years prior to filing of complaint are not barred by the statute of limitations under provisions of section 206 (f) of the transportation act, 1920. Ball, Seligman & Co., 73 I. C. C. 223. Warren Construction Co. v. G. N. P. S. S. Co., 92 I. C. C. 302, 303.

(h) Transportation Act Feb. 28, 1920, §206f (Comp. St. Ann. Supp. 1923 §10071¼cc), so far as it excludes period of federal control from limitation period Commerce Commission for causes arising prior to federal control, operates retrospectively so as to revive cause of action which had theretofore become barred by Interstate Commerce Act, §16, par. 2 (Comp. St. §8584). Cocke v. Morgan's Louisiana & Tex. R. S. S. Co. 4 Fed. (2d) 961.

(i) Where both informal and formal complaints involving shipments moving during Federal control were filed more than one year after the termination of Federal control the allegation of unreasonableness contained therein can not be considered. Tidal Osage Oil Co. v. Director General, 96 I. C. C. 112.

(j) Contention that the transportation act, 1920, did not and could not operate to revive a cause of action barred by pre-existing law, not sustained, following Pacific Coast Shippers' Asso., 78 I. C. C. 10, and other cited cases. Section 206 (f) of transportation act provides that period of Federal control be disregarded in computing statutory period of limitation in actions against carriers or in claims for reparaton for causes of action arising prior to Federal control. Under the two-year Federal statute of limitations, all "causes of action arising prior to Federal control" were barred at expiration of Federal control, and, unless section (206 f) was intended to and did revive such causes of action, it was meaningless and of no effect. M. Cohn v. C., M. & St. P. Ry. Co., 96 I. C. C. 257, 258.

(ja) Formal complaint alleging unreasonableness on shipments moving during Federal control, filed with commission within 90 days after institution of suit by carrier in the courts for collection of undercharges, but more than one year after termination of Federal control, found barred. The right of action under allegation of unreasonableness was not revived by court proceeding and is not properly before the commission under section 16 (3) of the interstate commerce act. The commission's jurisdiction to entertain complaints for reparation on account of the exaction of unreasonable rates on shipments moving during Federal control is derived solely from section 206(c) of the transportation act, 1920, under which such complaints must be filed within one year after termination of Federal control. See 264 U. S. 456. Cudahy Packing Co. v. Director General, 102 I. C. C. 598, 599, 600.

(k) Claims barred by statute not revived by subsequent change in statute. Upon inquiries as to the effect of the decision rendered on June 8, 1925 by the Supreme Court in Wm. Danzer & Co., Inc. v. G. & S. I. The Commission construes that decision, considered in connection with the decision in Kans. City Sou. v. Wolf 261 U. S. 133 as prohibiting common carriers subject to the act from paying straight overcharge claims which were barred by statute at or prior to the amendment of June 7, 1924 to paragraph 3 of section 16 of said act,

and as prohibiting the Commission from awarding reparation on any claim which was barred by statute at or prior to the date of that amendment. Milne Lumber Co. v. Wabash Ry. 104 I. C. C. 669.

(l) Supreme Court has held that section 206 f of the transportation act, 1920 which provides that the period of federal control shall not be computed as a part of the period of limitation in claims for reparation for causes of action arising prior to federal control, may not be construed retroactively to create liability. 268 U. S. 633. Parkersburg Rig & Reel Co. v. C. R. I. & P. Ry. 107 I. C. C. 182.

(m) Complainant attacked commodity rate of 30c charged on logs from Mascouche, Que., to Aspen, N. J., during Feb. and March 1920, as inapplicable to the extent it exceeded a rate of 27c. HELD, complaint barred, complaint dismissed. American Splint Corporation v. C. P. Ry. 109 I. C. C. 170.

(n) Complainant attacked rate charged on dressed granite from South Ryegate, Vt., to Columbus, O., March 12, 1921 as unreasonable and inapplicable. Complaint filed Feb. 16, 1925. HELD, complaint barred, complaint dismissed. Mason v. M. & W. R. R. R. 112 I. C. C. 56.

ALL OTHER CITATIONS

Eshelman & Sons v. Director General, as Agent, 85 I. C. C. 578; Lilly Co. v. O. S. L. R. R. Co., 85 I. C. C. 644; Parkersburg Rig & Reel Co. v. Director General, as Agent, 85 I. C. C. 665; Mifflin Hood Brick Co. v. Director General, 88 I. C. C. 206.

§2. Claims Accruing before June 7, 1924.

(a) Claims which were barred by statute at or prior to the date of the amendment of June 7, 1924 can not be revived. American Splint Corp. v. C. P. Ry. 109 I. C. C. 170.

(b) Claims which were barred at or prior to the date of the June 7, 1924 amendment could not be revived. Chevrolet Motor Co. v. B. & O. R. R. 109 I. C. C. 184, 185.

(c) Section 206f of the transportation act, 1920 can not be applied to revive complaints which were barred by the statute of limitations at the time the section was enacted. Chevrolet Motor Co. v. C. & A. R. R. 109 I. C. C. 462.

(d) Complainant alleged that during the period from Aug. 1, 1921 to July 15, 1922 it made certain shipments of cotton from South Carolina to North Carolina and Virginia compressed at Toccoa, Ga., upon which a rate of 69c was applied; that on Oct. 23, 1924 defendants collected 15c as the cost of compressing the cotton at Toccoa; that during the same period complainants competitors were furnished free compression in some instances and in others a rate of 72.5c which included 15c for compression was applied by defendants upon similar shipments from and to more distant points. Complainant contended rates and charges unreasonable, unduly prejudicial and in violation of the fourth section. The shipments were delivered to defendants for transportation to Toccoa with the privilege of concentration and compression there by a compress company and reshipment to final destination on the basis of through rates under tariffs and transit rules that made no provision for the absorption of the charges for compression assessed by the compress company. On Aug. 8, 1924 defendants instituted suit in court against complainant to recover the compress charges thus paid by their agent to the compress company. To terminate the litigation and to establish what complainant believed to be a proper foundation for a complaint before the Commission, the amount of the compress charges was paid by complainant to defendants on Oct. 23, 1924. On Nov. 6, 1924 this complaint was filed. The complaint having been filed more than two years after delivery of the shipments, the claim is barred in so far as concerns the two year limitation of section 16 (3) of the act as well as section 16 (3b) as amended June 7, 1924. By those provisions the period of limitation is extended 90 days from the time action is begun by a carrier for recovery of charges in respect of the same transportation service. For present purposes assume that the suit instituted by defendants was for the recovery of charges in respect of the same transportation service. As the action was begun on Aug. 8, 1924 complaint could have been filed with the Commission on that date. As that counts one day, ninety days from the time such action is begun would permit filing the complaint not later than Nov. 5. Complaint was filed

Nov. 6. Under the long standing practice the day on which the shipment is delivered is included in ascertaining whether a complaint seeking reparation has been filed within the period provided by the act. The amendment of June 7, 1924 for the first time provided for an extension of the period of limitation to 90 days after the collection of charges in respect of transportation service. As that is limited to instances where the collection is made without beginning action, it has no application to any portion of the present claim. HELD, claim is barred, complaint dismissed. Latham Bradshaw Cotton Co. v. B. R. Ry., 109 I. C. C. 593.

(e) Complainant attacked commodity rates charged on a car of wrapping paper shipped during Jan. 1922 to Memphis, Tenn., from Piercefield, N. Y., as inapplicable. Complaint filed Dec. 31, 1924. Shipment here concerned was barred by the statute prior to the enactment of the amendment of June 7, 1924 and comes within the provisions of conference rule and is barred. HELD, complaint dismissed. Memphis Freight Bureau v. C. & O. Ry., 112 I. C. C. 55.

(f) Claims barred by statute prior to June 7, 1924 can not be revived. Mason v. M. & W. R. R. R. 112 I. C. C. 56.

(g) Complainant attacked commodity rates charged on a number of tank cars of gas oil between Dec. 3, and 21, 1920 from Vinita, Okla., to Blissville and Hempstead, N. Y., and Detroit, Mich. as in violation of section 6. Complaints filed with the Commission Dec. 1, 2, 3 and 5, 1924. The claims were not filed with the Commission prior to the dates of the filing of the formal complaints, about 3 years 11 months after the shipments were delivered and the cause of action accrued. This filing was within six months after the passage of the amendment of June 7, 1924 to section 16 of the act. However, when the cause of action accrued the statutory period of such claims was two years and these claims were barred prior to the amendment of June 7, 1924. Such amendment did not revive the action. HELD, claims barred by the statute, complaints dismissed. Standard Oil Co. v. St. L. S. F. Ry. 112 I. C. C. 217.

§2½. Reliance For Filing on Carrier.

(a) Fact that correspondence was conducted with the interested carrier to ascertain its attitude on the question of the reasonableness of the rates charged, resulting in a final closing of the informal file later than otherwise would have been the case, could not toll the statute of limitations, and was not in any other respect equivalent to the filing of a complaint within the meaning of the act. St. Louis Fruit & Vegetable Asso. v. L. & N. R. R. Co. 98 I. C. C. 553, 554

§3. Date of Delivery of Shipment.

ALL CITATIONS

Citizens Gas & Electric Co. v. A. T. & S. F. Ry. Co., 85 I. C. C. 435; Lilly Co. v. O. S. L. R. R. Co., 85 I. C. C. 644; Lakewood Engineering Co. v. B. & O. R. R. Co., 88 I. C. C. 588; Swift & Co. v. T. & P. Ry. Co., 88 I. C. C. 610.

§5. Date of Amending Claims.

(a) Complaint only sought reparation on past shipments therein specified but at original hearing complainants filed an amendment to cover all shipments moving since filing of the complaint, to which defendants interposed no objection. Subsequently a further hearing was held and defendants there contended that shipments delivered more than two years prior thereto are barred by the statute, HELD: Complainants clearly seek reparation on shipments made during pendency of the proceeding. Wichita Board of Commerce v. Director General, 92 I. C. C. 370, 371.

(b) Neither informal nor formal complaint made any reference to fact that shipments received transit service and were subsequently reshipped to destinations beyond transit point, complainant having been permitted to later amend formal complaint to show this fact, and also to name additional carriers over whose rails shipments moved beyond transit point. Upon contention that claims in respect of such shipments are barred by statute of limitations, HELD: Both complaints contained sufficient information to put defendant upon notice as to subject matter and to stop running of statute in respect of all such shipments. See 92 I. C. C. 215. Fact that all of the carriers involved were not named in original complaint can not act as a bar where shipments, as here, moved during Federal control wholly over Federally-controlled lines and only reparation is sought. See 80 I. C. C. 485. Farrell v. C., M. & St. P., 102 I. C. C. 455, 456.

§5½. After notice to file formal complaint.

See Supra §1.

(a) Claim on shipments moving more than six months after notice that claim had failed of informal adjustment found barred by the statute of limitations. American Stores Co. v. P. R. R. Co., 89 I. C. C. 41.

(b) A formal complaint filed March 12, 1923 after claimant had been notified on Sept. 12, 1922 that the claim could not be adjusted informally, was filed within six months after the date of mailing of notice that the claim could not be adjusted informally. New Idea Spreader Co. v. Director General, 92 I. C. C. 742, 744.

(c) Complainant attacked commodity rates charged on two cars of coal in February and March 1918 from Ziegler, Ill., to Agar, S. D., one reconsigned to Lake Preston, S. D., and other to Miller, S. D., as unreasonable. Freight charges based on combination rates to and beyond Tracy, Minn., the reconsigning point. Complainant was advised that claim could not be handled on informal docket, and the submission to the Commission on the formal docket was long after the time allowed by law for filing claims against the director general. HELD, complaints dismissed. Sexauer & Son v. Director General, 93 I. C. C. 687.

(d) Complainant notified by letter dated January 28, 1922, that informal complaint could not be adjusted informally, and formal complaint was filed July 28, 1922. Contention that complaint should be considered as having been abandoned under Rule III (g) of Rules of Practice not sustained, since formal complaint as above noted was filed "within six months after date of mailing of notice that claim could not be adjusted informally". See West Cache Sugar Co., 87 I. C. C. 368. Du Pont De Nemours & Co. v. Director General, 91 I. C. C. 15.

(e) Formal complaints filed with commission "within six months after date of mailing of notice that the claim could not be adjusted informally," as provided by Rule III (g) of Rules of Practice, are not barred by statute of limitations contained in section 16 (3) of the act. Ouachita Cotton Oil Co. v. M. P. R. R. Co., 91 I. C. C. 750; Macbeth Glass Co. v. B. & O. R. R. Co., 91 I. C. C. 758.

(f) Original formal complaint attacking one factor of a combination rate was filed against originating carrier within statutory period. By amended complaint filed more than six months after notice that claim could not be disposed of informally and more than two years after cause of action accrued, carrier publishing other factor was brought in as an additional party defendant. HELD: Claim against originating line, whose factor only is assailed, found not barred but claim against carrier named in amended complaint found abandoned under Rule III (g) of Rules of Practice. Inland Paper Co. v. C. M. & St. P. 92 I. C. C. 29, 30.

(g) Complainant was notified by letter mailed January 24, 1923, that its informal complaint could not be adjusted informally. Formal complaint was filed July 24, 1923. Upon contention of defendant that complaint should be deemed to have been abandoned under rule III (g) of Rules of Practice, FOUND: Formal complaint was filed "within six months after date of mailing of notice that claim could not be adjusted informally." See also West Cache Sugar Co. 87 I. C. C. 368. National Supply Co. v. Director General, 92 I. C. C. 610, 611.

(h) Informal complaint alleging unreasonableness of shipments moving during Federal control filed March 1, 1921. Less than two years and six months after Federal control terminated informal complaint was amended so as to bring into issue applicability of the rates. Formal complaint filed less than six months after closing of informal file. HELD: Shipments are not barred as to section 6 of the act. Caddo Central Oil & Rfg. Corp. v. Director General, 92 I. C. C. 627, 628.

(i) Complainant notified on January 24, 1922, that claim could not be adjusted informally. Formal complaint filed July 24, 1922. Contention that complaint should have been filed not later than July 23, 1922, to bring it within the six months' rule, HELD: Following West Cache Sugar Co., 87 I. C. C. 368, complaint found to have been filed within six months after notification that claim could not be adjusted informally as provided under Rule III (g) of Rules of Practice. New Idea Spreader Co. v. Director General, 92 I. C. C. 742, 743.

(j) Complainant was informed by

commission that its informal claim for reparation on shipments moving during Federal control was not susceptible of informal adjustment and that resource lay through formal complaint. After extensive correspondence between complainant and the railroad administration culminating in a refusal of the director general to pay the claim it was resubmitted to the commission formally. HELD, formal complaint is barred because not filed within one year after termination of Federal control as prescribed in section 206 (c) of the transportation act, 1920. Sexauer & Son v. Director General, 93 I. C. C. 687.

(k) Informal complaint filed within statutory period alleging violation of the act in matter of tariff construction, and formal complaint filed more than two years after cause of action accrued further alleging that rates charged were unreasonable and unduly preferential. HELD, through filing of formal complaint the informal complaint was not broadened so as to include allegations of unreasonableness and undue preference, as contended by complainant, and formal complaint is barred by statute of limitations. St. Louis Fruit & Vegetable Asso. v. L. & N. R. R. 98 I. C. C. 553, 554.

(l) Informal claim alleged overcharges on imported shipments of potato flour, billed as potato starch in error, moving during Federal control, from Seattle, Wash., to New York, N. Y., the rates applicable on potato starch being collected. Formal complaint, filed more than one year after the termination of Federal control, alleging the rate charge was unreasonable, found barred by statute, since the issue in the informal complaint was solely one of legality. Lasker & Bernstein v. Director General, 98 I. C. C. 624.

(m) Formal complaint was filed on April 16, 1923 more than two years after the cause of action accrued and more than six months after notice to complainant that the claims had failed of informal adjustment. These claims must be deemed to have been abandoned and will not be considered. Jones v. Pennsylvania R. R. 107 I. C. C. 483, 484.

(n) Complainant attacked demurrage charges collected at New Orleans, La., on nine cars of flour shipped from St. Louis between July 10, and August 3, 1920 for export to Havana, Cuba, and the rate of 42c collected on five of the nine from New Orleans back to St. Louis, as inapplicable. Shipments moved over M. P., from St. Louis to New Orleans and return. The flour was not exported to Havana. It was held at New Orleans until, upon complainants instructions, it was returned to St. Louis and accepted by complainant in October, 1920. The claim was presented informally Oct. 15, 1921. On Feb. 7, 1922 it was denied. On Feb. 4, 1924 it was again presented on the informal docket. Complainant was advised that as it had not been resubmitted on the informal docket nor a formal complaint filed within six months from the date of its denial on the informal docket, or within the statutory period under the act, it was barred from further consideration. The claim was again resubmitted on the informal docket on June 23, 1924. Formal complaint was filed Dec. 29, 1924. HELD, complaint was barred prior to the date of the amendment of the act and was not revived, complaint dismissed. Saxony Mills v. M. P. R. R. 107 I. C. C. 649.

(o) Complainant alleged that by reason of the error and negligence of defendants one car of lumber shipped April 19, 1920 from Milepost 45, Minn., to complainant at Sparta, Wis., was forwarded to Chicago, Ill., that, on arrival of the car at Chicago, by reason of the further error and negligence of defendants, complainant was not notified of such arrival; and that complainant paid and bore charges; freight charges point of origin to Chicago $78.10, demurrage at Chicago $103, penalties $270, reconsignment from Chicago to Sparta $5, and freight charges from Chicago to Sparta $42.50. The matter was brought to the attention of the Commission by informal complaint filed August 10, 1921. Under date of Jan. 14, 1922 complainant was informed that charges were legally assessed. Nothing further was done until the formal complaint was filed, more than two years ten months later. HELD, claim held to have been abandoned, complaint dismissed. Barnes v. C. & N. W. Ry., 109 I. C. C. 589.

(p) Complainant attacked defendants failure and refusal to reconsign promptly at Jackson, Miss., numerous carload shipments of lumber originating at Columbia and other points in Mississippi on defendants lines, during the

period Oct. 27, 1917 to Jan. 15, 1918 and subsequently forwarded from Jackson to Pennsylvania, Ohio, West Virginia, New Jersey, New York and Illinois resulted in assessment of demurrage and other charges in excess of published tariffs in violation of section 6. The matter was declined informally April 13, 1921 and not submitted on formal docket until May 5, 1924. HELD, informal claims abandoned and complaints barred, complaints dismissed. Krauss Brothers Lumber Co. v. Director General 112 I. C. C. 117.

ALL OTHER CITATIONS

Wadhams Oil Co. v. C. & N. W. Ry. Co. 85 I. C. C. 705; Alaska Junk Co. v. Director General, as Agent, 85 I. C. C. 745; Sunderland Brothers Co. v. Director General, as Agent, 88 I. C. C. 585; Santa Rosa Mercantile Co. v. Director General, as Agent, 88 I. C. C. 753.

§5¾. Interveners.

See Interveners.

(a) Shipper was notified that its claim for overcharges could not be adjusted informally and that formal complaint should be filed within six months thereafter; otherwise claim could not be further considered. Claim was not again presented until intervention of shipper at hearing more than six months after notification that claim could not be adjusted informally, and more than two years and six months after termination of Federal control. HELD: Claim barred under Rule III (g) of Rules of Practice; also under section 206 (c) of the transportation act, 1920, as amended. Fairmont Creamery Co. v. Director General, as Agent, 89 I. C. C. 359, 360.

II. INFORMAL COMPLAINTS.

See Reparation §22.

§6. In General.

(a) Informal file was closed, subsequently revived by letter from complainant, and again closed. HELD: Consideration of shipments involved therein is not barred by the statute of limitations where formal complaint is filed within six months after date of second closing. Duluth Iron & Metal Co. v. Director General, as Agent, 89 I. C. C. 343.

§7. Formal Complaint.

(a) Formal complaint alleging unreasonableness found barred because informal complaint not filed within statutory period of one year from termination of Federal control, but in so far as overcharges alleged in same complaint are concerned, it is not barred, the informal complaint having been filed within statutory period of two years and six months after Federal control terminated. San Antonio Paper Co. v. Director General, 102 I. C. C. 243.

(b) Defendant contends that neither informal nor formal complaint alleged an overcharge, because in neither is it specifically stated that rates charged were in violation of section 6. Both complaints, however, alleged that charges collected were neither applicable nor lawful and set forth rates complainant contends were applicable. HELD: This is sufficient allegation of an overcharge. San Antonio Paper Co. v. Director General, 102 I. C. C. 243, 244.

(c) Where formal complaint originally received by commission within statutory period of limitation is returned for correction and subsequently refiled after statutory period has run, claim is not barred, since original receipt constitutes a filing with the commission as of that date. See also 98 I. C. C. 361, 369. Clark Lbr. Co. v. A., B. & A., 102 I. C. C. 252, 253.

(d) Where formal complaint relating back to informal complaint filed in behalf of same shippers brings into issue additional shipments not covered by informal proceeding, such additional shipments are barred unless filed within statutory period of limitation. Chicago Live Stock Exchange v. Director General, 102 I. C. C. 452.

(e) Formal complaint contained but a partial list of shipments, complainant stating a complete list would be furnished at hearing. No such list was furnished, but reference was made to informal complaint for complete list. HELD: A mere reference to shipments contained in informal complaints does not incorporate them in formal complaints under commission's rules of practice. Western Pine Mfrs' Asso. v. Director General, 102 I. C. C. 753, 755.

(f) Contention that claim for misrouting, raised for the first time in a complaint filed after expiration of the one-year period provided in section 206 (c) of the Transportation Act, 1920, is barred by the statute of limitations, not sustained. Informal complaint filed

within statutory period alleged that "the charges assessed on this shipment were unreasonable and violative of sections 1, 2, 3 *** and also section 10 of the Federal control act ***." Such general allegation of unreasonableness is sufficient to permit of the consideration of a claim for misrouting, and, accordingly, the specific allegation of misrouting in the formal complaint does not amount to the setting up of a claim or cause of action different from that originally relied upon. Gwinn Bros. & Co., 56 I. C. C. 298, 302. Mifflin Hood Brick Co. v. Director General, as Agent, 88 I. C. C. 205, 206.

ALL OTHER CITATIONS

Gerhard & Hey (Inc.) v. Director General, as Agent, 88 I. C. C. 293; Radiant Glass Co. v. Director General, as Agent, 88 I. C. C. 295; Midland Linseed Products Co. v. N. Y. S. & W. R. R. Co., 88 I. C. C. 329; International Harvester Co. v. N. Y. C. R. R. Co., 88 I. C. C. 368; Armour & Co. v. Director General, as Agent, 88 I. C. C. 569.

§8. Requisites of Informal Complaint.

See Supra §1.

(a) Informal complaint filed within statutory period alleging violation of the act in matter of tariff construction, and formal complaint filed more than two years after cause of action accrued further alleging that rates charged were unreasonable and unduly preferential. HELD, through filing of formal complaint was not broadened so as to include allegations of unreasonableness and undue preference, as contended by complainant, and formal complaint is barred by statute of limitations. St. Louis Fruit & Vegetable Asso. v. L. & N. R. R. Co., 98 I. C. C. 553, 554.

ALL OTHER CITATIONS

Glenn v. Director General, as Agent, 85 I. C. C. 743; Wyoming Sugar Co. v. Director General, as Agent, 88 I. C. C. 213; International Harvester Co. v. N. Y. C. R. R. Co., 88 I. C. C. 368; Doniphan Brick Works v. Director General, as Agent, 88 I. C. C. 438.

IV. PARTIES ENTITLED TO RECOVER.

§12. In General.

(a) Informal complaint showed "The Team Company" a copartnership composed of three partners as claimant. Formal complaint brought in the Wichita Company as additional complainant. Upon contention that the Wichita Company is a department of the copartnership; that informal complaint tolled the statute with respect to all shipments on its behalf; that partners were operating under two names; and that trade names, as such, have no standing under the law, copartners being real parties in interest, HELD: Failure to name the Wichita Company in informal complaint is not fatal. The parties in interest are named and the statute tolled in respect of the shipments here involved. Wichita Chamber of Commerce v. Director General, 102 I. C. C. 745, 746.

§13. Assignments.

(a) Purported assignments and letters of authorization to complainant from consignors of all rights to reparation respecting shipments on which consignors bore charges, bearing dates after that on which the statutory period within which complaints for the recovery of damages could have been filed, found to come too late to accomplish the purpose intended. See 80 I. C. C. 55. Farrell v. C., M & St. P., 102 I. C. C. 455, 456, 457.

(b) Upon contention that under section 3477 of the Revised Statutes of the United States assignments were void because they transfer unliquidated claims against the Government, HELD: Section 3477 does not apply to claims brought under the transportation act against the Director General. See 89 I. C. C. 645, 649. Wichita Chamber of Commerce v. Director General, 102 I. C. C. 745, 746, 747.

CLASS RATES

I. TARIFFS AND PUBLICATION.
§1. In general.

II. REASONABLENESS AND DISCRIMINATION.
§2. In general.

III. REPARATION.
§3. In general.

CROSS REFERENCES

See Classification V; Commodity Rates §2; Differentials; Evidence §13 (1½); Reasonableness of Rates §28.

I. TARIFFS AND PUBLICATION.

§1. In general.

See Commodity Rates §2; Tariffs.

(a) Fifth class rates on tank-car loads of gasoline, in effect during Federal control, from Central, Bristol, Wilsonburg, Clarksburg, Jacksonburg, Jane Lew, and Skinner's Creek Siding, W. Va., to Bayonne, N. J., found unreasonable to extent they exceeded lower commodity rates contemporaneously in effect from Ellenboro, Parkersburg, Hastings, Gassaway, and Charleston, W. Va., farther distant points, which lower rates were published subject to rule 77 of Tariff Circular 18-A, requests for publication of rates in accordance with that rule not having been made until after shipments had moved. Reparation awarded. Standard Oil Co. v. Director General, as Agent, 89 I. C. C. 7.

(b) Complainant attacked class rates charged of $1.485 and $1.335 on two cars of steel grinding balls shipped on Feb. 23, 1922 and April 25, 1923 from Cgrome, N. J., to Ada, Okla., as unreasonable and inviolation of section four. Shipments moved via N. Y. & N. J. S. S. Co., Morgan Line to Galveston, Tex., G. C. & S. F., and Santa Fe beyond, charged fifth class rates. The rates are on a low basis and reflect the competition of the river crossings and the northern Atlantic ports and are not maximum reasonable rates. HELD, rates charged applicable, no violation of the fourth section, complaint dismissed. Oklahoma Portland Cement Co. v. A. T. & S. F. Ry., 93 I. C. C. 203.

(c) Complainant attacked class rates charged on two cars of bicycles June 20 and Nov. 15, 1921 from Middleton, O., to Los Angeles, Calif., as inapplicable. Charged first class rate of $5.835 on bicycles and third class rate of $4.20 on the unfinished bicycle forks. Contemporaneously there was in effect a commodity rate of $2.765 on vehicles, nonself propelling, and parts thereof. Effective Sept. 30, 1922 defendants established a commodity rate on bicycles from and to these points higher than the rate then in effect on vehicles as described in western classification under the heading of vehicles, horsedrawn. A bicycle is neither a freight nor a passenger vehicle and rate charged on bicycles was applicable. HELD, complaint dismissed. United Cycle & Supply Co. v. B. & O. R. R., 93 I. C. C. 689.

(d) Complainant attacked fourth class rate of $3.665 charged on two cars of woven paper fabric bags in February 1922 from Cleveland, O., to San Francisco and Los Angeles, Calif., as unjust, unreasonable and unduly prejudicial. Shipments moved as routed. At time shipments moved defendants maintained a commodity rate on paper bags from Cleveland to San Francisco and Los Angeles of $1.92 and commodity rate on burlap, gunny, and jute bags, in bales of $1.835. The latter rate, subject to the general reduction of 1922 was established on woven paper fabric bags, effective June 1 1923 and it is to this basis that reparation is sought. In view of the specific rating on woven paper fabric bags, the Commission can not agree that the broad description used in connection with the commodity rate on paper bags took complainants article out of the classification. HELD, rate attacked unreasonable to extent it exceeded $1.92, reparation awarded. Cleveland Akron Bag Co. v. W. & L. E. Ry., 93 I. C. C. 699.

(e) Complainant attacked class rates charged on paper tablets, paper bags, and wrapping paper, in straight and mixed carloads, from Birmingham, Ala., and Atlanta, Ga., to Jackson, Miss., as unreasonable unjustly discriminatory and unduly prejudicial. Rates attacked are class rates governed by the southern classification which provides on paper tablets, fifth class, paper bags or wrapping paper, class A and on mixed carloads the highest rating and highest minimum applicable to any article in the car. No complaint is made of the measure or relationship of the rates as class rates. The record shows that class rates are generally applicable to these paper articles within and to points in the south. No sound reason appears for prescribing rates on these paper articles which will reflect certain percentages of the corresponding class rates. The record is convincing that the class basis is reasonable and proper for these occasional carload shipments, and that complainant has suffered no undue prejudice by reason of the maintenance of the unused commodity rates from Atlanta. HELD, rates attacked not unreasonable or otherwise unlawful, complaint dismissed.

Jackson Paper Co. v. A. G. S. Ry., 98 I. C. C. 442.

(f) Class rates charged on matches from Oswego, N. Y., to certain team-track delivery points in Philadelphia, found inapplicable. Lower commodity rate to Baltimore, published in tariff which provided that "rate to any station not provided with a specific rate, and which is directly intermediate to a station having a specific rate, will be the rate shown to next more distant station," found applicable. Although shipments for Baltimore would not ordinarily pass through Philadelphia delivery points here involved, it would have been physically possible to have so moved them, and there was no restriction against such routing. Shipments found overcharged and reparation awarded. Diamond Match Co. v. Director General, 92 I. C. C. 68.

(g) Class rate on l. c. l. shipment of iron pipe fittings from Barberton, Ohio, to Duluth, Minn., destined to Virginia, Minn., found inapplicable to extent it exceeded lower commodity rate published in same tarfif on "iron and steel articles, c. l., which lower rate by tariff note applied on a list of commodities in which pipe fittings were included without limitation as to whether c. l. or l. c. l. While carriers intended to omit all reference to l. c. l. rates in connection with lower commodity rate, through oversight this was not done. However, erroneous publication of rates does not justify a departure therefrom and intention of framers is not controlling. Reparation awarded. Murray-Egan-McLeod Co. v. P. R. R., 93 I. C. C. 79.

(h) Combination fifth - class rates based on Ohio River crossings assessed on sporadic shipments of canned meats (surplus army stock) moving from Atlanta to Chicago, found not unreasonable as compared with lower commodity rates on other canned goods, or with rate on the complete canned goods list, including meats, vegetables, fruits, etc., southbound from Ohio River crossings to Atlanta. Probability of any traffic northbound other than sporadic shipments is remote, and a northbound commodity rate south of Ohio on these shipments as low as that applicable in reverse direction, under which traffic moves regularly, does not seem justified. Armour & Co. v. L. & N., 93 I. C. C. 360.

(i) Upon contention that class rates are properly applicable on isolated shipments in lieu of commodity rates, as latter are established to take care of sustained movements. HELD, shippers are entitled to reasonable rates, and fact that there have been relatively few shipments of a commodity between certain points is not sole determinative factor. Parkersburg Rig & Reel Co. v. M. P., 93 I. C. C. 667, 669.

(j) Class C rates on prepared roofing from Port Neches, Tex., to Couchwood, Cotton Valley and Haynesville, La., and State Line and Emerson, Ark., found unreasonable as compared with rates from St. Louis and Kansas City to same destinations, from Port Neches to Shreveport, Monroe, New Orleans, Vicksburg and Memphis, and to extent they exceeded lower commodity rates subsequently established equal to basis prescribed in Memphis Southwestern Investigation, 77 I. C. C. 473, 562, for distances the same as those between Port Neches and the several points of destination of complainant's shipments. Reparation awarded. Texas Pipe Line Co. v. L. & A., 95 I. C. C. 674.

(k) Proposed restriction of the application of distance class rates between points in Nebraska, except Omaha, and points in Wyoming, so as to make them inapplicable from and to points on the line of the C., B. & Q. lying generally east of Lincoln, Crete, Beatrice and Wymore, Nebr., resulting in higher specific class rates becoming applicable, found not justified. Casper Chamber of Commerce v. C. & N. W. Ry Co., 96 I. C. C. 736.

(l) Interstate class rates, between points in southern territory should be not higher than a normal level based upon a distance scale or scales of such extent as to cover hauls of all lengths. Southern Class Rate Investigation, 100 I. C. C. 513, 615.

(m) Upon general investigation, on commission's own motion, of interstate rates within southern territory and between southern and official territories, FOUND: Class percentage relationships should be uniform for all traffic, intraterritorial or interterritorial governed by southern classification. Such uniform percentage relationships shown. Southern Class Rate Investigation, 100 I. C. C. 513, 630.

(n) Hay, straw, shucks, grain, grain products, and grain by-products should be excepted for present from application of class rates herein approved between

official and southern territories and from Ohio River and Mississippi River crossings to points in southern territory. Southern Class Rate Investigation, 100 I. C. C. 513, 707.

(o) Fifth-class rates on sugar from Philadelphia, Pa., and New York, N. Y., to St. Louis, Mo., found inapplicable in that a lower commodity rate was contemporaneously in effect. The item in tariff publishing commodity rate contained a note restricting rates to proportional application only in so far as east Mississippi River crossings are concerned. It may have been the intention of carriers to so restrict application of the rate to all points listed in the item but the tariff does not effectuate that intention in so far as St. Louis is concerned. The language of the tariff rather than intention of the framers is controlling. Defendants state that use of rates on local shipments to St. Louis will result in fourth section violations, but this does not constitute a ground for holding that they apply other than in accordance with the terms of the tariff. Refund of overcharges directed. National Candy Co. v. P. R. R., 101 I. C. C. 43.

(p) Third-class and first-class rates applicable on c. l. and l. c. l. shipments of printed matter, n. o. i. b. n., assessed on shipments of paper envelope blanks, or paper wrappers, in sheets, printed or lithographed, moving over an interstate route from New York, N. Y., to Buffalo, found not unreasonable or otherwise unlawful as compared with the second-class and fifth-class rates applicable on "envelopes, other than Government stamped, printed or not printed," assessed on envelopes reshipped to New York. Rates higher on unfinished than on finished products are unusual, but in other cases the commission has declined to disturb the classification as applied to particular kinds of printed matter, even where the value was less than that of the commodity here considered and if an exception was made in this instance it would open up an endless field for complaint from the manufacturers of all kinds of printed matter. Furthermore, it would be practically impossible to distinguish between the different grades of commodities that come under the designation "printed matter" for the purpose of fixing specific rates on each. American Lithographing Co. v. L. V. R. R., 101 I. C. C. 100.

(pa) Class rate assessed on thin lumber or veneer, found applicable. While a commodity tariff carried a lower rate on lumber and articles taking same rates, the list of articles published therein did not include thin lumber or veneer, such tariff being specific as to what manufactured commodities are entitled to rate on lumber. On the other hand, the classification specifically describes veneer of the kind here shipped. Commodity tariffs must be strictly construed, therefore, until the specific commodity description is physically incorporated into the commodity tariff the class rate must be applied. Milne Chair Co. v. A. C. L., 102 I. C. C. 165.

(q) Complainant attacked rates on sirup and molasses, in straight carloads, and on sirup, molasses and preserves, in mixed carloads, from Kansas City, Mo., to destinations in Kansas since May 21, 1922 as unreasonable, unjustly discriminatory and unduly prejudicial. In the absence of commodity rates, sirup, molasses and preserves in this territory in straight carloads, take fifth class rates. This basis applies from Kansas City. Fifth class rates apply on mixed carloads. There may be need from a commercial standpoint for commodity rates on mixed carloads but there is no showing that the present rates impose an undue burden on the traffic. HELD, rates attacked not unreasonble or otherwise unlawful, complaint dismissed. Bliss Sirup Refining Co. v. A. T. & S. F. Ry., 109 I. C. C. 391.

(r) Complainant attacked class A rate charged on 6 cars of contractors outfits shipped in August and Oct. 1921 from Buffalo, Iowa, to Apache and Richards Spur, Okla., and return as unjust and unreasonable and inapplicable. Five cars moved from Buffalo to Apache and one from Richards Spur to Buffalo. Charged class A rates $1.25 to Apache and $1.33 to Buffalo. Reparation is sought to basis of commodity rate of 84.5c from and to the same points, this basis being canceled Dec. 15, 1923. In the general index to commodities appearing in the front of the tariff no reference is made to contractors outfits, but the term "outfits, graders" is shown and reference made to the item carrying the 84.5c rate. The Commission can not consider only the part of the rule that is favorable to complainants contention, and ignore other provisions of the tariff that make clear its appli-

cation. It is clear that the 84.5c rate did not apply on contractors outfits. The testimony was directed almost wholly to the tariff issue. The record fails to show any prior movements between points, nor are there likely to be any but sporadic movements in the future. Complainant does not attack the reasonableness of the classification rating as such, but admits that it is reasonable for general application. HELD, class rates attacked applicable and not unreasonable, complaint dismissed. Dolese Bros. Co. v. C. R. I. & P. Ry., 109 I. C. C. 561.

II. REASONABLENESS AND DISCRIMINATION.

§2. In general.

See Classification §17; Commodity Rates §2, §4 (c); Discrimination §8 (3); Equalization of Rates; Reasonableness of Rates §28.

(a) Fifth-class rates on tank-car loads of gasoline, in effect during Federal control, from Central Bristol, Wilsonburg, Clarksburg, Jacksonburg, Janelew, and Skinner's Creek Siding, W. Va., to Bayonne, N. J., found unreasonable to extent they exceeded lower commodity rates contemporaneously in effect from Ellensboro, Parkersburg, Hastings, Gassaway, and Charleston, W. Va., farther distant points, which lower rates were published subject to rule 77 of Tariff Circular 18-A; requests for publication of rates in accordance with that rule not having been made until after shipments had moved. Reparation awarded. Standard Oil Co. v. Director General, as Agent, 89 I. C. C. 7.

(b) Class A rates on horses, mules, asses, and burros from Kansas City, Mo. to points in Texas and Louisiana, found unreasonable and unduly prejudicial as compared with rates within Texas or Louisiana or between those States, and to extent they exceed the distance rates based on the class C scale provided for in Memphis-Southwestern Investigation, 55 I. C. C. 515, herein prescribed for future. Kansas City Chamber of Commerce v. A. & W. Ry. Co. 89 I. C. C. 22.

(c) Charges on fuller's earth, moving in tank cars furnished by shipper because of inability of carriers to furnish adequate box-car equipment, from Georgia and Florida points to Richmond, Calif., based on combinations to and from Mississippi River, found unreasonable to extent class rates for haul east of New Orleans, La., exceeded the contemporaneous commodity rates applicable on shipments moving in box cars. Reparation awarded. Standard Oil Co. v. A., T. & S. F. Ry. Co., 89 I. C. C. 27.

(d) Class D rate on nut coal from Cornell, Kans., to Fairview, Mo., found unreasonable to extent it exceeded lower commodity rate subsequently established. Reparation awarded. Midland Coal Co. v. M. P. R. R. Co., 89 I. C. C. 101.

(e) Fifth class rate on straw from Yorktown, Ind., to Grand Rapids, Mich., found not unreasonable as compared with lower temporary commodity rate established after shipments moved. Earnings under rate assailed can not be condemned as unreasonable per se and in United Paperboard Co., 69 I. C. C. 573, fifth class rates on this commodity were found not unreasonable. American Box Board Co. v. Director General, as Agent, 89 I. C. C. 271.

(f) Rates on fresh fruits and vegetables from Los Angeles and San Francisco, Calif., to Douglas and Bisbee, Ariz., found unreasonable to extent they exceed contemporaneous class C rates, which basis was found reasonable and prescribed by commission in Murray & Layne Co., 59 I. C. C. 552, and various other cases. Rates equivalent to class C were subsequently established by carriers. Reparation awarded. Buxton-Smith Co. v. A., T. & S. F. Ry. Co., 89 I. C. C. 373.

(g) Combination class rates between points on the Federal Valley R. R., and points on connecting lines, found unreasonable and unduly prejudicial as compared with joint rates maintained from competing points on other lines in Athens County, Ohio. Reasonable basis for joint class rates for future prescribed. Ohio Farm Bureau Federation v. A. & W. Ry. Co., 89 I. C. C. 489.

(h) Fifth-class rates on petroleum and products, including gasoline, in tank-car loads, from Point Breeze, Philadelphia, Pa., to Fresh Pond, N. Y., found unreasonable and unduly prejudicial as compared with commodity rates from refining points to a large number of destinations in trunk-line and New England territories, which are on a somewhat lower basis than fifth-class rates. Repa-

ration awarded. Transcontinental Oil Co. v. P. R. R. Co., 89 I. C. C. 738.

(i) Complainant attacked class rate of 63c collected on two cars of tanning extract shipped Feb. 21 and March 6, 1916, from Andrews, S. C., to Mariners Harbor, N. Y., as unreasonable, unjustly discriminatory and unduly preferential. Shipments moved via Southern to Potomac Yard, thence one car via Pennsylvania to Linden Junction, N. J., and one car via B. & O., to Crawford Junction, N. J., thence Staten Island Rapid Transit Ry. to destination, applicable sixth class rate 64c, shipment undercharged. Contemporaneously, commodity rate of 26c applied on tanning extract from Andrews, N. C., to New York City and points in that vicinity, which was increased on June 1, 1916 to 26.6c and made applicable to Mariners Harbor. Mariners Harbor and other points on the Staten Island water front are within the free lighterage limits of New York Harbor. HELD, rates attacked unreasonable to extent they exceeded 26c, reparation awarded. Haley Hammond Co. v. Southern Ry., 91 I. C. C. 1.

(j) Complainant attacked sixth class rate of 34.5c charged on 18 cars of coal tar shipped in January 1921 from Fairmount, W. Va., to Everett, Mass., as unreasonable. Distance moved 820 and 832 miles. On July 13, 1920 complainant requested established of a commodity rate and a rate of 31c was established Oct. 15, 1921. Coal tar is a comparatively low grade commodity. It is not shown that this commodity moves generally or, except under circumstances such as those here described, even occasionally on the classification basis from producing to consuming points in this territory. HELD, rate attacked unreasonable to extent it exceeded rate of 31c, reparation awarded. Barrett Company v. B. & O. R. R., 91 I. C. C. 53.

(k) Complainant attacked class rates charged on two cars of automobiles shipped in May 1922 from Dallas, Tex., to Los Angeles, Calif., as unreasonable to extent they exceeded charges which would have accrued had defendants furnished one car as ordered. A 50 foot car was ordered but defendant furnished two smaller cars. HELD, rates attacked unreasonable to extent they exceeded what would have been applied on the 50 foot car, reparation awarded. Dallas Transfer Co. v. Southern Pacific Co., 91 I. C. C. 73.

(l) Complainant attacked fourth class rates charged on carloads of fresh tomatoes from western New York to Pittsburgh, Pa., during August, September and October, 1919 and during the same months in 1920 as unreasonable, unjustly discriminatory and unduly prejudicial. Points of origin are in the Silver Creek district extending about 28 miles along Lake Erie, being 218 to 246 miles from Pittsburgh, movement being via the Pennsylvania, charged fourth class. The average number of shipping days was 53 in 1919 and 1920, and average number of cars shipped per day was 22.7. 278 cars were assigned to this service in 1920. There is practically no return movement from Pittsburg to the Silver Creek district except the empty baskets and dunnage, upon which fourth class rate also applies. Tomatoes do not generally move to factories for distances over 50 miles. There have never been commodity rates from and to the points in question. Considering the volume of traffic, its seasonal nature, the expense of assembling and returning the equipment, and all other pertinent facts, the Commission is of the opinion rates charged were unreasonable and that with a minimum of 40,000 pounds, rates of 24.5c prior to August 26, 1920 and 34c thereafter, would be reasonable. HELD, rates attacked unreasonable to extent it exceeded 80% of fourth class, 24.5c prior to August 26, 1920 and 34c thereafter, subject to general reductions of 1922, reparation awarded. An order will be entered prescribing for the future a group rate not exceeding 30.5c minimum 40,000 pounds. Heinz Company v. Director General, 91 I. C. C. 358.

(m) Complainant attacked class rates on watermelons from Atlanta, Ga., to Murphy, N. C., since May 1921 as unjust, unreasonable, unduly prejudicial. Shipments originated at points south of Atlanta, and were either billed to complainant in the first instance or rebilled in transit from Atlanta to complainant at Murphy, over the L. & N., rate charged from Atlanta being the proportion of the joint rate based on Atlanta. Prior to July 1, 1922 the rate from Atlanta over L. & N., was sixth class 47c, reduced on that date to 42.5c. Until July 1, 1922 the Southern main-

tained a rate of 19c from Atlanta to Murphy reduced to 17c on that date. On April 14, 1923 both L. & N., and Southern established a rate of 33.5c, the present rate. The short line distance over L. & N., from Atlanta to Murphy is through Marietta and Jasper, Ga., 130 miles, distance via Southern 375 miles. While the distance is 66 miles farther to Knoxville, Tenn., than to Murphy, the shipments to Knoxville move in through trains and under more favorable operating conditions than to Murphy. The rate to Murphy should be somewhat higher than to Knoxville, not, however, exceeding 5c. HELD, rate attacked via the Southern not unreasonable, but rate attacked via L. & N., unreasonable to extent it exceeded 21c., reparation awarded. Fain Grocery Co. v. L. & N. R. R., 91 I. C. C. 374.

(n) Complainant attacked fifth class rates charged on wire rods, carloads, from Canton and Youngstown, Ohio and Pittsburgh, Pa., to Lancaster, Pa., of wire, in coils from Lancaster to Harrison, N. J., and of band steel, in coils and bundles, from Lancaster to points in New England, New York and New Jersey, as unreasonable. In 73 I. C. C. 567, the Commission found rates attacked unreasonable, and awarded reparation. HELD, reparation awarded. Lancaster Steel Products Corp. v. Director General, 92 I. C. C. 1.

(o) Complainant attacked fourth class rate charged on metallic and woven wire mattresses, in carloads, from Chicago, Ill., to Indianapolis and Evansville, Ind., Cincinnati, O., and Louisville, Ky., between March 25, 1918 and Jan. 9, 1919, as unjust and unreasonable to extent they exceeded rates subsequently established. Commodity rates were established on commodity basis. This adjustment was disrupted when class rates in central territory were readjusted on Sept. 20, 1917. The carriers attempted to cancel various commodity rates, including those applicable to this traffic, schedules suspended but permitted to become effective March 25, 1918. HELD, rates attacked not unjust or unreasonable, complaint dismissed. Madden v. Director General, 92 I. C. C. 48.

(pq) Complainant attacked commodity rate of 34c charged on five cars of cullet from Memphis, Tenn., to Sapulpa, Okla., between August 26, 1920 and March 24, 1922 as unjust and unreasonable to extent it exceeded 25.5c. Cullet is rated class C in classification, distance shipments moved 483 miles, charged commodity rate of 34c prior to August 4, 1921, a rate of 25.5c being in effect after that date. The establishment of this rate placed Memphis on a parity with Fort Smith, Ark., and St. Louis, Mo. HELD, rate attacked not unreasonable, complaint dismissed. Liberty Glass Company v. St. L. S. F. R. R., 92 I. C. C. 199.

(r) Complainant attacked class rates charged on four cars of fresh tomatoes shipped between July 28 and August 9, 1923 from St. Louis, Mo., to Pueblo, Colo., as unreasonable and in violation of the fourth section. Shipments charged fifth class 96c, while a commodity rate of 88c applied from New Orleans to Pueblo, and effective April 1, 1924 a commodity rate of 87c was established from St. Louis. HELD, rate attacked unreasonable to extent it exceeded 88c, reparation awarded. Pressey Fruit Company v. M. P. R. R., 92 I. C. C. 287.

(s) Complainant attacked fifth class rate from Omaha, Nebr., to Dubuque, Iowa, of 27.5c charged as first factor of combination rates on 10 cars of potash shipped in April 1919 from Omaha to destinations east of the Mississippi river, as unjust, unreasonable, discriminatory and unduly prejudicial. All moved via C. G. W., to Dubuque. Alkali salts were rated fourth class in official classification under Potassium salts, n. o. i. b. n., although sixth class was provided for other specified varieties of potash. Commodity rates were in effect from Lakeside, Neb., point of origin to eastern destinations named but these shipments were stored at Omaha because of insufficient storage facilities at the plant. In February 1922 rating of potash in western classification was reduced from fifth to class C. No evidence bearing upon the reasonableness of the combination rates, or even an exact statement of such rates, was introduced by complainant. HELD, rate attacked not unreasonable, complaint dismissed. Standard Potash Co. v. Director General 92 I. C. C. 337.

(t) An attack upon the reasonableness of a class rate implies either that the article is improperly classified, or that, if properly classified, the class rate, as such, is too high, or that it moves in sufficient volume to entitle it

to a commodity rate. Burson Knitting Co. v. B. & O. R. R., 92 I. C. C. 607, 608.

(u) Complainant attacked class rate on coke, carloads, since Nov. 8, 1922 from Portsmouth, O., to Wingate, Ind., as unreasonable, unduly prejudicial and in violation of the fourth section. Wingate a local point on the Clover Leaf is 480 miles from Portsmouth over the B. & O., to Holgate, O., thence Clover Leaf to Wingate, charged sixth class $4.70. There was a commodity rate of $3.03 from Portsmouth to Wingate, Linden and Veedersburg, Ind., applicable over the N. & W., in connection with the Clover Leaf. Shipper routes shipments via route they moved. There is no necessity for a commodity rate over the circuitous route of the B. & O., and Clover Leaf. HELD, rate attacked not unreasonable, unduly prejudicial or in violation of the fourth section, complaint dismissed. Crabbs, Reynolds, Taylor Co. v. B. & O. R. R. 92 I. C. C. 621.

(v) Complainant attacked fifth class rate of 22.5c charged on 25 cars of copper bars, rough cast, shipped from Rome, N. Y., to Perth Amboy, N. J., between Jan. 1 and 12, 1920 as unreasonable. In 64 I. C. C. 691, rates attacked found not unreasonable or otherwise unlawful. This was a return movement of goods rejected by the vendee. The rate sought as the basis for reparation is 18c, which was the same as the commodity rate paid on the original movement from Perth Amboy to Rome and which was published in the reverse direction soon after these shipments moved. The contemporaneous rate from Rome to Perth Amboy on copper wire, the manufactured product of copper bars, was also 18c, a commodity rate. In the reverse direction a higher class rate was applicable on copper wire. HELD, rate attacked not unreasonable or otherwise unlawful, complaint dismissed. Raritan Copper Works v. Director General 92 I. C. C. 671.

(w) Complainant attacked class A rate of 50c charged on one car of tanker furnace blocks, shipped June 24, 1922 from Tallapoosa, Ga., to Alton Park, Tenn., within the switching limits of Chattanooga, as unjust and unreasonable to extent it exceeded 20c. Shipment moved over Southern from Tallapoosa via Anniston to Chattanooga, distance 181 miles. These blocks are fire brick of large size and are used for the same purposes as fire brick. They move on fire brick in official territory, from that territory to points in southeastern and Carolina territories, and from interior eastern points to southern points. The rating in the three major classifications is the same on both commodities. The contemporaneous applicable rate on fire brick was 20c. In 68 I. C. C. 213, the Commission provided a uniform brick list, in which tank or furnace blocks take the same rate as fire brick. HELD, rate charged unreasonable to extent it exceeded 20c, reparation awarded. Chattanooga Bottle & Glass Mfg. Co. v. Southern Ry., 93 I. C. C. 71.

(x) Complainant attacked class rate charged on one car of toilet paper shipped on May 24, 1922 from Green Bay, Wis., to Muskogee, Okla., as unreasonable and unduly prejudicial. Shipment moved over Northwestern to Council Bluffs, Iowa, M. P., to Okay, Okla., and K. O. & G., to destination charged fifth class of 94c. Subsequent to the movement, effective June 15, 1922, a rate of 76c was established pursuant to 66 I. C. C. 571. HELD, rates attacked unreasonable to extent it exceeded 76c, reparation awarded. Hale Halsell Co. v. K. O. & G. Ry., 93 I. C. C. 205.

(y) Complainant attacked class rate charged of $4.335 on three cars of rubber arctics from Seattle, Wash., to Omaha, Neb., as unreasonable. In 83 I. C. C. 525, rate attacked found not unreasonable and complaint dismissed. Upon rehearing, rates charged unreasonable to extent they exceeded $2.085 the rate in the opposite direction, reparation awarded. Hayward Bros. Shoe Co. v. C. M. & St. P. Ry., 93 I. C. C. 243.

(z) Complainant attacked third class rate charged on drugs and medicines carloads from Norwich, N. Y., to points in trunk line territory during the two years next preceding the filing of the complaint as unreasonable, unjustly discriminatory and unduly prejudicial. Norwich is on the D. L. & W., and N. Y. O. & W., 234 and 225 miles over the respective lines from Hoboken, N. J. The short line distance of 223 miles from Norwich to New York is over the Western and Erie and includes 10 constructive miles for the floatage service in New York Harbor. Charged third class rate

of 47.5c. The general basis of rates on drugs and medicines, in carloads, throughout trunk line and central territories is third class, except from the central territory to New York, Philadelphia and Baltimore, to which destinations commodity rates are published. The third class rate from Norwich is 71.4% of the first class rate, whereas the commodity rates from central territory points represent an average of about 54.5% of the first class rates from those points to New York. HELD, rates attacked to New York not unreasonable or unjustly discriminatory but are unduly prejudicial to extent it exceeded a rate made less than the following amounts under rates from Cleveland, 17.5c, Detroit 17.5c, Kalamazoo and Holland 31c, Indianapolis 33c and St. Louis 58c and the undue prejudice to be removed by the withdrawal of the D. L. & W., and N. Y. O. & W., from the tariffs publishing commodity rates from the points in central territory to New York, or by the establishment of a commodity rate from Norwich to New York in accordance with the above finding. Norwich Pharnacal Co. v. B. & O. R. R., 93 I. C. C. 246.

(aa) Complainant attacked fifth class rates of $1.25 and $1.13 charged on two cars of common pottery insulators shipped Oct. 29, 1921 and Dec. 23, 1922 from East Liverpool, O., to Jackson, Miss., as unjust, unreasonable, unduly prejudicial and unjustly discriminatory. Distance is 1,066 miles. Defendants point out that insulators are almost invariably subject to fifth class rates to all points in the country, the principal exception being a commodity rate to the Pacific coast. HELD, rate attacked not unreasonable unduly prejudicial or unjustly discriminatory, complaint dismissed. Jackson Traffic Bureau v. B. & O. R. R., 93 I. C. C. 342.

(bb) Complainant attacked class rates charged on one car of earthenware jugs, insulated and metal jacketed, shipped Feb. 13, 1923 from Macomb, Ill., to Dallas, Tex., as unreasonable. Shipment moved via Burlington, Kansas City, M. P., to O. K. Junction, Okla., K. C. O. & G., to Denison, Tex., and H. & T. C., beyond 846 miles, charged one and one-half times first class or $3.69. Effective June 10, 1923, subsequent to the movement, the classification was amended as follows: Jugs, flasks or earthenware, insulated and steel jacketed, fourth class carloads. During February 1923, the fourth class rate from and to the points in controversy was $1.565. Defendants are willing to award reparation to this basis. HELD, rates attacked unreasonable to extent it exceeded $1.565, reparation awarded. Cullum & Boren Co. v. C. B. & Q. R. R., 93 I. C. C. 354.

(cc) Complainant attacked fifth class rates charged on canned meats, carloads, from Atlanta, Ga., to Chicago, Ill., between Nov. 1, 1921 and Oct. 1, 1922 as unreasonable. Hauls were 854, 785, and 733 miles according to the route used, charged fifth class of 83c to Ohio river and 31.5c beyond. The record indicates that the probability of any traffic northbound other than sporadic or isolated shipments is remote. A northbound commodity rate south of the Ohio river on these shipments as low as or lower than that applicable in the reverse direction, under which traffic moves more or less regularly, does not seem justified under the circumstances. HELD, rates attacked not unreasonable, reparation awarded. Armour & Company v L. & N. R. R., 93 I. C. C. 360.

(dd) Complainant attacked class rate charged on two cars of crushed marble shipped May 14 and August 3, 1921 from Los Angeles to Fort Bliss, Tex., as unreasonable. Fort Bliss is 6 miles east of El Paso, Tex., Group J territory Charged class E rate of $1.055. There was a rate of 65c, on stone, and on rock (lime) ground or unground. On Sept. 1, 1922 the description on the latter was changed to read stone, crushed or ground, without restriction as to kind, which would embrace the article here considered, this rate being further reduced to 50c on June 18, 1923. Crushed marble is low in value, loads heavily, is not susceptible to damage, and rarely moves at class rates even for very short hauls HELD, rate attacked unreasonable to extent it exceeded 65c, reparation awarded. Musto Sons-Keenan Co. v. S. P. Co., 93 I. C. C. 447.

(ee) Complainant attacked class rates charged on six cars of mussel shells shipped during April, July, August and Sept. 1922 from Marked Tree, Pocahontas, and Clarendon, Ark., to Oswego, Kas., as unreasonable. Points of origin and destination are on the Frisco, except that Clarendon is on the St. L. S. W. Charged class E of 44.5c from Po-

cahontas, 36.5c from Marked Tree, and 40c from Clarendon. Effective Oct. 26, 1922, after the shipments had moved, and subsequent to the general reductions of July 1 of that year, defendant established commodity rates of 24.5c from Pocahontas and 26c from Marked Tree and Clarendon, and these rates are still in effect. None of defendants tariffs makes any distinction between whole or crushed clam or mussel shells. These shells load heavily are not easily damaged, and can be shipped in either gondola or box cars. HELD, rates attacked unreasonable to extent they exceeded 27c from Pocahontas and 26c from Marked Tree and Clarendon, reparation awarded. Pioneer Pearl Button Co. v. St. L. S. F. Ry., 93 I. C. C. 599.

(ff) Complainant attacked class rates charged on six cars of fabricated steel tank material between May 3 and Dec. 4, 1922 four from Haynesville, La., to Smackover, Ark., one from Haynesville to El Dorado, Ark., and one from Couchwood, La., to Smackover, as unreasonable. Haynesville is on the L. & N. W., between Gibsland, La., and McNeil, Ark., and Couchwood on the L. & A., south of Stamps, Ark., Smackover and El Dorado served by the M. P., and C. R. I. & P. Charged fifth class 39.5c from Haynesville to Smackover, 45.5c from Couchwood to Smackover, and 50c from Haynesville to El Dorado. In 57 I. C. C. 390, the Commission found reasonable rates to be 60% of the fifth class rates. HELD, rates attacked unreasonable to extent they exceeded 60% of fifth class, reparation awarded. Parkersburg Rig & Reel Co., v. M. P. R. R., 93 I. C. 667.

(gg) Complainant attacked class rates charged on 13 cars of automobile wheels, shipped between Sept. and Nov. 1921, May 1922 and from July to October, 1922, from Portland, Ind., to Los Angeles, and San Francisco, Calif., and Tacoma and Seattle, Wash., as unreasonable unjustly discriminatory and unduly prejudicial. Shipments consisted of wheels without tires, hubs, or ball or roller bearings, some having only the priming coat of paint, but others having additional coats; and motor truck wheels, wooden, in the white, without hubs, tires, or ball or roller bearings. Charged class A of $3.035 prior to July 1, 1922 and $2.73 thereafter. Portland is in origin Group C for the application of rates on shipments to Pacific coast points. Effective June 1, 1922 a commodity rate of $2.42 was established on this commodity from Group C points. HELD, rate attacked not unreasonable, or otherwise unlawful, complaint dismissed. Rimel Spoke & Auto Wheel Co. v. L. E. & W. Ry., 95 I. C. C. 9.

(hh) Complainant attacked class rates charged on wire rods, in coils, from Acme and Peoria, Ill., Harriett, N. Y., and Johnstown, Pa., to Kansas City, Mo., are unreasonable, unjustly discriminatory and unduly prejudicial. Wire rods are about one fourth inch in diameter and are shipped in open top cars in coils. Claims for damage are negligible. The rates to Kansas City from Johnstown and Harriet are combination rates based on St. Louis, Mo. East of the Mississippi river wire rods are accorded the same rate as billets, and complainant asked that the rate on billets west of the river be made applicable on wire rods. Wire rods are rated fifth class in official and western classifications, billets are rated sixth class in official and class D in western. The rate applicable west of St. Louis is fifth class proportional rate. The rates from Acme and Peoria to Kansas City are fifth class. Rate from Johnstown to St. Louis, 689 miles, is $7.20 and from Johnstown to Kansas City, 968 miles, $14.03. HELD, rates attacked not unreasonable or otherwise unlawful, complaint dismissed. Black Steel & Wire Co. v. A. T. & S. F. Ry., 95 I. C. C. 161.

(ii) Complainant attacked fifth class rates charged on wrought iron pipe, carloads, from Goose Creek and Docbrown, Tex., to Anse La Butte and Olivier, La., as unjust and unreasonable. Goose Creek is on the Dayton-Goose Creek Ry., 23 miles from the junction of the latter with the C. P., and Docbrown is on the O. & N. W., both points being in the Houston-Galveston group. Anse La Butte is on the M. L. & T., 5 miles east of La Fayette, and Olivier is a short distance south of Anse La Butte on the S. P., and G. C. L. Normally these points take the New Orleans group rates. The complaint is directed against the application and maintenance of rates eastbound which were and are higher than the rates in the reverse direction of 36.5c before and 33c after July 1, 1922. HELD, rates attacked unreasonable to extent they exceeded 54.5c and 49c before and after July 1, 1922 and for future unreason-

able to extent they exceed 32c from Docbrown to Olivier and 37c from Goose Creek to Anse La Butte and Olivier, reparation awarded. Humble Oil & Refining Co. v. D. G. C. Ry., 95 I. C. C. 435.

(jj) Complainant attacked class rate charged on two cars of coal, one shipped August 18, 1918 from Marshall, Colo., to Stanhope, Iowa, and other shipped August 22, 1918 from Frederick, Colo., to Fredericksburg, Iowa, as unjust and unreasonable. Shipment from Marshall moved C. & S., to Denver, Burlington to Council Bluffs, Iowa, C. & N. W., beyond, 755 miles, applicable rate class D 46.5c. Shipment from Frederick moved over U. P., to Council Bluffs and C. G. W., beyond 803 miles, charged $6.80, made up of $3.90 to Council Bluffs and Class D beyond $2.90. Subsequently a rate of $5.49 was established. HELD, rates attacked unreasonable to extent they exceeded rates subsequently established, reparation awarded. National Supply Co. v. Director General, 95 I. C. C. 445.

(kk) Complainant attacked fifth class rate of 40.5c charged on 11 cars of steel from Carnegie, Pa., to Richmond, Va., from April to May 1924 as unjust and unreasonable to extent it exceeded 38c. Carnegie is on the P. C. & Y., and Pennsylvania 8.5 miles southwest of Pittsburgh. Shipments moved 493 miles, charged fifth class of 40.5. At the time of movement a joint commodity rate of 38c was in effect to Richmond from Pittsburgh proper and from Leetsdale, Ambridge, and Economy, Pa., local stations on the Pennsylvania about 15, 16.5 and 18 miles northwest of Pittsburgh. This rate was subsequently established. HELD, rate attacked unreasonable to extent it exceeded 38c, reparation awarded. McClintic Marshall Steel Supply Co. v. P. C. & Y. Ry., 95 I. C. C. 459.

(ll) Complainant attacked class A rate of $3.035 charged on a car of oil well supplies shipped June 9, 1922 from Toledo, O., to Bakersfield, Calif., as unjust, unreasonable and unduly discriminatory. Shipment was routed by shipper and moved over B. & O., and I. C., to New Orleans, thence M. L. & T., L. W., G. H. & S. A., and S. P., 3,300 miles. Complainant asked reparation based on commodity rate of $2.61 applicable since June 1, 1922, from Toledo over either the T. St. L. & W., or Ann Arbor and connections and established on Sept. 30 1922 via route of movement. The short line route of the T. St. L. & W. and connections is 2,902 miles. HELD, rate attacked not unjust, unreasonable or unjustly discriminatory, complaint dismissed. National Supply Co. v. N. Y. C. R. R., 95 I. C. C. 461.

(mm) Complainant attacked sixth class rates charged since January 1922 on broken glass, cullet, carloads, from Washington, Pa., Newark, O., and Ottawa, Ill., to Marion, Ind., as unreasonable, unjustly discriminatory and unduly prejudicial. In 81 I. C. C. 685, the Commission found the sixth class rates not unreasonable. HELD, rates attacked not unreasonable or otherwise unlawful, complaint dismissed. Marion Glass Dash Co. v. Pennsylvania R. R., 96 I. C. C. 172.

(nn) Complainant attacked fifth class rates charged on scrap brass and scrap copper, carloads, from New York to points in New England as unreasonable, unjustly discriminatory and unduly prejudicial. Rates attacked are fifth class, which is the basis in effect without exception on scrap brass and scrap copper within New England territory and, generally speaking, within trunk line and central territories. The class rates from New York to New England points are on the bases approved in 49 I. C. C. 421. HELD, rate attacked not unreasonable or otherwise unlawful, complaint dismissed. Lissberger & Co. v. N. Y. N. H. & H. R. R., 96 I. C. C. 231.

(oo) Complainant attacked class rates charged on spelter, carloads, from Trenton, N. J., to Baltimore and Sparrows Point, Md., Weir Branch, Cambridge, Boston and Worcester, Mass., Providence, R. I., and Stamford, Springdale, Cheshire, Bridgeport and Waterville, Conn., as unjust, unreasonable, unjustly discriminatory and unduly prejudicial. Prior to Feb. 25, 1922 the sixth class rate of 25c applied from Trenton to Baltimore and Sparrows Point. Sparrows Point is 5 miles beyond Baltimore and usually takes the Baltimore rate. On that date a specific commodity rate of 16c was established from Trenton to Baltimore. Defendants stated they would establish a rate of 13.5c for future application which was satisfactory to complainant. Prior to July 1, 1922 the

rates from Philadelphia and Trenton to New England destinations on the New Haven were generally sixth class, ranging from 27 to 30.5c. On that date commodity rates were published of 15.5c advanced Sept. 1, 1922 to 17c. Defendants agreed to the hearing to establish a specific commodity rate of 17c from Trenton to all the New England destinations named in the complaint. It is clear from the record that complainants showing was based entirely upon the fourth section violations complained of and a finding that the class rates charged were unreasonable prior to the time of the establishment of the rates from the more distant points under rule 77 is not warranted. HELD, rates attacked not unjustly discriminatory or unduly prejudicial and not unreasonable except that from Trenton to Baltimore and Sparrows Point they were unreasonable to extent they exceeded 13.5c from and after Feb. 17, 1922; from Trenton to Boston and Worcester, Mass., Providence, R. I., and Bridgeport unreasonable to extent they exceeded 15.5c from July 1, 1922 to August 31, 1922 and 17c thereafter, reparation awarded. Trenton Smelting & Refining Co. v. Pennsylvania R. R., 96 I. C. C. 264.

(pp) Complainant attacked class rates charged on black powder, carloads, from Quaker Falls, Pa., to Clinton, Terre Haute, Oakland City, Yankeetown, and Evansville, Ind., and to Danville, Joliet, Hilliary, Catlin, and East St. Louis, Ill., as unreasonable and unduly prejudicial compared to its competitors at Mooar and Keokuk, Iowa and Pleasant Prairie, Wis. Quaker Falls is on the P. & L. E., 9 miles southeast of Youngstown, O. Mooar is within the switching limits of Keokuk. Pleasant Prairie is on the C. & N. W., 20 miles from Kenosha, Wis. Charged second class rates, and rates from Mooar and Pleasant Prairie are commodity rates, ranging from 42.7% to 87.5% average 68.4% of the second class rates. HELD, rates attacked unreasonable to extent they exceed to Terre Haute, Joliet and Clinton, Ind., 60c prior to July 1, 1922 and 54c thereafter; to Danville, Hilliary and Catlin, Ill., 61c prior to July 1, 1922 and 55c thereafter; to Evansville and Oakland City, Ind., 67c prior to July 1, 1922 and 60c thereafter; to East St. Louis, Ill., 72c prior to July 1, 1922 and 65c thereafter, reparation awarded. Grasselli Powder Co. v. A. C. & Y. Ry., 96 I. C. C. 271.

(qq) Complainant attacked fifth class rates charged on brass and copper ingots, carloads, from East Liberty, Pa., to New York, West Virginia, Ohio, Indiana, Kentucky, Illinois, Michigan and Missouri are unjust and unreasonable and in violation of section four. East Liberty is within the switching limits of Pittsburgh, Pa., on the Pennsylvania. From Williamsport, Pa., a point on the Pennsylvania about 93 miles north of Harrisburg, commodity rates on brass and copper ingots are published to Pittsburgh and to practically all points in central territory. These rates are scaled on the New York-Chicago basis and are considerably lower than the rates from East Liberty to the same destinations. These rates are applicable through East Liberty and are published subject to rule 77. Subsequent to the hearing the rates from Williamsport were canceled. Defendants maintain rates from Chicago, Grasselli, Ind., Kankakee, and Bradley, Illinois to points in central territory which are less than the fifth class rates. HELD, rates attacked to Follansbee and Wheeling, W. Va., Toronto, Youngstown, Canton, Cleveland, Newburg, Howard Avenue, Lorain, Toledo, Wagon Works, Maryville, Springfield and Bellaire, O., Detroit, Mich,, East Chicago and Gary, Ind., Chicago and South Chicago, Ill., Louisville and South Louisville, Ky., and St. Louis, Mo. unreasonable to extent they exceed rates from Williamsport, Pa. Rates attacked to Buffalo, Lackawanna and Depew, N. Y., unreasonable to extent they exceed rates from 60% group points to Rochester, reparation awarded. Duquesne Reduction Co. v. Pennsylvania R. R., 96 I. C. C. 351.

(rr) Complainant attacked class rates charged on four cars of burlap bags, shipped from New Orleans, La., to Jackson, Miss., between Oct. 29, 1921 and April 27, 1922 as unjust, unreasonable, unduly prejudicial and in violation of section four. Shipments moved 184 miles. Rates charged sixth class, and on July 10, 1922 a commodity rate of 29c was established. HELD, rates attacked unreasonable to extent they exceeded 36.5c, reparation awarded. Jackson Traffic Bureau v. I. C. R. R., 96 I. C. C. 449.

(ss) Complainant attacked class rate

of $2.80 charged on two cars of soft coal April 30, 1923 from Boston, Mass., to Hills Grove, R. I., as unreasonable and unduly prejudicial. Hills Grove is on the New Haven 53 miles from Boston, charged sixth class rate of $2.80. HELD, rate charged unreasonable to extent it exceeded $1.85 per long ton, reparation awarded. Rhode Island Malleable Iron Works v. N. Y. N. H. & H. Ry., 98 I. C. C. 43.

(tt) Complainant attacked interstate rates and minimum weights on cottonseed, cottonseed and related vegetable oils, cakes and meals, feet, and sediments, inedible tallow, between all points in the southwest and western trunk line territory as unreasonable and unduly prejudicial. The southwestern cotton growing industry is that portion of the southwest embraced within the area bounded by the Gulf of Mexico, the Mississippi river, and a line drawn from St. Louis over the Frisco to Seneca, Mo., thence along the Kansas-Oklahoma state line to, but not including, Liberal, Kas., the Rock Island and Rock Island & Gulf to the New Mexico state line west of Bravo, Tex., the New Mexico Texas state line to Texico, N. M., the Santa Fe to Roswell, N. M., thence southwest via an imaginary line to El Paso, Tex., and southeast along the Rio Grande to the Gulf of Mexico. **Rates in the Southwest.** It appears that uniformity now exists in the rates on cottonseed and cottonseed products, except oil and feet and sediments between points in the southwest generally east of the K. C. S., from Kansas City to Port Arthur, but not west thereof. Disparities as pronounced as those which moved the Commission to prescribe a uniform basis of rates for application in the southwest east of the K. C. S., exist in the present rates on cottonseed and its products in this territory west of the K. C. S., and also on cottonseed oil and related oils east of that line. Due largely to influence of competition from mills located at Memphis and other points on and east of the Mississippi river, especially in the Mississippi Valley, the rates on many commodities, including those here considered, in the territory east of the K. C. S., have always been on a somewhat lower level, generally speaking, than the rates on the same commodities west of that line. Many of the rates on cottonseed and its products in the territory west of the K. C. S., and between points east and points west of that line are higher for shorter than for longer distances, and frequently the rates vary over different routes between the same points for about the same distances, brought about largely through the establishment by different carriers of rates at varying levels in order to meet the demands of commercial or carrier competition. Disparities similar to those shown in the rates on cake and meal also exist throughout this territory on cottonseed hulls. There is no fixed relationship between the rates on these commodities, but hulls generally take lower rates than cake and meal. No joint rates are published on cottonseed between many points requiring a joint haul, and the lowest combinations, generally made up of local distance rates, apply. Similar lack of uniformity exists in the rates on inedible tallow, feet and sediments, and the related vegetable oils and vegetable cakes and meals. HELD, rates on cottonseed, and related vegetable oils, cakes, and meals, feet and sediments, cottonseed hulls, and inedible tallow, carloads, between points on class L railroads, in Texas as common point territory, and in the states of Oklahoma, western Louisiana, Arkansas, and southern Missouri, between points in the southwest, on the one hand, and Mississippi river crossings, Memphis to New Orleans, on the other, and from points in the southwest to Cairo and Thebes, Ill., and Kansas City, Mo., are unduly prejudicial and preferential to the extent that the interrelationships differ from those hereinafter prescribed. All of the complainants and interveners agree that the similarity of transportation conditions in the southwest warrants a uniform basis of rates throughout that territory. If the competition from the Mississippi Valley is to influence the level of the rates in the eastern section, consistency demands that consideration be given also to the commercial competition from the eastern section which the mills in the western section have to meet. The difference in the force of this competition is only in degree, and is brought about primarily by the lower level of rates east than west of the Mississippi river. The difference in the levels of reasonable rates in the Mississippi Valley and in the eastern section is at present shrouded with much uncertainty, which will not be allayed

until the relative levels of reasonable class and commodity rates in both territories have been definitely determined. Until that determination has been made the degree of difference between the force of commercial competition which the eastern section has to meet and that which the western section meets, or is entitled to meet, is impossible of ascertainment. HELD, the undue prejudice and preference in the interstate rates hereinbefore found to exist should be removed by the establishment, for application to the commodities considered, of a fairly uniform basis of interest rates throughout the southwest, between points in the southwest and Mississippi river crossings, Memphis and south, and from points in the southwest to Cairo and Thebes, Ill., and Kansas City, Mo. **The Intrastate Rates.** Numerous disparities, similar in many respects to those found in the interstate rates in the southwest, exist between the intrastate rates on these commodities, particularly in Oklahoma and Texas, on the one hand, and the interstate rates applying between those states on the other. The Arkansas intrastate rates on cottonseed oil, the Louisiana intrastate rates on cottonseed hulls, and the Missouri and New Mexico intrastate rates on all of these commodities are not of record, and no finding can be made with respect thereto. The evidence of record upon which a conclusion may be reached as to the discriminatory character of the intrastate rates on cottonseed and cottonseed cake, meal and hulls now in effect in Arkansas and on all of these commodities applying between points in Louisiana is very meager. There is no material difference between the transportation conditions surrounding intrastate traffic in Texas common point territory and Oklahoma and the transportation conditions surrounding interstate traffic between points in Texas and Oklahoma. In such a circumstance the law entitles both intrastate and interstate shippers to a uniform basis of rates. HELD, interstate rates on cottonseed cake, meal, hulls and oil between points on class 1 railroads, in Texas and Oklahoma, will be reasonable, but those rates and intrastate rates in Texas and Oklahoma are unduly prejudicial to interstate shippers to extent said intrastate rates may be lower than the corresponding interstate rates maintained for like distances on class 1 railroads in Texas and Oklahoma, and that any such disparity between said intrastate and interstate rates will result in unjust discrimination against interstate commerce between Texas and Oklahoma. **Reasonableness of the rates in the southwest.** The record leaves no room for doubt that, particularly in the feeding of livestock and swine, cottonseed cake, and meal comes into competition with corn, linseed meal, and other stock foods taking corn rates. This competition is, of course, much more severe throughout the portions of intermountain territory where cattle are extensively raised and where the hardships of winter create a greater demand for stock foods of large protein content, such as cottonseed cake and meal, that it is in the southwest. The principal differences in the transportation characteristics of corn and cottonseed cake and meal are in the average loading and volume of movement. These differences are important, but it must not be overlooked that a number of stock foods, including linseed meal, some more and others less valuable than cottonseed cake and meal, with which cottonseed cake and meal are directly competitive, have long taken the corn rates in this general territory, and that the transportation characteristics of these related stock foods differ very little from those of cottonseed cake and meal. The reasons for the original establishment of the Texas common point blanket are well known, and in the day's of unlimited carrier competition may have been entirely sufficient to warrant its establishment; but under the minimum and maximum rate powers which have since been lodged in the Commission, and in the absence of forceful competition by water through the Gulf ports, affecting many of the commodities as to which the blanket still prevails, including cottonseed and cottonseed products, the continued maintenance of the extensive Texas common point grouping is no longer warranted. The establishment of reasonable rates on cottonseed and cottonseed products within and to and from Texas with greater regard for distance will be a step toward a solution of the financial difficulties with which the Texas carriers have long contended. HELD, interstate minimum weights in the southwest on the commodities in question as well as rates unreasonable to extent they exceed minimum of 40,000 pounds and rates ranging on cake

and meal single line 6c for 10 miles, joint line 8c for 10 miles, on hulls single line 5c for 10 miles and joint line 6.5c for 10 miles to 66c single and join line on cake and meal for 2,600 miles and 36c single and joint line on hulls for 1,-200 miles. The value of cottonseed generally ranges from about $5 to $12 a ton higher than that on cottonseed meal, although this difference varies considerably at different periods of the shipping season and in the various sections of the cotton growing territory. Cottonseed requires more care while in transit because of its tendency to become heated, but claims for loss and damage are small in number and amount on both cottonseed and products. HELD, interstate rates and minimum weights on cottonseed seed, in carloads, and minimum weights on cottonseed, carloads, between points in the southwest between points in the southwest on the one hand, and Mississippi river crossings, Memphis to New Orleans, on the other, and from points in the southwest to East St. Louis, Cairo, Thebes, and Kansas City, on all class 1 carriers, are unreasonable to extent they exceed rates hereinbefore mentioned subject to minimum of 40,000 pounds, actual weight to govern when car is loaded to full space capacity, and 30,000 pounds to apply on immature cotton bolls. **Cottonseed Hulls.** The present rates in the southwest range from as low as 50% to 100% of the rates on cottonseed cake and meal. The average would perhaps not exceed 75%. HELD, rates on cottonseed hulls unreasonable to extent they exceed rates prescribed subject to minimum of 30,000 pounds. The rates under the prescribed scale on hulls are about 75% of the rates prescribed on cake and meal. **Cottonseed Oil and Related Vegetable Oils & Oil Sediments.** The primary purpose of complainants and interveners in suggesting a revision of the rates on vegetable oils in the southwest is to bring about uniformity without reducing the present revenues of the carriers. They contend that their proposed scale will accomplish this purpose. The present rates on vegetable oils apply also when in bulk, in barrels or drums, and when solidified, in bulk in bags, boxes, barrels or drums, and shipped in ordinary equipment. The present commodity rates on vegetable oil, feet and sediments and inedible tallow are generally somewhat lower than the rates on vegetable oils. HELD, rates on vegetable oil, feet and sediments unreasonable to extent they exceed rates about 75% of the rates on vegetable oils. **Rates to and from Texas Differential Territory and Eastern New Mexico.** HELD, interstate rates on cottonseed and cotton seed and related vegetable oils, feet and sediments, cake and meals, cottonseed hulls and inedible tallow, carloads, between points in Texas differential territory and New Mexico east of and not including the line of the E. P. & S. W., extending from Dawson, N. M., through Tucumcari and Vaughn, N. M., to and including El Paso; between points in those territories and points in Texas common point territory, western Louisiana, Oklahoma, Arkansas, southern Missouri, and Mississippi river crossings, Memphis and South; and from points in those territories to East St. Louis, Cairo Thebes and Kansas City, on all class 1 carriers, are unreasonable to extent they exceed rates previously shown plus differentials. **Rates to Kansas & Missouri Illinois Western Trunk Line Territory and Colorado Common Points.** There appears to be no good reason for not extending to all points in this destination territory the distance scales of rates hereinbefore described on these commodities between points in the southwest. It is true that the levels of rates in Illinois and certain portions of western trunk line territory are as a rule somewhat lower than in the southwest, and, particularly on short haul traffic, the differences are justified by varying degrees of traffic density; but where, as here, the traffic density on all class I carriers is comparatively heavy and the hauls are as long as those to these destinations, there is ample ground for disregarding such differences in rate levels. This is true as well with respect to the oils as to cake and meal. **Rates on Vegetable Cakes and Meals and Cottonseed Hulls to Intermountain and Pacific Coast Territories.** Practically all of the cottonseed cake and meal from the southwest to points in intermountain territory, and the Pacific coast originates in Oklahome and Texas, principally in Oklahoma. HELD, present rates in the southwest to these territories unreasonable to extent they exceed the rates prescribed hereinbefore, subject to differentials to be added to the total distance. **Rates on Cottonseed Oil and Related Vegetable Oils**

from Texas to California. HELD, rates on these commodities from Texas to California on class 1 carriers unreasonable to extent they exceed 80c to Fresno, Calif., and points south, and 90c to points north of Fresno, subject to a commodity description and minimum weight the same as in connection with rates on the same commodities between points in the southwest. **Rates on Cottonseed from Arizona and New Mexico to Texas and Oklahoma.** HELD, rates on cottonseed attacked unreasonable to extent they exceed rates hereinbefore prescribed in southwest plus differentials. **Export Rates.** HELD, rates on export shipments of cottonseed and related vegetable oils, cakes, meals, feet, sediments and inedible tallow, carloads, from Oklahoma, Arkansas, western Louisiana, Texas, and Loving, N. M., to Gulf ports, Houston and Galveston to New Orleans on class 1 carriers unreasonable to extent they exceed rates hereinbefore prescribed in southwest plus differentials. **Joint Line Differentials.** It has been and is the general practice in the southwest, on intrastate as well as interstate traffic, to add differentials for joint line hauls where rates are constructed on a distance basis, and the addition of such differentials has frequently been approved by the Commission. This record does not warrant a reversal of that general practice. Accordingly, joint line differentials have been prescribed which diminish in proportion to the length of the haul, and are allowed only for distances not exceeding 500 miles. **Application of Rates under Distance Scales Prescribed.** The term class 1 carriers as used in this report, refers to all carriers in the territories described, except such financially weak lines as are now individually accorded arbitraries or rates on bases higher than standard scales or general trunk line rates in the same territories. Such carriers as are now accorded such arbitraries or higher rates may at their option apply the rates herein prescribed or add thereto the present arbitraries received by them. **Additional Charges for Mississippi River Crossings.** The addition of any allowance for crossing the Mississippi river at East St. Louis, Cairo and Thebes would be a departure from the present or past practice. The Commission has never approved allowances for the crossings at those points. The proposal to continue allowance at Memphis and crossings south thereof is not protested in this proceeding and upon this record no reason can be found for their disapproval, but the practice should not be permitted to spread to crossings north of Memphis unless and until upon a more complete record the propriety of these allowances is definitely determined. HELD, in making rates under the distances scales of rates, prescribed in this report, between points west of the Mississippi river considered in this proceeding, on the one hand, and Memphis and east bank Mississippi river crossings south thereof, on the other, bridge or ferry tolls not exceeding 2c per 100 pounds may be added to the rates based upon the distances to or from west bank points. **Group Versus Distance Rates.** The record leaves no doubt that a group system of rates from the southwest to western trunk line, intermountain and Pacific coast territories would be preferable to a strict application of distance scales. Points in the destination territory beyond the southwest may be grouped in lieu of publishing rates based strictly upon the scales, provided that rates are published to such destination groups in such manner as to produce substantially the same revenue as would result from a strict application of the scales. If a plan of grouping points of origin in the southwest can be agreed upon between the shippers and carriers, the Commission will interpose no objection to the publication of rates from such groups, subject to the condition last mentioned. **Fourth Section Relief.** Defendants will be authorized to establish and maintain routes from, to, or between points in the territories here considered the lowest rates prescribed herein as maximum rates via any route between said points, and to maintain higher rates from, to, or between intermediate points; provided that the rates from, to, or between the said intermediate points shall not exceed the rates prescribed herein and shall in no case exceed the lowest combination and provided further, that the relief herein granted shall not apply, (1) where the distance over the short line or route is 500 miles or less and the longer line or route is more than 70% circuitous; (2) where the distance over the short line or route exceeds 500 miles but does not exceed 1,000 miles and the longer line or route is more than 50% circuitous, except that where the

short line or route exceeds 500 miles and the longer line or route does not exceed 850 miles, relief will apply to such longer line or route even though the said longer line or route is more than 50% circuitous; and (3) where the distance over the short line or route exceeds 1,000 miles and the longer line or route is more than 33 1-3% circuitous, except that where the short line or route exceeds 1,000 miles and the longer line or route does not exceed 1,500 miles, relief will apply to such longer line or route even though the said longer line or route is more than 33 1-3% circuitous. No 15039. Complainant attacked rates on cottonseed from Oklahoma points to Sherman, Tex. HELD, rates attacked unreasonable to August 15, 1923 to extent they exceeded like distances the rates between Shreveport and Texas points, and subsequent thereto unreasonable to extent they exceeded rates prescribed heretofore, reparation awarded. Oklahoma Corporation Commission v. A. & S. Ry., 98 I. C. C. 183.

(uu) Complainant attacked fifth class rates charged on 60 cars of hoop steel between Oct. 29, 1918 and Feb. 20, 1920 from Pittsburgh, Pa., district to Cleveland, O., as unjust, unreasonable, unduly prejudicial and in violation of the fourth section. Shipments moved from Allegheny, Pa., to Cleveland, O., 55 via B. & O., and 5 via Pennsylvania, charged fifth class rates of 17c, there being contemporaneously in effect commodity rates of 7.5c to Youngstown and 7.5c beyond. HELD, rate attacked unreasonable to extent it exceeded 15c, reparation awarded. Greif Bros. Cooperage Co., v. Director General, 98 I. C. C. 419.

(vv) Complainant attacked sixth class rate charged of $2.40 on sand, carloads, shipped in February 1920 from Portsmouth, O., to Charleston, W. Va., as unjust, unreasonable and in violation of the fourth section. Shipments moved N. & W., to Kenova, W. Va., 39 miles thence C. & O., 58 miles. On June 25, 1918 rates of 40c to and 70c from Kenova were increased to 60 and 90c. On Feb. 21, 1920 carriers established from Portsmouth to Charleston a rate of $1.30 made by deducting 20c from each of the local rates and adding the same amount to the sum so arrived at. HELD, rate attacked unreasonable to extent it exceeded $1.30 per ton, reparation awarded. Fuller Co. v. Director General, 98 I. C. C. 468.

(ww) Complainant attacked commodity rates charged on cyanamid, carloads, from Niagara Falls, Ont., and from Suspension Bridge, N. Y., to Alexandria, Va., as unjust and unreasonable since April 8, 1922 and unduly prejudicial as compared with rates on sulphate of ammonia from Buffalo, N. Y., and as compared with rates on cyanamid from Niagara Falls to Baltimore, Md., and to Lynchburg, Richmond and Norfolk, Va. Cyanamid was and is rated sixth class in the official classification, and from Niagara Falls the sixth class rates since Nov. 1, 1922 have been as follows: to Baltimore 34c, to Alexandria 34c and to the Virginia cities 46c. The equalization of the sixth class rates to Alexandria and Baltimore is said to have occurred by error in tariff publication and was corrected Oct. 20, 1924 to the recognized basis of 5c over the Baltimore rate, or 39c. Defendants recognize that rates on cyanamid from Niagara Falls to Alexandria have been out of line and have offered to establish a rate of 33c to that point. HELD, rates attacked unreasonable to extent they exceeded 37c prior to July 1, 1922 and 33c thereafter, reparation awarded. Bryant v. M. C. R. R., 98 I. C. C. 526.

(xx) Complainant attacked sixth class rate of $3.20 charged on scrap iron, carloads from Rensselaer, Ind., to St. Joseph, Benton Harbor and Bridgman, Mich., as unreasonable unjustly discriminatory and unduly prejudicial. Six shipments originated on the C. I. & L. Those consigned to St. Joseph were delivered by the M. C., and those consigned to Benton Harbor and Bridgman were delivered by the P. M. $2.39 rate applies from Monticello, Ind., and from Chicago, Ill., to Benton Harbor, Bridgman and St. Joseph are intermediate to Benton Harbor. Complainant competes with other dealers in scrap iron located in substantially all nearby large cities. Throughout central territory there are many commodity rates on scrap iron lower than the sixth class rates. HELD, rates attacked unreasonable and unduly prejudicial to extent they exceeded $2.39, reparation awarded. Karnowsky v. C. I. & L. Ry., 98 I. C. C. 533.

(yy) Complainant attacked class rate charges on 23 cars of tomatoes shipped from St. Louis to New Orleans, La., during July and August in 1920, 1921, 1922

and 1923 as unreasonable, unduly preferential and inapplicable. All moved over I. C., 697 miles or the L. & N., 940 miles, charged third class of 81.5c and $1.43 on the 10 shipments in 1920 and 1921, respectively, and a specific commodity rate of 77c on the 18 shipments made in 1922 and 1923. In the early part of 1922 application was made to the L. & N., for a commodity rate from St. Louis to New Orleans in lieu of the third class rate. In presenting the request to the other interested carriers the L. & N., suggested a commodity rate of 85.5c the rate then applicable in the reverse direction, and that rate was established on June 5, 1922. Under the general reduction of July 1, 1922 the rate became 77c and are the present rates. HELD, rates charged in 1920 and 1921 applicable, rate charged in 1922 and 1923 not unreasonable, complaint dismissed. St. Louis Fruit & Vegetable Asso. v. L. & N. R. R., 98 I. C. C. 553.

(zz) Complainant attacked class rates charged as unreasonable and unduly prejudicial on clam shells from Illinois to points in Illinois and Iowa. The shells as received are worth generally from $10 to $80 per ton and average about $25 according to complainants. From them are cut the button blanks which are made into buttons by grinding, drilling and other processes. Complainants regard these shells as desirable traffic for the carriers. They can be loaded in box or gondola cars, are not liable to loss or damage to any considerable extent, and claims are not heavy. Only a small fraction of the total weight of the shells rereceived by the button manufacturers is suitable for button blanks and only a fraction of the weight of a button blank becomes a button. The shells become principally waste. Much of this waste is crushed or ground and sold for fertilizer purposes, stucco dash and poultry grit. Shipments made in 1921 and 1922, rates charged class E rates for distances from 115 to 239 miles. At time shipments moved a commodity rate of 9c, the same as on fertilizer, applied from all the points in the Chicago group to Davenport, Iowa, and Rock Island, Moline and Keithsburg, Ill., on the upper Mississippi river. The western trunk line exceptions, applicable in the territory here considered, provided the fertilizer basis wherever the tariffs naming commodity rates on fertilizers specify that the exceptions shall apply, and that is the situation here. The commodity rates on fertilizer are intended principally for application on the heavy traffic from the packing houses at Chicago, but in accordance with custom they are published also from the Chicago group, which is very extensive. No such rates are published from the Peoria group, as there appears to be no present or prospective movement of fertilizers. Class E basis applies to a large movement of shells. The movement of the traffic under consideration is rather sporadic, and seasonal and comparatively light. Shells are not shipped from and to the points concerned except for the manufacture of buttons. They constitute a different commodity from the crushed, ground or waste shells that are valuable only for fertilizer, stucco dash or chicken grit. HELD, class E rates not unreasonable, complaints dismissed, but the present rate structure is in a chaotic condition and defendants should promptly proceed to revise it. Mississippi Pearl Button Co. v. A. T. & S. F. Ry., 98 I. C. C. 560.

(3a) Complainant attacked sixth class rate charged on scrap iron, carloads, between March 1, 1920 and Jan. 31, 1921 from Penniman, Va., to Vandergrift, Chester and Latrobe, Pa., and Massillon, O., as unreasonable and unduly prejudicial. Penniman is a local point at the end of a branch line of C. & O., 4.68 miles from Penniman Jct. It is about 5 miles east of Williamsburg, Va., and 27 miles northwest of Newport News, Va. This commodity is of low value and loss and damage claims are negligible. Charged sixth class to Chester of $6.90. Rate prior to August 26, 1920 was $4.90. There was a contemporaneous commodity rate from Williamsburg to Chester of $4.76 which had been $3.40 prior to August 26, 1920. The sixth class rates from Williamsburg, Richmond, Newport News and other socalled Virginia cities were the same as the sixth class rates from Penniman. Distance from Williamsburg and from Penniman to Chester is about 341 miles over the C. & O., to Potomac Yard, Va., and Pennsylvania beyond. Sixth class rates charged to other points of destination, this being the rating in official territory. The contemporaneous commodity rates from Williamsburg were $4.90 prior to August 26, 1920 and $6.86 thereafter. On commodities generally the same rates ap-

plied on shipments from Penniman as from Williamsburg. HELD, rate attacked unreasonable to extent they exceeded the commodity rates from Williamsburg, reparation awarded. Briggs & Turivas v. C. & O. Ry., 98 I. C. C. 584.

(3b) In 85 I. C. C. 47 the Commission prescribed class rates to apply in lower peninsula of Michigan. Complainant asked that the higher rated zones in Michigan be abolished and that the basic c. f. a. scale be applied to the entire lower Peninsula. With respect to traffic density the evidence confirms the facts developed at the first hearing. Although it is unsatisfactory in some respects, it shows conclusively that the traffic density in the higher rated zones in Michigan is materially less than in the remainder of central territory as a whole. The value of the zone arbitraries to the Michigan carriers is considerable. HELD, the class rates, and commodity rates bearing a direct relation thereto, between points in the lower Peninsula of Michigan north of the line of the M. C., from Detroit, Mich., to Chicago, Ill., and points in central territory for the future will be unreasonable, unduly prejudicial to persons and localities in the lower Peninsula of Michigan north of said line and unduly preferential of persons and localities in central territory on and south of said line to the extent they exceed the following: To and from zone B, with the addition of the entire thumb district lying between Saginaw Bay and Lake Huron, rates exceeding the distance scale of class rates applying between points in central territory on and south of said line by not more than 2c per 100 pounds first class; to and from Zones C and D excluding the thumb district, rates exceeding the said scale by not more than the first class; rates on the lower classes to bear the same percentage relationship to first class as they do in the said scale. Michigan Traffic League v. A. A. R. R., 98 I. C. C. 660.

(3c) Sixth-class rate on coal tar, in tank-car loads from Fairmont, W. Va., to Everett (East Boston), Mass., found unreasonable as compared with lower commodity rates contemporaneously in effect from Dunbar, Pa., and other points to same destination, and to extent it exceeded lower commodity rate subsequently established. Complainant made application for establishment of commodity rates more than five months prior to movement of shipments but, due to inconsistencies in commodity rates on coal tar, carriers delayed their establishment. Reparation awarded. Barrett Co. v. B. & O. R. R. Co., 91 I. C. C. 53.

(3d) Class rates on sporadic shipments of sugar from Seattle, Wash., to Chicago, Ill., Boston, Mass., and Landisville, N. J., found not unreasonable as compared with lower commodity rates from California terminals and from sugar-producing points in California and southern Oregon. There is a considerable movement of sugar from California to the East, but character and volume of movement from Seattle does not warrant establishment of commodity rates or retroactive application thereof on shipments here involved. Armour & Co. v. N. P. Ry. Co., 91 I. C. C. 75.

(3e) Class rates applicable on scoured and pulled wool from Pacific coast terminals to eastern defined territories are apparently too high to permit any movement thereunder. Wool Rates Investigation, 1923, 91 I. C. C. 235, 267.

(3f) Following Stewart-Warner Speedometer Corp., 64 I. C. C. 541, and other cases cited, double first-class rates and ratings on speedometers, l. c. l., from New Rochelle, N. Y., to Pueblo, Colo., found unreasonable to extent they exceeded first-class rates and ratings subsequently established. Reparation awarded. Baker Steam Motor Car & Mfg. Co. v. A. T. & S. F. Ry. Co., 91 I. C. C. 381.

(3g) Sixth-class rate assessed on epsom salts moving from Atlanta, Ga., to Greensboro, N. C., found not unreasonable as compared with lower commodity rates contemporaneously maintained to Durham and Winston-Salem, N. C., farther distant points to which Greensboro is intermediate, which lower rate was subsequently established to Greensboro, or as compared with paper rates instanced by complainant to various points for greater distances. Fourth-section departure was protected by an appropriate application, sixth-class rates are generally applicable on this traffic in Southeast, and sixth-class rates instanced by defendants on shipments moving to various southeastern points compare favorably with those assessed. Proximity Mfg. Co. v. Director General, 91 I. C. C. 612.

(3h) Fifth-class rate on refined cottonseed oil from Los Angeles, Calif., to San Francisco and South San Francisco, Calif., during Federal control, found unreasonable to extent it exceeded lower commodity rate applicable in the opposite direction on cottonseed, fish, nut, seed, and soya-bean oils, in packages, c. l., and on coconut oil, in tank-car loads, which lower rate was subsequently established in both directions. Reparation awarded. Los Angeles Soap Co. v. Director General, 91 I. C. C. 691.

(3i) Complainant attacked class D rate of $1.30 per ton charged on 227 cars of coal between August 6 and Dec. 28, 1918 from Breed, Colo., to Colorado Springs, Colo., as unjust, unreasonable, unjustly discriminatory and unduly prejudicial to extent it exceeded a rate of 60c. Breed is a nonagency station on the Santa Fe, 7.7 miles north of Colorado Springs. Complainants mine is on a private spur about 0.5 miles south of Breed. About three months before complainant started shipping he requested defendant to publish rates on lump coal from his mine to points on the Santa Fe and was later informed that this had been done. When the time arrived for the shipments to begin he discovered that only a rate of $1.10 to Denver had been established. He was told, however, to start shipping and assurance was given him that when the rate to Colorado Springs was published a refund would be made on prior shipments. On Dec. 5, 1918 the rate on slack to Colorado Springs was reduced to 60c but the rate on lump coal remained unchanged. HELD, rate attacked unreasonable to extent it exceeded 60c, reparation awarded. Corley v. Director General, 100 I. C. C. 293.

(3j) Complainant attacked class rates and carload minima applicable to unfinished open model passenger automobile bodies, carloads, from Dayton, O., to Detroit, Mich., and Windsor, Ont., as unreasonable and unduly prejudicial. All are shipped wholly set up. Not more than 24 can be loaded into a 36 ft. car and not more than 32 into a 40 ft. car. The official, western and southern classifications provide a second class rating on passenger automobile bodies finished or not finished set up or partially knocked down, loose or in packages, carload minimum 10,000 pounds for 36 ft. cars, and higher graded minima for larger cars. Prior to July 1, 1922 the second class rates from Dayton were 69c to Detroit and 77.5c to Windsor, reduced on that date to 62 and 70c, respectively. The commodity rates as now maintained apply on unfinished automobile bodies and body parts, partially assembled, all steel, stamped. Prior to July 1, 1922 the second class rate from Philadelphia to Detroit, Mich., was $1.02 the reduced rate then effective being 91c. When established, the commodity rates, except to South Bend, were the equivalent of the third class rates, but as they were not reduced July 1, 1922 they are now higher than the present third class rates. Complainant asks for commodity rates of 54.5c to Detroit and 61c to Windsor, subject to minimum of 10,000 pounds, which rates represent the equivalent of the third class rates in effect prior to July 1, 1922. The commodity rates noted appear to be the only exception to the classification basis in official classification territory and apparently there is no present movement under the rate noted to South Bend. Dayton is served by the B. & O., Pennsylvania and Big Four. These lines in connection with the M. C., P. M., and D. & T. S. L., form through routes for this traffic from Dayton to Detroit. Testing undue prejudice here by the ability of the lines parties to the rates from both Philadelphia and Dayton to put an end to the preference and prejudice, it is clear that withdrawal by such defendants of their participation in the Philadelphia rate would result in no benefit to complainant, as that rate would still be available over other lines. There is no adequate basis for a finding of undue prejudice. HELD, rates and carload minima not unreasonable or unduly prejudicial, complaint dismissed. Maxwell Motor Corp. v. B. & O. R. R., 100 I. C. C. 363.

(3k) Commission instituted an investigation covering all interstate class rates within southern territory and between that territory and official territory on the north. It covers all such rates, both all rail and rail water, with certain exceptions which will later be noted, and it also covers less carload ratings provided in exceptions to the southern classification and less carload commodity rates. Its purpose is to determine whether the rates and ratings under in-

vestigation are unreasonable or are unduly prejudicial to or unduly preferential of particular localities, persons, or descriptions of traffic. It is not the primary purpose of this inquiry either to add to or subtract from the aggregate revenues of the carriers, but rather to adopt a class rate structure which will be as simple as it can be made, with due regard for the public interest, and free from undue prejudice, and which will serve the purposes that class rates ought to serve. HISTORY OF THE SOUTHERN RATE STRUCTURE. Southern territory is surrounded by navigable water. On the east is the Atlantic Ocean; on the south the Gulf of Mexico; on the west, the Mississippi river; on the north, the Ohio river. The Appalachian mountain ranges separate Virginia and the Carolinas from Kentucky and Tennessee, but dwindle into foothills in Alabama. Many navigable waterways penetrate the interior. When railroad building began, the South was almost wholly an agricultural country, the great staples being cotton and tobacco, with the natural waterways furnishing the means of transportation and the sites for the principal trading points. Some of the early railroad lines formed links between the waterways or acted as feeders, but more often they were competitors and the fight for traffic became acute. The result was that the cities upon the coast or inland navigable waters were given very low rates, while a much higher level prevailed at interior points less favorably situated. This was the origin of the famous basing point system. Since the steamboats made no distinction between carload and less carload traffic, a further result of the competition was the establishment, to a greater extent than in any other part of the country, of any quantity freight rates. It was the practice of the railroads in the case of local noncompetitive business to establish rates increasing rapidly with distance and so high that as a competitive point was approached the scale would be cut by the combination of the low rate to such point plus the local rate back. In such instances, the intermediate noncompetitive point was given the "benefit" as it was termed of the lowest combination. It thus became about that in the territory surrounding or tributary to the larger trading centers, the rates based upon these centers and they came to be known as basing points. As railroad construction continued, the competition with the steamboats was supplemented by equally keen competition between the railroad lines, with the result that depressed rates were accorded to important railroad junctions, like Atlanta, which are not situated on navigable waterways. Between central territory and the South the general basis of rates was originally, and still is to a great extent, the combination of local rates on Ohio river crossings or Virginia cities. Relatively these combination rates rate higher than the joint rates between the East and the South, and as central territory grew in importance as a manufacturing district competitive with the East, this fact caused complaint. Until quite recently, however, the lines leading south from the Ohio river were unwilling to go further in meeting eastern competition than to maintain as a key rate between Louisville, Ky., and Atlanta a rate no higher than the water-rail rate between Baltimore, Md., and Atlanta. PRESENT RATE STRUCTURE. While the number of fourth section departures has been substantially reduced, the basing point system has by no means been wholly eliminated. It still persists to a very considerable extent. Where the rates have been revised in one direction, they frequently have not been revised in the reverse direction, so that great inconsistencies prevail. All interstate class rates are governed by the southern classification, but there are separate state classifications in Georgia, Florida, Alabama and Mississippi. All the southern lines publish distance scales of class rates which apply locally in the absence of specific rates, but there is no harmony or consistency in these scales. The levels differ widely, as do the percentage relationships of classes. This is also true of the specific rates. RATES FROM CENTRAL TERRITORY. For many years the generally prevailing basis of class rates between central territory and the South has been combinations on the Ohio river or, in the case of the Carolinas, on the Virginia cities. As a rule, the factors in the combination have been local rates, although there have been and are exceptions. While the practice of publishing proportional rates has been largely discontinued, the publication of through rates lower than the combination has increased. Apparently the Illinois

Central, having large mileage in Illinois and Indiana as well as in the South, first established such through rates. At the present there are the following between points in central territory and the south: From all points in Illinois territory, including related points in Indiana, to all points in the Mississippi valley. These joint rates as now published, following the Pitt readjustment, generally conform to the fourth section. From other points in central territory, not including the Buffalo-Pittsburgh zone to Mississippi river points and Gulf ports. These joint rates do not conform to the fourth section, because similar rates are not published to intermediate interior points. They are extensively blanketed, central territory east of Illinois being largely covered by two great groups. Following the Pitt readjustment they were revised, but only on a temporary basis. Between the Buffalo Pittsburgh zone and many points in the Mississippi valley and southeast. These rates were originally combinations published as joint rates for convenience but owing to the varying percentage increases applicable in the general rate changes to interterritorial and intraterritorial rates, they are now generally lower than combination. They do not conform to the long and short haul provision of the fourth section, and in some instances exceed the aggregate of the intermediates. There are also various joint rates published between the east and the south, via Ohio river crossings, which are lower than combinations rates currently in effect from intermediate points in central territory.

RATES TO AND FROM EASTERN TERRITORY. Traffic between eastern territory and the south moves all rail and also by water and rail. The all rail gateways are the Virginia cities, Bristol, and the Ohio river crossings. The gateways of the water routes are Norfolk, the south Atlantic ports and the Gulf ports. The present rate structure is the resultant of the competition between these routes and gateways. This is also true of the proposed rate structure, which differs only in detail from the present. The water-rail routes were first in the field, and their rates form the foundation of the rate structure. Between eastern territory and a very large part of the south water-rail and rail-water-rail rates are differentially lower than the corresponding all rail rates.

DISCUSSION AND CONCLUSIONS. This proceeding is unique in its scope and in the opportunity which it affords for fundamental consideration of railroad rates. Certain general principles may well serve as a guide: Every reasonable effort should be made to simplify the structure. The present class rates in southern territory are complex and inconsistent to a degree impossible to defend. The carriers realize this, and their proposed rates are in improvement in this respect. The new class rates should look also to the future. They should, for example, be so framed as to facilitate the elimination not only of special classification exceptions but also of many commodity rates which provoke complaints of discrimination and have no other excuse than an inadequate and imperfect class rate structure. The tendency in recent years has been to give more and more consideration to the national need for a properly coordinately railroad service. This principle runs through the legislation of 1920, and is expressly declared in what is now paragraph 5 of section 15a of the act. The application of this principle will result in a greater degree of territorial uniformity in rates than would be possible if attention were concentrated on the individual railroad properties. It assumes that differences in earning power will be a material extent be cared for by adjustment of divisions or through the operations of the recapture clause. The commission is the guardian of the general public interest, and it must have in mind not only the carrier and the larger shipping interests but also the smaller communities and the great body of consumers. In rate proceedings, the smaller towns are seldom adequately represented and the consumer almost never. Yet one of the main reasons for the creation of the commission was the protection of those public interests which are rarely equipped for self-protection. Everything possible under the law and upon the record should be done to promote harmony between intrastate and interstate rates. The present lack of harmony in southern territory must be remedied. This was conceded by practically every witness, for carrier and shipper, who testified. The record contains nothing to indicate that the shippers of the south desire differences in level between the two sets of rates or that such differences can be justified, and

numerous so called Shreveport cases will surely be brought unless the situation is corrected. Most important of all, perhaps, the new rate structure should be as coherent and consistent as it can reasonably be made. Seeming inconsistencies should be susceptible of adequate defense. If the new structure is to possess any degree of permanence, it must be so constructed that it will not invite complaints of undue preference and prejudice. INTRATERRITORIAL RATES. Aside from general level, the chief issue with respect to the intraterritorial rates is whether a system of uniform distance rates, or closer adherence to the distance principle, is preferable to what the carriers term their related adjustment, i. e., rates which are based, in large part, on group or differential relationships, some of them of long standing. GROUP RATES VERSUS DISTANCE RATES. The railroad rate structure of the country is not the result of the application of socalled scientific principles. It is the product of the efforts of freight traffic managers seeking maximum revenue for their respective railroads, modified to some extent by public regulation. Where competition has made it necessary, the traffic managers have always been ready to handle freight at very low rates rather than not to handle it at all. It has been, indeed, the presence of competition at certain points and its absence at others which have caused most of the confusion in the rate structure. It is often said that railroad competition is now in service, rather than in rates, but there is only a degree of truth in this aphorism. Rate wars are less common than they once were, but the present rate structure is full of low rates made for competitive reasons and still defended on the ground of competition. HELD, no good reason has been shown for making interstate class rates between any two points in southern territory relatively high in order that corresponding rates for other hauls may be made relatively low. Stated differently, no adequate commercial or other reasons have been shown for grouping or relating interstate class rates in such a way that the rates between any two points are made substantially higher than the normal level. That the normal level of interstate class rates within southern territory should be based upon a distance scale or scales sufficiently extended so that hauls of all lengths will be covered. No reason has been shown for making the normal rate level higher than it otherwise would be made, in order to offset possible material reductions made voluntarily by the carriers below the distance scale basis. HELD, that on standard lines a single scale of distance rates should be used as the basis of maximum reasonable interstate class rates between points within southern territory, except that to and from points in Florida south of the S. A. L., Jacksonville to River Junction, there should be added to the rates so determined arbitraries likewise based upon a distance scale. That all the carriers operating within southern territory should be classed as standard lines for the purpose of the above finding, except the short lines and weak lines for which specific treatment is hereinafter found reasonable. That in applying the single scale of distance rates and also the scale of arbitraries, distances should be computed at actual mileage, except that 50 miles may be used as a constructive distance for the car float transfer on the Tennessee river in Alabama between Hobbs Island and Gunters Landing. JOINT LINE DIFFERENTIALS. Joint line differentials or arbitraries rest upon the theory that a joint line haul costs more than a single line haul. But no attempt has been made to measure or even to estimate this extra cost, and the differentials proposed are the product of unguided judgment. Nor is extra cost in physical handling always incurred. If, for instance, all lines in southern territory were consolidated under a single ownership, it does not follow that the method of operation over what are now joint line routes would in all cases, or even in most cases, be changed materially. While joint line hauls ordinarily involve switching operations at the junction point and sometimes the transfer from car to car of less carload freight, similar operations are common in the case of single line hauls. HELD, no sufficient reason has been shown for joint line differentials or arbitraries, but that the absence of such differentials is a factor which should be given some weight in determining the level of the distance scale. In this connection it should be noted that the fixing of the rate between any two points on the basis of a short route distance does not mean, necessarily, that

such route need be open for the movement of traffic. Carriers can not be required to short haul themselves when they can secure a longer haul by a reasonably direct route; but if they choose the latter alternative it does not follow that the reasonable rate must be fixed by the longer route. CLASS PERCENTAGE RELATIONSHIPS. No mathematical formula can be applied with any degree of authority to the determination of class percentage relationships. The problem is to arrive at relationships which will bring class rates to maximum usefulness and discourage the publication of all manner of special commodity rates. HELD, class percentage relationships should be uniform for all traffic, whether intraterritorial or interterritorial, which is governed by southern classification, and that these uniform percentage relationships should be as follows: first 100, 2nd, 85, 3rd, 70, fourth 55, fifth 45, sixth 40, seventh 35, eighth 30, ninth 25, tenth 22.5, eleventh 20, twelfth 17.5; that the classes should be numbered from 1 to 12 inclusive, the present classes A, B, C, D, becoming, respectively, 8, 7, 9 and 10. LESS CARLOAD CLASSIFICATION EXCEPTIONS. It is probable that changes in classification ratings may be desirable if the exceptions are eleminated. Plainly the southern classification has often been honored in the breach, and the wide variations in class percentage relationships have been an obstacle to any consistent scheme of ratings. The establishment of uniform relationships and the elimination of exceptions will so change conditions that a review of the classification will doubtless become imperative. In exceptional cases competitive conditions may lead carriers voluntarily to maintain or establish specific classification exceptions and may make this possible without undue preference. In general, however, it is clear that classification exceptions are unsound in principle and should be discouraged. HELD, nothing has been shown of record which would justify the commission in requiring the maintenance or establishment on less carload traffic of interstate exceptions to the southern classification. This should not be construed as an approval of all existing ratings under southern classification. LESS CARLOAD COMMODITY RATES. The carriers have not sought to justify the cancellation of existing less than carload commodity rates. They have given a list of such rates which they propose to maintain and, so far as the remainder are concerned state that they will consider them with care and consult with shippers before determining whether or not they should be canceled. In view of this state of the record, no finding with respect to specific rates of this character can properly be made. The record indicates that less than carload commodity rates have been widely established in southern territory, and that they are strongly favored by certain large jobbing centers which desire a wide radius of distribution. Such rates, however, mean uneconomical operation and the burden ultimately falls upon the consuming public. From this point of view, carload service should be encouraged and less than carload service discouraged. It would seem that the results which the larger jobbing centers desire might be accomplished, in large degree, without sacrifice of economy in operation, by more liberal mixtures which will permit the consolidation of small lots of freight into one carload shipment and also, even without such privileges, by the cooperation of shippers and the use, if need be, of forwarding and delivering agencies. ANY QUANTITY RATINGS. Similar observations may be made in regard to any quantity ratings. The original cause of such ratings, steamboat competition, has practically ceased to exist intraterritorially in the south. Considered apart from competition, they clearly encourage uneconomical operation. As in the case of less carload commodity rates, there are probably few, if any, circumstances under which the Commission would be justified in requiring the maintenance or establishment of any quantity ratings. But in eliminating them the carriers will clearly err if they proceed on the assumption that in all cases the change should be accomplished by assigning a higher rating to the article when it moves in less carload quantities, allowing the present any quantity rating to stand as the carload rating without reduction. THE SCALE TO BE PRESCRIBED. It is a safe conclusion that class rates are now relatively high in southern territory, at least as compared with the adjoining official territory. HELD, the maximum reasonable class rates for interstate application on standard lines between points in southern territory and

lying wholly within such territory, except between points in Virginia and points in North Carolina and except to and from points in the Florida peninsula, are, and for the future will be, rates determined by the distance scale of class rates set forth in Appendix K. That the reasonable maximum class rates for interstate application on standard lines between points in the Florida peninsula south of the S. A. L., from Jacksonville to River Junction, on the one hand, and other points in southern territory, on the other, are, and for the future will be, rates determined by the distance scale of class rates set forth in Appendix K plus arbitraries determined by the scale set forth in Appendix L for that part of the distance lying south of the aforesaid line of the S. A. L. WEAK LINES AND SHORT LINES. Certain financially weak carriers of fair size and numerous socalled short lines seek special treatment. The weak lines which made such a plea at the hearings are there: G. M. & N., B. & N. W., T. C., B. N. O. G. N., G. & S. I., Miss. Cent. and C. & G. HELD, the maximum reasonable class rates for interstate application between points on any of the weak lines or short lines indicated are, and for the future will be, rates determined by the distance scale of class rates set forth in Appendix K plus arbitraries determined by a distance scale similar to that set forth in Appendix L but not necessarily having the same level; and that the maximum reasonable class rates for interstate application within southern territory between points on such weak lines or short lines and points on standard lines are, and for the future will be, rates determined by the distance scale of class rates set forth in Appendix K plus arbitraries the same as those employed in the case of local hauls on the weak line or short line in question, for that part of the joint haul which is over the weak line or short line. Lines under common control or management with standard lines are excepted from the above finding because no good reason appears for treating them any differently than branch lines, that being their real status. While the matter of divisions of joint rates is not under consideration in this proceeding, the Commission deems it not inappropriate to express the view that where joint rates between standard lines and weak or short lines are made by the use of arbitraries in the manner above indicated, it is a fair presumption that the division of the standard line should not be greater than it would receive if it were dividing the same rate minus the arbitrary with another standard line, and that the benefit of the arbitrary should accrue wholly to the weak or short line. DETERMINATION OF MILEAGES. HELD, that in computing distances for the application of the scales set forth in Appendix K and Appendix L, the shortest routes for the interchange of carload traffic shall be used, embracing as a maximum the lines or parts of lines of not more than three carriers for distances up to 200 miles four carriers for distances from 200 to 500 miles, and five carriers for greater distances, except that where shorter routes are now in use which embrace the lines of more than the specified number of carriers such shorter routes shall be used. Connecting lines under common ownership or control shall be considered as a single line, but disconnected portions of the same railroad system shall for the purposes of this finding be counted as separate lines. In the application of this finding cases may arise where the shortest possible route to a point reached by two or more lines may be wholly or in part over the road of a weak or short line subject to finding 13. In such an event the arbitrary added by such line for the distance covered by its portion of the haul should be included in determining the rate, and if a longer route wholly over a standard line makes a lower rate such lower rate should be applied. The INTERTERRITORIAL RATE BASIS. It can not be said that the record furnishes any convincing reason for making interterritorial rates between central aud southern territories relatively higher than intraterritorial rates within southern territory, except so far as the desire to avoid too abrupt a departure from past practice may be deemed a reason. HELD, through class rates lower than the combination of local rates to and from the boundary line should be established between official and southern teritories, and that there is no sufficient reason why such through class rates should be relatively higher than the maximum class rates herein found reasonable within southern territory. MAXIMUM ALL RAIL RATES. Having determined that through class rates lower than the combination of local

rates to and from the boundary line should be established between official and southern territories, and that the basis for this new interterritorial structure should be a system of through rates governed by the southern classification and by the standard percentage relationships, the next steps are to determine the measure of these rates and, following that, to determine the extent to which this underlying basis should be modified (1) to meet the conditions created by the sudden transition at the boundary line from one system of class rates to a very different system and (2) to meet the conditions created by the coastwise water routes. HELD, a uniform and unmodified application between official and southern territories on all rail traffic of the southern territory class rate scale herein approved would in many instances result in rates which would neither be reasonable nor free from undue preference and prejudice, particularly to and from the border districts of southern territory. To correct the situation in those districts a scale of differential rates should be prescribed, applicable within southern territory to and from all gateway points, and it should be provided that the through charges upon interterritorial traffic subject within southern territory to class rates shall not exceed the lowest charges which would be produced either by the application of the appropriate through class rate based upon the southern territory scale herein approved or by combination of the applicable local rate within official territory to or from any gateway point with the applicable differential class rate within southern territory from or to such gateway point. The differential rates will serve two purposes: First, to provide a reasonable gradient between the two territories in lieu of the precipitous hump which would otherwise exist; and second, to afford some degree of proper protection to competitive relationships between communities. These differential rates should be so adjusted that they will, as a general rule, result in charges lower than those obtained by the through rates based upon the southern territory scale only in what may reasonably be regarded as border districts, but will grade into the general basis applicable to points farther south. The present rate situation in official territory is such, however, that to and from certain points in that territory any reasonable scale of differentials will result in lower charges than the through rates at many points south of the border districts. Under the existing official territory adjustment it is inevitable that this should be the result, if the purposes for which the differentials are designed are to be accomplished, for otherwise in such cases the rate hump and the undue preference and prejudice would merely be shifted from the border districts to territory farther south. The Commission has used the word "differential" rather than the word "proportional" in describing these contemplated rates south of the gateway points to avoid any presumption that they should form the basis for dividing the through charges between the official and southern carriers. The tariffs which provide for their alternative application should make it clear that the through rates constructed by the combination of local rates with these differentials, as well as the through rates based upon the southern territory scale, are joint rates. Without expressing any opinion as to the reasonable division of such joint rates, the Commission can with propriety say that no presumption exists that the divisions accruing to the southern lines should not exceed the differentials. RATES TO AND FROM EASTERN TERRITORY. The rates between southern territory and the eastern portion of official territory present what is, in many ways, the most difficult of the many difficult problems involved in the investigation. This is so because they apply not only over routes wholly by rail but also over routes which are partly by water. For a great many years no relationship in the southern adjustment was regarded as more firmly established and immutably than the parity between the all rail rates from Louisville, and the other Ohio river crossings, and the water-rail rates from Baltimore to Atlanta. The latter rates were the active force in this relationship and they were described by the carriers as a competitive influence which depressed the rates from the Ohio river below a normal and reasonable basis. This relationship continued from 1879 to 1917 when it was disrupted by the reduction in the differential between the water-rail and the all rail rates from the eastern ports, following 45 I. C. C. 303. When the differential between the all rail and the water-

rail rates from eastern ports was cut in half in 1917 under the unusual war time conditions then prevailing, it was upon a definite understanding that if, when normal times return, they (the water lines) find themselves receiving less than a fair proportion of the traffic, the present differential scale in part, or in whole, will be restored on 30 days notice from initial water lines. It never has been restored. Under the present plan, the rail water rail rates from eastern interior points are in general published on the concurrence plan, so that the water lines and the southern carriers are obliged to absorb out of the joint rates the full locals of the eastern carriers to the ports, except to the extent that the New England carriers have established proportional rates lower than the locals for the benefit of this traffic. These local rates have been increased relatively far more, under the general rate changes, than have the rail-water-rail rates. At the southern end, the rate structure seems to have been designed with an eye to the interests of the north and south rail lines which parallel the coast. The first class port to port rate from Baltimore to Savannah is now 99c, and the same rate applies from New York and Philadelphia. THE NONCONCURRENCE PLAN. This plan of publishing through rates has been in effect for many years without challenge by the Commission although never approved in a formal proceeding. On the other hand, similar plans applied to all rail routes have been condemned in several formal cases. The same question with respect to rail water rail routes is now definitely presented in this proceeding, and it becomes necessary to determine whether the nonconcurrence plan of publishing through rates over these routes should be approved, or whether joint rates should be required in lieu thereof. The Commission has power to prescribe the form of concurrence and the manner in which it may be shown in the tariffs. Clearly these rail water rail rates are not joint rates with the eastern lines nor are they combination rates. If this method of publishing through rates is to be sanctioned, there is no means of compelling the nonconcurring line to post the through tariff at its stations in a form convenient for public use. But here there are broader and more important reasons for questioning the practice. The nonconcurrence plan was originally adopted only because the eastern rail carriers would not concur in the joint rail water rail rates. By refusing to concur they made sure of their local rates for the haul to the ports. As participants in joint rates they would be entitled only to divisions, which might or might not be equal the local rates. At the other end, indeed, the southern rail carriers receive divisions which are materially lower than their locals from the ports. Yet if the rail water routes from eastern interior points are routes which ought in the public interest to be open, plainly the eastern lines should in the responsibilities and burdens by participating in reasonable joint rates; and, without prejudging the question, it is at least possible that they are not fairly entitled to divisions of such rates which are equal to their local rates. It appears that the nonconcurrence plan should be discontinued. The Commission now has the power to prescribe through routes and joint rates in a situation like this, even if the result be the shorthauling of certain rail carriers, where it is shown that such through routes and joint rates are necessary or desirable in the public interest. HELD, that the noncurrence plan of publishing rail water rates between interior points in eastern territory and interior points in southern territory should be discontinued, and that joint rail water rail class rates are necessary and desirable in the public interest and should be established and maintained between such points in all cases where maximum reasonable rail water rail rates are hereinafter prescribed. Under the special and peculiar conditions surrounding the movement of traffic between southern territory and eastern points from and to which routes partly by water furnish an economical and efficient means of transportation. HELD, that the interterritorial class rates applicable to such traffic should be determined with regard to the reasonably direct route wholly by rail and to the reasonably direct routes partly by water. In Appendix O are shown the maximum all rail and the maximum water rail or rail water rail first class rates which the Commission finds to be just and reasonable between the key points in eastern territory and the various southern groups. Since the Commission has taken into consideration both classes of routes,

those wholly by rail and those partly by rail, these maximum rates are not so high in certain cases nor so low in others as they would be if the routes were independently considered. Where, for example, from an eastern port to a certain southern group the water rail route is clearly more and the all rail route clearly less economical, the water rail rate has been made somewhat higher and the all rail rate somewhat lower than would be the case if they were separately determined. In reverse situations a reverse process has been followed, the result in all cases, however, being a certain narrowing of the spread between the two classes of rates. The fixing of rates in this way is obviously not a matter of formula but a matter of reasonable judgment. In the exercise of this judgment, the Commission has taken into consideration the given weight to the following factors, among others: present rates; rates proposed by carriers; the rates recommended in the proposed report as worked out for use in the traffic test of 1924; the average all rail rates from each key point to each southern group which would result from the application of the southern territory scale herein approved; the criticisms of the constructive mileage used in the proposed report which were offered in various exception briefs, the avoidance of fourth section departures over reasonably direct routes, whether all rail, water rail or rail water rail. HELD, the maximum reasonable and nonprejudicial class rates for interstate application all rail over standard lines between points in central territory, not including the Buffalo-Pittsburgh zone, and points in southern territory, and for similar application between points in southern territory where a part of the haul is through official territory, are and for the future will be rates governed by the southern classification and based upon the distance scale set forth in Appendix K, subject, however, to the provisions below. The maximum reasonable and nonprejudicial class rates for interstate application all rail over standard lines between points in trunk line territory, not including the Buffalo-Pittsburgh zone, or New England territory and points in southern territory not in the States of Virginia and North Carolina, and between points in the Buffalo-Pittsburgh zone and points in southern territory are and for the future will be rates governed by the southern classification and based upon the appropriate key rates, if any, shown in Appendix O, or, in the case of points in southern territory to and from which no appropriate key rate is shown in said appendix, based upon the distance scale set forth in Appendix K; subject in all cases to the provisions below. The maximum reasonable and nonprejudicial class rates for interstate application over routes partly by rail over standard lines and partly by water via Norfolk, Va., or any south Atlantic port, between points in trunk line territory, not including the Buffalo-Pittsburgh zone, or New England territory and points in southern territory not in Virginia and North Carolina, and between points in the Buffalo-Pittsburgh zone and points in southern territory are and for the future will be rates governed by the southern classification and based upon appropriate key rates, if any, shown in Appendix O. In case of points in southern territory to and from which no appropriate key rate is shown in said appendix, or to and from which the rate over all rail routes made in accordance with paragraph below is lower than the appropriate key rates, no water rail rate or rail water rail rate, as the case may be, need be published. In no case shall an interterritorial class rate over an all rail route exceed the lowest rate that may be made by combining the local class rate, applicable within official territory to the traffic in question and governed by the applicable classification or exception thereto, to or from any gateway set forth in paragraph e below with the differential class rate applicable from or to the same gateway under the scales set forth in Appendix P, said scales to be governed by the southern classification subject to the same exceptions, if any, to which the corresponding local class rates are subject. e. For the purposes of the above finding the following points shall be recognized as gateway points between official and southern territories: Cairo, Ill., Metropolis, Ill., Brookport, Ill., Evansville, Ind., New Albany Ind. Jeffersonville Ind., Cincinnati, O., Lexington, Ky., Winchester, Ky., Elkhorn City, Ky., St. Paul, Va., Bristol, Va. Tenn., Roanoke, Va., Lynchburg, Va. Alta Vista, Va., Brookneal, Va., Burkeville, Va., Meherrin, Va., Richmond, Va., Petersburg, Va., Alberta, Va., Jarret, Va., Suffolk, Va. Norfolk, Va. f. In applying the above

mentioned scales distances shall be computed in accordance with finding. 14. To and from points in Michigan, such arbitraries may be added, in determining the maximum rates under the distance scale set forth in Appendix K, as are contemporaneously recognized and applied in determining class rates within central territory. Likewise to and from points in Vermont, New Hampshire, and Maine, such arbitraries may be added in determining said maximum rates, as are contemporaneously recognized and applied in determining class rates within New England territory. To and from points in the Florida peninsula, arbitraries may be added, in determining said maximum rates, in accordance with finding 12. g. The standard lines in Southern territory to which the above finding applies are those defined in finding 5. The standard lines in official territory to which it applies are all lines except such short lines, including the Bangor & Aroostook, Ry., as do not now ordinarily participate in joint class rates with lines other than their immediate connections or which add arbitraries in the construction of such joint rates. Maximum reasonable and nonprejudicial class rates for interstate interterritorial application to and from points on lines other than those classes as standard are and for the future will be rates made in the manner indicated in the above finding but with the addition of arbitraries for such portion or portions of the joint haul as are over a line not classed as standard. In Appendix P two scales of differentials are set forth, one for use from gateways other than north bank Ohio river crossings and the other for use from such crossings. The latter is in all cases 3c higher, first class, than the former. The purpose of this difference is to compensate in some measure for the river crossings. The evidence of record is insufficient to warrant any finding with respect to the water rail rates from eastern ports via Gulf ports to points in southern territory. HELD, in the adjustment of class rates between central and southern territories Portsmouth and Ironton, O., Ashland, Ky., and Kenova and Huntington, W. Va., shall be included within a single group, distances to be figured in all cases from Ashland, a central point within the group. CLASSIFICATION EXCEPTIONS. The matter of less carload exceptions to the southern classification has already been covered, and this finding has equal application to interterritorial and intraterritorial traffic. GRAIN AND GRAIN PRODUCTS. It appears that the strictly intraterritorial movement of grain and grain products is of minor importance, since these and the related commodities originate very largely in other territories, and the transit arrangements are such that the interterritorial rates usually apply to final point of consumption, even when the commodities are stopped in transit within southern territory for various purposes such as grading, sorting, milling and the like. From the Ohio river and Mississippi river, however, the application of the new class 9 and class 10 rates intraterritorially would, it seems, disrupt the present market equalization plan. HELD, hay, straw, shucks, grain, grain products, and grain by products, now rated class C or class D in the southern classification, should be excepted for the present from the application of the class rates herein approved between official and southern territories and from Ohio river and Mississippi river crossings to points in southern territory. It will be noted that this finding is broad enough to apply to movements from eastern as well as central territory. With the exception of hay, the movements from eastern territory are of minor importance, but no reason appears why a different conclusion should be reached with respect to them than with respect to movements from central territory. OTHER EXCEPTIONS. It appears that classification differences may bring about other cases where the new through rates to points in southern territory will be lower than the local rates to the gateway point. HELD, no specific finding is necessary with respect to this or other similar proposed minor exceptions to the application of the class rates interterritorially. The carriers will be at liberty to propose such exceptions in connection with the publication of the new rates. FOURTH SECTION RELIEF. All applications for fourth section relief assigned for hearing in this case will be denied and all outstanding relief with respect to class rates in southern territory will be withdrawn, except in the case of weak lines and short lines covered by findings 14 and 17. The principal ground upon which the respondents now seek relief is circuity. In other

words, relief is sought so that circuitous routes may meet the rates at competitive points fixed by short line or rate making routes. It has been the practice of the Commission to grant such relief reasonably limited, and it is of the opinion that it should be granted in this proceeding subject to the equi-distant clause. It will be granted subject to the further condition that in establishing rates thereunder the respondents will refrain from publishing the short line rates over routes so circuitous as to result in wasteful transportation or in rates which to the more distant points are not reasonably compensatory. The carriers further urged that relief should be granted, not upon the ground of circuity, but in order that their proposed group adjustment might be maintained inviolate. The Commission has heretofore granted relief in some cases to permit group adjustments to be maintained. Under the rate plan herein approved, it is doubtful whether such relief will in many cases be necessary, but in so far as it proves necessary, applications therefor may be filed. It may be that other occasions for fourth section relief will arise in connection with the interterritorial rates made upon the differential basis. In such cases appropriate applications accompanied by full explanations of the reasons which make such relief desirable may be presented. It is expected that rates established in pursuant of the finds herein will generally conform to the provisions of the fourth section and that applications for relief other than upon the ground of circuity, will be confined to special situations where there are reasonable and substantial grounds for departing from the requirements of that section. ENTRY OF ORDER. It is highly desirable that the new rates should become effective not later than January 1, 1926 and with the cooperation of carriers and shippers there is no good reason why they should not become effective on or before that date. The basis of class rates herein approved is intended to supersede all adjustments heretofore presented by the Commission with reference to all or any of the rates in issue. That being the case, and in order to avoid possible conflicts, an order will be entered modifying, with one exception, outstanding unexpired orders relating to such extent necessary to permit the carriers to publish and apply the rates herein approved. The single exception is 64 I. C. C. 709 so far as the rates from Ohio river crossings and points beyond in central territory and the Buffalo-Pittsburgh are concerned. While it is quite possible that some modification of the order ought to be made in harmony with the general class rate readjustment herein approved, the Commission does not feel that such a modification ought to be made upon the record in this proceeding, particularly in view of the fact that the rates between official territory points and Bristol, Va., are not in issue. Appendix K, distance scale approved in the report ranges from 30c first class for 5 miles and under to 283c first class for 1,500 miles. Appendix L, scale of arbitraries to be added to rates under basic distance scale for distances south of the branch of the Seaboard Air Line from Jacksonville to River Junction, Fla., ranges from 3c first class for 10 miles and under to 16c for 540 miles, first class. Appendix O, maximum first class rates approved in report between certain eastern key points and southern groups, see attached. Differentials approved in report for use from gateways other than north bank Ohio river crossings, see attached. Appendix P. Southern Class rate investigation 100 I. C. C. 513.

Differentials approved in report for use from gateways other than north-bank Ohio River Crossings
(Differentials are in cents per 100 pounds)

	1	2	3	4	5	6	7	8	9	10	11	12
10 miles and under	12	10	8	7	5	5	4	4	3	3	2	2
15 miles and over 10	14	12	10	8	6	6	5	4	4	3	3	2
20 miles and over 15	16	14	11	9	7	6	6	5	4	4	3	3
25 miles and over 20	18	15	13	10	8	7	6	5	5	4	4	3
30 miles and over 25	20	17	14	11	9	8	7	6	5	5	4	4
40 miles and over 30	24	20	17	13	11	10	8	7	6	5	5	4
50 miles and over 40	28	24	20	15	13	11	10	8	7	6	6	5
60 miles and over 50	32	27	22	18	14	13	11	10	8	7	6	6
70 miles and over 60	35.5	30	25	20	16	14	12	11	9	8	7	6
80 miles and over 70	39	33	27	21	18	16	14	12	10	9	8	7
90 miles and over 80	42	36	29	23	19	17	15	13	11	9	8	7
100 miles and over 90	45	38	32	25	20	18	16	14	11	10	9	8
110 miles and over 100	48	41	43	26	22	19	17	14	12	11	10	8
120 miles and over 110	51	43	36	28	23	20	18	15	13	11	10	9
130 miles and over 120	53.5	45	37	29	24	21	19	16	13	12	11	9
140 miles and over 130	56	48	39	31	25	22	20	17	14	13	11	10
150 miles and over 140	58.5	50	41	32	26	23	20	18	15	13	12	10
160 miles and over 150	61	52	43	34	27	24	21	18	15	14	12	11
180 miles and over 160	66	56	46	36	30	26	23	20	17	15	13	12
200 miles and over 180	71	60	50	39	32	28	25	21	18	16	14	12
220 miles and over 200	76	65	53	42	34	30	27	23	19	17	15	13
240 miles and over 220	81	69	57	45	36	32	28	24	20	18	16	14
260 miles and over 240	86	73	60	47	39	34	30	26	22	19	17	15
280 miles and over 260	91	77	64	50	41	36	32	27	23	20	18	16
300 miles and over 280	96	82	67	53	43	38	34	29	24	22	19	17
320 miles and over 300	101	86	71	56	45	40	35	30	25	23	20	18
340 miles and over 320	106	90	74	58	48	42	37	32	27	24	21	19
360 miles and over 340	111	94	78	61	50	44	39	33	28	25	22	19
380 miles and over 360	116	99	81	64	52	46	41	35	29	26	23	20
400 miles and over 380	121	103	85	67	54	48	42	36	30	27	24	21
420 miles and over 400	126	107	88	69	57	50	44	38	32	28	25	22
440 miles and over 420	131	111	92	72	59	52	46	39	33	29	26	23
460 miles and over 440	136	116	95	75	61	54	48	41	34	31	27	24
480 miles and over 460	141	120	99	78	63	56	49	42	35	32	28	25
500 miles and over 480	146	124	102	80	66	58	51	44	37	33	29	26

Differentials approved in report for use from north-bank Ohio River Crossings
(Differentials are in cents per pound)

	1	2	3	4	5	6	7	8	9	10	11	12
10 miles and under	9	8	6	5	4	4	3	3	2	2	2	2
15 miles and over 10	11	9	8	6	5	4	4	3	3	2	2	2
20 miles and over 15	13	11	9	7	6	5	5	4	3	3	3	2
25 miles and over 20	15	13	11	8	7	6	5	5	4	3	3	3
30 miles and over 25	17	14	12	9	8	7	6	5	4	4	3	3
40 miles and over 30	21	18	15	12	9	8	7	6	5	5	4	4
50 miles and over 40	25	21	18	14	11	10	9	8	6	6	5	4
60 miles and over 50	29	25	20	16	13	12	10	9	7	7	6	5
70 miles and over 60	32.5	28	23	18	15	13	11	10	8	7	7	6
80 miles and over 70	36	31	25	20	16	14	13	11	9	8	7	6
90 miles and over 80	39	33	27	21	18	16	14	12	10	9	8	7
100 miles and over 90	42	36	29	23	19	17	15	13	11	9	8	7
110 miles and over 100	45	38	32	25	20	18	16	14	11	10	9	8
120 miles and over 110	48	41	34	26	22	19	17	14	12	11	10	8
130 miles and over 120	50.5	43	35	28	23	20	18	15	13	11	10	9
140 miles and over 130	53	45	37	29	24	21	19	16	13	12	11	9
150 miles and over 140	55.5	47	39	31	25	22	19	17	14	12	11	10
160 miles and over 150	58	49	41	32	26	23	20	17	15	13	12	10
180 miles and over 160	63	54	44	35	28	25	22	19	16	14	13	11
200 miles and over 180	68	58	48	37	31	27	24	20	17	15	14	12
220 miles and over 200	73	62	51	40	33	29	26	22	18	16	15	13
240 miles and over 220	78	66	55	43	35	31	27	23	20	18	16	14
260 miles and over 240	83	71	58	46	37	33	29	25	21	19	17	15
280 miles and over 260	88	75	62	48	40	35	31	26	22	20	18	15
300 miles and over 280	93	79	65	51	42	37	33	28	23	21	19	16
320 miles and over 300	98	83	69	54	44	39	34	29	25	22	20	17
340 miles and over 320	103	88	72	57	46	41	36	31	26	23	21	18
360 miles and over 340	108	92	76	59	49	43	38	32	27	24	22	19
380 miles and over 360	113	96	79	62	51	45	40	34	28	25	23	20
400 miles and over 380	118	100	83	65	53	47	41	35	30	27	24	21
420 miles and over 400	123	105	86	68	55	49	43	37	31	28	25	22
440 miles and over 420	128	109	90	70	58	51	45	38	32	29	26	22
460 miles and over 440	133	113	93	73	60	53	47	40	33	30	27	23
480 miles and over 460	138	117	97	76	62	55	48	41	35	31	28	24
500 miles and over 480	143	122	100	79	64	57	50	43	36	32	29	25

APPENDIX O

Maximum first-class rates approved in report between certain eastern key points and southern groups shown in Appendix N
(Rates are in cents per 100 pounds)

Southern group	Baltimore		Philadelphia		New York		Boston		Albany		Syracuse		Watertown		Rochester	
	Rail	Water and rail	Rail	Water and rail	Rail	Water and rail	Rail	Water and rail	Rail	Rail-water-rail	Rail	Rail-water-rail	Rail	Rail-water rail	Rail	Rail-water-rail
	Cents	Cents	Cents	Cents	Cents	Cents	Cents	Cents	Cents	Cents	Cents	Cents	Cents	Cents	Cents	Cents
1	(1)	(1)	(1)	(1)	(1)	(1)	(1)	(1)	(1)	(1)	(1)	(1)	(1)	(1)	(1)	(1)
2	(1)	(1)	(1)	(1)	(1)	(1)	(1)	(1)	(1)	(1)	(1)	(1)	(1)	(1)	(1)	(1)
3	(1)	(1)	(1)	(1)	(1)	(1)	(1)	(1)	(1)	(1)	(1)	(1)	(1)	(1)	(1)	(1)
4	(1)	(1)	(1)	(1)	(1)	(1)	(1)	(1)	(1)	(1)	(1)	(1)	(1)	(1)	(1)	(1)
5	149	143	160	153	166	156	181	167	181	175	186	183	194	191	190	187
6	149	149	160	159	166	162	181	173	181	181	186	186	194	194	190	
7	160	152	170	161	176	164	190	174	190	183	196	192	204	200	200	196
8	160	160	170	169	176	172	190	182	190	190	196	196	204	204	200	200
9	172	160	181	168	187	191	200	180	200	190	205	197	213	205	209	201
10	178	170	187	178	192	180	205	189	205	199	207	207	215	215	211	211
11	184	168	193	176	198	178	210	186	210	197	214	204	222	212	218	208
12	192	178	201	186	206	188	218	196	218	207	221	215	229	223	223	217
13	178	178	187	187	192	192	205	201	205	205						
14	192	185	201	193	206	195	218	203	218	214						
15	199	185	208	193	213	195	225	203	225	214	225	221	233	229	225	225
16	199	192	208	200	213	202	225	210	225	220	225	223	233	231	225	225
17	206	195	214	202	219	204	231	212	231	222	231	227	239	235	231	231
18	209	204	217	211	222	213	234	221	234	231	234		242		234	
19	214	204	222	211	227	213	239	221	239	231	239	235	247	243	239	239
20	218	215	226	222	231	224	248	232	242	242						
21	220	215	228	222	233	224	245	232	245	242	245		253		245	
22	230	223	238	230	243	232	255	240	255	250	255		263		255	
23			218	218	220	220	232	232	232							
24			208	208	210	210	222	222	222							
25			184	184	186	186	201	201	201							
26							193	193	193							
27	198	184	207	192	212	194	224	202	224	213	228	220	236	228	232	224
28	213	200	222	208	227	210	239	218	239	229	243	236	251	244	247	240
29	228	216	237	224	242	226	254	234	254	245	258	252	266	260	262	256
30	243	232	252	240	257	242	269	250	269	261	273	268	281	276	277	272

1 Rates to Groups 1 to 4, inclusive, are not in issue from eastern territory, except from points in the Buffalo-Pittsburgh zone.

APPENDIX O—Continued

Maximum first-class rates approved in report between certain eastern key points and southern groups shown in Appendix N.—Continued.
(Rates are in cents per 100 pounds)

Southern group	Buffalo		Pittsburgh		Altoona		Scranton		Harrisburg		Cumberland		Washington	
	Rail	Rail-water-rail	Rail	Rail-water-rail	Rail	Rail-water-rail	Rail	Rail-water-rail	Rail	Rail-water-rail	Rail	Rail-water-rail	Rail	Water and rail
	Cents	Cents	Cents	Cents	Cents	Cents	Cents	Cents	Cents	Cents	Cents	Cents	Cents	Cents
1					(1)	(1)	(1)	(1)	(1)	(1)	(1)	(1)	(1)	(1)
2					(1)	(1)	(1)	(1)	(1)	(1)	(1)	(1)	(1)	(1)
3					(1)	(1)	(1)	(1)	(1)	(1)	(1)	(1)	(1)	(1)
4					(1)	(1)	(1)	(1)	(1)	(1)	(1)	(1)	(1)	(1)
5	198	198					173	170	162	159	162	162	142	142
6							173	173	162	162	162		142	
7	206	202	196	192	190	186	183	179	173	168	177	173	157	157
8							183	183	173	173			157	
9	215	207	205	197	199	191	193	186	185	176	189	187	172	172
10	217	217	207	207	201	201	199	195	191	186	193		178	
11	223	214	213	204	207	198	204	193	197	184	199	194	184	180
12	223	220	213	210	213	207	212	203	205	194	203	203	192	190
13							199	199	191	191				
14							212	210	205	201			192	192
15	223	223	213	213	217	213	219	210	211	200	206	206	199	197
16	223		213		217		219	216	211	207	206		199	199
17	230	230	220	220	224	220	225	218	218	210	213	213	206	206
18							228	227	217	217			209	209
19	238	238	238	238	236	228	233	227	222	219	221	221	214	214
20							236	236	226				218	
21							239	238	228	228			220	
22							249	246	238	237			230	230
23														
24														
25														
26														
27	237	230	227	220	221	214	218	210	211	200	213	210	198	196
28	252	246	242	236	236	230	233	226	226	216	228	226	213	212
29	267	262	257	252	251	246	248	242	241	232	243	242	228	228
30	282	278	272	268	266	262	263	258	256	248	258	258	243	243

1 Rates to Groups 1 to 4, inclusive, are not in issue from eastern territory, except from points in the Buffalo-Pittsburgh zone.

(31) Complainant attacked fifth class rate charged on naphtha carloads between June 5, 1922 and May 31, 1923 from Devol, Okla., to Burkburnett, Tex., as unreasonable. Prior to July 1, 1922 rate was 17c, reduced on that date to 15.5c and further reduced on Dec. 20, 1922 to 10c. Rate of $11.25 per car was established Dec. 1, 1923 following 83 I. C. C. 51. Shipments originated at Constantine refinery 2.7 miles south of Devol and moved to complainants plant 1.1 miles south of Burkburnett, a haul of 5.3 miles. The origin and destination were within the Burkburnett yard limits. HELD, rate attacked unreasonable to extent it exceeded $12.50 per car prior to July 1, 1922 and $11.25 thereafter, reparation awarded. Skelly Oil Co. v. M. K. & T. Ry. 101 I. C. C. 47.

(3m) Complainant attacked sixth class rate charged on 12 cars of broken soapstone between July 1, 1922 and Dec. 1923 from Marriottsville, Md., to Stockerton, Pa., as unreasonable. Marriottsville is on the B. & O., 26 miles west of Baltimore, Md. Stockertown is on the L. V., 10 miles north of Easton, Pa. Shipments moved B. & O., to Park Junction, Pa., P. & R., to Bethlehem, Pa., L. V., beyond charged sixth class of 26c. A commodity rate on broken ground or refuse soapstone was maintained of 18.9c from Marriottsville to Allentown, Bethlehem, and Easton, Pa., and other stations for distances ranging from 177 to 212 miles. Broken soapstone is a low grade commodity. HELD, rate attacked unreasonable to extent it exceeded $3.78 per ton, reparation awarded. Kelly & Co. v. L. V. R. R. 101 I. C. C. 49.

(3n) Complainant attacked class rates charged on paper envelope blanks in sheets, printed or lithographed, or paper wrappers in sheets, printed or lithographed, shipped since Sept. 6, 1922 from New York to Buffalo as unjust, unreasonable, unjustly discriminatory and unduly prejudicial. The finished envelopes are designed for use in packing individual hair nets for the retail trade, and each uncut envelope bears the figure of a woman's head and various printed words and phrases. Charged third class 54.5c carloads and 79.5c first class less carloads. The Commission has declined to disturb the classification as applied to particular kinds of printed matter, even where the value was less than this. If an exception were made with regard to the commodity shipped by complainant it would open up an endless field for complaint from the manufacturers of all kinds of printed matter. It would be practically impossible to distinguish between the different grades of commodities that come under the designation printed matter for the purpose of fixing specific rates on each. HELD, rates attacked not unreasonable or otherwise unlawful, complaint dismissed. American Lithographic Co. v. L. V. R. R. 101 I. C. C. 100.

(3o) Complainant attacked class rates on strawboard, in carloads, from and to points in central territory and from points in that territory to Canadian and trunk line territories as unreasonable unjustly discriminatory and unduly prejudicial. The allegation of undue prejudice grows out of the fact that relatively lower rates apply from St. Louis, Mo., Alton, Ill., Milwaukee, Wis., and other points in the socalled Illinois district than apply elsewhere in central territory. Strawboard is rated fifth class but under exceptions the rating throughout official territory is 90 per cent of sixth class. This basis was prescribed in 52 I. C. C. 84. Complainants described the manufacture of strawboard and paper, and named the principal ingredients of these products and paper boards, wall board and roofing material, and introduced evidence as to their respective values, seeking to have strawboard excepted from the general list of boards on which the rating of 90 per cent of sixth class applies. However, all these boards are so similar from the standpoint of manufacturing process, value, use, and transportation characteristics that they naturally fall into one group and should be accorded a common basis of rates. HELD, rates attacked not unreasonable, unjustly discriminatory or unduly prejudicial, complaint dismissed. Lafayette Box Board & Paper Co. v. A. C. & Y. Ry. 101 I. C. C. 273.

(3p) Complainant attacked sixth class rate charged on five cars of scrap iron shipped during Nov. 1921 from Dunbar, W. Va., to Weirton, W. Va., as unjust and unreasonable to extent it exceeded the rate subsequently established. Dunbar is on the K. & M., near Charleston, W. Va. Shipments moved via that line to Columbus, O., and Pennsylvania be-

yond, 339 miles, charged sixth class rate of $5.10. On Sept. 30, 1921 complainants requested the establishment of a commodity rate of $3.92 which applied from Dunbar to Wheeling, W. Va., and Steubenville, O. and it became effective Jan. 20, 1922. HELD, rate attacked unreasonable to extent it exceeded $3.92 per long ton, reparation awarded. Hilb & Bauer v. N. Y. C. R. R. 101 I. C. C. 621.

(3q) The evidence is directed to the reasonableness of the rates on cheese, carloads, from Wisconsin producing points and Chicago, Ill., to destinations in Arkansas, Louisiana, Oklahoma and Texas. To some of these destinations commodity rates lower than the classification basis of third class have applied for many years. To the others third class rates have been and are applicable. Cheese movement is regular throughout the year. When shipped it is packed in round wooden boxes, called hoops, loaded in the cars in solid tiers, and braced. As a perishable commodity it requires protection to some extent against heat and cold, and moves only in refrigerator equipment, under refrigeration for about 8 months in the year and under either carriers or shippers protective service, during the other four months. Rates on cheese from defined territories to the southwest are constructed by adding certain established differentials to the rates from Kansas City, Mo., and St. Louis, the principal gateways for this traffic from Wisconsin and Chicago. Commodity rates are published from Wisconsin points and from Chicago to numerous destinations in Arkansas and Louisiana. On shipments into Oklahoma they are confined to Oklahoma City and a few intermediate destinations. To all other destinations in those states and in Texas third class rates apply. Destination in eastern Texas, such as Fort Worth, are intermediate over available routes to Shreveport and other Louisiana points, and the maintenance of commodity rates to these Louisiana points and the higher third class rates to Texas gave rise to the negotiations which culminated in these proceedings. From the standpoint of distance the level of the rates should be substantially the same to Oklahoma and Arkansas. The record also warrants the conclusion that there is no justification for applying from Wisconsin to any part of the destination territory the same rates as from Chicago, except from points of origin in Wisconsin comprised in the Milwaukee group. The present record affords no reason for disturbing the present difference in rates as between the Fox River and Minneapolis-St. Paul groups on the one hand and the Chicago and Milwaukee groups on the other hand or why that difference should not be maintained in respect of traffic to all of the destination states. HELD, proposed schedules not justified, without prejudice to filing of new schedules minimum 24,000 pounds, as follows: From Wisconsin to Tulsa, Okla., 135 from Chicago 117c; Oklahoma City 142 and 124c respectively; Fort Smith, Ark., 139 and 121c, respectively; Little Rock, Ark., 133 and 115c, respectively; Texarkana, Ark., 144c and 126c; Dallas, Tex., 155 and 137c; Houston, Tex., 167 and 149c; San Antonio, Tex., 173 and 155c; El Paso, Tex., 185c and 167c; Shreveport, La., 149 and 131c; and Lake Charles, La., 158c and 140c; rates attacked not unreasonable but will be unreasonable for future to extent they exceed rates named above. Cheese from Wisconsin, 101 I. C. C. 744.

(3r) Fifth-class rate on toilet paper from Northumberland to New Hartford and South Utica, N. Y., found not unreasonable as compared with lower commodity rate from Groveton, N. H., a farther distant point to which Northumberland is intermediate. Saucquoit Paper Co. v. Director General, 92 I. C. C. 61.

(3s) In cases where there has been no prior movement, the commission has found that class rates were not unreasonable even though commodity transported was a low-grade raw material capable of heavy loading. See Grasselli Chemical Co., 66 I. C. C. 263. Atlas Portland Cement Co. v. Director General, 92 I. C. C. 171, 172.

(3t) Fifth-class rates assessed on raw sugar from Brooklyn, New York, Weehawken, and Philadelphia, to Marine City, Mich., found not unreasonable as compared with lower commodity rates to farther distant Canadian points to which there is a substantial movement. Circumstances governing application of commodity rates to Canadian points substantially differed from those surrounding movements to Marine City; former are not acceptable as a measure of reasonable rates on latter; nor is subsequent publication of lower commodity rates to Marine City sufficient ground for finding unreasonableness in absence

of other proof. Garcia Sugars Corp. v. N. Y. C., 92 I. C. C. 239.

(3u) Comparisons of rate levels in respective classification territories serve no useful purpose in a case involving reasonableness of classification rating in a particular classification territory. Coca-Cola Co. v. B. & O., 92 I. C. C. 340, 343, 344.

(3v) Fifth-class rate and rating on alkali salts, so-called potash, from Omaha to Dubuque, assessed as factor of combination from Omaha to destinations east of Mississippi River, found not unreasonable or otherwise unlawful as compared with commodity rates applicable on through shipments from complainant's plant at Lakeside, Nebr., to same destinations, or as compared with lower rate subsequently established. Ordinarily complainant ships in bulk direct to consumers, but these shipments were unusual in that they were stored at Omaha because of insufficient storage facilities at complainant's plant; furthermore, the subsequent reduction of this factor is not sufficient to warrant a condemnation of the combination rate. Standard Potash Co. v. Director General, 92 I. C. C. 337.

(3w) Upon further hearing, maintenance of class and commodity rates from points in California, Oregon, Washington, and eastern transcontinental groups to Mesa and Nogales, Ariz., relatively lower than those to points on Globe divisions of the Arizona Eastern R. R. found not unduly prejudicial to points on the Globe division. Record on further hearing shows that circumstances and conditions surrounding transportation to Mesa and Nogales are not wholly comparable with those in connection with transportation to points on the Globe division. Original report 81 I. C. C. 134, modified. Class and Commodity Rates to Mesa, 92 I. C. C. 512.

(3x) Class rates from western trunk-line, c. f a., and trunk-line territories, and rates on various commodities from same points and from Ohio River crossings and New Orleans, La., to Virginia, Minn., found not unreasonable or unduly prejudicial as compared with rates to Duluth. Location of Duluth at head of the lakes, as the principal gateway of lake-and-rail traffic has brought about a competitive rate situation at that point which is not applicable to Virginia. Virginia Chamber of Commerce v. A., T. & S. F. 92 I. C. C. 722.

(3y) Sixth-class rate assessed on lumber and fixtures from Chattanooga, Tenn., to Belhaven, N. C., found unreasonable as compared with lower rate contemporaneously in effect from Nashville, through Chattanooga to Belhaven, with rate from Chattanooga to Newbern, N. C., located in same general seaboard territory as Belhaven; and to extent it exceeded the combination based upon the aggregate of rates to and from Nashville. Reparation awarded. Walsh & Weidner Boiler Co. v. Director General, 93 I. C. C. 1.

(3z) Fifth-class rates assessed on sisal from Indianapolis to certain points in c. f. a. territory, western New York, and Ontario, Canada, found not unreasonable. Shipments here involved represented the reshipment of sisal imported via gulf ports and held in storage at Indianapolis beyond the transit period. Had they been shipped out from transit point within the transit period they would have been entitled to joint rates from the ports to ultimate destination, plus transit charge. Complainant did not attack the rating or class rates as such but in effect sought extension in some degree of the benefit of the storage-in-transit arrangement to shipments made after expiration of the transit period. Similar proposals, however, were found not justified in 73 I. C. C. 455 and 78 I. C. C. 575. Sisal Sales Corp. v. B. & O., 93 I. C. C. 297.

(4a) Class rates assessed on crushed marble found unreasonable to extent they exceeded lower commodity rates contemporaneously applicable on other kinds of stone analogous to crushed marble from a transportation standpoint, and to extent they exceeded lower commodity rate established subsequent to movement. Crushed marble is low in value, loads heavily, is not susceptible to damage, and rarely moves at class rates even for very short hauls. Musto Sons-Keenan Co. v. S. P. Co., 93 I. C. C. 447.

(4b) Upon contention that class rates are properly applicable on isolated shipments in lieu of commodity rates as latter are established to take care of sustained movements. HELD, shippers are entitled to reasonable rates, and fact that there have been relatively few shipments of a commodity between certain points is not the sole determinative factor. Parkersburg Rig & Reel Co. v. M. P., 93 I. C. C. 667, 669.

(4c) Second-class express rates on cream, in 10-gallon cans, from Albion

and Dallas Center, Iowa, to Omaha, found unreasonable to extent they exceeded commodity distance rates subsequently established. Reparation awarded. Fairmont Creamery Co. v. Am. Ry. Exp. Co., 93 I. C. C. 684.

(4d) Fifth-class rate on structural steel from Carnegie, Pa., to Richmond, Va., found unreasonable to extent it exceeded lower joint commodity rate contemporaneously in effect from Pittsburgh proper and other competing points in same rate group to same destination, which lower rate carriers subsequently established from Carnegie. Reparation awarded. McClintic Marshall Steel Supply Co. v. P., C. & Y., 95 I. C. C., 459.

(4e) Third-class rating and rates in southern classification on cocoanut oleine found not unjustly discriminatory or unduly prejudicial but unreasonable to extent they exceeded fifth-class rating and rates contemporaneously applicable on cocoanut oil. Oleine and refined cocoanut oil are analogous, are used for same purposes, the only difference between them being in the melting point. Reasonable rating prescribed and reparation awarded. Best Foods v. C. R. R. Co. of N. J., 95 I. C. C. 738.

(4f) Fifth-class rate assessed on corrugated strawboard boxes from St. Louis, Mo., to Urbanette and Green Forest, Ark., found unreasonable to extent it exceeded lower rate to Searcy, Ark., a farther distant point beyond Urbanette and Green Forest. Reparation awarded. Villines Canning Co. v. M. Ry. Co., 96 I. C. C. 3.

(4g) Joint fifth-class rates assessed on fabricated steel tank material, k. d., from Shreveport, La., to El Dorado, Ark., found unreasonable as compared with lower commodity rates subsequently established, and to extent they exceeded rates based upon distance scale prescribed in Memphis-Southwestern Investigation, 77 I. C. C. 473. Earnings which these rates yield are sufficiently remunerative for a heavy loading commodity of the character under consideration. Reparation awarded. Parkersburg Rig & Reel Co. v. C., R. I. & P., 96 I. C. C. 99.

(4h) Class rates on spelter from Trenton, N. J., to Baltimore, and Sparrow's Point, Md., Weir Branch, Cambridge, Boston and Worcester, Mass., Providence, R. I., and Stamford, Springdale, Chelshire, Bridgeport and Waterville, Conn., found not to have been unjustly discriminatory or unduly prejudicial and not unreasonable, except for a certain period when they exceeded lower commodity rates which were published subject to Rule 77 of Tariff Circular 18 A and would have been applicable upon request. Reparation awarded. Trenton Smelting & Refining Co. v. P. R. R., 96 I. C. C. 264.

(4i) Second-class rates on black powder from Quaker Falls, Pa., to various destinations in Illinois and Indiana, found unjust and unreasonable as compared with commodity rates averaging 68.4 per cent of second class, which rates are applicable from Mooar, Iowa, Pleasant Prairie, Wis., and other powder-producing points which compete with Quaker Falls in destination territory under consideration. Reasonable rates prescribed for future and reparation awarded. Grasselli Powder Co. v. A., C. & Y. Ry., 96 I. C. C. 271.

(4j) Second-class rating and rates applicable on l. c. l. shipments of printed waxed wrapping paper between points in official territory, found not unduly prejudicial but unreasonable to extent they exceeded, exceed, or may exceed third-class rating and rates contemporaneously applicable on l. c. l. shipments of waxed wrapping paper unprinted. Printed waxed paper weighs the same, occupies same amount of space in a car, and is shipped in same kind of container as unprinted waxed paper, the only difference being that the printed paper is slightly more valuable. Moreover, waxed paper, printed and unprinted, in official classification, takes same c. l., rating and in both southern and western classification the same l. c. l. rating. Reparation awarded. General Baking Co. v. P. R. R. Co., 96 I. C. C. 280.

(4k) Fourth-class rate assessed on shipments of sisal from New Orleans, La., to Mounds, Ill., during Federal control, found unreasonable as compared with import commodity rates contemporaneously in effect from New Orleans to Indianapolis, Ind., and to extent it exceeded lower import commodity rate subsequently established over route of movement. Reparation awarded. Capital Warehouse Co. v. Director General, 96 I. C. C. 293, 297, 298.

(4l) Third-class rates on butter to Fort Worth, Houston, and San Antonio, Tex., from various points and territories found unreasonable as compared with distance rates in the same general territory on various commodities as prescribed in 77 I. C. C. 473, and 57 I. C. C.

231, and to the extent they exceeded rates based on the distance scale of reasonable maximum rates on butter, eggs and dressed poultry prescribed in Butter, Eggs and Dairy Products, 96 I. C. C. 19. Reasonable rates prescribed and reparation awarded. Mistletoe Creameries v. A., T. & S. F., 96 I. C. C. 303.

(4m) Fifth-class rates assessed on brass and copper ingots from East Liberty, Pa., to Follansbee and Wheeling, W. Va.; Toronto, Youngstown, Canton, Cleveland, Newburg, Harvard Avenue, Lorain, Toledo, Wagon Works, Maryville, Springfield and Bellaire, Ohio; Detroit, Mich.; East Chicago and Gary, Ind.; Chicago and South Chicago, Ill.; Louisville and South Louisville, Ky., and St. Louis, Mo., found unreasonable to extent they exceeded rates contemporaneously in effect on brass ingots from Falls Creek and Punxsutawney, Pa., to same destinations. Reparation awarded. Duquesne Reduction Co. v. P. R. R. Co., 96 I. C. C. 351.

(4n) Class rates on burlap bags, in carloads and less than carloads, from New York, N. Y., Philadelphia, Pa., and Baltimore, Md., and points taking the same rates to Alexandria, Va., found unjust and unreasonable to the extent they may exceed the commodity rates proposed by the carriers for establishment between the same points. Bryant v. P. R. R. Co., 96 I. C. C. 564.

(4o) Third-class rates on lime-cola sirup shipped during Federal control from Montgomery to Mobile, Ala., found inapplicable. Lower commodity rates in effect on "sirup in wood or in tin cans, boxed" should have been assessed. Reparation awarded. Allen v. Director General, 96 I. C. C. 561.

(4p) Class rates on burlap bags, in carloads and less than carloads, from New York, N. Y., Philadelphia, Pa., and Baltimore, Md., and points taking the same rates to Alexandria, Va., found unjust and unreasonable to the extent they exceed or may exceed the commodity rates proposed by the carriers for establishment between the same points. Reparation awarded. Bryant v. P. R. R. Co., 96 I. C. C. 564.

(4q) Applicable fifth-class rate charged on a carload of sulphate of ammonia from Gary, Ind., to Little Rock, Ark., found unreasonable to extent it exceeded a lower combination of commodity rates contemporaneously in effect over the route of movement. Reparation awarded. Arkansas Fertilizer Co. v. Director General, 96 I. C. C. 567.

(4r) Proposed increased commodity rates on glucose products from Chicago, Ill., and certain points in Iowa, to South Dakota destinations north and west of Sioux Falls and east of the Missouri River, designed to make such rates approximately the same percentage of the contemporaneous fifth-class rates as obtains to Sioux Falls, Sioux City, Iowa; Minneapolis, Minn., and other destinations in the same general territory, found not justified, in view of the fact that the record does not disclose that the class rates afford a proper basis upon which to construct the commodity rates proposed to all of these destinations. Glucose Products to South Dakota, 96 I. C. C. 579.

(4s) As indicated in 46 I. C. C. 1, commodity rates are supposed to reflect the specific transportation conditions which prompt their establishment. They are not necessarily or usually related to class rates. Under some circumstances that method of making commodity rates may be both proper and convenient, but if it does not appear that the class rates to all of the points embraced in such an adjustment are properly related, the method ceases to be proper. Glucose Products to South Dakota, 96 I. C. C. 579, 584.

(4t) First-class and commodity rates assessed on shipments of hog bristles from Pacific Coast ports to New York, N. Y., which were washed, sorted and bunched prior to shipment, thus changing their character so that they could no longer be considered as coming within the designation "other than crude" within the meaning of the tariffs, found applicable. Cone & Co. v. Director General, 96 I. C. C. 629.

(4u) Fifth-class rates for the transportation of manufactured iron and steel articles from points in the Pittsburgh, Pa., district to St. Louis, Mo., and points in Illinois and Indiana, found unjust and unreasonable to extent they exceed or may exceed, scale prescribed. In computing distances under this scale, the shortest routes by existing connections for the interchange of carload traffic shall be used, embracing as a maximum the lines of not more than three line-haul carriers. Jones & Laughlin Steel Corp. v. B. & O., 96 I. C. C. 682.

(4vw) Class rates to Casper, Wyo., from Omaha, Nebr., Sioux City and Burlington, Iowa, Kansas City and St. Louis,

Mo., St. Paul, Minn., and Chicago, Ill., and proportional class rates from upper Mississippi River crossings found unreasonable and unduly prejudicial to the extent they exceed the rates specified, which are prescribed as reasonable and nonprejudicial rates for the future. The reduced percentage relationship of the lower class rates to first class herein prescribed should permit elimination of some higher commodity rates, and rates on other commodities should be established or revised where necessary to afford Casper a fair basis in comparison with points with which it competes, observing substantially the same relationship prescribed in connection with the class rates. Casper Chamber of Commerce v. C. & N. W. Ry. Co., 96 I. C. C. 736.

(4x) First-class rates assessed on uncompressed cotton, in bales, from Greenville, Miss., to Dyersburg, Tenn., found unreasonable to extent it exceeded lower commodity rate contemporaneously in effect on cotton, in bales, compressed or uncompressed, from Greenville to Cairo, Ill., over route of movement and the Illinois Central, subject to Rule 77 of Tariff Circular 18-A. Reparation awarded. Churchill Compresses v. C. & G. R. R. Co., 98 I. C. C. 5.

(4y) Third-class l. c. l. rates assessed on one carload of balsam wool, from Minnesota Transfer, Minn., to Tacoma, Wash., found unreasonable to extent it exceeded commodity rate, c. l., contemporaneously in effect on flaxlinum, fibrofelt, linofelt, and hair felt, analogous insulating materials which with balsam wool is competitive. Reparation awarded. Dower Lumber Co. v. N. P. Ry. Co., 98 I. C. C. 9.

(4z) On artificial silk, in carloads, from Roanoke, Va., to Marcus Hook, Pa., complainant seeks a commodity rate which is the same as that applicable on artificial-silk waste, based on released value, in lieu of the first-class rate, any quantity, based on released value. FOUND, that the first-class rate assailed is not unreasonable and that there is no justification for requiring same rate on artificial silk as on artificial-silk waste. Artificial silk is a high-grade article, and the freight charges bear a small ratio to its value, and the present rates are not shown to discourage the movement or to impose an undue burden on traffic, which is of a special character, between two of complainant's plants. The fact that the rate assailed is an any-quantity rate does not in itself prove that it is unreasonable as applied to carload shipments. U. S. Farm Sales Co., 92 I. C. C. 19. Viscose Co. v. P. R. R. Co., 98 I. C. C. 97.

(5a) Proposal to cancel interstate commodity rates on iron and steel articles from certain points on W. & L. E. in Ohio to destinations on P. & L. E. in Ohio and Pennsylvania and to apply the higher fifth-class rates in lieu thereof found not justified. The fact that the class basis is maintained over other lines from and to points involved is not controlling. Iron and Steel Articles from Ohio to Pennsylvania Points, 98 I. C. C. 151.

(5b) Exceptions to the classification and commodity rates are often founded on the conditions surrounding the transportation of the excepted commodity between particular points or in comparatively limited sections. A mere reference to certain tariffs in which such commodity rates or exceptions appear is not in itself persuasive of any impropriety in the classification. Classification of Canned Goods, 98 I. C. C. 166, 175.

(5c) Class rates on paper tablets, paper bags, and wrapping paper from Birmingham, Ala., and Atlanta, Ga., to Jackson, Miss., found not unreasonable or otherwise unlawful. The record is convincing that the class basis is reasonable and proper for these occasional carload shipments, and that complainant has suffered no undue prejudice by reason of the maintenance of unused commodity rates from Atlanta. Jackson Paper Co., v. A. G. S. R. R. Co., 98 I. C. C. 442.

(5d) Class rates on paper tablets, paper bags, and wrapping paper from Birmingham, Ala., and Atlanta, Ga., to Jackson, Miss., found not unreasonable or otherwise unlawful. No sound reason appears for prescribing rates on these articles which will reflect certain percentages of corresponding class rates as sought by complainant. Rates published in 66 I. C. C. 571 and 64 I. C. C. 306 do not bear a uniform percentage relation to first class, and those to Jackson resulting from those cases do not reflect same percentage relationships to corresponding first-class rates. Commodity rates established pursuant to last-cited case were not prescribed as reasonable maxima. The record is con-

vincing that the class basis is reasonable and proper for these occasional carload shipments. Jackson Paper Co. v. A. G. S. R. R. Co., 98 I. C. C. 442.

(5e) Class rates charged on tomatoes shipped from St. Louis, Mo., to New Orleans, La., during 1920 and 1921 found applicable under governing tariffs. Contention that lower commodity rates applied under the tariffs can not be sustained. St. Louis Fruit & Vegetable Asso. v. L. & N. R. R. Co., 98 I. C. C. 553, 555, 556.

(5f) Following 73 I. C. C. 396, and other cases cited, proposed cancellation of numerous l. c. l. and any-quantity commodity rates from points in southeastern and Carolina territories to destinations in Mississippi Valley, leaving effective generally higher-class rates, found justified, except as to such rates on marble, granite, and stone. Commodity Rates Between Points in Southern Territory, 98 I. C. C. 627.

(5g) Class rate charged on automobile heaters in l. c. l. from Chicago, Ill., to San Francisco, Calif., found applicable and not shown to be unreasonable. Under the governing tariff provision is made for a lower commodity rate on automobile parts, but heaters can not be classed as a part of an auotmobile, being more in the nature of an accessory or added feature. Neither are heaters included in the list of automobile parts specifically named in the classification, they being separately provided for under the heading "Heaters." Complaint dismissed. Western Auto Supply Agency of Los Angeles, Calif. v. C., B. & Q., 98 I. C. C. 647.

(5h) Class rates, and commodity rates bearing a direct relation thereto, between points in Lower Peninsula of Michigan north of main line of Michigan Central R. R. from Detroit, Mich., to Chicago, Ill., and points in central territory on and south of that line found unreasonable, unduly prejudicial to persons and localities in Lower Peninsular of Michigan north of said line, and unduly preferential of persons and localities in central territory on and south of said line. Reasonable and nonprejudicial bases of rates prescribed, and former report, 85 I. C. C. 47, modified accordingly. Michigan Traffic League v. A. A. R. R. Co., 98 I. C. C. 660.

(5i) Application for authority to establish rates on classes and commodities from New Orleans, La., and points taking same rates or arbitraries higher, to destinations east and north of Kansas City, Mo., and west of Indiana-Illinois line without observing the long-and-short-haul provision of fourth section of the act, granted, except as to rates on asphalt, to enable western carriers herein considered to compete with eastern carriers between Mississippi River crossings. Class and Commodity Rates from New Orleans 98 I. C. C. 673.

(5j) Class rates from St. Paul, Minneapolis, and Duluth, Minn., and Superior, Wis., and related points taking same rates, to Valley City and Jamestown, N. Dak., found unreasonable and unduly prejudicial as compared with lower contemporaneous rates from same points of origin to Fargo, N. Dak. Maximum scale of distance class rates prescribed for future. Fargo Commercial Club v. A. & W. Ry. Co., 98 I. C. C. 691.

(5k) Class rates from St. Paul, Minneapolis, Minnesota Transfer Cloquet, Duluth, and West Duluth, Minn., and Superior and South Superior, Wis., to Fargo, N. Dak., found unduly prejudicial to Fargo and unduly perfect trial of Moorhead, Minn., to extent they exceed corresponding contemporaneous rates from same points of origin to Moorhead by more than the difference that would exist between rates from said points of origin to Fargo and Moorhead under the scale of maximum distance class rates prescribed herein as just and reasonable for future. Fargo Commercial Club v. A. & W. Ry. Co., 98 I. C. C. 691.

(5l) Maintenance of class rates from St. Paul, Minneapolis, and Duluth, Minn., and Superior, Wis., to Fargo, N. Dak., lower, distance considered, than class rates contemporaneously maintained from same points of origin to Valley City and Jamestown, N. Dak., found unduly prejudicial to Valley City and Jamestown and unduly preferential of Fargo to extent that rates to Valley City and Jamestown exceed corresponding contemporaneous rates from same points of origin to Fargo by more than the differences that would exist between rates from said points of origin to Valley City and Jamestown on one hand and Fargo on the other under the scale of maximum class rates shown herein,

which are prescribed as just and reasonable rates for future. Fargo Commercial Club v. A. & W. Ry. Co., 98 I. C. C. 691.

(5m) Application by defendant carriers of commodity rates lower than corresponding class rates on various commodities from St. Paul, Minneapolis, and Duluth, Minn., Superior, Wis., and points taking same rates to Fargo, N. Dak., while contemporaneously applying the full class rates on same commodities to Valley City and Jamestown, N. Dak., found unduly prejudicial to latter points and unduly preferential of Fargo to extent that the percentage relationships between rates assailed and corresponding class rates herein prescribed under western classification applicable on same commodities to Valley City and Jamestown exceed, or may exceed, percentage relationships between the rates on such commodities and corresponding class rate to Fargo. Fargo Commercial Club v. A. & W. Ry. Co., 98 I. C. C. 691.

(5n) Class rates from Fargo, N. Dak. to destinations in Minnesota distant 150 miles and less from Fargo over short-line routes found unduly prejudicial to Fargo and unduly preferential of Moorhead, the Twin Cities, Duluth, Crookston, Fergus Falls, Thief River Falls, Detroit City, Wadena, Brainerd, Sauk Center, St. Cloud, and Willmar, Minn., to extent they exceed corresponding contemporaneous rates from said points of origin in Minnesota to same destinations by more than the differences that would exist between rates from said points of origin, on one hand, and from Fargo, on other, to said Minnesota destinations under the scale of class rates prescribed herein as just and reasonable for future. Fargo Commercial Club v. A. & W. Ry. Co., 98 I. C. C. 691, 716.

(5o) Class rates from St. Paul, Minneapolis, Minnesota transfer, Cloquet, Duluth, and West Duluth, Minn., and Superior and South Superior, Wis., to Fargo, N. Dak., and Moorhead, Minn, and from Fargo and certain Minnesota points of origin to points in Minnesota 150 miles and less from Fargo over short-line routes, found less than reasonable maximum rates, and reasonable maximum distance rates prescribed for future. Fargo Commercial Club v. A. & W. Ry. Co., 98 I. C. C. 691, 715, 717.

(5p) In the first decision in the Certain-teed Products case, the Commission did not find, as complainant here contends, 80 per cent of the contemporaneous fifth-class rate to be proper on roofing materials. The Commission found undue prejudice to the extent that the percentage of the commodity rates to the fifth-class rates to interior jobbing points exceeded or might exceed by more than 20 per cent the percentage of the commodity rates to the fifth-class rates on like traffic to border points. Fargo Commercial Club v. A. & W. Ry. Co., 98 I. C. C. 691, 719.

(5q) Class rates from Chicago, Ill., to Fargo, N. Dak., on local traffic from points east of Chicago in central, trunk-line, and New England territories, found unduly prejudicial to Fargo and unduly preferential of St. Paul and Minneapolis, Minn. Establishment of the local and proportional rates herein found reasonable will partially remove this undue prejudice, and defendant carriers will be expected to remove the remaining undue prejudice. Fargo Commercial Club v. A. & W. Ry. Co., 98 I. C. C. 691, 724.

(5r) Class rates from all points east of Chicago, Ill., in central, trunk-line, and New England territories to Fargo, N. Dak., found unreasonable to extent that the factors from Chicago to Fargo exceed those specified herein. Reasonable proportional rates from Chicago on traffic from such points prescribed for future. Fargo Commercial Club v. A. & W. Ry. Co., 98 I. C. C. 691, 724.

(5s) Class rates from Fargo, N. Dak. to points in Montana more than 900 miles from Fargo over short-line routes and to points in Montana east of Malta, Melstone, and Myers, found not unduly prejudicial, but that to Malta, Melstone, and Myers, and to all points in Montana west thereof not more than 900 miles from Fargo over short-line routes, they are, and for the future will be, unduly prejudicial to Fargo and unduly perferential of St. Paul and Minneapolis, Minn., to extent that said rates from Fargo exceed, or may exceed, rates which are less than corresponding contemporaneous rates from St. Paul and Minneapolis to same destinations by 25 cents on first class, and on other classes by amounts ascertained by applying the same percentages to first-class rates so constructed as are reflected by corresponding contemporaneous rates from

St. Paul and Minneapolis to same points. Fargo Commercial Club v. A. & W. Ry. Co., 98 I. C. C. 691, 727.

(5t) Class rates from Omaha, Nebr., and Kansas City, Mo., and points related thereto to, Fargo N. Dak., found not unduly prejudicial upon the record. Fargo Commercial Club v. A. & W. Ry. Co,. 98 I. C. C. 691, 730.

(5u) Class rates from all points in California, Nevada, and Utah, to Fargo, N. Dak., found unreasonable and unduly prejudicial to extent they exceed corresponding contemporaneous rates from same points to Duluth, Minn. Reasonable and nonprejudicial basis of rates prescribed for future. Fargo Commercial Club v. A. & W. Ry. Co., 98 I. C. C. 691, 731.

(5v) Complainant attacked sixth class rate at 18.5 c charged on wet brewers grain, carloads, between July 12 and August 6, 1923 from Philadelphia, Pa., to Newark, N. J., as unjust and unreasonable. Shipments moved as routed, P. & R., to Bound Brook Junction, N. J., Jersey Central beyond 95 miles. On July 13, defendants agreed to publish a commodity rate of 15.5c on short notice and it was made effective August 11. This later rate was in effect from Philadelphia to Newark over the Pennsylvania and over the defendants own route in the reverse direction. HELD rate attacked unreasonable to extent it exceeded 15.5c, reparation awarded. Penn. Grain & Feed Co. v. Reading Co., 102 I. C. C. 100.

(5w) Complainant attacked class rate charged on thin gum lumber, or one eighth inch veneer, 21,500 pounds, forwarded on April 7, 1920, from Smith field, N. C., to Chattanooga, Tenn., as unjust and unreasonable to extent it exceeded rate on lumber. Shipment moved A. C. L., Ga. R. R., and N. C. & St. L., charged sixth class of 54 c minimum 36,000 pounds applicable on lumber or veneer, n. o. i. b. n., exceeding one sixteenth inch, but not exceeding one eighth inch in thickness. Rate on lumber was 27 c, the item publishing a note 34 in the same tariff for list of articles taking lumber rates. This list does not include thin lumber or veneer. The tariff is specific as to what manufactured commodities are entitled to the lumber rates named therein, whereas the classification describes the size of veneer which constituted the shipment here considered. Until the specific commodity description is physically incorporated into the commodity tariff the class rate must be applied. HELD, rate charged applicable and not unreasonable, complaint dismissed. Milne Chair Co. v. A. C. L. R. R. 102 I. C. C. 165.

(5wa) Proposed increased class rates between Memphis, Tenn., and Cairo, Ill., on the one hand, and points in Kansas, Missouri, Nebraska, and Colorado, on the other hand, found not justified. The percentages of classes under the proposed rates, although substantially the same as those prescribed in 55 I. C. C. 515, are materially different from those prescribed in 100 I. C. C. 274 and other cases. The Topeka rates, if fairly related to Kansas City rates, would be higher than the latter, but the proposed differences are excessive. Moreover, if the proposed rates to and from Topeka and points grouped therewith are permitted to become effective without change in the present rates to and from various other points in Kansas, the Topeka rates on certain classes would be higher than the corresponding rates to and from Wichita and other more distant points grouped therewith. Class Rates between Memphis and W. T. L. Points, 102 I. C. C. 207.

(5wb) Class rates assessed on imported soya-bean oil, and cocoanut oil, in tank-car loads, from Wilmington, Calif., to Los Angeles, found unreasonable to extent they exceeded lower commodity rates subsequently established from and to same points. Reparation awarded. Los Angeles Soap Co. v. P. E. Ry., 102 I. C. C. 235.

(5wc) Class rates assessed on helical springs from Chicago and Waukegan to New Orleans found not unreasonable or unduly prejudicial as compared with rates on bed springs and various other commodities taking rates on iron and steel articles. Nor are present commodity rates, reflecting 78 per cent of class basis, unreasonable when applied to occasional shipments as here involved. Crescent Bed Co. v. A. & V. Ry., 102 I. C. C. 419.

(5x) Complainant attacked class rates charged on sulphuric and muriatic acids in tank cars and in carboys from Grasselli, Ind., to Sioux City, Iowa, as unreasonable and unduly prejudicial. Grasselli, Ind., is 20 miles east of Chicago and generally takes Chicago rates. From August 26, 1920 to July 1, 1922

the rates were 34 c in tank cars and 54 c in carboys. Effective on that date they were reduced to 30.5 c and 48.5 c. On May 1, 1923 the rate in carboys was reduced to 36 c. The rates on acid in tank cars were commodity rates and in carboys class A rates until May 1, 1923 when commodity rates were established. The rate to Sioux City is the same as to Omaha and Kansas City. Hawarden, Iowa, and a number points just north of Sioux City are grouped under rates on 24c in tank cars and 27.5c in carboys. On Sept. 16, 1917 the rates from Chicago on acids in tank cars were increased a 5 c to Missouri river cities, and 5.5 c to Sioux Falls, S. D., but the rates to the interior Iowa points were published in separate tariffs and were overlooked not being increased. The rates have not since been changed except that, effective April 1, 1925 the rates to the Hawarden group were increased to the Sioux Falls basis, 32.5 c in tank cars and 37.5 c in carboys, while the rates of 23 c in tank cars and 26.5 c in carboys applying to the group immediately east of Sioux City were increased to the level of the Sioux City rates. HELD, rates attacked not unreasonable and present adjustment not unduly prejudicial, complaint dismissed. Kennedy & Parsons Co., v. C. & N. W. Ry. 102 I. C. C. 591.

(5y) Complainant attacked class rate applicable on two cars of ash staves, shipped May 6 and 15, 1922 from Fort Lynn, Ark., to Gulfport, Miss., as unjust and unreasonable. Shipments moved as routed by complainant 22.9 miles south to Texarkana, Ark., over T. & P. to New Orleans, reconsigned at that point via Southern and G. & S. I., to Gulfport, Miss., 515.7 or 448.7 miles. Ash staves are generally accorded the rates on lumber products. Applicable rate class D of 67.5 c shipments undercharged. In the absence of the joint rate the charges on the shipment would have been combination rate of 41.5 c plus reconsignment charge of $2.50. HELD, rate charged unreasonable to extent it exceeded 41.5 c, reparation awarded. Hollings Co. v. T. & P. Ry., 102 I. C. C. 603.

(5z) Complainant attacked fifth class rate charged on 15 cars of built up wood, faced with veneer made from foreign woods, between June 26, 1922 and Sept. 18, 1923 from Louisville, Ky., and New Albany and Evansville, Ind., to Memphis, Tenn., as unreasonable. Charged fifth class rate of 63.5 c. Following 81 I. C. C. 227, defendants established a rate of 29 c on this commodity to Memphis from these points of origin, all of which are lower Ohio river crossings. HELD, rate attacked not unreasonable, complaint dismissed. King Haase Furniture Co., v. B & O. R. R. 102 I. C. C. 629.

(5za) Following 81 I. C. C. 227 and other cases cited, class rates on sporadic shipments of built-up wood, faced with veneer made from foreign woods, from Louisville, Ky., and New Albany, and Evansville, Ind., to Memphis found not unreasonable as compared with contemporaneous rates on like traffic from and to other points for comparable distances and with rates on lumber, chair stock, and furniture. King-Haase Furniture Co. v. B. & O., 102 I. C. C. 629.

(5zb) Class rates applied on potatoes from Naples and Lily, S. Dak., to points in Iowa found unreasonable to extent they exceeded commodity rates contemporaneously in effect from other points in the group in which Naples and Lily are located and as compared with lower rates in effect from and to other points in same general territory. Reasonable rates prescribed and reparation awarded. Naples Potato Growers Asso. v. C., M. & St. P., 102 I. C. C. 649.

(6a) Complainant attacked fifth class rates charged on six cars of frozen pig or hog skins moving during the period Oct. 16, 1923 to June 2, 1924 from St. Louis, Mo., and Mississippi river junctions to Grand Rapids, Mich., as unjust, unreasonable, unjustly discriminatory and unduly prejudicial to extent they exceeded rate of 27c applicable on green salted hides. Shipments moved under refrigeration and charged fifth class rate of 35 c from St. Louis and 35, 32.5 and 31.5 c from East St. Louis, proper rate being 35 c resulting in undercharges. There was in effect a commodity rate of 27c applicable on hides, pelts, skins, not dressed or tanned, viz., cattle, calf, goat, hog or sheep, green salted, loose or tied in bundles, in straight or mixed carloads, minimum 36,000 lbs. On this record the Commission is not convinced that the difference in rates on frozen and green salted skins constitutes undue prejudice to the former and undue preference of the latter. The fact that the frozen skins must be shipped

under refrigeration, thereby requiring special equipment and expedited service, constitutes a difference in the transportation conditions which can not be overlooked. HELD, rates charged not unreasonable or unduly prejudicial, complaint dismissed. Keifer Tanning Co. v. E. J. & E. Ry. 102 I. C. C. 721.

(6b) Complainant attacked class rate charged on metal cushion or seat spring assemblies mounted on supports, interlaced, not interlaced, and compressed in carloads, from Cincinnati, O. and received at Fort Smith on and after Oct. 12, 1922 as unreasonable, unjustly discriminatory and unduly preferential. Shipments moved B. & O. to East St. Louis, Ill., M. P. beyond. The shortline route of the B. & O., to East St. Louis and Frisco beyond is 755 miles, applicable rate fourth class of $1.185. Contemporaneously there was a commodity rate on davenport or sofa bed metallic spring assemblies, with fixtures from Cincinnati to Fort Smith. Davenport or sofa bed metallic spring assemblies, with fixtures, were and are included under the caption "furniture parts'" in the western classification and rated fourth class, carloads. Metal cushion or seat spring assemblies although rated fourth class in western classification, were and are not included under the captions mentioned. Defendants do not seriously object to applying a rate of 79.5 c minimum 30,000 pounds on cushion or seat spring assemblies from Cincinnati to Fort Smith for the future. HELD, rate attacked not unjustly discriminatory or unduly prejudicial and not unreasonable as to the past but unreasonable to extent it exceeded 79.5 c for future. Ft. Smith Couch & Bedding Co. v. B. & O. R. R. 102 I. C. C. 726.

(6c) Complainant attacked class rates charged on newsprint paper winding cores, carloads and less carloads, returned, from Washington, D. C., Baltimore, Md., Chester and Harrisburg, Pa., Detroit, Mich., and Columbus, O., to various destinations in New York the New England states, and Canada, as unreasonable, unjustly discriminatory and unduly prejudicial. In less carload shipments the cores are tied in bundles ranging from 25 to 40 pounds in weight. In carloads they are merely stacked in the cars. There is little liability to damage in transit and no such damage claims have been filed by complainant. In the three classifications paper winding cores made of compressed paper or pulp are rated fourth class in less carloads in bundles, and fifth class carloads minimum 24,000 pounds subject to rule 34. Iron or steel winding cores, lose or in packages, are subject to these ratings in the official and western classifications, but are accorded an any quantity rating of sixth class in southern classification. The classification basis generally applies to shipments of these commodities from points in official classification territory to these various destinations, although there are some departures both in carload and in less car load rates. The record discloses little analogy between newsprint paper and cores and no relationship between the rates on these commodities. The Commission is not prepared to find that the rates on returned cores should necessarily be measured by the rates on newsprint paper in the reverse direction. HELD, record affords no basis for a finding of unjust discrimination or undue prejudice or for condemning the level of the rates on less carloads. Rates applicable on carloads unreasonable to extent they exceeded sixth class reparation awarded. Washington Publishers Asso. v. A. C. & H. B. Ry. 104 I. C. C. 4.

(6d) Complainant attacked class rates charged on whiskey, in glass, in barrels or boxes, in carloads and less carloads, from eastern points to California as inapplicable and unreasonable. Effective Dec. 10, 1919 whiskey, in glass, in barrels or boxes, was rated first class, less carloads and second class carloads. On Aug. 31, 1921 these ratings were canceled and the rating on alcoholic liquors, n. o. i. b. n., became applicable. These ratings were and are one and one-fourth times first class on less carloads and second class on carloads. The transportation of whiskey under present conditions is a source of much annoyance and unusual expense to the carriers. Shipments of whiskey are under special protection of railroad police from the time they come into the possession of the carrier until they are delivered to the consignee. A guard rides the car containing them during switching movements and on the line hauls. Each division notifies the next division of the train and car number so that a relief guard may be on hand at the division

point to ride the car to the next division. At destination a constant watch is kept until delivery is effected. Protection is accorded shipments not only while in transit but also in the railroad yards and terminals and while being held at destination awaiting delivery to the consignee. When less carload shipments of whiskey are transferred from one carrier to another by truck an armed guard is assigned to follow the truck across the city. HELD, rates attacked applicable and not unreasonable, complaint dismissed. Green v. A. T. & S. F. Ry. 104 I. C. C. 24.

(6e) Respondents proposed to increase the present fourth class rating in official classification on asphalt composition battery boxes, carloads, to rule 26, and to increase the present carload minimum of 20,000 pounds in official, southern and western classification to 24,000 pounds. Asphalt composition battery boxes are used as containers for automobile and other small storage batteries and come into competition with battery boxes made of wood, rubber or impregnated fibre. Protest against the proposed increased minimum was withdrawn at the hearing. The rating on the rubber boxes is not before the Commission and it expresses no opinion as to whether that article should be rated more nearly on the same level as the other types of boxes with which it competes. But for the asphalt boxes, the facts shown in this record as to their value, weight density, and other transportation characteristics fall far short of establishing the propriety of a carload rating higher than fourth class. HELD, schedules not justified, except increased carload minimum to 24,000 pounds subject to rule 34. Classification of asphalt battery boxes 104 I. C. C. 190.

(6f) Complainant attacked class and commodity rates charged on high explosives in carloads and less carloads from Gibbstown, N. J., to Powder, W. Va., Norton, Va., and other points in Virginia and West Virginia on the N. & W., west of Roanoke, Va., as unjust and unreasonable, unjustly discriminatory and unduly prejudicial and in some cases in excess of those legally applicable. By amendment complainant attacked rates as in violation of the fourth section in that they exceed those in effect to Kenova, W. Va., and also that the class rates from New York, Philadelphia, and Baltimore to Roanoke are unjust and unreasonable to extent they exceed rates to Kenova. Gibbstown is served by the Pennsylvania and Reading. High explosives are not rated in official classification, but under exceptions thereto they generally moved in eastern territory on first class rates in carloads and double first class in less carloads. In some instances the movement is on commodity rates of equivalent amounts. Class rates between Gibbstown and points on the Norfolk & Western are made by the addition of arbitraries to the rates to and from Philadelphia, but the rates on explosives are at present the same as the first class rate and double first class rate from Philadelphia. The present record will not sufficiently support a finding that the class rates here considered are unreasonable or unduly prejudicial, as applied to explosives or other commodities. Complainants amendment, extending the scope of the complaint to include the general structure of class rates from eastern cities, was filed but 10 days before the hearing and did not bring in as additional defendants other carriers which participate in those rates. While the record shows that these class rates are inconsistent in some respects with other class rates in the same general territory, such inconsistencies are characteristic of the class rates as a whole in trunk line territory. It appears that prior to May 1, 1922 the rates applicable from complainants Gibbstown plant to the destinations here considered exceeded the general basis above referred to and to that extent were unreasonable. HELD, rates attacked prior to May 1, 1922 unreasonable to extent they exceeded first class and double first class, but otherwise rates not unlawful, reparation awarded. DuPont de Nemours & Co., v. W. J. & S. R. R. 104 I. C. C. 247.

(6g) Complainant attacked class rates charged on two shipments of bull wheel arms, cants, and pins, from Tulsa, Okla., to Bluffdale, Tex., in March and May 1919 as unreasonable, unjustly discriminatory, unduly prejudicial and illegal. Shipments moved over the Frisco and Ft. W. & R. G. Charged fourth class of 74.5 c at actual weight and class A distance rate of 65 c and a carload minimum of 36,000 pounds. An examination of the western classification in effect dur-

ing the period in question discloses that the articles under consideration were listed under oil well outfits and supplies and rated fourth class, less carloads and class A carloads. In the absence of commodity rates the class rates were applicable. HELD, complaint dismissed. Marion Machine Foundry & Supply Co. v. Director General 104 I. C. C. 265.

(6h) Complainant attacked class rates charged on three cars of scrap iron shipped on Oct. 27, 1922 from Norfolk, Va., to Washington, D. C., as illegal and unreasonable. One car was billed as miscellaneous iron and steel machinery parts; carload machinery; carload used iron and steel machinery parts. Shipments moved by car ferry through Cape Charles, Va., Pennsylvania beyond, charged fifth class rate of 38 c then applicable on second hand iron and steel machinery and machinery parts. The only evidence offered is the tender of two copies of invoices for two lots of scrap iron, made on complainants billheads to two parties more than a year after shipments were delivered. Upon the face of these copies of complainants invoices there is nothing to identify the alleged sales of scrap iron with the material comprising the shipments under consideration. In the absence of positive evidence that the description of the goods upon the face of the bills of lading and freight bills was erroneous, charges attacked not illegal. HELD, Complaint dismissed. Washington Salvage Company v. Pennsylvania R. R. 104 I. C. C. 291.

(6i) Complainant attacked class rates charged on 78 cars of tight cooperage between July 19, 1921 and Sept. 16, 1923 from St. Louis, Mo., to Los Angeles, Calif., as unreasonable and unjustly discriminatory. Fourth class rate applied prior to Sept. 30 1922 of $3.335 prior to July 1, 1922 and $3 between that date and Sept. 30, 1922; from that date to Dec. 29, 1922 a commodity rate of $2.23 was applicable. Aside from referring to the fact that tight empty barrels and kegs move at the class D rates from St. Louis to Utah common points, Colorado common points and Missouri river territory and that commodity rates the same as or slightly lower than the class D rates applied from Los Angeles to Utah common points, complainant presented no evidence to prove the applicable rate was unreasonable. Empty wooden barrels and kegs are light articles and generally move under class rates. The fact that carriers in certain territories have seen fit to apply lower bases to encourage movement can not be taken as a measure of reasonable rates. HELD, applicable rates not unreasonable or unjustly discriminatory, complaint dismissed. Coca Cola Co. v. A. T. & S. F. Ry. 104 I. C. C. 377.

(6j) Complainant attacked fourth class rates charged on flexible split leather, carloads, from Waukegan, Ill., to Natick, Mass., as unreasonable. Waukegan is on the Northwestern, 35 miles north of Chicago, Ill; also on the E. J. & E. Natick is on the B. & A., 18 miles west of Boston, Mass., distance 1,056 miles, charged 77.5 c prior to July 1, 1922 and 70 c thereafter. Complainant asked for a commodity rate on this traffic. Complainant does not attack the rating or the fourth class rate as such. In fact it asserts that it would be impossible to distinguish between the different kinds of split leather in the classification and that the rate attacked is reasonable for an average loading of around 24,000 pounds. Its claim for a special commodity rate rests primarily upon the fact that its shipments average about 67,000 pounds. Complainant estimates that the volume of its shipments will continue in the future as in the past at about one carload a week. HELD, rate attacked not unreasonable, complaint dismissed. Greiss Pfleger Tanning Co. v E. J. & E. Ry. 104 I. C. C. 464.

(6k) Complainant attacked rates charged on apple skins, apple chops, and apple pomace, carloads, from New York, Pennsylvania, West Virginia and Illinois and from St. Louis, Mo., to Topeka, Kas., since July 16, 1921 as unreasonable. Apple pomace is the residue from cull or low grade apples which have been crushed and from which the juice has been extracted in the ordinary manufacture of apple cider or vinegar. Its value ranges from $15 to $50 per ton at origin, is shipped in cheap burlap bags and will load over 40,000 pounds in a standard car. Apple pomace, carloads, is rated fifth class in official, and class B in the Illinois and western classifications, the ratings not attacked. Rates charged are combinations of fifth class rates to Mississippi river, plus class B of 39.5 c be-

yond. Effective Oct. 1, 1922 a proportional commodity rate of 30.5 c was established from the crossings to Topeka and such rates are still in effect. The rate from Olney, Ill., was 58.5 c class B 19 c to East St. Louis, Ill., and 39.5 c beyond. The combination basis of rates from points east of the Indiana-Illinois state line to points west of the Mississippi river, including Topeka, has been in effect generally since the railroads were constructed. The class rates are the normal bases on those apple products in official territory and the record does not warrant the establishment of lower commodity rates. HELD, rates attacked not unreasonable, complaint dismissed. Leo Greenwald Vinegar Co. v. B. & O. R. R. 104 I. C. C. 637.

(6l) Complainant attacked class rates charged on carload and less carload shipments of cigarettes during October, 1919 from Durham, N. C., to Brooklyn, N. Y., as unreasonable. Shipments were originally routed over D. & S. C., and N. S., to Norfolk, Va., thence Old Dominion Steamship Line, but upon arrival at Norfolk, owing to an embargo on the old Dominion, they were diverted, with complainants consent, to an all rail route embracing the N. Y. P. & N., and Pennsylvania beyond Norfolk. Charged joint second class any quantity rate of $1.04 applicable over certain all rail routes but not over the D. & S. C., as an originating line. The applicable rate was $1.13 A commodity rate of 90 c applied via the rail and water route originally selected and a commodity rate of 92.5 c via various all rail routes other than that of movement. The latter rate was made applicable over the route of movement on Dec. 31, 1919. HELD, rate of $1.13 unreasonable to extent it exceeded second class rate of $1.04 c, undercharges waived, complaint dismissed. American Tobacco Company v. Director General 107 I. C. C. 55.

(6m) Complainant attacked class rates charged on less carloads of glass lamp globes, lettered, in boxes, shipped from Cincinnati and Brighton, O., to Los Angeles, Calif., as unreasonable and inapplicable, shipments moved between March 30 and Oct. 10, 1923, charged double first class rate of $10.50 in accordance with the rating provided for glass globe signs in the western classification. Complainant asks reparation to the basis of a commodity rate of $3.45 applicable to glass lamp globes, less carloads. The distance from Cincinnati to Los Angeles is about 2,545 miles. HELD, rate attacked applicable but unreasonable to extent it exceeded $3.45, reparation awarded. Boyle Dayton Co. v. A. T. & S. F. Ry. 107 I. C. C. 151.

(6n) Complainant attacked class rate charged on a car of rough lumber from North Lewisburg, O., to Chicago, Ill., on Sept. 4, 1925 as unjust, unreasonable and unduly prejudicial. Shipment moved from North Lewisburg to Chicago as routed by complainant over Erie and Chicago & Erie, 303 miles, charged sixth class rate of 22 c. It exceeded a rate of 18.5 c from Cincinnati to Chicago, North Lewisburg being directly intermediate over the route of movement between these points, this rate being subject to rule 77 of tariff circular 18-A which provided for its establishment from intermediate points upon reasonable request therefor. HELD, rate attacked unreasonable to extent it exceeded 18.5 c, reparation awarded. Liberty Cooperage & Lumber Co. v. Erie R. R. 107 I. C. C. 165.

(6o) Complainant attacked sixth class rate of 18.5c charged on 11 cars of logs, shipped during Jan., Feb. and March 1923 from Pawpaw, Mich., to Hicksville, O., as unjust, unreasonable, unjustly discriminatory and unduly prejudicial. Two shipments originated at Lawton, Mich., on the M. C., charged sixth class rate of 17c, nine originating at Pawpaw. Lawton cars moved M. C., to Toledo, O., and B. & O., beyond, distance of 294 miles. Two of the cars originating at Pawpaw moved over K. L. S. & C., to Lawton, M. C., to Kalamazoo, Pennsylvania to Avilla, Ind., B. & O., beyond, distance 119 miles. Other seven cars originating at Pawpaw moved over K. L. S. & C., to Lawton, M. C., to Toledo and B. & O., beyond 299 miles. 65% of sixth class rate was prescribed in 85 I. C. C. 533. HELD, rates attacked unreasonable to extent they exceeded 16.5c, reparation awarded. Crook Son & Co., v. K. L. S. & C. Ry., 107 I. C. C. 379.

(6p) Complainant attacked commodity rates charged on newsprint, carloads, from Main and Vermont to Massachusetts, Rhode Island, Connecticut and New York, as unreasonable, unjustly discrim-

inatory unduly prejudicial and illegal. Shipments moved over the Maine Central, B. & M., and New Haven. Charged commodity rates on paper and paper bags when classified third class less carloads and fifth class carloads. Sixth class rates were on a lower basis. Prior to Feb. 14, 1920 when the so-called Anderson scale prescribed in 49 I. C. C. 421 was established, the commodity rates generally were lower than the sixth class rates. When the commodity rates were originally established the official classification accorded newsprint paper a carload rating of fifth class. The sixth class rates became applicable August 1, 1923 when the commodity rates were canceled. HELD, rates attacked unreasonable to extent they exceeded sixth class rates, reparation awarded. Hartford Times v. Mc. C. Ry. 107 I. C. C. 536.

(6q) Respondents proposed to cancel the application of class rates from Indiana to Minneapolis, St. Paul and Duluth, Minn., via routes across Lake Michigan. Proposed elimination developed from 66 I. C. C. 512, 88 I. C. C. 709, Indiana cases. In response to the findings of undue prejudice in these decisions respondents reduced their class rates to the Twin Cities and Duluth from Indiana and made them subject to the western classification. The revised rates are lower than many of the Michigan rates are governed by the official classification. It appears from the record that the routes through Michigan which it is proposed to cancel are, with exception of the one through Mackinaw City to the Twin Cities, reasonably direct and move a substantial volume of traffic. Their continuance is also desirable for emergencies during periods of traffic congestion. Respondents should have filed application for fourth section relief and supported it with apropriate evidence if they desired to protect the Michigan rate level during the temporary period before they anticipate a final adjustment of the rate structure in this territory. With the exception above noted, suspended schedules not justified Fourth section violations should be promptly removed by providing that the Indiana rates will apply as maximum rates at intermediate points in Michigan. Class rates to Twin Cities 107 I. C. C. 665.

(6r) Interstate class rates between Oakland, Calif., and various destinations in California and Nevada found not unreasonable or unduly prejudicial as compared with class rates between San Francisco and said points. Since it is acknowledged that Oakland's rates are based upon San Francisco's rates and that the rates really have been made from San Francisco and not from Oakland, it follows that the latter has shared the low level of rates applying from San Francisco. Viewing this whole situation, it has not been established that the present adjustment as between Oakland and San Francisco subjects complainant to undue prejudice or disadvantage. Oakland Chamber of Commerce v. S. P. Ry. Co., 100 I. C. C. 55.

(6s) Proposed increased class rates from Virginia cities and points taking same rates, or rates made differentially higher, to destinations on the Charleston division of the Baltimore & Ohio found not justified. First-class rate from Lynchburg to Grafton on the main line of the B. & O. is lower than the present first-class and the proposed rate to points on the Charleston division, and, since no restrictions upon the routing are made in the tariff, this rate is applicable over the Charleston division. Following Zelnicker Supply Co., 80 I. C. C. 651, and Dixie Portland Cement Co., 96 I. C. C. 47, respondents' contention that no increase in discrimination against intermediate points under the fourth section results because no arrangements for divisions are in effect over these routes to Grafton, and routing over this line would not be observed, can not be sustained. Class Rates from Eastern Points to Points in West Virginia, 100 I. C. C. 215.

(6t) Schedules proposing readjustment of class rates, both interstate and intrastate, between points in Missouri, and between Missouri and other sections, based upon a maximum distance scale which would result in substantial increases to some points, and reductions between points where the socalled Memphis-Southwestern scale is now in effect, found not justified. Scale of maximum reasonable rates prescribed. Recognized bridge arbitraries at Mississippi River crossings may be added wherever and to extent they now apply, and rates to and from defined territories should be based on the present differentials over the river crossings. Class Rates between Missouri and Interstate Points, 100 I. C. C. 274.

(6u) Springfield jobbers contend that the proposed readjustment of class rates between points in Missouri, and between points in Missouri and other sections will increase both their inbound and outbound rates while only outbound rates of St. Louis and Kansas City will be affected, thus causing a disruption in the parity of rates existing between these points. The fact that disparities may be created, lying outside the limits of the situation under consideration, can not be accepted as ground for not remedying undue prejudice where it has been established. Class Rates between Missouri and Interstate Points, 100 I. C. C. 274, 284.

(6v) Class rate on coal from Breed to Colorado Springs, Colo., during Federal control, found unreasonable to extent it exceeded the rate contemporaneously in effect from Pikeview, Colo., to Colorado Springs. Reparation awarded. Corley v. Director General, 100 I. C. C. 293.

(6w) Class A rates on shipments of household and office electric fans and motors, from Springfield, Ohio, to San Francisco, Calif., found not inapplicable or unreasonable. Lower combination sought, composed of a factor applicable on "sugar-making machinery" including "fans" and "motors" found not applicable to complainant's shipments which could not be put to any normal use in connection with machinery in a sugar mill. Therefore, no violation of the aggregate-of-intermediates provision of the fourth section existed. Robbins & Meyers Co. v. C., C., C. & St. L. Ry. Co., 100 I. C. C. 418.

(6x) Upon investigation by commission, on its own motion, of interstate class rates within southern territory and between southern and official territories, these rates discussed at length and a class-rate structure, designed to serve purposes class rates should serve, to be free from undue prejudice, and as simple as is consistent with due regard for public interest, adopted. Southern Class Rate Investigation, 100 I. C. C. 513.

(6y) Upon general investigation, on commission's own motion, of interstate class rates, all rail and rail-water, within southern territory, FOUND: That all such rates between points in southern territory should be not higher than a normal level based upon a distance scale or scales of such extent as to cover hauls of all lengths. Southern Class Rate Investigation, 100 I. C. C., 513, 615.

(6z) In dealing with a scale of class rates moving c. l. as well as l. c. l. traffic in southern territory, there is little evidence here with reference to c. l. costs, but the deduction is warranted that terminal costs are materially lower than in the case of merchandise traffic, and that line-haul costs are also lower. Southern Class Rate Investigation, 100 I. C. C. 513, 643.

(7a) It is believed that the new distance scale of class rates herein prescribed for application in southern territory, if applied both interstate and intrastate, will more than maintain present revenues, particularly if many of the l. c. l. exceptions and commodity rates are gradually eliminated. The possible increase in revenue, if maximum rates are uniformly applied, is believed to be justified by the fact that class-rate traffic is in general of such a character that in revising the rates upon its revenue doubts may well be resolved in favor of carriers, or, in other words, in favor of commodity rates on traffic of a more basic character, the revision of which is pending. Southern Class Rate Investigation, 100 I. C. C. 513, 649.

(7b) Through class rates lower than the combination of local rates to and from the boundary line, relatively no higher than those herein found reasonable as a maximum for application within southern territory, should be established between official and southern territories. Southern Class Rate Investigation, 100 I. C. C. 513, 664.

(7c) Commission is of opinion that class rates between official and southern territories on all-rail traffic, the uniform and unmodified application of southern territory class-rate scale herein approved would result, in many instances, in rates neither reasonable nor free from preference or prejudice, particularly to and from border districts of southern territory. This situation should be corrected by means of a scale of differential rates. Southern Class Rate Investigation, 100 I. C. C. 513, 675.

(7d) The basis of class rates herein approved for application in southern territory and between southern and official territories is intended to super-

sede all adjustments heretofore presented by the commission with reference to all or any of the rates in issue. That being the case, and in order to avoid possible conflicts, an order will be entered modifying, with one exception outstanding unexpired orders relating to such rates to the extent necessary to permit the carriers to publish and apply the rates herein approved. Southern Class Rate Investigation, 100 I. C. C. 513, 710.

(7e) Fifth-class rates on sugar from Philadelphia, Pa., and New York, N. Y. to St. Louis, Mo., found inapplicable in that a lower commodity rate was contemporaneously in effect. National Candy Co. v. P. R. R., 101 I. C. C. 43.

(7f) Class rate on broken soapstone from Marriottsville, Md., to Stockertown, Pa., found unreasonable to extent it exceeds or may exceed lower contemporaneous commodity rate on like traffic from Marriottsville to other destinations for comparable distances. Reparation awarded. Kelly & Co. v. L. V. R. R., 101 I. C. C. 49.

(7g) Class rates from Duluth, and related points taking same rates, to Watertown, S. Dak., found unreasonable to extent they exceed specific rates enumerated herein, and unduly prejudicial to Watertown and unduly preferential of Sioux Falls and Aberdeen, S. Dak., to extent they exceed rates reflecting a certain relationship to the contemporaneous rates from Duluth to Sioux Falls and Aberdeen. Reasonable maximum and nonprejudicial basis of rates from Duluth and related points taking same rates and Sioux Falls and Aberdeen to Watertown prescribed. Watertown Chamber of Commerce v. A. & W., 101 I. C. C. 427, 432.

(7h) Class rates from St. Paul, Minneapolis, and Chicago and related points taking same rates to Watertown, S. Dak. found not unreasonable, but unduly prejudicial to Watertown and unduly preferential of Sioux Falls, S. Dak., to extent they exceed the contemporaneous rates to Sioux Falls by specific differentials enumerated herein. Nonprejudicial bases of rates prescribed for future. Watertown Chamber of Commerce v. A. & W., 101 I. C. C. 427, 434.

(7i) Class rates from St. Paul, Minneapolis, and Chicago, and related points taking same rates, to Watertown, S. Dak., found not unreasonable, but unduly prejudicial to Watertown and unduly preferential of Sioux Falls, S. Dak., to extent they exceed the contemporaneous rates to Sioux Falls by specific differentials enumerated herein. Nonprejudicial bases of rates prescribed for future. Watertown Chamber of Commerce v. A. & W., 101 I. C. C. 427, 434, 436.

(7j) Class rates from points east of Indiana-Illinois State line and north of Ohio and Potomac Rivers to Watertown, S. Dak., found unreasonable to extent they exceed rates composed of contemporaneous rates, local or proportional as case may be, applicable from same points of origin to Mississippi River on traffic destined to Sioux City, Iowa, and Sioux Falls and Aberdeen, S. Dak., and of proportional rates to Watertown from Mississippi River crossings, East Burlington to East Dubuque, Ill., inclusive, not exceeding specific amount herein enumerated, and unduly prejudicial to Watertown and unduly preferential of Sioux Falls. Reasonable and nonprejudicial basis of rates prescribed for future. Watertown Chamber of Commerce v. A. & W., 101 I. C. C. 427, 439.

(7k) Class rates from Watertown, S. Dak., to points in southwestern Minnesota found not unreasonable, but unduly prejudicial to Watertown, unjustly discriminatory against interstate commerce, and unduly preferential of Sioux Falls, Sioux City, the Twin Cities, and other Minnesota points. Nonpreferential basis of rates prescribed. Watertown Chamber of Commerce v. C. & N. W., 101 I. C. C. 441.

(7l) Fifth-class rates on condensed milk from Northfield, Minn., to eastern destinations found not unreasonable or unduly prejudicial as compared with lower commodity rates contemporaneously in effect from points in Wisconsin to same destinations. Canned Goods to Eastern Points, 101 I. C. C. 502, 511.

(7m) Class rate on scrap iron moving from Dunbar, W. Va., via an interstate route, to Weirton, W. Va., found unreasonable to extent it exceeded a commodity rate subsequently established. As Weirton was not a scrap iron consuming point until about a year prior to period of movement of these shipments commodity rates generally had not been published to that point, but before making these shipments com-

plainant requested establishment of the commodity rate which applied from Dunbar to Wheeling, W. Va., and Steubenville, Ohio. The request was acted upon but due to delay in its establishment shipments were made in order to supply demands of customers. Reparation awarded. Hilb & Bauer v. N. Y. C., 101 I. C. C. 621.

(7n) Contention that fifth-class rate assessed on mixed carload shipment of billets and handle material shaved or cut to shape, not further finished, from Marengo, Ind., to Chicago, was not unreasonable because not out of line with fifth-class rates for comparable distances from and to numerous points in c. f. a. territory, not sustained. It is not shown that fifth-class rates were or are the general or usual basis on this traffic between points in this territory. Moreover, distance over route of movement is identical with distance over another route in connection with which commodity rates were in effect at time of movement, and these lower commodity rates were subsequently established over route of movement. Chicago Heights Mfrs. Asso. v. B. & O. C. T. R. R., 101 I. C. C. 675, 681.

(7o) Complainant attacked sixth class rate of 18c charged on lumber from Nashville, Mich, to Toledo, O., as unreasonable and unduly prejudicial. Lumber generally takes sixth class rates between points in central territory, but a commodity rate of 14.5c applies to Toledo from Lansing, Bay City and Saginaw, although the distances and sixth class rates are approximately the same as from Nashville. This commodity rate also applies from intermediate points. HELD, rate attacked not unreasonable but unduly prejudicial for future to extent it exceeds the rate from Saginaw to Toledo, reparation denied. Liberty Cooperage & Lumber Co. v. M. C. R. R., 109 I. C. C. 1.

(7p) Complainant attacked fifth class rates on iron and steel articles, carloads, from Buffalo, N. Y., Johnstown and Pittsburgh, Pa., Wheeling, Va., and points grouped therewith, to Cleveland, Elyria, and Lorain, O., as unreasonable, unjustly discriminatory, unduly preferential and prejudicial and in violation of section four. Fifth class rates were generally applicable on socalled long haul iron and steel shipments, such as from Pittsburgh to Cleveland, during the period of the complaint up to Sept. 1, 1924. Iron and steel traffic is able to bear a higher freight rate than may be applied to many low grade commodities such as those used by complainant. The present rates, except from Buffalo, are lower than the rates on manufactured articles taking fifth class. This would seem to be a proper alignment. HELD, rates attacked from Pittsburgh and Wheeling to Cleveland, Elyria and Lorain unreasonable to extent they exceeded 21c prior to July 1, 1922 and 19c thereafter, from Buffalo to extent they exceeded 23c after July 1, 1922 reparation awarded, present rates not unreasonable except from Buffalo to extent they exceeded 23c. Columbia Steel Co. v. B. & O. R. R., 109 I. C. C. 46.

(7q) Complainant attacked class rate charged on copper clad steel scrap, carloads, shipped since July 3, 1922 from Swissvale and Rankin, Pa., to Norfolk and West Norfolk, Va., and present rate from Rankin is unjust and unreasonable. The value of the scrap is about 2.6c per pound at Rankin, commodity moving in box cars and is not subject to damage. Swissdale is on the Pennsylvania 8 miles east of Pittsburg and Rankin is on the P. & L. E., and B. & O., 9 miles east of Pittsburgh. The commodity is rated fifth class and class of 40.5c was charged on July 1, 1922. On July 18, 1924 a commodity rate of 33.5c equal to sixth class became effective from Rankin over the P. & L. E., and connections, and via B. & O., on July 20, 1924. The rate from Swissvale was not reduced as no subsequent movement from that point was contemplated. The transportation characteristics of this scrap apparently as favorable as are those of copper and brass scrap. HELD, rates attacked unreasonable to extent they exceeded 28.5c, reparation awarded. Copperweld Steel Co. v. B. & O. R. R., 109 I. C. C. 99.

(7r) Complainant attacked class rates charged on one car of till boxes, one mixed car of till boxes and box material and one car of box material, shipped Feb. 11, March 24 and April 19, 1922 from Crystal Springs, Miss., to Walker, Doyle, and Denham Springs, La., as unreasonable and in violation of fourth section. Crystal Springs is a short distance south of Jackson, Miss., on the I. C. Three destinations are on the Y. & M. V., from Hammond, La., to Baton

Rouge, La. The normal route of movement is through Hammond. The distances are, to Hammond 106 miles, Doyle 122 miles. Walker 140 miles, Denham Springs 136 miles and Baton Rouge 151 miles. Passing now to the issue of unreasonableness of the charges it is first necessary to determine that issue to Walker and Denham Springs when the Commission can not ascertain from the record what the proper charges on those shipments would have been under the tariff. The record warrants consideration of the basis sought by complainant as the maximum reasonable basis. HELD, rates charged unreasonable to extent they exceeded those which would have accrued at rates of 22.5c to Doyle and 23.5c to Walker and Denham Springs, minimum 30,000 pounds, subject to rule 34, reparation awarded, undercharge waived. Crystal Springs Mfg. Co. v. I. C. R. R., 109 I. C. C. 177.

(7s) In 100 I. C. C. 513 the Commission gave reasons for believing that the work of preparing and publishing tariffs in accordance with the findings therein would be expedited rather than delayed if no order were entered, provided the carriers were prepared to join with the Commission and representatives of the shippers in working out, in a spirit of cooperation, the details of the system of rates proposed. The class rates of official territory are much lower than the class rates in southern territory. While transportation conditions justify some difference in level, they do not in themselves justify the difference which exists. If the class rates in southern territory were reduced to something like the level which prevails in official territory, it would be necessary to transfer much traffic from a commodity rate to a class rate basis. the class rates of the two territories are in reality based upon two differing theories of freight rate construction. The resulting wide difference in the level of the two sets of rates, therefore, has been in this proceeding a complicating factor which could not be avoided. The difficulties which it creates have been particularly troublesome in the fixing of class rates between the two territories. The finding in the original report numbered 11 at page 646 should be changed to read as follows: That the maximum reasonable class rates for interstate application on standard lines between points in southern territory and over routes lying wholly within such territory, except between points in Virginia and points in North Carolina and except to and from points in the Florida peninsula, are, and for the future will be, rates determined by the distance scale of class rates set forth in Appendix K-1 herein. The establishment of the class rates prescribed should make it possible to eliminate various carload commodity rates, to the extent at least that such rates are now published because of the inconsistencies of the present class rate structure. HELD, that the maximum reasonable class rates for interstate application on standard lines between points in the Florida peninsula south of the S. A. L., from Jacksonville to River junction, on the one hand, and other points in southern territory on the other are, and for the future will be, rates determined by the distance scale of class rates set forth in Appendix K 1 herein plus arbitraries determined by the scale set forth in Appendix L 1 herein for that part of the distance lying south of the aforesaid line of the S. A. L. SHORT AND WEAK LINES. Original finding numbered 13, at pages 653 and 654 should be changed to read as follows: That the maximum reasonable class rates for interstate application between points on any of the weak or short lines indicated below are, and for the future will be, rates determined by the distance scale of class rates set forth in Appendix K 1 herein plus arbitraries determined by a distance scale similar to that set forth in Appendix L 1 herein, but not necessarily having the same level, except in the case of the Norfolk Southern, in which instance the Appendix L 1 scale shall be used; and that the maximum reasonable class rates for interstate application within southern territory between points on such weak lines or short lines and points on standard lines are, and for the future will be, rates determined by the distance scale of class rates set forth in Appendix K 1 plus arbitraries the same as those employed in the case of local hauls on the weak line or short line in question, for that part of the joint haul which is over the weak or short line. The weak lines to which this finding applies are those listed on page 650 of the original report, excepting the Gulf & Ship Island, and adding the A. B. & A.,

so long as that company remains independent of standard line control, and the Norfolk Southern. The short lines are those listed in Appendix M of the original report, except such as are under common control or management with standard lines, and excepting also the Live Oak Perry & Gulf and the South Georgia. COMPUTATION OF DISTANCES AND JOINT LINE DIFFERENTIALS. HELD, the finding in the original report numbered 14, at page 656, should be changed to read as follows: in computing distances for the application of the scales set forth in Appendix K 1 and L 1 herein, the shortest workable routes shall be used. In applying this rule the words "shortest workable route" shall be construed in mean the shortest routes that are, irrespective of existing traffic arrangements, physically adapted to the movement of traffic without plain and serious sacrifice of economy and efficiency. FLEXIBILITY IN APPLICATION OF SCALE. In the application of the maximum measure the Commission has specifically permitted the grouping of stations which constitute a single industrial community, and it has also approved the use of territorial groups of moderate extent except in the case of the shorter hauls. The carriers may publish lower rates than the scale provides, to the extent that this can be done without creating undue preference and prejudice, or by common consent of the shippers and communities affected. INTERTERRITORIAL RATES. Between southern territory and central territory only all rail rates are involved, but to and from trunk line and New England territories the problem is complicated by the existence, in addition to all rail routes, of through routes which are partly by rail and partly by water. HELD, upon consideration the problem and all that has been said for and against the interterritorial rates prescribed in the original report, the Commission is persuaded that the differential basis set forth in Appendix P should for the present be abandoned. It is also persuaded that any attempt at a final solution of the interterritorial rate problem, at least so far as southern border territory is concerned, should be postponed pending the outcome of the Eastern Class Rate Investigation. The finding in the original report numbered 18 at page 706 should be changed: that the maximum reasonable class rates for interstate application over standard lines between points in eastern Kentucky on the C. & O., also Portsmouth and Ironton O., and Ashland, Ky., and Kenova and Huntington, W. Va., on the one hand, and points in southern territory, on the other, (1) over routes lying wholly south of the Ohio river, other than routes via Virginia city gateways, and (2) over routes crossing the Ohio river at Kenova W. Va., and thence over routes described in (1), are, and for the future will be, subject to the provisions of finding 17 (f), rates determined by the distance scale of class rates set forth in Appendix 1 herein, rates involving hauls over short and weak lines to be adjusted in accordance with finding 13; provided, however, that in adjusting said rates Portsmouth, Ironton, Ashland, Kenova and Huntington shall be included within a single group, and distance figured in all cases from Kenova. HELD, finding numbered 19 at page 707 of the original report, will be modified to read as follows: That grain, grain products and grain by-products now rated class C or class D in the southern classification, should be excepted for the present from the application of the class rates herein approved between official and southern territories and from Ohio river and Mississippi river crossings to points in southern territory. Where higher rated routes desire to meet the rates over lower rated routes, or where it is desired to establish through higher rated groups the rates applicable to or from lower rated groups, appropriate applications for fourth section relief may be presented. Appendix 1 first class ranges from 34c for 5 miles and under to 283c for 1,500 miles. Appendix 1 ranges first class 5c for 10 miles and under to 24c for over 500 miles. Southern Class Rate Investigation 109 I. C. C. 300.

(7t) Complainant attacked class rate charged on a car of manure shipped Feb. 13, 1923 from Harlem River station, New York, N. Y., to North Hatfield, Mass., as unjust and unreasonable. Shipment was delivered to New Haven without routing instructions and moved via that line to Northampton, Mass., thence B. & M., charged sixth class rate of 19.5c. Rates of 12c applied to Hatfield and 12.5c to Whately, Mass., which serves the same community as North Hatfield. The rate to North Hatfield via N. Y. C., and B. & M., was 15.5c. HELD, rate attacked unreasonable to extent it

exceeded 15.5c, reparation awarded. American Sumatra Tobacco Co. v. N. Y. N. H. & H. R. R., 109 I. C. C. 383.

(7u) Complainant attacked class rate of 48c charged on one car of building paper shipped May 21, 1923 from Downington, Pa., to Jacksonville, Fla., as unreasonable and unlawful. Shipment was routed and moved over Pennsylvania to Philadelphia thence M. & M. Steamship Line to destination. There was in effect from York, Pa., to Jacksonville a rate of 33c over defendants lines by rail to Baltimore, Md., thence by water, applicable on prepared or composition roofing paper, and including building paper. The distance of the combined rail and water movement from Downingtown via Philadelphia is greater than from York via Baltimore. Subsequently a rate of 34c was established from Downingtown. HELD, rate attacked not unreasonable or otherwise unlawful, complaint dismissed. Baker & Holmes Co. v. Pennsylvania R. R. 109 I. C. C. 396.

(7v) Complainant attacked class rates charged on excelsior cushions, mats, or pads, carloads, from Oshkosh and Rice Lake, Wis., to Fort Smith, Ark., as unreasonable and unduly prejudicial. Short line distances are 865 from Oshkosh and 1,055 miles from Rice Lake. Rates attacked are governed by the western classification, under which packing cushions of excelsior and excelsior in machine pressed bales are rated fifth class and class C, respectively, minimum 20,000 pounds, subject to rule 34. Prior to Jan. 28, 1924 the fifth class rates were $1.06 from Oshkosh and $1.125 from Rice Lake, class C rates 79.5c and 87.5c. On that date the rates became 83c from Oshkosh and 91c from Rice Lake constructed by adding an arbitrary of 3.5c to the class C rates. On July 15, 1924 the combination on Seligman, Mo., of 76c was applied from Oshkosh, no change being made in the rate from Rice Lake. Complainants attack is directed chiefly against the factor from Seligman, Mo., to Fort Smith, 103 miles, class C rate 38.5c. In 100 I. C. C. 274 the rate found reasonable for articles taking class C rating for 103 miles is 18c. Taking this rate as a fair measure of the factor beyond Seligman and adding a 3.5c arbitrary thereto and also a like arbitrary to the factor to Seligman, rates of 66c are obtained from Oshkosh and 74c from Rice Lake, which the Commission considers to be maximum reasonable rates to apply from and to the points under consideration. HELD, rates attacked unreasonable to extent they exceeded 66c from Oshkosh and 74c from Rice Lake, reparation awarded. Ballman Cummings Furn. Co. v. C. & E. I. Ry., 109 I. C. C. 413.

(7w) Complainant attacked class rate charged on car of canned fruit, shipped Oct. 22, 1923 from New Orleans, La., to Haynesville, La., as unjust and unreasonable and in violation of the fourth section. Shipment moved 505.9 miles, charged fifth class 78c, while aggregate of intermediates was 65.5c composed of 41.5c to Gibsland and 24c beyond. HELD, rate attacked unreasonable to extent it exceeded 65.5c, reparation awarded. Haynesville Provision Co. v. L. & N. W. R. R., 109 I. C. C. 451.

(7x) Complainant attacked class rate charged on four cars of lawn mowers between April 19 and June 12, 1922 from Los Angeles, Calif., to Battle Creek, Mich., as unjust and unreasonable. Charged fourth class rate of $3.585, reparation sought to basis of $1.92 contemporaneously in effect in the reverse direction. Subsequently a rate was made effective of $1.73 on Dec. 5, 1922. The Commission is not convinced that the westbound rate of $1.92 was the fair measure of a reasonable maximum rate on eastbound traffic of the character here involved. The eastbound rate on agricultural implements was $2.765. HELD, rate charged unreasonable to extent it exceeded $2.765 reparation awarded. Rich Steel Products Co. v. S. P. Co., 109 I. C. C. 465.

(7y) Complainant attacked class rate charged on four cars of green salted hides, from Moultrie, Ga., to Elsmere Jct., Del., between Sept. 16 and 26, 1921 as unreasonable. Moultrie is served by the G. N., A. B. & A., and G. & F. Shipments moved G. N., A. C. L., R. F. & P., and B. & O., at sixth class rate of $1.185, reparation being sought to basis of 66c, a commodity rate which became effective Dec. 5, 1921, distance 899 miles. HELD, rate attacked unreasonable to extent it exceeded 66c, reparation awarded. Barr & Dougherty v. G. N. Ry., 109 I. C. C. 487.

(7z) Complainant attacked fifth class rate charged on 13 cars of soya beans shipped between June 3 and 30,

1922 from Norfolk, Va., and Snowden and Gregory, N. C., to Chicago Heights, Ill., as unreasonable. Average distance from Norfolk 1,152 miles charged fifth class 51.5c minimum 36,000 pounds. On March 10, 1924 a commodity rate of 35.5c was established. The fifth class rate, as such, and the present minimum, are not attacked. To award reparation on the shipments under consideration would be tantamount to prescribing a commodity rate for application nearly a year prior to the time its establishment was requested of these defendants, with a minimum much lower than that made applicable in connection with the commodity rate they voluntarily established some two years after the movement or that at present in effect. HELD, rate attacked not unreasonable, complaint dismissed. Chicago Heights Mfrs. Asso. v. B. & O. R. R., 109 I. C. C. 545.

(8a) Complainant attacked fifth class rates charged on iron and steel articles, carloads, between March 1, 1920 and Oct., 31 1924 from Pittsburgh, Pa., and related points and Pennsylvania Ohio and West Virginia to Erie, Pa., as unreasonable and in violation of the fourth section. Rates charged exceeded the combination on Youngstown and other intermediate points. HELD, rates attacked unreasonable to extent they exceeded the aggregate of intermediates, reparation awarded. Erie Bolt & Nut Co. v. B. & O. R. R. 109 I. C. C. 590.

(8b) Complainant attacked class rates charged on two cars of iron ore shipped from Ishpeming, Mich., and on three cars from Negaunee, Mich., to Tamms, Ill., between Dec. 2, 1921 and Aug. 7, 1922 as unreasonable and unduly prejudicial. Ishpeming and Negaunee are on the Northwestern 3 miles apart. Shipments moved over Northwestern to Chicago, thence C. & E. I., to destination, charged class D rates of 42.5c prior to July 1, 1922 and 38.5c thereafter on Sept. 5, 1922 a commodity rate of $3.69 per long ton became effective. HELD, rates attacked unreasonable to extent they exceeded $6.75 per long ton prior to July 1, 1922 and $6.08 thereafter, reparation awarded. Tamms Silicia Co. v. C. & N. W. Ry., 109 I. C. C. 618.

(8c) Complainant attacked sixth class rate of 33.5c charged on five cars of crude feldspar shipped in Nov. and Dec. 1924 from De Kalb Junction, N. Y., to Cleveland, O., as unjust, unreasonable unjustly discriminatory unduly preferential and prejudicial to extent it exceeded a rate of 19c. Feldspar in either crude or ground form is rated sixth class. Crude feldspar is shipped in bulk and usually loads to marked capacity of car. In ground form it is shipped in packages, and the leading generally approximates the classification minimum. The value of crude feldspar is about one half that of ground feldspar. Loss and damage claims are negligible. On March 1, 1925 subsequent to movement defendant established the present commodity rate of 25c on feldspar, crude or ground, and defendant admits rate charged unreasonable to extent it exceeded rate subsequently established. Present rate is considerably higher relatively than are the rates from both Penland and Keene. Distance of 739 miles from Keene to Cleveland is through De Kalb Junction, from which the present rate is but 0.5c less for a distance shorter by 299 miles. HELD, rate attacked unreasonable to extent it exceeded 22.5c reparation awarded. Green Hill Mining Co. v. N. Y. C. R. R., 109 I. C. C. 643.

(8d) Complainant attacked fifth class rate of 59c charged on one car of window glass other than plate not framed or leaded shipped in Sept. 1924 over Pennsylvania and Merchants & Miners Transportation Co. from Jeanette, Pa., to Jacksonville, Fla., as unreasonable, unjustly discriminatory and unduly prejudicial to extent it exceeded 54c. Basis sought is commodity rate now applicable over route described from Jeanette and a number of other Pennsylvania points to Savannah, Ga of 54c, fifth class rate to Savannah being 57c. Complainant asked a finding both of unreasonableness and undue prejudice in the rates on window glass on basis of the fact that on certain other commodities the two ports take the same rates. It makes no showing that any of the commodities upon which there is a parity to the two ports compete with window glass or that the assessment of the class rate on window glass and a commodity rate on a competing commodity resulted in undue prejudice. HELD, rate attacked not unreasonable or unlawful, complaint dismissed. Towers Hardware Co. v. Pennsylvania R. R. 109 I. C. C. 651.

(8e) Complainant attacked fifth class rates charged on canned goods, carloads

from C. F. A., territory to river cities as unreasonable; and relation of rates from Illinois territory to the river cities on the one hand, and to Chicago and Peoria, Ill., and St. Louis, Mo., on the other as unduly prejudicial. Canned goods usually move on fifth class rates in central territory but move largely on commodity rates in Illinois territory. There is a higher level of rates to the river cities than to Chicago, Peoria and St. Louis and also a number of commodity rates that are higher than fifth class. Measured solely by the comparative adjustment in central territory any basis lower than full fifth class would have to be regarded as too low, inasmuch as the rates on canned goods in central territory are generally on the fifth class basis. Fifth class rates apply quite generally in western trunk line territory, although there are a considerable number of commodity rates from canning points on a lower basis. Fifth class rates also apply locally in Iowa although it should be stated that the fifth class rates in Iowa are lower than the fifth class rates for similar distances in central territory and in Illinois, and lower also, in some instances than the rates here prayed. This record does not establish that the conditions of transportation in Illinois territory are more favorable than those in central territory. This record tends to support the inference that the general fabric of commodity rates in Illinois territory is low and a source of difficulty in dealing with the relative adjustments in Illinois and central territories. The record does not warrant a finding that the rates attacked are unreasonable except to the extent they exceed fifth class. No definite showing is made with respect to the character or intensity of the competition with various points, nor as to the specific effect thereon of the relation of rates here considered. There is also failure to show the extent to which conditions affecting transportation to the respective jobbing points are properly comparable. HELD, rates attacked which exceed fifth class rates unreasonable to that extent but the other rates attacked not unreasonable or unduly prejudicial, reparation denied. Burlington Shippers Asso. v. A. T. & S. F. Ry., 109 I. C. C. 694.

(8f) Complainant attacked second class rate of 142c charged on one car of fresh peaches in baskets shipped Sept. 6, 1924 from Quincy, Pa., to Jacksonville, Fla., as unreasonable, unjustly discriminatory and unduly preferential. Shipment moved as routed over Pennsylvania to Hagerstown, Md., thence N. & W., Winston Salem South bound, and A. C. L., to destination, 935 miles. From Quincy and northern points generally, second class rates apply on this commodity to southern territory. HELD, rates attacked not unreasonable or otherwise unlawful, complaint dismissed. Nooney & Co. v. P. R. R., 112 I. C. C. 35.

(8g) Complainant attacked class rates charged on 18 cars of asphalt between Sept. 3, 1921 and Aug. 19, 1922 from Richmond, Calif., to Susanville, Calif., as unjust, unreasonable, unjustly discriminatory and unduly prejudicial. Shipments moved as routed S. P., from Richmond, 15 miles northeast of San Francisco to Susanville 367 miles, charged class D of 65.5c prior to July 1, 1922, thereafter 59c. On August 23, 1922 a commodity rate of 49.5c was published and remained in effect until class D rate was reduced to 46.5c on Dec. 31, 1922. During the period of movement a commodity rate of 45.5c prior to July 1, 1922 and 41c thereafter applied on petroleum road oil, also rated class D. Complainant endeavored as early as Sept 3, 1921 to have defendant publish a rate of 45.5c equal to the road oil rate, and on March 21, 1922 defendant advised it would approve a rate of 55c, its equivalent after July 1, 1922, a rate of 49.5c made effective August 23, 1922. HELD, present rates not unreasonable but were unreasonable at time shipments moved to extent they exceeded 49.5c on and after July 1, 1922, reparation awarded. Warren Brothers Co. v. S. P. Co., 112 I. C. C. 87.

(8h) Complainant alleged fifth class and sixth class rates applicable, respectively, on less carload and carloads of burlap bags, in bales, from New Orleans La., to Tuscaloosa, Ala., as unjust, unreasonable, unjustly discriminatory, unduly prejudicial and in violation of the fourth section to extent they exceed commodity rates in effect on like traffic from same point of origin to Birmingham, Ala. Complaint has been satisfied as to the carload rate by establishing the Birmingham rate to Tuscaloosa. Burlap bags are packed for shipment in

compact bales weighing from 375 to 400 pounds and damage claims are negligible. Tuscaloosa is 55 miles southwest of Birmingham and is served by the A. G. S., L. & N., and M. & O. Sixth class rate to Tuscaloosa 69.5c, commodity rate to Birmingham 49.5c. Rate attacked is unduly prejudicial of rates to Birmingham. HELD, rate attacked not unreasonable but unduly prejudicial to extent it exceeds rate to Birmingham. Dixie Peanut Mills v. A. G. S. R. R., 112 I. C. C. 168.

ALL OTHER CITATIONS

Gila Water Co. v. A. E. R. R. Co., 85 I. C. C. 408; Grand Island Chamber of Commerce v. A. & R. R. R. Co., 85 I. C. C. 502; Nitrate of Soda from Gulf Ports, 85 I. C. C. 586; Crawford & Sabastian v. C. R. I. & P. Ry. Co., 85 I. C. C. 753; Seaboard By-Product Coke Co. v. Director General, as Agent, 88 I. C. C. 261; National Car Coupler Co. v. B. &. O. R. R. Co., 88 I. C. C. 325; Gilbert Co. v. L. & N. R. R. Co., 88 I. C. C. 405; Moline Ice Co. v. Director General, as Agent, 88 I. C. C. 444; Barrett Co. v. Director General, as Agent, 88 I. C. C. 459; Hickman, Williams & Co. v. Director General, as Agent, 88 I. C. C. 501; Armour & Co. v. Director General, as Agent, 88 I. C. C. 569; Grate Bars to Memphis, 88 I. C. C. 701.

III. REPARATION.

§3. In general.

See Reparation.

(a) In numerous instances where class rates were charged on unusual movements the Commission has declined to award reparation in the absence of proof that the commodity was improperly classified or that the class rates as such were unreasonable. The special facts of particular cases have, however, warranted some departures from this principle. Omaha Cold Storage Co. v. C. & N. W. Ry., 98 I. C. C. 437, 440.

CLASSIFICATION

I. RIGHT OF CARRIER TO ESTABLISH.

§1. In general.
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II. BASIS OF CLASSIFICATION.

§3. In general.
§3½. Application of section 2.
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IV. COMPARATIVE RATINGS.

A. Analogous articles.

§17. In general.
§18. Specific comparisons.
§18½. Split classes.
§19. Evidence and procedure.
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V. REASONABLENESS AND DISCRIMINATION.

§22. In general.
§23. Uniform or consolidated classification.
§24. Exceptions to classification.
§25. Refusal to transport.
§26. Jurisdiction of courts.
§27. Reparation.

VI. TARIFFS AND CONSTRUCTION.

§28. In general.

CROSS REFERENCES

See Advanced Rates §5 (3), §18 (12); Class Rates; Differentials §2; Evidence §60½; Tariffs §12¼.

I. RIGHT OF CARRIER TO ESTABLISH.

§1. In General.

ALL CITATIONS

Gallaudet Aircraft Corp. v. N. Y. N. H. & H. R. R. Co., 88 I. C. C. 750.

II. BASIS OF CLASSIFICATION.

§3. In General.

(a) State of manufacture of an article is important as a guide in classification only in so far as it indicates the transportation characteristics of the article, such as its loading qualities, value, and transportation. Rates on Lumber and Lumber Products, 52 I. C. C. 598. Vitrolite Co. v. A., T. & S. F. Ry. Co., 89 I. C. C. 367, 372.

(aa) It is obvious that the varying shades of difference in classification elements can not be translated into ratings with mathematical accuracy, especially where the number of ratings in the classification is limited. The Commission has said repeatedly that no classification can be so minute as to conform to all the different varieties and conditions of traffic. It can do no more than exercise its best judgment in an effort to give proper weight to all of the evidence and with due regard to the interests of the shippers, the carriers, and the public generally. Indian Packing Corp. v. Director General, 93 I. C. C. 400, 408.

(b) There is no fixed measure for the reasonableness of a classification rating. Classification is largely a matter of comparison of all the commodities that move as freight and the assignment of ratings such that each shall bear its fair share of the transportation burden. Two especially important factors entering into the fixing of a rating for any commodity are value and weight density, but a number of other things must also be considered. Classification of canned goods, 98 I. C. C. 166, 176.

(cd) Classification, from its very nature and use, can not be so minute as to do mathematically exact justice to every variety of commerce that moves. Colorado Culvert & Flume Co. v. A. T. & S. F. Ry., 100 I. C. C. 311, 313.

(e) Evidence as to profits realized by shippers on a particular commodity is of little value in determining reasonableness of the classification rating applied to that commodity. Coca-Cola Co. v. B. & O., 92 I. C. C. 340, 343.

(fg) When articles which are identical except for a difference in density can practicably be covered by distinguishing tariff descriptions, carriers commonly accord lower ratings with higher minima to the form of article which loads more heavily. Such distinctions apply to articles set up and knocked down, nested and not nested, in bags and in machine-compressed bales, and notably to tanks and similar objects made of metal of different gauges. Aluminum Goods Mfg. Co. v. A. & V. Ry., 92 I. C. C. 346, 351.

(h) Trend of freight classification for many years, and probably since the beginning, has been toward multiplication and refinement of commodity descriptions. The consolidated classification today provides specific ratings for thousands of articles, and for most of them there are several ratings, application of which depends upon form in which the article is prepared for shipment. Many of these ratings are not precisely correct, some of them doubtless not even reasonably correct; but they were all established in the first instance with some regard for value, weight density, susceptibility to damage, and other transportation characteristics of the commodity under consideration. Parlor Frame Mfrs. Asso. v. A. A. R. R., 93 I. C. C. 506, 508, 509.

(i) In establishment of freight classifications, involving as it does the grouping of all commodities into a limited number of classes, principle that the unfinished should be rated lower than the finished article must frequently yield to other considerations. Parlor Frame Mfrs. Asso. v. A. A. R. R., 93 I. C. C. 506, 510.

(j) There is a clear distinction between making different rates for application between same point on same commodity conditioned solely upon use to which the commodity is to be put, a prac-

tice which the commission has frequently condemned, and making different rates on different commodities and taking into consideration, along with other factors, the general use to which respective commodities are put for purpose of determining the applicable rate. Lime from Eastern Trunk Line Points, 93 I. C. C. 617, 630.

(k) Fact that movement of a commodity between specific points was and is light is not conclusive that such shipments should move on the classification basis. Humble Oil & Rfg. Co. v. D.-G. C. Ry., 95 I. C. C. 435, 437.

(l) If in the establishment of rates or classifications differences in value of the respective commodities carried were reflected in rate increments only sufficient to cover cost of insurance, the rates as a whole would either be such that it would be impossible for carriers to earn what they reasonably might, and in fact what they necessarily should in order to perform their services, or the rates on many low-grade commodities would have to be such that they would be prohibitory of any movement. See 26 I. C. C. 159. Classification of Canned Goods, 98 I. C. C. 166, 172, 173.

(m) The consolidated classification case was a comprehensive proceeding dealing primarily with the numerous problems arising out of the unification of the commodity description and carload minimum weights of the three separate classifications then effective. The proposal to revise the l. c. l. ratings in the official classification on canned goods was considered in its broader aspect and as an entity. The adverse recommendation made by the commission in that case is in no sense conclusive of the question presented here, which relates only to the ratings on certain of the higher grades of canned goods. Classification of canned goods, 98 I. C. C. 166, 174.

(n) Freight classifications afford a means of grading rates according to value of the service, although other factors, such as loading characteristics and liability to damage in transit, are taken into consideration. At present three principal classifications are in use, the official southern and western. Commission has endeavored to promote uniformity in classification, and much has been done in that direction, but in truth the purpose of uniformity in classification is not fully accomplished without uniformity in number of classes and also in class percentage relationships. Southern Class Rate Investigation, 100 I. C. C. 513, 628.

(o) No classification can be so minute as to conform to the differing varieties and conditions of traffic, and to separate different grades and densities of the same article into different classes with varying rates, even if it could be accomplished, would go far to defeat the real purpose of classification. Western Paper Makers Chem. Co. v. A. A. R. R., 109 I. C. C. 133, 138.

(p) The classification generally imposes the highest rate which a particular commodity should bear under normal conditions and a commodity rate which is higher than the class rate is an abnormality which on its face requires special justification. Chevrolet Motor Co. v. C. & A. R. R., 109 I. C. C. 462, 463.

§4. Bulk or Weight of Commodity.

See Evidence §65; Express Companies §18; Loading and Unloading; Passenger Fares and Facilities §10.

(a) Weight density is a very material factor in determining the relative cost of transportation, and therefore a distinction is rating based thereon, if fairly made, can hardly be termed arbitrary. Where the other factors are substantially uniform, weight density may become the dominant factor in classification. Indiana Public Service Commission v. A. A. R. R., 92 I. C. C. 83, 86.

(b) Variations in weight density are of considerably less importance in fixing classification ratings for articles as heavy as those here under consideration than they are when light and bulky articles are under consideration. Classification of Canned Goods 98 I. C. C. 166, 173.

(ba) Rates on cylindrical cheese boxes found not unreasonable or otherwise unlawful as compared with rates on wooden drums, other wooden containers, and numerous other commodities. Considering the light loading of cylindrical cheese boxes the rates assessed do not produce earnings which may be regarded as excessive. Wisconsin Cheese Box Mfrs. v. A., T. & S. F., 102 I. C. C. 279.

(c) It is true that in rating light and bulky articles a difference in weight density of only a few pounds per cubic foot becomes a matter of first importance, but other considerations, such as the value, susceptibility to damage, and method of packing, can not be disregarded. National Commercial Fixture Mfrs. Asso. v. A. A. R. R., 109 I. C. C. 479, 482.

§4½. Knocked-down or set-up shipments.

See Knocked-down Shipments; Reduced Rates §5 (j).

(a) Complainant attacked commodity rates on wooden tanks, knocked down, carloads, from the north Pacific coast to points in western trunk line, central and trunk line territories, and from California points to eastern defined territories, which apply in connection with a transit arrangement at certain Pacific coast points, as unduly prejudicial in that transit is not allowed at Chicago and Batavia, Ill., Milwaukee, Wis., and Cincinnati, O. The rates on tanks, knocked down, from the Pacific coast are the same as the rates on lumber. A transit arrangement permits the reshipping of tank material, manufactured from rough lumber brought into certain transit points on the Pacific coast, at the through lumber rate from points of origin to final destination, plus a transit charge ranging from 1.5c to 3c, depending upon the distance from the point of origin to the transit point. Rates on lumber from the north Pacific coast are blanketed over a large area and the transit points are within that area. Complainants have no transit arrangement at their plants under which they can manufacture and reship lumber in the form of tanks, knocked down. On such tanks fifth class rates apply. The C. M. & St. P., is the only single line which serves transit points on the Pacific coast as well as the cities in which some of the complainants are located. If defendants should accord milling in transit arrangements on lumber originating on the Pacific coast to be Milwaukee, Chicago, Batavia and Cincinnati and reshipped from those points, complainants would still be at a disadvantage by being compelled to haul a wastage of 20% for a distance of more than 2,000 miles to the manufacturing point. This is a disadvantage due to geographical location. Complainants enjoy a tremendous advantage by reason of their proximity to the great consuming market. HELD, rates on wooden tanks, knocked down, carloads, including fixtures and metal parts not exceeding 20% of the weight of the entire shipment, from Chicago, Batavia, Milwaukee and Cincinnati to points in western trunk line territory are not unreasonable but to points in central trunk line territories are unreasonable to extent they exceed 110% of the lumber rates. Transit privilege denied. Tank & Tower Council v. A. & R. R. R., 91 I. C. C. 309.

(b) Complainant attacked class rate of $1.485 charged on two carloads of steel tanks, knocked down, shipped Feb. 21, 1922 from Hopewell, Va., to Oklahoma City, Okla., as unreasonable to extent it exceeded $1.095. Shipments moved over N. & W., to Cincinnati Big Four to St. Louis, M. K. & T., beyond, 1,562 miles, charged fifth class rate. Effective June 15, 1922 defendants established a commodity rate of $1.095. Effective Sept. 15, 1922 the present rate of 95.5c was established. HELD, rate attacked unreasonable to extent it exceeded $1.095, reparation awarded. Southland Cotton Oil Co. v. M. K. & T. Ry., 93 I. C. C. 213.

(c) Complainant attacked fifth class rates charged on 7 cars of fabricated steel tank material, knocked down, shipped between Jan. 18 and Aug. 3, 1921 from Shreveport, La., to El Dorado, Ark., as unreasonable, unjustly discriminatory and unduly prejudicial. There are four routes over which the shipments might have moved; the short line route by way of the V. S. & P., to Ruston, La., and Rock Island beyond, 120 miles; St. Louis Southwestern to Fordyce, Ark., and Rock Island beyond, 195 miles; L. & A., to Winfield, La., and Rock Island beyond, 198 miles; and T. & P., to Alexandria, La., and Rock Island beyond, 269 miles. Three of the shipments were routed and moved over the route via Alexandria. One shipment was delivered to T. & P. The three remaining cars were routed and moved via Winfield. Charged on all but one shipment at joint line fifth class distance rate of 52c for 120 miles. This short line distance rate by provision of the governing tariff was conditionally applicable over the longer routes, the carriers by these routes reserving the right to reject a shipment

tendered at the rate applicable over the short line route. Effective Dec. 21, 1921 a commodity rate of 29.5c was established on certain iron and steel articles including tank material of the character shipped by complainant. HELD, rates charged unreasonable to extent they exceeded 34.5c via Winfield and 41c via Alexandria, reparation awarded. Parkersburg Rig & Reel Co. v. C. R. I. & P. Ry., 96 I. C. C. 99.

(d) Rates on wooden tanks, k. d., including metal parts not to exceed 20 per cent of weight of entire shipment, from Chicago and Batavia, Ill., Milwaukee, Wis., and Cincinnati, Ohio, to points in c. f. a. and trunk-line territories found unreasonable to extent they exceed 110 per cent of rates on lumber of same species, which basis was found reasonable in Rates on Lumber and Lumber Products, 52 I. C. C. 598, and Parkersburg Rig & Reel Co., 59 I. C. C. 751; 78 I. C. C. 238. Tank & Tower Council v. A. & R. R. R. Co., 91 I. C. C. 309.

(e) Complainant attacked commodity rates charged on four carloads of fabricated tank material, knocked down, one of which contained, among other things, a quantity of steel pipe on which the fourth class less carload rate was charged, shipped between Dec. 22, 1922 and July 3, 1923 from Houston, Orange, Iowa Park, and Kosse Tex., to El Dorado and Smackover, Ark., as unreasonable and unduly prejudicial. Houston, Orange and Kosse are in Texas common point territory. Iowa Park is in the Dallas-Fort Worth group. El Dorado and Smackover are in the Little Rock-Fort Smith territory. The shipments were delivered to the carriers unrouted. Fabricated steel tank material and steel pipe are both heavy loading commodities of a similar nature and there is nothing of record to show why they should take different rates. In fact, in western classification, which governs in this territory, rates fabricated steel tank material and iron or steel pipe fifth class and provides that these articles may be shipped in mixed carloads at the highest minimum weights and class rates. There appears to be no reason, and certainly there is none shown of record, why this same principle should not apply when these articles are shipped under commodity rates. HELD, rates charged unreasonable to extent they exceeded 51c, reparation awarded. Parkersburg Rig & Reel Co. v. G. C. & S. F. Ry. 100 I. C. C. 245.

§5. C. L. and L. C. L. shipments.

See Infra §13; Advanced Rates §5 (2) (la), §15 (c); Cars and Car Supply §11⅞; Class Rates §2 (3k) (5f) (6c) (6d) (6f) (6m) (6z); Classification §10 (h), §13, §20 (c) (o); Commodity Rates §1 (d) (no), §5 (4r); Evidence §63; Express Companies §10 (a); Long and Short Hauls §4 (3i); Minimums.

(a) It is necessary, in determining whether c. l. rates to supersede the any-quantity rates on cotton, should be established, to consider commercial and economical aspects of the question and determine whether the arrangement, if established, would be in the public interest. Taylor Dry Goods Co., 28 I. C. C. 205. Mississippi Railroad Commission v. A. & V. Ry. 89 I. C. C. 47, 54, 55.

(b) The reasons that justify and require lower rates for carloads than for less carloads are not materially affected by considerations as to value of the commodity. Burroughs Adding Machine Co. v. M. C. R. R., 91 I. C. C. 378, 380.

(c) Complainant attacked ratings on kitchen cabinets, crated or boxed, less carloads, in official and southern classifications, as unjust and unreasonable and unduly preferential and prejudicial. In 48 I. C. C. 518 the official classifications ratings on kitchen cabinets shipped with tops and bases separated were considered, and it was found that in so far as they had been increased since Jan. 1, 1910, they were justified and that otherwise they were not unreasonable, unjustly discriminatory or unduly prejudicial. Ratings are one and one half times first class on tops and bases with legs attached, first class with legs detached or without legs. In western classification the rating on tops and bases is first class without regard to legs. HELD, ratings attacked not unreasonable or unduly prejudicial, complaint dismissed. Public Service Commission of Indiana v. A. A. R. R., 92 I. C. C. 83.

(d) Respondents proposed to increase from first class to 1.5 times first class the less carload ratings in the

official, southern and western classifications on automobile wheels made of wood combined with iron or steel, with or without rubber tires, and weighing each about 200 pounds. They also propose to require that such wheels be either wrapped, boxed, or crated for shipment, whereas under the existing schedules they may be shipped loose. The present item is restricted to automobile wheels while the new item also includes wheels for motor tractors, for motor platform or warehouse trucks or tractors, and for motor vehicle or tractor trailers. HELD, respondents have failed to justify the proposed increased rating, and they have not justified the proposed packing requirements unless there is added thereto a note stating that old wheels may be shipped loose. Classification of motor vehicle wheels, 92 I. C. C. 190.

(e) Complainant attacked official classification rating of second class, less carloads, and fourth class, carloads, on cocoa cola sirup, in bulk in barrels or kegs, as unreasonable, unjustly discriminatory and unduly prejudicial. This sirup is a finished sirup containing about 94% simple sirup and 6% other ingredients referred to as "characteristics elements". To protect its formula, prevent adulteration, and the probability of substitutes being served, complainant asserts it is necessary to ship its product as a finished sirup. The carload ratings on flavoring or fruit sirup in bulk in barrels in the three classifications are uniformly one class higher than the ratings on carbonated beverages. But in less carloads, taking beverages in solid sided bottle carriers, the container most frequently used as the basis for comparison, the two commodities are rated the same in the western classification, while in the southern classification the sirups are one class, and in the official classification are two classes, higher than the beverages. HELD, the fourth class rating on coca cola sirup, in bulk in barrels or kegs, carloads, if official classification not unreasonable but second class on that commodity, in bulk in barrels or kegs less carloads in official classification territory unreasonable to extent it exceeded rule 25. Coca Cola Co. v. B. & O. R. R., 92 I. C. C. 340.

(f) Complainant attacked less carload rating in western classification, and carload ratings in official, southern and western classifications on adding or computing machines, in boxes, since March 1, 1920 as unreasonable to extent they exceed first class, less carloads and third class carloads. The machines are substantially built, are packed singly in strong wooden boxes, and are not subject to damage by the ordinary shocks of transportation. Considering their many similar transportation characteristics, a less carload rating on adding machines higher than one class above speedometers does not seem warranted for the future. The second class rating on adding machines, carloads, with a minimum of 30,000 pounds, which can be easily loaded in standard equipment, does not appear unreasonable. It was voluntarily established by the carriers upon request of the record does not justify condemnation of the higher any quantity rates applicable on carloads prior thereto. HELD, rating on adding machines, less carloads, in western classification not unreasonable but are unreasonable for future to extent they exceeded one and one quarter times first class. Ratings in carloads, in official, southern and western classifications not unreasonable. Burroughs Adding Machine Co. v. M. C. R. R., 91 I. C. C. 378.

(g) Complainant attacked official classification less carload ratings on food products in glass containers, packed in barrels or boxes, as unjust and unreasonable. In 64 I. C. C. 205, Commission found second class rating on sliced dried beef, in glass, unreasonable to extent it exceeded third class, and awarded reparation. Food products in glass containers compete with the same articles in metal containers and in all instances where the classification provides a rating on these food products when shipped in metal cans packed in barrels or boxes, complainants ask for the same rating on shipments in glass packed in barrels or boxes. Commodities in glass are generally rated first class in less carloads. There is a difference in favor of the metal container from 45 to 95%. On the whole, the record indicates that, as to many of the elements proper to be considered in the classification of freight, shipments of the food products here considered in glass and in metal containers are upon a substantial parity; as to others, they differ in varying degrees. It does not established that the ratings on shipments

in metal afford a proper measure of the reasonableness per se of the ratings on shipments in glass. HELD, ratings attacked unreasonable; less carload ratings in official classification on food products in glass unreasonable to extent they are higher than the first numbered class above the less carload ratings applicable to the same articles when in metal cans, packed in barrels or boxes, reparation denied. Indian Packing Corp. v. Director General, 93 I. C. C. 400.

(h) Complainant attacked rating on furniture frames, car loads, in official classification, and less carloads, in official, southern and western classifications, as unreasonable, unjustly discriminatory and unduly prejudicial. They are usually prepared for shipment in less carloads by wrapping or crating, although the classifications do not require that this be done. In making carload shipments from 55 to 65 piece sets are usually loaded into the car loose, the chairs being placed in the seat of the davenport. The lading is braced in sections to prevent damage from shifting. Ordinary box cars are used. All of the evidence introduced related to the reasonableness of the ratings applicable on the fully set up frames in the three piece sets. Under the present rate adjustment most of the less carload shipments move by express. That service is much more expeditious and includes pick up and delivery, which is not a part of the freight service. HELD, less carload ratings on set up chair and lounge frames, loose or in bundles, not unreasonable. HELD, less carload rating in official classification on wooden chair and lounge frames, when set up, in boxes or crates, unreasonable to extent it exceeded two and one half times first class; but that the corresponding ratings in the southern and western classifications are not unreasonable. Parlor Frame Mfrs. Asso. v. A. A. R. R., 93 I. C. C. 506.

(i) Complainant attacked less carload rates charged on cases and casks, containing empty bottles, returned from Saxon, Wis., and Herman, Bergland and Hancock. Mich., to Duluth, Minn., between May and November, 1920, as unreasonable, unjustly discriminatory, unduly prejudicial and in violation of the fourth section. Shipments from Hancock moved to Houghton over Mineral Range, thence D. S. S. & A., those from Saxon and Herman moved over D. S. S. & A., direct. Charged fourth class rates, reparation being desired to one-half of such rates. Prior to Dec. 31, 1919, the tariffs authorized one-half fourth class rates on similar shipments between these points, and effective Nov. 15, 1922 this basis was restored. One-half fourth class has been applicable in western trunk line territory for many years. The rates charged from Saxon and Herman contravened the fourth section in that one-half of fourth class rates applied from points to which Saxon and Herman are intermediate. HELD, rates attacked unreasonable to extent they exceeded one-half fourth class rates reparation awarded. Fitger Brewing Co. v. D. S. S. & A. Ry., 95 I. C. C. 3.

(j) Complainant attacked ratings on cast iron toys in the official and southern classifications as unreasonable. The toys manufactured by complainant consist of various wheeled toys, such as miniature locomotives and cars, horses and wagons or carts, automobiles, cabs, tractors, sedans, fire engines and hose reels, and miscellaneous toys, such as cooking stoves and utensils, banks, pumps, cap pistols and the like. Cast iron toys, in barrels, boxes or crates in less carloads are rated second class in official and first in southern and in carloads, third class and second class. The ratings attacked have been in effect for a number of years. Cast iron toys constitute desirable traffic of heavy density not materially unlike many articles of hardware so far as a number of transportation elements are concerned. Complainants toys will load to practically the capacity of an ordinary box car, and while not being shipped to any appreciable extent in carload movement of that character might be stimulated with a proper spread between the carload and less car load ratings. No good reason appears why the ratings in the southern classification should be so much higher than in the official classification, or why the carload ratings should not be the usual two classes lower than the less carload ratings. HELD, cast iron toys n o i b n, less carload rating in official classification not unreasonable, but in southern classification is unreasonable to extent it exceeds second class; that the carload rating in both classifications is unreasonable to extent it exceeds fourth class,

minimum 30,000 pounds. Grey Iron Casting Co. v. A. & V. Ry., 96 I. C. C. 199.

(k) Complainant attacked second class rating and rates on less carloads of printed waxed wrapping paper, in rolls, in boxes or crates, from paper producing points in official territory to destinations in the same territory, as unreasonable and unduly prejudicial to extent they exceed third class rating and rates applicable on the same commodity, not printed. Waxed paper, not printed, is shipped in the same kinds of containers as waxed paper, printed, weighs the same, and occupies the same amount of space in the car. Printed Waxed wrapping paper and waxed wrapping paper not printed possess the same transportation characteristics and the only difference between the two commodities is that the printed paper is slightly more valuable. Numerous other kinds of printed paper, apparently higher in value and subject to greater risk of damage, are rated third class, in less carloads, in official classification. HELD, second class rating and rates on printed waxed wrapping paper, less carloads, between points in official territory unreasonable to extent they exceed third class rating and rates, reparation awarded. General Baking Co. v. P. R. R., 96 I. C. C. 280.

(l) Complainant attacked less carload ratings and rates on electric cooking stoves, constructed so as to be used on a table and equipped with cooking utensils, from Huntington, W. Va., to interstate destinations as unreasonable and unduly prejudicial. Until a more specific item was provided, complainants commodity clearly came within the general description of a portable electric cooking stove of the disk heater or hot plate type within the meaning of the tariff. To construe the item as not permitting reasonable variations from and additions to the simpler commodity contemplated when the item was originally framed would be impracticable and unfair to both carrier and shipper, particularly in view of the rapid changes which have been and are taking place in the electric appliance industry. It is true that the variations and additions in this instance operate to make complainants commodity more elaborate, useful and valuable, but this very fact strengthens the conclusion that its rating should be no lower than that on the simpler stove. The latter is packed in the same manner and has no greater susceptibility to damage, and obviously bears closer analogy to the former than does the large electric stove or range for the kitchen. HELD, applicable ratings of second class in official and first in southern and western not unreasonable or otherwise unlawful, complaint dismissed. Armstrong Mfg. Co. v. A. & R. Ry., 96 I. C. C. 595.

(m) Complainant attacked less carload rates charged on cream and condensed milk, in cans, from Taneytown, Md., to Hanover, Pa., and thence in carloads to Washington, D. C., Woodstock, Va., Charlotte, N. C., and Jacksonville, Fla., between April 4, 1921 and April 7, 1922 as inapplicable and unreasonable. The shipments might properly have been billed so as to make applicable the rates sought. Such rates have been accorded under the same rule on similar shipments made since April 7, 1922 upon compliance with the billing requirements thereof. No evidence was introduced to support the allegations of unreasonableness. HELD, rates charged applicable, not unreasonable, complaint dismissed. Chapin Sacks Corp. v. Pennsylvania R. R., 96 I. C. C. 706.

(n) Respondents proposed various changes, including increase and reductions, in the less carload ratings in the official classification on certain foods in inner containers packed in barrels, boxes or crates. The proposed changes would bring about the classification relationships prescribed in 93 I. C. C. 400. The primary question here is whether the respondents have justified the proposed increases from rule 26 to third class on shipments in cans in boxes. If they have, the proposed reductions on shipments in boxed glass will stand; if they have not, then the ratings on shipments in glass must be further reduced to third class to comply with the orders in Indian Packing Co., 93 I. C. C. 400. Respondents canceled from the classification the separate provision for corn sirup jelly and that commodity has since been subject to the ratings provided for edible jelly, not otherwise indexed by name. HELD, corn sirup jelly is shown to be comparatively low grade commodity. HELD, proposed increased ratings not justified. HELD, except as to proposed increased ratings on corn sirup jelly the ratings proposed have been justified.

Classification of canned goods, 98 I. C. C. 166.

(o) Although exceptions are quite common the usual spread between carload and less carload ratings is two full classes. Classification of canned goods, 98 I. C. C. 166, 170.

(p) Respondents proposed certain changes in classification which would result in increasing the freight charges on less carload shipments of jute packing in rope form. Jute packing, whether in rope form or otherwise, is now rated third class in less carloads, and fourth class, minimum 30,000 pounds in carloads, in the official, southern and western classifications, under the description of vegetable fibre packing, n. o. i. b. n. The suspended schedules would provide uniform ratings in the three classifications of second class in less carloads, and fourth class, minimum 30,000 pounds, in carloads, under the description of jute packing in rope form, tarred and not tarred. The suspended schedules will provide for the same ratings on jute packing in rope form as those applicable on oakum. Oakum is made of manila, sisal, hemp, and other socalled hard fibers, contains a considerable amount of tar, and is coarser in texture than jute. HELD, respondents have failed to justify the increased ratings proposed. Classification of jute packing, 98 I. C. C. 287.

(q) Complainant attacked class rate of $1.22 on stoves and ranges, less carloads from Nashville, Tenn., to Lynchburg, Richmond and Norfolk, Va., and other points taking same rates, as unjust, unreasonable unduly prejudicial and in violation of section four. In official, western and southern classifications stoves and ranges are rated fifth class in carloads and third class less carloads. For a number of years defendants have maintained commodity rates lower than the class rates from Birmingham, Ala., Chattanooga, Tenn., and Atlanta, Ga., to Virginia cities. Prior to Oct. 1, 1922 on carloads and to Nov. 5, 1923 on less carloads the class rates were applicable from Nashville to Virginia cities. On those dates commodity rates lower than the class rates were established and are still in effect. The carload rate from Nashville is the same as from the other originating points named but the less carload rate is 47c higher than that from the other three points. A correction of the disparity between the rates from Nashville and from Birmingham should result in the establishment of rates which will remove the cause for complaint as to the rate from the other competing points, and accordingly the finding will be confined to the relationship of the rates from Nashville and Birmingham to the Virginia cities. HELD, rates on stoves and ranges less carloads from Nashville to Virginia cities not unreasonable but unduly prejudicial to extent they exceed rates from Birmingham to same destinations. Allen Mfg. Co. v. N. C. & St. L. Ry., 98 I. C. C. 405.

(r) Complainant attacked less carload ratings in the western classification, the carload and less carload ratings in the southern classification, and carload and less carload rates of defendants in southern classification on edible flour, n. o. i. b. n., and corn meal, when contained in rope stock paper bags, as unreasonable, and, as compared with the lower ratings and rates on the same commodities in cloth bags unjustly discriminatory and unduly prejudicial. Rope stock paper bags are made principally from old manila rope, but with a certain content of old burlap bagging and wood pulp. The rating of sixth class on flour and corn meal in paper bags was established in southern classification to accord with the finding in 55 I. C. C. 209. It is shown that flour and corn meal when in paper bags will less readily absorb moisture and odors, and are less susceptible of contamination generally, than when in cloth bags. On the other hand, it appears that paper bags are somewhat more easily torn or burst, and when in that condition are less easily repaired than are cloth bags. The Commission is not convinced on the record, that the relative risk to the carrier in handling less carload shipments of flour and corn meal in paper bags would be greater than that incurred in handling less carload shipments of the same commodity in cloth bags. Under the official classification no distinction is made between the ratings on flour in cloth bags and in paper bags; and in southern territory where any quantity ratings prevail, there is no distinction in the rating on flour based upon the quantity shipped. The less carload movement of flour is important and strongly competitive with

the carload movement. HELD, carload and less carload ratings and rates not unreasonable but unjustly discriminatory to extent they exceed those in cloth bags. Rope Paper Sack Bureau v. A. & V. Ry., 98 I. C. C. 511.

(s) Complainant attacked class rates charged on two less carloads of automobile heaters, shipped during Oct. 1923 from Chicago, Ill., to San Francisco, Calif., as unreasonable. Charged first class rate of $5.10 applicable on heaters, automobile, in boxes. A commodity rate of $2.21 under the general heading of vehicle parts, self propelling, was applicable on automobile parts (metal) in straight or mixed carloads. The list under that heading does not contain automobile heaters. The tariff publishing the commodity rate on automobile parts which complainant sought to have applied provides, under rule 8, that all articles for which commodity rates are not herein specifically provided will be subject to class rates governed by classification. HELD, rate attacked applicable and not unreasonable, complaint dismissed. Western Auto Supply Agency v. C. B. & Q. Ry., 98 I. C. C. 647.

(tuv) Double first-class ratings and rates on adding machines, in boxes, l. c. l., in western classification, found not unreasonable in past, but for future found unreasonable to extent they may exceed one and one-fourth times first class. Burroughs Adding Machine Co. v. M. C. R. R. Co., 91 I. C. C. 378.

(wx) Proposal to increase from first class to 1½ times first class the l. c. l. ratings on automobile wheels made of wood combined with iron or steel, with or without rubber tires, and weighing 200 pounds or more each, found not justified. Commodity here considered is not analogous to those to which a rating of 1½ times first-class has been assigned by commission in various cases, whereas a rating of first-class has been prescribed on speed indicators and automobile sound-warning signals, commodities having a much higher value than automobile wheels. Classification of Motor Vehicle Wheels, 92 I. C. C. 190.

(y) As a general proposition no definite relationship exists between c. l. and l. c. l. rates, and use of different commodities would produce varying results. Southwest Cotton Co. v. A. E. R. R., 92 I. C. C. 563, 565.

(z) Protective-tariff rules governing l. c. l. shipments provided that carriers would furnish, or allow use of, refrigerator cars when aggregate weight of shipments was not less than 15,000 pounds, with no charge for refrigeration service unless specifically provided for in separate tariffs. Upon contention that shipments of lettuce were l. c. l shipments entitled to benefits of the rule, FOUND: As each box was not marked as required by the classification to obtain benefit of the l. c. l. rate, cars used were ordered for c. l. shipments, bills of lading and shipping orders signed by or for shippers showed minimum weights applicable to c. l. shipments, and bore notations and instructions having application only to c. l. traffic under the protective tariff, the c. l. rates, minimum, and stated refrigeration charges applicable thereto were legally assessed. Martin v. P. R. R., 92 I. C. C. 639.

(aa) Class rate on l. c. l. shipment of iron pipe fittings from Barberton, Ohio, to Duluth, destined to Virginia, Minn., found inapplicable to extent it exceeded lower commodity rate published in same tariff on "iron and steel articles, c. l.," which lower rate by tariff note applied on a list of commodities in which pipe fittings were included without limitation as to whether c. l. or l. c. l. While carriers intended to omit all reference to l. c. l. rates in connection with the lower commodity rate, through oversight this was not done. However, erroneous publication of rates does not justify a departure therefrom and intention of framers is not controlling. Reparation awarded. Murray-Egan-McLeod Co. v. P. R. R., 93 I. C. C. 79.

(bb) Application of existing classification ratings on steel files, l. c. l., to shipments of used or worn files, returned for reconditioning; found not unreasonable or otherwise unlawful. Practice of applying same rating on used as on new files extends to all other kinds of tools and machinery, such as agricultural implements, etc., and many of such articles are shipped secondhand or are returned to manufacturers for repairs or reconstruction. Moreover, in Minneapolis Traffic Asso., 23 I. C. C. 432, 437, the commission pointed out difficulties which would be encountered in the practical application of different rates on old and on new articles of same kind. Continental File Co. v. P., C., C. & St. L., 93 I. C. C. 373.

(cc) Considering the superior protec-

tion against damage which crating affords, also that furniture frames are unfinished material. FOUND, that the l. c. l. rating in official classification on wooden chair and lounge frames, when set up, in boxes or crates, is unreasonable for future to extent it exceeds 2½ times first class. Parlor Frame Mfrs. Asso. v A. A. R. R., 93 I. C. C. 506.

(dd) L. c. l. ratings on set-up wooden chair and lounge frames, when in boxes, crates, bundles, or loose, in western and southern classification, and when loose or in bundles in official classification; also the c. l. rating on such frames, loose or in packages, in official classification, found not unreasonable or otherwise unlawful. Parlor Frame Mfrs. Asso. v. A. A. R. R., 93 I. C. C. 506.

(ee) Charges resulting from use of actual weights on l. c. l. shipments of petroleum and its products, in packages, from Jacksonville to points in Georgia, found not unreasonable or unduly prejudicial as compared with lower charges based upon estimated weights applying intrastate in Georgia and Florida. Comparison was also made with tariff which provided for use of estimated weights from Jacksonville to Georgia destinations, but record establishes that such weights were for use in connection with c. l. shipments only. Moreover, actual weight of complainant's shipments exceeded estimated weight sought. Gulf Rfg. Co. v. A. & W. P. R. R., 95 I. C. C. 731.

(ff) Less-than-carload rating on n. o. i. b. n. in southern classification found unreasonable to extent it exceeds or may exceed the rating of second class contemporaneously applicable in official classification. Carload rating in both classifications found unreasonable to extent it exceeds or may exceed fourth class, minimum 30,000 pounds, the usual rating of two classes lower on c. l. than on l. c. l. ratings. Grey Iron Casting Co. v. A. & V. Ry. Co., 96 I. C. C. 199.

(gg) Answering complainant's contention that rating on cast iron toys should be same as that applicable on iron and steel hardware, n. o. i. b. n., defendants urge that a mere showing that such toys are cheaper, with similar transportation characteristics does not prove that rating should be same; that such toys are in the nature of nonessentials and properly are rated higher than general utility articles included within description of hardware, n. o. i. b. n. HELD, evidence is not persuasive that ratings on cast-iron toys in classification territories are unreasonable as compared with strikingly nonuniform ratings on hardware, nor is there any competitive reason for such rating. See Daisy Mfg. Co., 81 I. C. C. 44. Grey Iron Casting Co. v. A. & V. Ry. Co., 96 I. C. C. 199, 200, 201.

(hh) Following Channel Chemical Co., 31 I. C. C. 407, rates on less-than-carload shipments of furniture polish, in glass, boxed, and in metal cans, boxed, and mops, in bundles, from Chicago to intermediate points in transcontinental territory, since June 30, 1917, and on mop handles, in bundles, between June 30, 1917, and March 14, 1918, inclusive, found unreasonable to extent they exceeded bases herein prescribed. Reparation awarded. O-So-Ezy Products Co. v. Director General, 96 I. C. C. 220.

(ii) Second-class rating and rates applicable on l. c. l. shipments of printed waxed wrapping paper between points in official territory found not unduly prejudicial but unreasonable to extent they exceeded, exceed, or may exceed third-class rating and rates contemporaneously applicable on l. c. l. shipments of waxed wrapping paper unprinted. Printed waxed amount of space in a car, and is shipped in same kind of container as unprinted waxed paper, the only difference being that the printed paper is slightly more valuable. Moreover, waxed paper, printed and unprinted, in official classification takes same c. l. rating and in both southern and western classification the same l. c. l. rating. Reparation awarded. General Baking Co. v. P. R. R. Co., 96 I. C. C. 280.

(jj) Ratings applicable on electric table stoves, with equipment of cooking utensils in less than carloads, from Huntington, W. Va., to interstate destinations throughout the United States found not unreasonable or otherwise unlawful as compared with ratings on other similar electric appliances. Armstrong Mfg. Co. v. A. & R. Ry. Co., 96 I. C. C. 595.

(kk) Shipments of cream and condensed milk, in cans, moved from Taneytown, Md., to Hanover, Pa., in less-than-carload lots, under bills of lading naming the shipper as consignor and consignee, and thence in carloads to Washington, D. C., and other destinations under bills of lading naming the shipper as consignor and complainant as consignee. A less-than-carload rate from Taneytown to Hanover plus the carload rates on the

final destinations were charged, whereas complainant contends that in view of the fact that there was only one shipper and one consignee the contemporaneous carload rates from original point of shipment to final destinations were applicable. HELD, since different consignees were shown in the bills of lading, the rates charged, and not the rates sought, were applicable and are not shown to have been unreasonable. Complaint dismissed. Chapin-Sacks Corp. v. P. R. R. Co., 96 I. C. C. 706.

(ll) Rates assessed on l. c. l. shipments of returned empty steel drums from Sartell, Minn., and Groos and Menominee, Mich., to North Milwaukee, Wis., found applicable but found to have been unreasonable to extent they exceeded l. c. l. rates, based on a rating of one-half of fourth class, contemporaneously in effect on returned empty iron drums in same general territory, which rates and rating were subsequently made applicable on steel drums, returned empty. Reparation awarded. Vera Chemical Co. v. C., M. & St. P. 98 I. C. C. 3.

(mm) Ratings and rates on stearine coconut, in c. l. and l. c. l., from Bayonne N. J., to points in official territory, found unreasonable and unduly prejudicial to extent they exceed ratings and rates contemporaneously applicable on peanut, cottonseed, palm-kernel, and mixed stearines. Reasonable and nonprejudicial ratings and rates prescribed for future and reparation awarded. Best Foods v. C. R. R. Co. of N. J. 98 I. C. C. 331.

(nn) Less-than-carload ratings applied under southern and western classifications on portable field-pea hullers found inapplicable and applicable ratings found unreasonable to extent they exceed one and one-half times first class. Applicable l. c. l. ratings in these classifications on other types of pea hullers found not unreasonable. Star Pea Huller Co. v. C., N. O. & T. P. Co., 98 I. C. C. 357.

(oo) Rate on stoves and ranges in l. c. l. from Nashville, Tenn., to Lynchurg, Richmond and Norfolk, Va., and points taking same rates, found not unreasonable but for future unduly prejudicial to Nashville to extent it may exceed the rate contemporaneously maintained on like traffic from Birmingham, Ala., to same destinations. Undue prejudice ordered removed. Allen Mfg. Co. v. N. C. & St. L. Ry., 98 I. C. C. 405.

(pp) Rates and ratings on grain flour, edible flour, and corn meal, in rope-stock paper bags, in c. l. and l. c. l., when carried under tariffs governed by southern classification and in l. c. l., when carried under tariffs governed by western classification, found not unreasonable, but are and for future will be unjustly discriminatory, unduly prejudicial and unduly preferential of shipments in cloth bags, to extent they exceed or may exceed corresponding rates and ratings contemporaneously maintained on same commodities when in cloth bags. Rope Paper Sack Bureau v. A. & V. Ry. Co., 98 I. C. C. 511.

(qq) Fact that, as to all freight generally, conditions affecting safety in transportation are different in c. l. traffic from those in l. c. l. traffic, and that loss and damage claims are relatively more frequent and serious in latter, not overlooked, but record here involved is not convincing that the relative risk to carrier in handling l. c. l. shipments of flour in paper bags would be greater than that incurred in handling l. c. l. shipments of same commodity in cloth bags. Nor should further fact that the l. c. l. movement of flour is important and strongly competitive with the c. l. movement be ignored See. 55 I. C. C. 209. Rope Paper Sack Bureau v. A. & V. Ry. Co, 98 I. C. C. 511, 514.

(rr) Proposed increase in l. c. l. ratings on rags, "having value for purposes other than conversion into fibre," in official classification, found not justified. Under proposed schedules shippers and carriers would be required to determine in first instance, as at present, whether a given lot of material was in fact rags, and following that it would be necessary, before the legal rate could be known, to relate the rags to some standard of value or usefulness which the record here shows is quite indefinite and indeterminate, if it exists at all. Classification of Rags 98 I. C. C. 591.

(ss) Complainant attacked class rates charged on two less carload shipments of automobile crank shaft counterbalance weights on Aug. 12 and Dec. 30, 1922 from Clarinda, Ia., to Seattle, Wash. as unreasonable and illegal. Shipments moved Burlington and G. N.

Charged second class rate of $4.28 under iron or steel automobile parts, n. o. i. b. n. They were a permanent but not essential part of and are adapted solely to automobile motors. At same time western classification provided fourth class on weights, counterbalance, iron or steel, n. o. i. b. n. The specific article being indexed by name as counterbalance weights precluded the application of automobile parts, n. o. i. b. n. The rating on the latter was not applicable to these shipments. Shipments overcharged on basis of fourth class rate. HELD, rate charged illegal, shipment overcharged, reparation awarded. Western Auto Supply Co. v. C. B. & Q. R. R. 102 I. C. C. 117.

(tt) Complainant attacked third class rating on gas stoves and ranges, iron or steel, n. o. i. b. n. as applicable on Radiant-Fire heaters, less carloads as unreasonable. In 83 I. C. C. 261 the Commission found this rating applicable and that for the future fourth class rating, minimum 16,000 pounds applicable on car load shipments to be unreasonable to extent it exceeded fifth class minimum 24,000 pounds. HELD, on consideration, less carload rating not unreasonable and fourth class carloads not unreasonable or otherwise unlawful, original finding reversed. General Gas Light Co. v. A. G. S. Ry. 102 I. C. C. 181

(uu) Respondents proposed to cancel less carload commodity rates on clean rice between various points in southern territory. The issues are identical with 102 I. C. C. 79. The respondents in that case proposed to cancel less carload commodity rates generally on clean rice between points in southern territory. HELD, proposed schedules not justified but without prejudice to the establishments of rates on clean rice in less carloads between the points under consideration not in excess of the sixth class rates approved in Southern Class Rate Investigation. Rice between points in southern territory (2) 102 I. C. C. 317.

(vv) Complainant attacked ratings in the official classification and rates applicable thereunder on steam shovel dipper or bucket parts, less carloads, as unjust and unreasonable to extent they exceed ratings and rates on iron and steel castings, n. o. i. b. n. The articles here considered are cast and forged steel dipper tooth bases and points and casts steel dipper lips or fronts. Iron and steel castings are rated fourth class, and dipper parts Rule 26. The Rule 26 rating was based upon a similar rating in the consolidated classification on coal ore or stone crusher or grinder parts, n. o. i. b. n. These also are made of manganese steel and are of about the same value as the dipper parts concerned. HELD, classification rating and rates attacked not unreasonable, complaint dismissed. Erie Steam Shovel Co. v B. & O. R .R. 104 I. C C. 367.

(ww) In 92 I. C. C. 749 the Commission found the carload ratings in the official, southern, and western classifications, and the rates applicable thereunder on certain brooms manufactured and sold by complainants were not unreasonable, and dismissed the complaint. The carload rating on "brooms other than wire" in the three classifications is second class, minimum 12,000 pounds, subject to rule 34. The type of broom principally shipped under this description is brooms with heads of broom corn. The maximum loading of such brooms in 36 f 6 in cars ranges from 12,000 to 16,000 pounds. From 24,000 to 30,000 pounds of complainants brooms can be loaded in cars of that length. The heads of complainants brooms are made of a mixture of Bahia palm and bassine fibre. HELD, the difference in weight density between complainants brooms and broomcorn brooms is substantial; carload rating of second class, minimum 12,00 pounds, in the official, southern and western classification for future unreasonable to extent it exceeds fourth class, minimum 24,000 pounds, subject to rule 34. Edlund Broom Corp. v. B. & M. R. R. 104 I. C. C. 692.

(xx) Complainant attacked rating and rates on Hughes tool joints, rotary rock drill bits and parts thereof, fishing taps, milling tools, and weight indicators, shipped from Houston, Tex., to interstate destinations as unreasonable, unjustly discriminatory. Rotary tool joints, in less carloads, are carried in the oil well outfits and supplies list of the classification, rated first class in western, second in official and southern. They are shipped with the box and pin screwed together and the address of the consignee shown on the joint and on a label attached to a wire placed through the

joint. The record, although convincing that a rotary tool joint is a much higher class article than an ordinary pipe connection, shows that a rating as high as first class is not justified by the usual classification consideration of value, weight density and susceptibility to damage. ROTARY DRILL BITS. These articles are rated second class in the three classifications. FISHING TAPS AND MILLING TOOLS. They are made of high grade steel and are practically indestructible. Milling tools are used principally for displacing or grinding up metal which falls in the hole. They are made of high grade steel and can not be damaged by handling. They take less car load rating of second class in western and third class in official and southern. At present they take second class in all classifications as oil well fishing tools, n. o. i. b. n WEIGHT INDICATORS. These articles also take second class, less carloads. HELD, rating and rates on rotary tool joints, less carloads unreasonable to extent they exceed second class reparation awarded; second class rating and rates on rotary drill bits, fishing taps, milling tools and weight indicators not unreasonable or otherwise unlawful. Hughes Tool Co. v. A. & R. R. R. 107 I. C. C. 545.

(yy) Revenue of carriers discussed in connection with general investigation instituted on commission's own motion, of interstate class rates and l. c. l. commodity rates within southern territory and between southern and official territories, all-rail and rail-water, and of l. c. l. ratings in exceptions to southern classification. Southern Class Rate Investigation, 100 I. C. C. 513.

(zz) Interstate l. c. l. ratings in exceptions to southern classification, discussed somewhat at length in the investigation instituted by commission on its own motion, for purpose of determining whether such ratings are "unreasonable, or are unduly prejudicial to or unduly preferential of particular localities, persons or descriptions of traffic." Southern Class Rate Investigation, 100 I. C. C. 513.

(3a) In dealing with a scale of class rates moving c. l. as well as l. c. l. traffic in southern territory, there is little evidence here with reference to c. l. costs, but the deduction is warranted that terminal costs are materially lower than in the case of merchandise traffic, and that line-haul costs are also lower. Southern Class Rate Investigation, 100 I. C. C. 513, 643.

(3b) There is nothing of record to justify the maintenance or establishment on l. c. l. traffic of exceptions to southern classification. Southern Class Rate Investigation, 100 I. C. C. 513, 706.

(3c) Upon general investigation, on commission's own motion, of l. c. l. ratings in exceptions to southern classification, FOUND: There is not justification for requiring the maintenance or establishment on l. c. l. traffic of exceptions to southern classification. Southern Class Rate Investigation, 100 I. C. C. 513, 549, 641, 709.

(3d) Class rates as applied to plow irons, parts, and castings, in l. c. l., from Macon, Ga., to Alabama destinations, found not unreasonable, but unduly prejudicial and in violation of long-and-short-haul clause of fourth section of the act to extent they exceed or may exceed lower contemporaneous rates on plow irons, in l. c. l., in effect from Atlanta, Ga., to same destinations. Massey Gin & Machine Works v. C. of G. Ry., 101 I. C. C. 45.

(3e) Third-class and first-class rates applicable on c. l. and l. c. l. shipments of printed matter, n. o. i. b. n., assessed on shipments of paper envelope blanks or paper wrappers, in sheets, printed or lithographed, moving over interstate route from New York, N. Y., to Buffalo, found not unreasonable or otherwise unlawful. The commission has in other cases declined to disturb the classification as applied to particular kinds of printed matter, even where the value was less than that of commodity here considered, and if an exception was made in this instance it would open up an endless field for complaint from manufacturers of all kinds of printed matter. Furthermore, it would be practically impossible to distinguish the different grades of commodities that come under the designation "printed matter" for purpose of fixing specific rates on each. American Lithographing Co. v. L. V. R. R., 101 I. C. C. 100.

(3f) Carload traffic is almost invariably loaded and unloaded by the shipper, whereas on less-than-carload traffic this service is generally performed by the carrier, which adds to the cost of

handling such traffic. Class Rates via I. P. S. Co., 101 I. C. C. 189, 193.

(3g) Rates on grain and products and cottonseed meal and hulls, l. c. l. from Natchez to points in Louisiana west of the Mississippi River found unreasonably and unduly prejudicial to Natchez and shippers therefrom and unduly preferential of points in Louisiana west of the Mississippi River and shippers therefrom. Reasonable rates prescribed. Natchez Frt. & Traffic Bureau v. M. P., 101 I. C. C. 476.

(3h) The difference in l. c. l. rates on grain and grain products and cotton seed meal and hulls east and west of the Mississippi River are due in parts to difference between two divergent class-rate structures, differences between western and southern classification ratings and rules, transportation and traffic conditions, relative financial strength of principal carriers serving the two territories, and differences between rates prescribed in Meridan Traffic Bureau. 60 I. C. C. 5, and other cases. Natchez Frt. & Traffic Bureau v. M. P., 101 I. C. C. 476, 481.

(3i) There are a number of expenses incident to the handling of l. c. l. freight which are not incurred on c. l. shipments, such as handling, stowage, loading, policing, and checking at railroad warehouses or freight stations. Claims for loss are more numerous and more clerical work is entailed on l. c. l. than on c. l. shipments. Natchez Frt. & Traffic Bureau v. M. P., 101 I. C. C. 476, 484.

(3ia) Proposal to cancel l. c. l. commodity rates on clean rice from, to, and between points in southern territory, designed primarily for purpose of bringing about uniformity and to remove discriminations, leaving in effect higher class rates, found not justified. Rates on basis of those approved in Southern Class Rate Investigation, 100 I. C. C. 513, approved. Rice between Points in Southern Territory, 102 I. C. C. 79.

(3ib) Proposal of carriers to establish l. c. l. ratings on radio sets, and on talking machines and radio sets combined, of one and one-half times first class in the official and western classifications, and double first class in the southern classification; a uniform c. l. rating on both articles of second class minimum 20,000 pounds; to increase the rating on c. l. shipments of radio sets from third to second class with a reduction in the minimum; and to continue the rating of second class, but increase the minimum on c. l. shipments of talking machines and radio sets combined, found justified, except as to c. l. ratings proposed on talking machines and radio sets combined, and to extent that l. c. l. ratings proposed in southern classification exceed one and one-half times first class. Classification of Radio Sets, 102 I. C. C. 140.

(3ic) Proposed cancellation of exceptions to southern classification, under which certain commodities l. c. l. moving water-and-rail from north Atlantic ports to Lynchburg and other Virginia points take ratings one class lower than those provided in southern classification, and restoration of such ratings to the full southern classification basis applying all-rail, found not justified. Respondents offered little justification other than a statement that exceptions were erroneously published, no evidence concerning reasonableness of the rates proposed being adduced, or justification for fourth-section departures which would result thereunder offered. Moreover, a considerable volume of business has developed under the present rates which have been in effect approximately two years. Exceptions to Southern Classification, 102 I. C. C. 205.

(3id) Following 102 I. C. C. 79 in which the commission quoted its statement in Southern Class Rate Investigation, 100 I. C. C. 513, that with a reasonable level of class rates, there would appear to be little if any justification for requiring l. c. l. commodity rates in southern territory, proposed cancellation of l. c. l. commodity rates on clean rice between points in southern territory, which would result in increases, found not justified. Rice between Points in Southern Territory, 102 I. C. C. 2, 317.

(3j) Complainant attacked official classification ratings on less carloads of work boards, bar or counter, and on carload and less carloads of soda fountain counter interiors and soda fountain counters when shipped in the same package with interiors as unreasonable and unduly preferential of artificially refrigerated ice cream cabinets. The ratings sought are first class, in less carloads and third class carloads. These are the present ratings in southern and western

classifications. Defendants are correct in urging that the actual loading possibilities rather than the mathematical weight density should be considered in fixing carload ratings for light and bulky articles. On the other hand, limitations on loading, if peculiar to carload shipments, are not properly a factor in fixing less car load ratings. The evidence here shows that only two rows of fountains can ordinarily be loaded length wise in a car, and that the fountains can not well be top loaded, but it nevertheless appears practicable in loading merchandise cars with less carload freight, to place other packages alongside and on top of the fountains if the carriers desire to use this car space. HELD, less carload ratings unreasonable to extent they exceed first class, but carload rating not unreasonable or otherwise unlawful. National Commercial Fixture Mfrs. Asso. v. A. A. R. R., 109 I. C. C. 479.

(3k) Complainant attacked class rate charged on a less carload of iron and wood settees, knocked down, in bundles, shipped on July 25, 1922 from Louisville, Ky., to Warm Springs, Mont., as unreasonable. Shipment moved Big Four to Kankakee, Ill., I. C., to Chicago, Northwestern to Wyoming, Minn., C. St. P. M. & O., to Minnesota Transfer, Minn., N. P., beyond, charged $4.97, refund being made to first class rate of $4.575. When the shipment moved settees, iron or steel, or iron or steel with wooden slats, k. d., wrapped in burlap or paper or in boxes or crates were rated second class in less carloads in western classification. It was further provided that when packing requirements were not fully complied with a rating one class higher would be applied. As the shipment herein considered was unwrapped it became subject to the first class rating. The requirement was removed effective March 22, 1923. HELD, from the evidence of record it does not appear that wrapping of the articles herein considered would have served any useful purpose. In fact, wrapping in paper would probably have made them less easy to handle. HELD, rate attacked unreasonable to extent it exceeded $3.945 reparation awarded. Dow Co. v. C. C. C. & St. L. Ry., 112 I. C. C. 320.

ALL OTHER CITATIONS

Sweet Dreams Co. v. L. & N. R. R. Co., 88 I. C. C. 33; Rates to Gray's Harbor and Willapa Bay Points, 88 I. C. C. 512.

§7 Mixed carloads.

See Class Rates §2 (7n) (7r); Classification §16 (cc), §16½; Commodity Rates §5 (ee); Express Companies §16; Live Stock Shipments (p); Minimums §6, §7 (hi); Mixed Carloads; Reasonableness of Rates §28 (3x).

(a) The term "carload" ordinarily connotes a shipment occupying a car, made on one day, by one shipper, for delivery to one consignee at one destination. See rule 14 of the consolidated classification. Mississippi Railroad Commission v. A. & V. Ry. Co., 89 I. C. C. 47, 52.

(b) Rates on mixed carloads of cottonseed meal and hulls from Tallulah, La., to Vicksburg, Miss., found unreasonable as compared with rates on cottonseed meal in mixed carloads with cottonseed cake, meal flakes, hull ashes, cold-pressed cottonseed, and cotton-bur ashes, and to extent they exceeded distance scale of rates prescribed in Memphis-Southwestern Investigation, 77 I. C. C. 473, on mixed shipments of cottonseed meal and hulls between other points in same general territory. Reparation awarded. Tallulah Cotton Oil Co., v. V., S. & P. Ry. Co., 89 I. C. C. 151.

(c) Respondents proposed to restrict the commodity rates on sash, in mixed carloads with common unglazed doors and millwork, from Chicago and Rock Island, Ill., Clinton, Davenport, Dubuque and Muscatine, Iowa and Milwaukee, Wis., to eastern destinations, so as not to apply on glazed sash. In 78 I. C. C. 495 the Commission found rates on sash and doors and other items of millwork from Illinois, Iowa and Wisconsin to eastern destinations unreasonable and unduly prejudicial, and required the carriers to establish rates 125% of those applicable on lumber. It is now proposed to amend the descriptions by inserting after the word "sash" the limitation "common unglazed" thus restricting the rates so as not to apply on mixed shipments including glazed sash, leaving the fifth class rate to apply. Increases range from 7.5 to 13.5c. The fair interpretation of the order would require defendants therein to establish on doors common unglazed and sash, set up or knocked down, the rates therein prescribed, and this was the interpretation placed upon the order by respondents when

the rates were first established. Nowhere in the report did the Commission refer to common unglazed sash. HELD, suspended schedules not justified. Glazed sash to trunk line and New England territories, 91 I. C. C. 731.

(d) Respondents proposed to eliminate wire, nails, and staples from the list of iron and steel articles permitted to be shipped in mixed carloads at commodity rates from St. Louis, Mo., other defined territories, and Shreveport, La., to Texas, Oklahoma, and New Mexico points, and between points in Texas on interstate traffic. Wire, nails and staples were included in the list of iron and steel articles to Texas points from defined territories effective June 16, 1922, and from Shreveport March 1, 1924. This mixture was established to adjust the through rates in many instances to meet combinations on Texas border points, to secure to the Texas carriers some of the business that was moving from the east principally by water through the Gulf ports, and generally to stimulate building and industry. Notes are contained in the proposed schedules: "Five hundred (500) pounds of nails and iron or steel washers may be included with shipments of articles making reference to this note." The proposed elimination of wire, nails and staples from the commodity items in issue would result in materially increased charges on shipments of iron and steel articles containing more than 500 pounds of wire, nails and staples. The facts upon which respondent principally rely to justify the proposed schedules may or may not lead to uniformity of tariff provisions in the Southwest. But irrespective of this representation increased rates can not be justified solely upon such a showing. Pictures to meet the demands of trade may to a great extent actuate the carriers in initiating tariffs, but in these proceedings it is shown that the proposed schedules would be injurious to a large number of shippers and dealers without the necessary justification for the increased rates and charges that would result on shipments of the mixtures now provided in the tariffs. Numerous shippers or dealers, whose interests are not to be considered subordinate to others, can and do avail themselves of the mixtures now in effect and the desire of certain dealers to bring about purchases from them is no warrant for increasing the transportation burden to be borne by the consumer. HELD, schedules not justified. Iron and steel articles to southwest, 93 I. C. C. 31.

(e) Complainant attacked rates charged on mixed carload and less carload shipments of furniture polish in glass, boxed, and in metal cans, boxed, mops and mop handles, in bundles, from Chicago, Ill., to Arizona, British Columbia, California, Colorado, Idaho, Mexico, Montana, New Mexico, Nevada, Oregon, Utah, Washington and Wyoming. The Commission has prescribed the measure of reasonableness in the rates to the coast during the periods from August 4, 1914 to August 3, 1916; Jan. 1, 1918 to Feb. 29, 1920; and Jan. 23, 1922 to the present time. Upon this record the Commission does not feel warranted in entering an order for the future as to shipments in mixed carloads, but defendants will be expected to establish a rule providing that such shipments will be charged on the basis of the highest rate and highest minimum weight applicable on straight carloads of any of the articles in the mixture. The rule should also provide that any mop handles included in the shipments will be subject to less carload rates. HELD, rates attacked unreasonable, reparation awarded. O-SO-EZY Products Co. v. Director General, 96 I. C. C. 220.

(f) Fifth-class rate charged on two carloads of dump cars found applicable and not unreasonable as compared with lower sixth-class rate on contractors' outfits, in mixed carloads. Sixth-class item covering mixed carloads of miscellaneous equipment was provided as an approximation for convenience of shipper and carrier, in order to avoid separate weighing and rating of various articles of equipment shipped, and mixing requirement is a convenient and reasonable test for application of item and to prevent its abuse. Complainant is not a contractor moving equipment from job to job, and no reason appears why straight carloads of designated articles under mixing provision should take sixth-class rates. Johnson-Porter Clay Co. v. C., B. & Q. R. R. Co., 91 I. C. C. 71.

(g) Distinction dependent on whether articles are nested or not nested for shipment would not be practicable in establishing c. l. ratings on aluminum articles, as nested and not-nested articles are usually shipped in mixed car-

loads. Nor can a distinction be based on thickness of the articles, because different parts of same articles are frequently made of metal of different gauges. Aluminum Goods Mfg. Co. v. A. & V. Ry., 92 I. C. C. 346, 351.

(h) Proposed elimination of wire, nails and staples from list of iron and steel articles permitted to be shipped in mixed carloads, for purpose of making tariffs in southwestern territory uniform, found not justified. Respondents' endeavor is prompted by requests of parties who desire an adjustment that will force movements through Texas jobbers. Increased rates can not be justified solely upon showing of desire for uniformity in tariff provisions. Moreover, shippers or dealers, whose interests are not to be considered subordinate to others, avail themselves of mixtures now in effect, and desire of other dealers to bring about purchase from them is no warrant for increasing transportation burden to be borne by consumers. Iron and Steel Articles to Southwest, 93 I. C. C. 31.

(i) Rates on grapefruit in mixed carloads with oranges, from Jacksonville to Montana points, found not unreasonable. In the Lindsay & Co. cases, 25 I. C. C. 424 and 33 I. C. C. 150, reasonable rates on oranges and grapefruit were prescribed which if subjected to general advances and reductions would result in rates materially higher than present rates. Complainant contended for lower rate established by director general when a group rate applicable on commodities in general from north Atlantic coast was extended to include Florida. But no special thought was given to reasonableness of the rate on oranges from Florida when that basis was established and it can not be accepted as a reasonable basis on grapefruit and oranges from Jacksonville. Devine & Asselstine v. A. C. L., 93 I. C. C. 174.

(j) Charges on second hand carbon-black houses, iron or steel, k. d., second-hand iron and steel articles and second-hand machinery, in mixed carloads, from Wilsonburg, W. Va., to Guthrie and Swartz, La., based upon the highest c. l. class rate applicable on the various articles, found not unreasonable as compared with rates on iron and steel articles from and to same points. Ton-mile earnings under rates assailed yield less than those under rates found reasonable on similar shipments in 73 I. C. C. 123; moreover, record does not show that there has been or will be a substantial movement of any articles included in shipment between points here involved. Peerless Carbon Black Co. v. A. & L. M. Ry., 95 I. C. C. 696.

(k) Combination rates on mixed carloads of fruit and vegetables from Los Angeles, Calif., to Globe, Ariz., found inapplicable inasmuch as lower combination contemporaneously applied over route of movement. Tariff publishing one factor of the lower combination did not publish rates on vegetables, but provided for application of highest rate and minimum to mixed carloads of fruits and vegetables. Fact that rates on vegetables were named in another tariff did not operate to make the mixture rule inapplicable. Refund of overcharges required. Mauk Produce Co. v. Director General, 95 I. C. C. 728.

(l) Applicable rate on mixed shipment of various canned goods, including chili sauce, found unreasonable to extent it exceeded lower rate on all commodities included in the shipment, in straight or mixed carloads, except chili sauce, that commodity having been added to list taking the lower rate subsequent to movement. Waiver of undercharges authorized. Oakes & Co. v. O. S. L., 96 I. C. C. 95.

(m) Following Channel Chemical Co., 81 I. C. C. 407, rates on mixed carload shipments of furniture polish, in glass, boxed, and in metal cans, boxed, and mops and mop handles, in bundles, from Chicago to intermediate points in transcontinental territory, since June 30, 1917, found unreasonable to extent they exceeded charges based upon the highest rate and the highest minimum weight applicable to straight carloads of any articles in the car, plus charges for mop handles, in bundles, on less-than-carload basis. Reparation awarded. O-So-Ezy Products Co. v. Director General, 96 I. C. C. 220.

(n) Following 43 I. C. C. 291, mixed carload rule, made in accordance with findings in Pocahontas Farmers Asso., 19 I. C. C. 514, governing rates and minimum weights on mixed carloads of fruit and vegetables from producing points in Mississippi to interstate destinations, found not unreasonable. Mississippi R. R. Commission v. A. & R. R. R. Co. 98 I. C. C. 55, 66.

(o) Rates on shingles, in mixed carloads with lumber shipped from Pacific

coast points and Stoltz Mill, B. C., to Toledo, Ohio, and later reconsigned to other destinations, found not unreasonable as compared with lower rate subsequently established over route of movement. Mauk Lumber Co. v. Director General, 98 I. C. C. 599.

(p) Rate on a mixed carload of beets, carrots, turnips, and cabbage, from San Fernando, Calif., to St. Paul, Minn., applicable on fresh or green vegetables, found unreasonable to extent it exceeded lower contemporaneous rate on beets, carrots, and turnips, in mixed carloads, and on cabbage in straight carloads, which latter rate was subsequently reduced and made applicable on beets, carrots, turnips, in bags, and cabbage in crates, in mixed carloads. In view of the conclusion, it became unnecessary to determine what rate applied. Reparation awarded. August Ammon v. S. P. Co., 101 I. C. C. 37.

(q) Rates on wrapping paper, in straight and mixed carloads with toilet paper and paper towels, from Wisconsin and Michigan points to Wichita, Kans., found unreasonable to extent they exceeded basis prescribed in the Paper case, 66 I. C. C. 571. Reparation awarded. Wichita Chamber of Commerce v. A., T. & S. F., 101 I. C. C. 55.

(r) Rates on handle material, not further finished than shaved or cut to shape, in straight carloads, or in mixed carloads with handle material not further finished than sawed square, rived or split from bolts, found unreasonable to extent they exceeded rates contemporaneously in effect on lumber manufactured from the same kind of wood. Reasonable basis of rates prescribed and reparation awarded. Chicago Heights Mfrs. Asso. v. B. & O. C. T. R. R., 101 I. C. C. 675.

(s) Contention that fifth-class rate assessed on mixed carload shipment of billets and handle material shaved or cut to shape, not further finished, from Marengo, Ind., to Chicago, was not unreasonable because not out of line with fifth-class rates for comparable distances from and to numerous points in C. F. A. territory, not sustained. It is not shown that fifth class rates were or are the general or usual basis on this traffic between points in this territory. Moreover, distance over route of movement is identical with that over another route in connection with which commodity rates were in effect at time of movement, and these lower commodity rates were subsequently established over route of movement. Chicago Heights Mfrs. Asso. v. B. & O. C. T. R. R., 101 I. C. C. 675, 681.

(sa) Where a radio set is designed for the reception of tubes or a loud speaker, or both, and those parts, or either of them, are shipped with the set, whether installed or separately packed, the whole constitutes a single electrical appliance, and must be rated as such. Classification of Radio Sets, 102 I. C. C. 140, 141.

(sb) Upon further hearing, minimum-weight rule applicable on mixed carload shipments of cottonseed meal and cottonseed hulls between Memphis and points in Arkansas found unreasonable for future. Reasonable rule prescribed and findings in 77 I. C. C. 473 and 98 I. C. C. 183 modified. Memphis-Southwestern Investigation, 102 I. C. C. 227.

(sc) Rates on paper and paper articles, in mixed carloads, from New Orleans to Dallas found unreasonable to extent they exceeded lower rates subsequently established. An analysis of revenues per car-mile under rates assailed shows such rates to be excessive. Reparation awarded. Palmer & Co. v. H. & T. C. R. R., 102 I. C. C. 372.

(t) Complainant attacked fourth class rate charged on five mixed cars of tin cans and tin pails shipped in Jan. Feb. and May 1923 from Norwood, O., to Nashville, Tenn., as unreasonable and unlawful. In its statement of facts complainant offered no evidence as to unreasonableness under section 1. Charged 66.5c prior to April 19, 1923 and 66c thereafter. Fifth class was applicable on tin cans subject to rule 34 and fourth class on tin pails or mixed with tin cans. HELD, rates charged applicable, complaint dismissed. Neuhoff Packing Co. v. L. & N. Ry., 112 I. C. C. 223.

ALL OTHER CITATIONS

Swift & Co. v. T. & P. Ry. Co., 88 I.. C. C. 610.

§9. Risk.

See Evidence §52.

(a) In establishing reasonable rates value of commodity to be rated and its liability to damage incident to trans-

portation must be considered. Jackson Traffic Bureau v. B. & O., 93 I. C. C. 342, 343.

§10. Use or process of making commodity.

See Reasonableness of Rates §22, §23; Restricted Rates.

(a) When a commodity is not distinctly within some common designation, its use and the ratings of competitive products are important factors with its transportation characteristics in determination of what rating is appropriate for it. Procter & Gamble Co., 9 I. C. C. 440, 482; Drake Marble & Tile Co., 37 I. C. C. 512. Vitrolite Co. v. A. T. & S. F. Ry. Co., 89 I. C. C. 371.

(b) The use of a commodity is a basis upon which the Commission has refused to sanction different rates, rather than pointing out any substantial difference in the character, value, and transportation characteristics of the compared commodities. Musto Sons-Keenan Co. v. S. P. Co., 93 I. C. C. 447, 448.

(c) The use of an article is a basis upon which the Commission has repeatedly refused to sanction different rates. Pioneer Pearl Button Co. v. St. L. S. F. Ry., 93 I. C. C. 599, 601.

(d) There is a clear distinction between, on the one hand, making different rates for application between the same points on the same commodity conditioned solely upon the use to which the commodity is to be put, a practice which the Commission has frequently condemned, and, on the other hand, making different rates on different commodities, and taking into consideration, along with other factors, the general use to which the respective commodities are put for the purpose of determining the applicable rate. Lime from Eastern trunk line points, 93 I. C. C. 617, 630.

(e) "Naphtha" is a generic term, and embraces the lighter or more volatile part of crude oil down to, and sometimes including kerosene, and takes in all the elements of finished gasoline; the words "naphtha" and "gasoline" being often used interchangeably to include the unfinished product of which the gasoline of commerce is made. U. S. v. Gulf Refining Co., 45 Sup. Ct. 597.

(fg) The commission has repeatedly refused to sanction different rates based upon use to which a commodity is put. Lockport Paper Co., 87 I. C. C. 347, 349. Musto Sons-Keenan Co. v. S. P. Co., 93 I. C. C. 447, 448.

(h) Proposed increase in l. c. l. ratings on rags, "having value for purposes other than conversion into fibre," in official classification found not justified Under proposed schedules shippers and carriers would be required to determine in first instance, as at present, whether a given lot of material was in fact rags, and following that it would be necessary, before the legal rate could be known, to relate the rags to some standard of value or usefulness which the record here shows is quite indefinite and indeterminate, if it exists at all. Classification of Rags, 98 I. C. C. 591.

(ha) Laundry: First-class rating on, in official express classification, found not unreasonable, discriminatory, or unduly prejudicial. If second-class rates, pound basis, as sought by complainant, were prescribed, it would be difficult to deny like classification and rates to various articles comprised in the laundry package or hamper when shipped by express from manufacturer to retailer, for ratings and rates can not be made to depend upon use to which an article is put. Thus the simple grouping of commodities moving by express into two general divisions would be disrupted.. Moreover, no similarity in transportation conditions is shown with respect to commodities used for comparisons with rates on laundry, and none of them is shown to compete with laundry. Laundry Owners' Nat'l Asso. v. Am. Ry. Ex. Co., 102 I. C. C. 36.

(i) Ratings and rates can not be made to depend upon the use to which an article is put. Laundry Owners National Asso. v. Am. Ry. Ex. Co. 102 I. C. C. 36, 39.

(j) It is the nature of the article shipped not the price at which it is sold or the use to which it is put, which determines whether the rate on scrap iron applies. Simon v. Southern Ry. 102 I. C. C. 325, 326.

(k) Rates may not be based upon the use to which a commodity is put. Brass, bronze and copper articles 109 I. C. C. 351, 357.

ALL OTHER CITATIONS

Lehigh Lime Co. v. A. C. & Y. Ry. Co., 85 I. C. C. 341; Manglesdorf Co. v. A. & R. R. Co., 88 I. C. C. 120; Armour & Co. v. Director General, as Agent, 88 I. C. C. 569; Hollingshead Co. v. A. T. & S. F. Ry. Co., 88 I. C. C. 191; Cutler-Hammer Mfg. Co. v. Director General, as Agent, 88 I. C. C. 600.

§11. Value.

See Advanced Rates §18 (5); Evidence §61; Reasonableness of Rates §38.

(a) Value constitutes only one of a number of elements entering into a proper classification. United States Farm Sales Company v. A. T. & S. F. Ry., 92 I. C. C. 19, 22.

(b) Differences in value are frequently disregarded in rate making where the articles are essentially of the same nature and highly competitive. Chloride of Zinc to Texarkana, 92 I. C. C. 568, 572.

(c) In the establishment of freight classifications, involving as it does the grouping of all commodities into a limited number of classes, the principle that the unfinished should be rated lower than the finished article must frequently yield to other considerations. Parlor Frame Mfrs. Asso. v. A. A. R. R., 93 I. C. C. 506, 510.

(d) Complainant attacked first class rate charged on artificial silk, carloads, from Roanoke, Va., to Marcus Hook, Pa., as unjust and unreasonable. The commodity rate sought is the same as that applicable on artificial silk waste, carloads, from Roanoke to Marcus Hook, when released at a value of 10c per pound. The Commission thinks it clear that there is no justification for requiring the same rate on artificial silks as on artificial silk waste. Because the value of the shipments is large, and it is desired to reduce to a minimum the danger of loss, damage or theft, the Virginian traces all of complainants shipments by wire while they are on that line, and delivery from Roanoke to Marcus Hook usually is accomplished in 72 hours. Artificial silk is a high grade article and the freight charges bear a small ration of its value. The present rates are not shown to discourage the movement or to impose an undue burden on the traffic, which is of a special character, between two of complainants plants. HELD, rates attacked not unreasonable, complaint dismissed. Viscose Company v. Pennsylvania R. R., 98 I. C. C. 97.

(e) If in the establishment of rates on classifications differences in value of the respective commodities carried were reflected in rate increments only sufficient to cover the cost of insurance, one of two results would of necessity follow. The rates as a whole would be such that it would be impossible for the carriers to earn what they reasonably might, and in fact what they necessarily should in order to perform their services; or that the rates on many low grade commodities would have to be such that they would be prohibitory of any movement. Classification of canned goods, 98 I. C. C. 166, 172.

(f) Rates on crude oil should be relatively lower than on refined oil. Barnett Oil & Gas Co. v. Director General, 93 I. C. C. 85, 87.

(g) The fact that the rates on the products of livestock are higher, even materially higher, than the rates on livestock does not warrant a finding that the rates on the products are unreasonable. Ogden Packing & Provision Co. v. D. & R. G. R. R., 101 I. C. C. 258, 269.

(h) Handle material not further finished than shaved or cut to shape is not in any more advanced stage of manufacture than handle material not further finished than turned to shape, the only difference between the two being that one is produced by hand and the other by machinery. Chicago Heights Mfrs. Asso. v. B. & O. C. T. R. R., 101 I. C. C. 675, 677.

III. CLASSIFICATION REGULATIONS.

§11¾. In General.

(a) Proposed elimination of requirement that description of contents be shown on outside of fiber boxes in official classification territory, together with penalty charge in connection therewith, found justified. The requirement is an inducement to pilferage and its elimination is designed for purpose of reducing loss and damage claims. Penalty Charge on Shipments in Fiber Boxes, 95 I. C. C. 528.

§12¼. Description.

(a) Absorption-process gasoline of a

vapor pressure at 100 degrees F. not exceeding 10 pounds per square inch must be described in tariffs as gasoline or casing-head gasoline. Standard Oil Co. v. Director General, as Agent, 89 I. C. C. 7, 9.

(b) Respondents proposed to eliminate the classification rule requiring that fiberboard, pulpboard, and double faced corrugated strawboard boxes, show description of contents on shipments between points in official classification territory. HELD, schedules justified. Penalty charge on shipments in fiber boxes, 95 I. C. C. 528.

(c) Failure of tariffs to impose upon initial carrier the duty of directing shipper's attention to tariff requirement that a certificate be made on bill of lading that packages used conform to packing requirements and specifications, found not unreasonable. Complainant here was fully advised of the tariff provision and while containers used fully complied with tariff requirements, through oversight its shipping clerk neglected to stamp the necessary certificate so stating on the bill of lading, resulting in the collection of penalty charges. American Licorice Co. v. C., M. & St. P., 95 I. C. C. 525.

(d) Proposed elimination of requirement that description of contents be shown on outside of fiber boxes in official classification territory, together with penalty charge in connection therewith, found justified. The requirement is an inducement to pilferage and its elimination is designed for purpose of reducing loss and damage claims. Penalty Charge on Shipments in Fiber Boxes, 95 I. C. C. 528.

§12⅞. Empty Equipment and Returned Containers.

See Cars and Car Supply §31; Reduced Rates §5.

(a) Respondents proposed by restricting the application of exceptions to the western classification to increase the rating on acid carboys, returned empty, from points in western trunk line territory west of the Missouri river to points in this territory east thereof. Acid carboys, returned empty, between points in western trunk line territory on and west of the Missouri river and from points west of that river to points east thereof in said territory, are rated one half fourth class, any quantity, under exceptions to the western classification. The proposed schedules would increase the rating from points west of the Missouri river to points east thereof to fourth class, which is the rating applicable from points on the Missouri river to Chicago, Ill., and other points east of the Mississippi river; between points east of the Mississippi river; and from points in that territory to points west of the Missouri river. The proposed rating does not appear to be unreasonable and it is not shown that it would result in any undue prejudice or preference. HELD, proposed schedules justified. Carboys, returned empty, in western territory, 93 I. C. C. 672.

§13. Loading and unloading.

See Facilities and Privileges §10; Loading and Unloading; Transportation §10.

(a) Upon arrival at Nashville, Tenn., cars were placed for unloading. Some were forwarded after being partly unloaded and reloaded with identical materials and loading of others were charged by substitution of commodities from complainant's stock. Separate bills covering inbound and outbound movements were rendered and paid. HELD: Reconsignment charges found inapplicable since shipments plainly fell within definition of reshipments as defined in governing tariffs. Chestnutt Lumber Co. v. Director General, as Agent, 89 I. C. C. 236.

(b) The stage of manufacture of an article is important as a guide in the classification only in so far as it indicates the transportation characteristics of the article, such as its loading qualities, value and transportation. Vitrolite Company v. A. T. & S. F. Ry., 89 I. C. C. 367, 372.

(c) Complainant attacked classification rating on bahia and bassine fiber brooms, carloads, from Burlington, Vt., to points in official, southern and western classifications as unreasonable. Brooms, other than wire, are rated second class in carloads, minimum 12,000 pounds, subject to rule 34, in all territories. The evidence does not establish that brooms made by other manufacturers out of materials other than broom corn will load as heavily as 24,000 pounds. It is well settled that the absence of differentiating transportation conditions competitive articles such as these should be accorded a parity in

rates and ratings. Clearly if experience showed that most shippers of this commodity were able to and did load more than the prescribed carload minimum, a rating compatible with the higher loading would be proper. But complainants are the only shippers who would profit by an increased minimum. They alone would be in position to ship in amounts of 24,000 pounds or more, and their competitors, due to commercial necessity, would be compelled to ship in smaller quantities and pay for the deficiency in weight. HELD, rating attacked not unreasonable, complaint dismissed. Edlund Broom Corp. v. B. & M. R. R., 92 I. C. C. 749.

(d) Variations in weight density are of considerably less importance in fixing classification ratings for articles as heavy as those here under consideration than they are when light and bulky articles are under consideration. Classification of Canned Goods, 98 I. C. C. 166 173.

§14. Marking and addressing.

See Supra §11¾ (a).

(a) Complainant sought insertion in the classification of the name "Vitrolite" in order that the material may be so designated in billing. This term is a registered trade-mark, which no other manufacturer may use, even though his product be substantially identical, and since each manufacturer has a different name for his commodity, the inadvisibility of requiring this to be done is apparent. Vitrolite Co. v. A., T. & S. F. Ry. Co., 89 I. C. C. 367, 369.

(b) Proposed elimination of requirement that description of contents be shown on outside of fiber boxes in official classification territory, together with penalty charge in connection therewith, found justified. The requirement is an inducement to pilferage and its elimination is designed for purpose of reducing loss and damage claims. Penalty Charge on Shipments in Fiber Boxes, 95 I. C. C. 528.

§15. Minimum charge and weight.

See Passenger Fares and Facilities §6½; State Rates and Regulations (g).

(a) Complainant attacked ratings in western classification on aluminum articles, n. o. i. b. n., not decorated, less first class, not nested, and first class nested, as unreasonable, unjustly discriminatory, unduly prejudicial and preferential of tinned, galvanized, enameled, and plain sheet iron or sheet steel ware. Defendants suggest one and one quarter times first class as appropriate on articles not nested. HELD, rating unreasonable to extent it exceeded one and one quarter first class. The carload minimum proposed of 14,000 pounds by complainant is about 2,000 pounds greater than the average of their carload shipments in standard 36 foot cars. The present minimum of 20,000 pounds is admittedly reasonable for interveners product, but is so far in excess of the highest weight to which complainants are able to load that it is manifestly too high for the lighter ware. It would be unfair to the intervener to reduce the minimum to a figure reflecting the actual loadings of complainants shipments with a compensating increase in the carload rating. HELD, present carload ratings not unreasonable if the existing minimum of 20,000 pounds is retained, and second class in all three classifications would be reasonable in connection with a minimum of 12,000 pounds. When articles which are identical except for a difference in density can practicably be covered by distinguishing tariff descriptions, the carriers commonly accord lower ratings with higher minima to the form of the article which loads more heavily. HELD, present carload ratings, minimum 20,000 pounds result in freight charges that are unjust and unreasonable, and defendants should establish for alternative application a carload rating of second class, minimum 12,000 pounds, subject to rule 34, making the latter rating applicable when it would result in lower charges. Aluminum Goods Mfg. Co., v. A. & V. Ry., 92 I. C. C. 346.

(b) Complainant attacked charges collected on 60 shipments of fresh meat and packing house products, in peddler cars, between August 29, 1920 and Dec. 13, 1921, from East St. Louis, Ill., to points on the I. C., Effingham to Bloomfield, Ind., as unreasonable. Cars moved through Decatur and Newton, Ill., to Bloomfield, 254 miles where bulk was broken, then back hauled over the same route to Newton and thence to Effingham, consignments being delivered at the designated intermediate points. Charged less carload rates on the actual

weight of each consignment to the respective destinations, plus charge based upon the difference between the combined weight in each car and the minimum of 15,000 pounds at the third class rate of 56c to Bloomfield, resulting in a minimum charge of $84 on each car. On Dec. 14, 1921 defendant revised its rule respecting the rate and minimum weight applicable on fresh meat and packing house products in peddler cars to provide that the minimum charge per car shall not be less than the carload rate on dressed beef, minimum 20,000 pounds from original point of shipment to final destination of the car. The minimum charge attacked exceeded that applying generally throughout central territory, particularly over the lines operating from East St. Louis, and that the minimum charge subsequently established was the same as that generally in effect in central territory. HELD, minimum charge attacked unreasonable to extent it exceeded that subsequently established. Armour & Co. v. I. C. R. R., 96 I. C. C. 678.

(c) In 87 I. C. C. 1 the Commission found the minimum charge on lumber, carloads, from East San Pedro, Calif., to Wilmington, Calif., during federal control as not unreasonable. Complainant shipped about 704 cars of lumber from East San Pedro to its yard at Wilmington over L. A. & S. L., rate charged 10c per ton, minimum $15 per car. Reparation is sought to basis of 1.5c per 100 pounds, minimum $6.50 per car, effective May 26, 1919. Practically no evidence was offered by complainant as to the cost of operation of trains from East San Pedro to Wilmington. HELD, rate attacked not unreasonable, complaint dismissed. Consolidated Lumber Co. v. Director General 101 I. C. C. 284.

(d) Minimum charge of $15 per car, applicable on freight generally collected on intrastate shipments of pine stumps, boughs, limbs, and wood fragments, moving during Federal control, found assessed without tariff authority. Shipments were billed as wood and were used in the extraction of oil, rosin, and turpentine. No specific rates were applicable and while governing classification carried the so-called analogy rule the practically refuse material comprising the shipments finds no analogy in lumber which embraces a prepared, sawed product of the forest. Nor can analogy be found in tariff item on fuel wood since applicable rates thereon were measurable in cords and shipments here in question could not be corded. Charges based upon those applicable on lumber, without regard to minimum charge per car, found reasonable and reparation awarded. National Reduction Corp. v. Director General, 95 I. C. C. 284.

(e) Minimum rules applicable on shipments of asphalt rock from Dougherty, Okla., to Kansas City, Mo.-Kans., found to have been, and for present and future to be, unreasonable to extent of their failure to provide for assessment of charges on actual weight of shipment when car is loaded to full visible capacity. Roudebush v. A., T. & S. F., 96 I. C. C. 319.

(f) Rates on apples, in bulk, in carloads, from the Yakima Valley to various interstate destinations found unreasonable and unduly prejudicial to the extent that such rates exceed the contemporaneous rates from and to the same points on apples in boxes, in carloads. Kloeber v. N. P. Ry. Co., 96 I. C. C. 437.

(g) Rule 29 of the southern and western classifications prescribing a minimum charge for shipments containing bulky articles found applicable to certain types of pea hullers. In readjusting charges the provisions of this rule should be observed. Star Pea Huller Co. v. C., N. O. & T. P. Ry. Co., 98 I. C. C. 357.

(h) Shipments of returned empty fruit boxes from Los Angeles, Calif., to various intrastate destinations, during Federal control, found overcharged to extent that charges assessed exceeded the lowest charges under tariff rules providing that the charge for a car fully loaded must not exceed the charge for same lot of freight if taken as a l. c. l. shipment, subject to a minimum charge per car. Reparation awarded. Klein-Simpson Fruit Co. v. Director General 98 I. C. C. 547.

(i) In 77 I. C. C. 473, the commission prescribed, among other things, reasonable maximum rates designated as table 6 and 3 of Appendix 8 for application, respectively, on cottonseed meal and cotton seed hulls, carloads, between Memphis, Tenn., and Arkansas, and that the rates between Memphis and Arkansas should not exceed for similar distances intrastate rates on like traffic between points within Arkansas by more than the

bridge toll there provided. Between certain points in Oklahoma and Arkansas a sale of rates applies on corn and articles taking the same rates, including cottonseed meal, cake, hulls and mixed feeds, in mixed carloads, subject to actual weight as minimum on cars loaded to full space capacity, or in the case of mixed feed to within 24 inches of the roof at sidewalls, and on cars not so loaded a minimum of 40,000 pounds. The minimum charges per car under the Arkansas rule, while materially lower than under the existing rule, compare favorably with minimum charges resulting from the rules in force in adjacent states and Memphis to Arkansas. HELD, the minimum weight rule applicable on mixed carload shipments included in the original report on cottonseed meal and hulls unreasonable to extent that such rule is in conflict or inconsistent with the following minimum rule, and finding in 98 I. C. C. 183 modified accordingly. Mixed carload shipments of cottonseed meal and cotton seed hulls subject to the carload rate applicable on each commodity and a minimum weight of 30,000 pounds, provided the weight of the cottonseed meal contained in the car does not exceed one-third of the actual aggregate weight in the car. If the total actual weight of the mixture does not equal or exceed 30,000 pounds, the deficiency will be charged for at the rate applicable on cottonseed hulls. Memphis Southwestern Investigation, 102 I. C. C. 227.

(j) Upon further hearing, original report 81 I. C. C. 1, finding that minimum charge of $15 per car established under General Order No. 28 of director general, and assessed on lumber from San Pedro, Calif., to Wilmington, Calif., during Federal control, was not unreasonable as compared with lower minimum charge subsequently established, or as compared with charges for similar movements in immediate vicinity, affirmed. Service rendered was a short road-haul, although a switch engine furnished the power. Subsequent establishment of lower charge can not be taken as an admission that former charge was unreasonable. Nor can lower charges for switching service elsewhere lead to conclusion that this charge was not reasonable for local nonswitching service. Consolidated Lbr. Co. v. Director General, 101 I. C. C. 284.

§15½. Nesting.

(a) Rating of first class, l. c. l., on nested aluminum articles found not unreasonable, discriminatory, or unduly prejudicial as compared with ratings on tinned, galvanized, enameled, and plain sheet-iron or sheet-steel ware. Aluminum ware is much lighter and more valuable than sheet-iron or sheet-steel ware, and properly takes higher ratings. Aluminum Goods Mfg. Co. v. A. & V. Ry., 92 I. C. C. 346.

(b) A distinction dependent on whether articles are nested or not nested for shipment would not be practicable in establishing c. l. ratings on aluminum articles, as nested and not-nested articles are usually shipped in mixed carloads. Nor can a distinction be based on thickness of the articles, because different parts of same articles are frequently made of metal of different gauges. Aluminum Goods Mfg. Co. v. A. & V. Ry., 92 I. C. C. 346, 351.

§16. Packing.

See Class Rates §2 (6d); Classification §5 (e) (g) (cc) (dd), §7 (g), §20 (c); Reasonableness of Rates §2.

(a) Respondents proposed to increase the rating in the official classification on soap, n. o. i. b. n., in pails or tubs, in less carloads, from fourth class to rule 26. Under the general rules of the consolidated classification, freight in drums and other containers named and described can be shipped at the rating applicable on freight in barrels. Rule 40, section 5, provides that iron and steel containers of drum construction and of less than 5 gallons capacity are subject to the classification provisions for cans and pails unless the gross weight is 50 pounds or more. Under these rules, protestant would be entitled to the fourth class rating if the handles, which are an advantage in handling were removed from the pail. HELD, respondents are not warranted in disrupting the long existing parity in less carload rating in the official classification, schedules not justified. Classification of soap, 92 I. C. C. 353.

(b) Complainant attacked charge of 50% assessed in addition to the rate of $1.50 for alleged improper bracing in the packing of two cars of glass water bottles shipped in bulk on Oct. 11 and Nov. 19, 1921 from Fort Smith, Ark., to San Francisco, Calif., as illegal and

unreasonable. Glass bottles are very fragile. The packing and bracing requirements provided in the western classification for shipments of bottles loose or in bulk were decided upon after consultation between representatives of the carriers and manufacturers of glassware. It may be considered as in the nature of a concession to permit the shipment of so fragile an article as a glass bottle without requiring a separate container therefor. If complainant desired the benefit of the rate provided for bottles in crates, on its shipments of bottles, in bulk, it should have complied with the specifications as to the proper packing and bracing. Not having done so, the Commission is not convinced that, considering the character of the shipments, the 50% charge assessed in addition to the rate of $1.50 was unreasonable. HELD, charges attacked applicable and not unreasonable, complaint dismissed. Radiant Glass Co. v. M. P. R. R., 95 I. C. C. 165.

(c) Carriers have a right to insist upon proper packing but they have no right to force the use of expensive containers by imposing upon shipments less substantially packed rates which are materially higher than is warranted by the additional risk assumed when such inferior containers are used. Classification of canned goods, 98 I. C. C. 166, 177.

(d) Complainant attacked class rates charged on two cars of dressed poultry, between Nov. 19 and 26, 1922 from Lander and Wheatland, Wyo., to Omaha, Neb., as unreasonable. Dressed poultry in carloads in barrels or boxes or in barrels with cloth tops, was rated third class in western classification. Complainants shipments were loaded in bulk in straw. There was no specific rating for shipments loaded in that manner. Rule 5 of the classification provided that articles tendered for transportation must be in the form prescribed in the separate descriptions; that articles would not be accepted unless in such condition and so prepared for shipment as to render the transportation thereof reasonably safe and practicable; and that articles when tendered for transportation which did not in all respects conform to these requirements, would be refused shipment. The record is not clear as to whether or not defendants agents at the points of origin were appraised of the manner in which the shipments were loaded, but it seems probable that they were. The rule further provided for higher ratings on articles which came into the carriers possession in containers of a kind the use of which was not specified in the description of the article; and provided specifically that when articles for which the classification description specified barrels or boxes were shipped loose the rating would be three classes higher. Under this rule the applicable rates, were one and one fourth times first class or $3.75 from Lander and $3.04 from Wheatland. Complainants shipments were the first carload movements of dressed turkeys from Wyoming. So far as the record shows the carriers nowhere maintain a lower basis of rates on dressed poultry shipped in bulk in straw than that applied to complainants shipments. Although these shipments were carried safely, the Commission is not convinced upon the record that the method of loading employed is as safe under all conditions as is the use of boxes or barrels specified in the classification. Lower rates were provided, of which complainant could have availed themselves if the shipments had been packed in accordance with the provisions of the classification. HELD, rates attacked not unreasonable, complaint dismissed. Omaha Cold Storage Co. v. C. & N. W. Ry., 98 I. C. C. 437.

(e) Complainant attacked class rates charged on four cars of bed sacks from Atlanta, Ga., to New York on or about May 2, 1922 as unjust, unreasonable, unduly prejudicial and in excess of applicable tariff rates. Shipments were of secondhand bed sacks sold by the Army as surplusage, value new, 72c but sold to complainant at 17.25c. The classification then in effect named an any quantity rating of first class on bags, bedding, blanket or clothing, in boxes. A rule of the classification prescribed that when commodities required to be boxed were received for transportation in machine pressed bales, the rating next higher than that provided for the article when in boxes would be applied. These socalled bed sacks, otherwise known as bed ticks, are not bedding, blanket or clothing bags, and can not be regarded as bags at all. They are simply cloth articles for which specific provision was not made either in the classification or in the commodity tariffs. Shipments

were subject to rating of dry goods, n. o. i. b. n., which was first class any quantity either in boxes or bales. In view of the sporadic nature of this traffic the failure of defendants to have in force a commodity rate was not unreasonable. The real question is as to the reasonableness of the classification rating. HELD, rate attacked not unreasonable or otherwise unlawful, complaint dismissed. Triad Corp. v. C. of Ga. Ry. 101 I. C. C. 687.

(f) Proposal to require that automobile wheels made of wood combined with iron or steel, with or without rubber tires, and weighing 200 pounds or more each, be either wrapped, boxed, or crated for shipment found not justified. Respondents made no contention that old wheels may not safely be transported loose, but merely stated that some packing protection for new wheels is essential, and that it is the practice of manufacturers to wrap, crate, or box l. c. l. shipments, although the classification does not require it. However, movement of old wheels, which would be affected by the proposed requirement, represents a different character of traffic from movement of new wheels, the former being confined largely to shipments to and from points where tire presses are maintained, whereas latter generally move from automobile and wheel factories or from points where manufacturers maintain distributing agencies. Classification of Motor Vehicle Wheels, 92 I. C. C. 190.

(g) Rating on, Coca-Cola syrup in bulk, in barrels or kegs, in official classification territory, found not unreasonable as compared with lower ratings on various carbonated beverages which move mainly in glass. Coca-Cola sirup and other flavoring and fruit sirups are more valuable than commodities diluted with carbonate water; moreover, ratings on former in three classifications are uniformly one class higher than on latter. Coca Cola Co. v. B. & O., 92 I. C. C. 340, 344.

(h) Proposed increased ratings in official classification on soap, n. o. i. b. n., in pails or tubs, l. c. l., from fourth class to rule 26 found not justified. Ratings on soap in pails or tubs and on soap in barrels or boxes have been maintained on a parity in official classification for many years and carriers are not warranted in disrupting this long-existing parity. It is not shown why a box could be more easily or cheaply handled than a pail, and under general rules of the consolidated classification, freight in drums and other containers can be shipped at rating applicable on freight in barrels. Classification of Soap, 92 I. C. C. 353.

(i) Upon further consideration, official classification rating of third class l. c. l., on floor-sweeping compound, in bulk, in barrels, found unreasonable to extent it exceeds fourth class. The commodity is of low grade and heavy density and is not easily damaged, from a transportation standpoint it is desirable traffic, and no explanation was offered by carriers for according it higher ratings in official than in southern or western classifications. Former report, 85 I. C. C. 416, reversed. Fitch Dustdown Co. v. A. A. R. R. Co., 92 I. C. C. 359.

(j) Differences in transportation conditions between salt in bulk and salt in containers found insufficient to justify differences in commodity rates, and such differences are unduly prejudicial and preferential. Salt Cases of 1923, 92 I. C. C. 388, 392.

(k) Second-class rates on sheep and goat pelts and skins, loose, in bundles, or in bales not machine pressed, in mixed carloads with cattle or horse hides, loose or in packages, from points in Utah, Wyoming, Idaho, Montana, and Washington to Portland, found unreasonable to extent they exceeded fourth-class rates. Reasonable basis of rates prescribed and reparation denied. Bissinger v. G. N. Ry., 92 I. C. C. 577.

(l) If a commodity is fairly uniform in value, so that carrier knows with reasonable degree of certainty the liability it assumes when it accepts a shipment for transportation, it should establish reasonable tariff regulations relative to packing and loading with a view to minimizing loss and damage claims, and, having done so, should then publish a single rate based on known transportation characteristics of the commodity. Released Rates on Stone in Southeast, 93 I. C. C. 90, 93.

(m) Rates on linseed oil, in tank cars, found unreasonable to extent they exceeded lower rates on same commodity, in packages. Reparation awarded. Fuller & Co. v. S. P. Co., 93 I. C. C. 154.

(n) Contention that cucumbers in brine were not pickles but were only packed in salt solution to facilitate trans-

portation to a point where they could be manufactured into pickles not sustained, since some shipments moved several months after the gathering season and must have been in brine sufficiently long to remove them from category of fresh cucumbers. Haarmann Vinegar & Pickle Co. v. C. B. & Q., 93 I. C. C. 251, 252.

(o) Considering superior protection against damage which crating affords, also that furniture frames are unfinished material, FOUND, that l. c. l. rating in official classification on wooden chair and lounge frames, when set up, in boxes or crates, is unreasonable for future to extent it exceeds 2½ times first class. Parlor Frame Mfrs. Asso. v. A. A. R. R., 93 I. C. C. 506.

(p) Penalty charge of 50 per cent assessed in addition to the rate for improper bracing in the packing of two carloads of 5-gallon glass water bottles in bulk found not illegal or unreasonable. Glass bottles are fragile, loss and damage claims are high and when shipped in bulk extremely hazardous. Packing and bracing requirements provided in governing classification were decided upon after consultation between carriers and glassware manufacturers, and to permit such shipments without requiring a separate container is in the nature of a concession. If complainant desired benefit of the rate provided for bottles, in crates, on its shipments, in bulk, it should have complied with specifications as to proper packing and bracing. Radiant Glass Co. v. M. P., 95 I. C. C. 165.

(q) Failure of tariffs to impose upon initial carrier the duty of directing shipper's attention to a tariff requirement that a certificate be made on bill of lading that packages used conform to packing requirements and specifications, found not unreasonable. Complainant here was fully advised of the tariff provision and while containers used fully complied with tariff requirements, through oversight its shipping clerk neglected to stamp necessary certificate so stating on the bill of lading, resulting in collection of penalty charges. American Licorice Co. v. C., M. & St. P., 95 I. C. C. 525.

(r) Proposed elimination of requirement that description of contents be shown on outside of fiber boxes in official classification territory, together with penalty charge in connection therewith, found justified. The requirement is an inducement to pilferage and its elimination is designed for purpose of reducing loss and damage claims. Penalty Charge on Shipments in Fiber Boxes, 95 I. C. C. 528.

(s) Rates on fresh vegetables, not otherwise specified, in certain packages, from producing points in South Carolina to New England, eastern trunk line, and central territories found unreasonable to extent the rates on the 1 and 1.5 bushel packages exceed one-third and one-half, respectively, of the present rates on similar traffic in 3-bushel packages, in connection with a carload minimum of 600 bushels in each case. Revenues would be the same on a carload minimum regardless of the size of the package used, and while there is probably some additional service by and expense to defendants in connection with handling of shipments in smaller packages, it is not such as to warrant a difference in the rates. Reasonable rates prescribed for the future. South Carolina Produce Asso. v. A. & R. R. R., 96 I. C. C. 107.

(t) Proposed changes, including increases and reductions, in l. c. l. ratings in official classification on various canned food products packed in barrels, boxes, or crates, the effect of which will bring about the classification relationship prescribed in Indiana Packing case, 93 I. C. C. 400, in purported compliance with which proposed schedules were filed, found justified, except proposed increases on corn-sirup jelly. Classification of Canned Goods, 98 I. C. C. 166.

(u) A box is a safer container than a crate. But presumably a crate is a cheaper container. Carriers have a right to insist upon proper packing, but they have no right to force the use of expensive containers by imposing upon shipments less substantially packed rates which are materially higher than is warranted by the additional risk assumed when such inferior containers are used. Classification of Canned Goods, 98 I. C. C. 166, 177.

(v) Proposal to increase rating on jute packing, in official, southern, and western classifications, designed to provide same ratings as those applicable on oakum and to prevent shippers from obtaining lower rates by billing this commodity as rope, found not justified. Jute packing in rope form is not, in fact, oakum or rope, and it is not evident how

the proposed specific classification rating would serve to stop the practice of shipping this commodity as rope. Classification of Jute packing, 98 I. C. C. 287.

(w) Two carload shipments of dressed turkeys moved from Lander and Wheatland, Wyo., to Omaha, Nebr., loaded in bulk in straw, and were charged a rate higher than if the shipments had been packed in barrels or boxes or in barrels with cloth tops, in accordance with the provisions of the classification. FOUND, rates charged were not unreasonable, as shipments were not entitled to same rating and rates as would have applied if the packing specifications had been complied with. Omaha Cold Storage Co. v. C. & N. W. Ry. Co., 98 I. C. C. 437.

(x) Shippers are entitled to reasonable rates upon whatever traffic they ship. But in a situation of the kind here involved, where the packing specifications were not complied with, resulting in a higher rate and rating than would otherwise have obtained, the earnings are not necessarily controlling. The nature of the commodity, as bearing upon its adaptability to shipment in a particular form, and the practices of carriers with respect to the rates on the same or similar commodities are of equal if not greater importance. Kloeber v. N. P. Ry. Co., 98 I. C. C. 437, 441.

(y) Rates and ratings on grain flour, edible flour, and corn meal, in rope-stock paper bags, in c. l. and l. c. l., when carried under tariffs governed by southern classification, and in l. c. l. when carried under tariffs governed by western classification, found not unreasonable, but are and for future will be unjustly discriminatory, unduly prejudicial and unduly preferential of shipments in cloth bags, to extent they exceed or may exceed corresponding rates and ratings contemporaneously maintained on same commodities when in cloth bags. Rope Paper Sack Bureau v. A. & V. Ry. Co., 98 I. C. C. 511.

(z) Fact, that, as to all freight generally, conditions affecting safety in transportation are different in c. l. traffic from those in l. c. l. traffic, and that loss and damage claims are relatively more frequent and serious in latter, not overlooked, but record here involved is not convincing that the relative risk to carrier in handling l. c. l. shipments of flour in paper bags would be greater than that incurred in handling l. c. l. shipments of same commodity in cloth bags. Rope Paper Sack Bureau v. A. & V. Ry. Co., 98 I. C. C. 511, 514.

(aa) The protection of the public against fire requires that the receipt as freight of rags and waste paper should be limited to dry materials, so baled as to prevent loss of pieces (sifting) from the bales, and reasonably free from loose edges, strips, pieces, fibres, or other parts protruding from the bales or surrounding them. National Asso. Waste Material Dealers v. D., L. & W. R. R. Co., 98 I. C. C. 606, 612.

(bb) Complainant apparently deduces that any special feature or attachment which some manufacturer might include as a part of regular equipment, even though not ordinarily considered as essential to the operation of a motor car, should, when shipped by itself, be regarded as an automobile part, and so rated. In practical effect this would nullify the classification which is intended to govern the rates on articles listed therein, except specific commodity rates or exceptions are provided. Western Auto Supply Agency of Los Angeles, Calif., v. C., B. & Q. 98 I. C. C. 647, 648.

(cc) Complainant attacked class rates charged on unfermented grape juice, in glass, in boxes, and in bulk, in barrels, in straight and mixed carloads, shipped between Oct. 4, 1922 and April 9, 1924, from Melvin, Calif., to Portland Ore., Aberdeen, Tacoma and Seattle, Wash., as unjust, unreasonable, unjustly discriminatory, unduly prejudicial, and in violation of section four. Melvin is on the S. P., 12 miles northeast of Fresno, Calif. Aberdeen is on a branch of the U. P., 54 miles from Centralia, Wash., the junction point. This commodity is rated in western classification fourth class. The rates on the juice in boxes are higher to Portland than to Tacoma, Seattle or Aberdeen and that the rates in bulk in barrels to the latter points are considerably higher than the rates in glass, in boxes. The water rate on grape juice, in glass, in packages or in bulk, in barrels, from San Francisco to Portland was 20c prior to April 3, 1924 on which date it became 22c. To Tacoma the water rate from San Francisco on grape juice, in glass, in packages, or in bulk in barrels is 25c. Al-

though the rate to Portland is $1.03 the rate through Portland from Melvin to points on the U. P., 98 miles east of Portland is 86c. Defendants admit that there is no inherent reason why this commodity should take a higher rate in bulk, in barrels, than in glass, in boxes, aside from the fact that when moving in glass, in boxes, it does not move under refrigeration. But the refrigeration charges are separate, and it would appear that refrigeration is not essential. The present rate to Portland is lower than to intermediate points, a departure from the fourth section which is protected by an appropriate application. The fourth section violation with respect to the rates to destinations in eastern Oregon and Montana must be removed. Complainant did not show damage because of any undue prejudice as between destinations. HELD, rates to Tacoma, Seattle and Aberdeen not unreasonable; to Portland unreasonable to extent they exceeded 93c and rates to Tacoma Aberdeen and Seattle on grape juice, in bulk, in barrels, unreasonable to extent they exceeded $1 to Tacoma, and $1.04 to Aberdeen and Seattle, reparation awarded. Joseph v. O. W. R. R. & N. Co. 104 I. C. C. 477.

(dd) Complainant attacked as unreasonable, rates charged during 1921 on apples received at Detroit, Mich., which had originated at Watsonville, Calif., and other points in California, delivered Oct. 7, 1921 and later dates, actions at law brought Oct. 9, 1924 and later dates and complaint filed Jan. 2, 1925 within 90 days from the times such actions by the carriers were begun. Apples were contained in lug boxes and were of medium size and fair quality; that the boxes had no tops, but when loaded in the car, the bottom of one box resting on another provided a cover for the box beneath; charged $1.50, alleged proper rate $2.25. The rate of $1.50 collected was applicable on apples in crates. It was not applicable on apples in bulk or in packages without tops. Shipments in bulk, or in packages without tops, were subject to a penalty charge of 50%, or to a rate of $2.25. This case is similar to 96 I. C. C. 437, in which the Commission found rates of $2.25 unreasonable to extent they exceeded $1.50. HELD, rate attacked unreasonable to extent it exceeded $1.50, undercharges waived. Lane v. S. P. Co. 107 I. C. C. 253.

(ee) Complainant attacked rates on ginger ale, root beer, and mineral water in glass bottles, packed in bottle carriers, in boxes and in barrels, less carloads, from Tazewell, Va., to destinations in West Virginia on the Virginian Ry. and K. G. J. & E., and on empty bottles, packed in the same containers, less carloads, from those points to Tazewell, as unjust and unreasonable and unduly prejudicial. Tazewell is 19 miles west of Bluefield, Va., on the N. & W., extending from Bluefield to Norton, Va. Shipments are made to and from points in West Virginia on the Virginian through Matoaka, W. Va., and to and from points on the Glen Jean through Matoaka and over the Virginian by way of Pax, W. Va. The distance over the N. & W., to Matoaka is 49 miles. Under exceptions to the official classification, the combination of fourth class rates to and beyond Matoaka are applied on beverages, and on returned empty bottles. The fourth class rates applied to Tazewell which are applicable on the return bottles are in some instances 3c less than the fourth class rates in the reverse direction applicable on beverages, HELD, class rates applicable unreasonable to extent they exceed 35c for 60 miles and less to 50c for 130 miles. Was-Cott Corp. v. K. G. J. & E. R. R., 109 I. C. C. 468.

(ff) Complainant attacked additional charges on a car of canned fruit from Canon City, Colo., to San Francisco, Calif., on June 1, 1922 as unreasonable. The fruit was in cans in fiber boxes. When so packed the applicable rate was $1.175 provided the boxes agreed with certain specifications published in the governing western classification. Among these was a provision that boxes must also show a description of contents. The tariff naming the rate provided that when fiber boxes not meeting all of the classification specifications were used the freight charges would be increased 25 per cent. The boxes used for these shipments were not marked with a description of the contents, and accordingly defendants increased freight charges 25 per cent. A description of the contents on the outside of fiber boxes doubtless facilitates policing of the special packing requirements in connection with particular articles or class-

es of articles. But as a practical matter, considering the large amount of traffic to be policed, it is probable that where articles liable to break, sift or leak are enclosed in fiber boxes, inspections to determine whether the packing requirements have been met should be limited to instances where the boxes show external evidence of breaking, sifting or leaking. Defendants do not explain what aid a knowledge of the contents of a fiber box affords in determining whether the weight or dimension limits have been exceeded. HELD, tariff rule requiring that fiber boxes be marked with a description of the contents is unreasonable, reparation awarded. Ball & Company v. D. & R. G. W. Ry., 109 I. C. C. 759.

ALL OTHER CITATIONS

Cotton and Cotton Linters to Louisiana and Texas Ports, 85 I. C. C. 5; O-So-Ezy Products Co. v. Director General, as Agent, 85 I. C. C. 187; Fitch Dustdown Co. v. A. R. R. Co. 85 I. C. C. 416; Gallaudet Aircraft Corp. v. N. Y. N. H. & H. R. R. Co., 88 I. C. C. 750.

§16a. Penalty Charges.

See Passenger Fares and Facilities §4¼; Penalty Charges.

(a) Complainant attacked commodity rates and penalty charge on one car of stick licorice shipped Feb. 23, 1922 from Healy, Ill., to Los Angeles, Calif., as unreasonable. Shipment charged commodity rate of $2.755 plus penalty of 69c, or 25%. The governing tariff provides that the rate will be increased 25% if the requirements and specifications of rule 41 of the western classification are not fully complied with. The fiber boxes containing the licorice fully complied with all the specifications of rule 41, but the certificate described in section 8 (c) of that rule was not placed on the bill of lading. HELD, failure of the tariffs to impose upon the initial carriers agent the duty of calling the shippers attention to the certificate required does not establish the unreasonableness of the charges collected. No attack is made upon the penalty as such. Complaint dismissed. American Licorice Company v. C. M. & St. P. Ry., 95 I. C. C. 525.

(b) The penalty rule in the classification must be regarded as having some bearing upon the propriety of the rates assessed thereunder, and in the absence of complaint and proof that it was unreasonable its provisions should not be set aside in particular instances except upon evidence which would support the view that the commodity, as shipped, was entitled to a lower specific rating. Omaha Cold Storage Co. v. C. & N. W. Ry., 98 I. C. C. 437, 441.

IV. COMPARATIVE RATINGS.

See Infra §22; Supra §6, §16; Advanced Rates §5 (3); Class Rates §1 (p), §2 (4a) (4e) (4j) (4n) (4o); Commodity Rates II, §5 (5n); Comparative Rates; Differentials §2½a; Evidence §12, §31; Live Stock Shipments; Reasonableness of Rates §28; Tank Car Shipments (p).

A. Analogous Articles.

§17. In General.

(a) Complainants sought to demonstrate intrinsic unreasonableness by comparing rates and revenues derived from cotton with rates and revenues derived from other commodities, but the well-settled rule is that the most helpful evidence in determining reasonableness of rates is to compare them with rates on like traffic, moving under like circumstances, in the same general territory. Mississippi Railroad Commission v. A. & V. Ry. Co., 89 I. C. C. 47, 61.

(b) There is no reason, from a transportation standpoint, for maintaining higher rates on oat flour than on rolled oats, oat groat, and oatmeal. Atlas Cereal Co. v. A. T. & S. F. Ry. Co., 89 I. C. C. 212, 214.

(c) Rates on rolled oats, oat groats, oatmeal, and oat flour, in straight or mixed carloads, or in mixed carloads with corn meal and hominy, found not unreasonable or unjustly prejudicial as compared with rates on wheat flour. Volume of movement of wheat flour is much greater than that of oat products; rates on wheat flour are affected by competitive and market conditions not related in any way to oat products; and there is no evidence on this record to find that there should be any fixed relationship between wheat flour rates and oat products rates. Atlas Cereal Co. v. A., T. & S. F. Ry. Co., 89 I. C. C. 212.

(d) Rates on nitrate of soda found not unduly prejudicial, but found unrea-

sonable as compared with rates on fertilizer. Distance scale of rates prescribed for future. New Orleans Joint Traffic Bureau v. A. & V. Ry. Co., 89 I. C. C. 223.

(e) Upon further hearing, previous reports, 69 I. C. C. 753, and 77 I. C. C. 242, rates on linseed-oil meal found unreasonable to extent they exceeded rates contemporaneously applicable on gluten feed. Reparation awarded. Midland Linseed Products Co. v. Director General as Agent, 89 I. C. C. 260.

(f) A mere statement of rate comparisons without a showing of conditions under which rates were established, volume of movement thereunder, or that transportation circumstances and conditions are substantially similar, are not very helpful in determining the reasonableness of rates. New York Commission of Highways, 55 I. C. C. 619, 623. Atlantic Refining Co. v. A., B. & A. Ry. Co., 89 I. C. C. 279, 280.

(g) Classification ratings on vitrolite slabs and table and counter tops in excess of five-sixteenths inch in thickness found unreasonable and unduly prejudicial to extent they exceed ratings contemporaneously applicable on marble slabs and table and counter tops, and on vitrolite scale platters to extent they exceed ratings greater than one class higher than on vitrolite slabs and counter and table tops. Vitrolite Co. v. A., T. & S. F. Ry. Co., 89 I. C. C. 367.

(h) Complainant attacked classification ratings on vitrolite, carloads and less carloads and rules, regulations, and practices, applicable to its transportation as unreasonable, unjustly discriminatory and prejudicial. Vitrolite is opaque and closely resembles porcelain in appearance. In structural work, it is used extensively as store fronts, wainscoting, on walls and ceilings, and as partitions in lavoratories and shower baths. It is packed in barrels, boxes or crates, ordinary box car equipment is used. The evidence tends to confirm the statement that the uses in general are not those of glass but of marble and tile, and that competition is confined almost wholly to the last named articles. Marbleized slabs take the same carload ratings as marble slabs and differ in less carloads ratings only in being third class in western instead of fourth class. Present ratings on vitrolite slabs are 22% higher than those on marble in car load quantities and 20% higher in less carloads, as measured by class rates for typical hauls. Less carload on both vitrolite and marble move at class rates. Competition in use is almost entirely with articles classified as natural and perhaps artificial stone. There is no reason why vitrolite should take a higher rating. Since the transportation characteristics of vitrolite and marble slabs are substantially identical, the various properties and uses of vitrolite and the ratings accorded its competitors are elements entitled to considerable weight. HELD, rate attacked unreasonable to extent they exceed that applicable on marble slabs. Vitrolite Company v. A. T. & S. F. Ry., 89 I. C. C. 367.

(i) A vitreous commodity, manufactured and shipped in slab form, is opaque and resembles porcelain. It is used as store fronts, wainscoting, on walls and ceilings, as partitions in lavoratories and shower baths, and for table and counter tops and analogous purposes. The ingredients are sand, feldspar, fluorspar, cryolite, lepidolite, manganese, arsenic, borax, antimony, china clay or kaolin, soda ash, and nitrate of soda. Vitrolite Co. v. A., T. & S. F. Ry. Co., 89 I. C. C. 367, 368.

(j) Analogous products having identical uses should take same ratings. Vitrolite Co. v. A. T. & S. F. Ry. Co., 89 I. C. C. 367, 369.

(k) When a commodity is not distinctly within some common designation, its use and the ratings of competitive products are important factors with its transportation characteristics in the determination of what rating is appropriate for it. Vitrolite Company v. A. T. & S. F. Ry., 89 I. C. C. 367, 371.

(l) The Commission sees no reason why rates on casinghead gasoline produced from natural gas as distinguished from gasoline obtained through distillation of crude petroleum should vary. Atlantic Refining Co. v. Director General, as Agent, B. & O. R. R. Co., 89 I. C. C. 391, 394.

(m) Rate on oil, petroleum gas in tank-car loads, found not unreasonable or otherwise unlawful because in excess of the rate on crude and fuel oils. While crude, fuel, and gas oils generally take same rates, the crude and fuel oil

rates herein considered were depressed by carrier competition. Moreover, earnings under rates charged are not excessive in comparison with many rates prescribed by the commission. Standard Oil Co. v. M.-K.-T. R. R. Co., 89 I. C. C. 463.

(n) Rates on finely crushed greenstone found not unreasonable or otherwise unlawful as compared with rates on other crushed stone. Crushed Stone from Maryland and Pennsylvania, 89 I. C. C. 681.

(o) Complainant attacked commodity rates charged on fruit, vegetable and grape packages, carloads, from Burlington, Iowa, St. Louis, Mo., and Marshall and Rusk, Tex., to points on the O. S. L., in Idaho and eastern Oregon, as unjust and unreasonable. Charged lumber rates plus 7c. Prior to August 26, 1920 the rate was 5c over the lumber rate when the latter exceeded 23.5c. On that date this arbitrary was increased 35% or to 7c east of Colorado common points and 6.5c or 33 1-3% to points west of Colorado common points. Effective April 15, 1922 a flat arbitrary of 7c was provided without restriction as to territory. HELD, defendants have not justified the increase, repartion awarded to extent they exceeded 6.5c prior to July 1, 1922 and 6c thereafter over the lumber rate. Package Sales Corporation v. U. P. R. R., 91 I. C. C. 697.

(p) Complainant attacked commodity rate charged on imitation leather, carloads, between Nov. 24, 1917 and Feb. 7, 1920, from Fairfield, Conn., and Newburg, N. Y., to Oakland, Calif., as unjust, unreasonable and unjustly discriminatory to extent they exceeded rates on leather. Charged rates of $2, contemporaneously a rate of $1.40 was applicable on leather. On Feb. 8, 1920 the rate on leather became applicable on imitation leather. The two articles are rated the same in the different classifications. No reason was offered from a transportation standpoint why the rate on imitation leather should have been higher than that on leather. HELD, rate attacked unreasonable to extent it exceeded rate on leather, reparation awarded. Chevrolet Motor Co. v. Director General, 93 I. C. C. 544.

(q) Complainant attacked class rates charged on oleomargarine, carloads, from Chicago, Ill., to South Bend, Ind., Syracuse and New York, N. Y., and Pittsburgh, Pa., and Philadelphia, Pa., between Jan. 1 and June 30, 1922 as unreasonable to extent they exceeded rates on butter. Prior to Jan. 1, 1922 third class rates were applicable on oleomargarine, butter, cheese, dressed poultry and eggs in the shell. On that date rates on the commodities named, except oleomargarine, were reduced 10% as a part of a voluntary reduction made by the carriers in rates on many products of the farm, garden, orchard and ranch. The reduced rates were in the nature of emergency rates published to expire June 30, 1922. On July 1, 1922 rates on butter, cheese, dressed poultry and eggs in the shell were restored to the full third class basis simultaneously with the general 10% reduction in rates. HELD, rates attacked not unreasonable, complaint dismissed. Jelke Company v. C. & N. W. Ry., 95 I. C. C. 643.

(r) Complainant attacked third class rating and rates on coconut oleine, carloads, from Bayonne, N. J., to Suffolk, Va., and other points of southern classification territory as unreasonable, unjustly discriminatory and unduly prejudicial to extent they exceeded class B rating on lard substitutes and compounds and fifth class rating and rates on coconut oil. HELD, rating and rates charged not unjustly discriminatory or unduly prejudicial but unreasonable to extent they exceeded fifth class, reparation awarded. Best Foods v. C. R. R. of N. J., 95 I. C. C. 738.

(s) Complainant attacked class rates charged on carloads of linseed oil meal and oil cake from Edgewater, N. J., to Toledo, O., and Waukegan, Ill., during March and April 1920 as unreasonable, unjustly discriminatory and unduly prejudicial. Charged sixth class rates of 37.5c to Waukegan and 29.5c to Toledo. HELD, rates attacked unreasonable to extent they exceeded rates on gluten meal of 23c and 29.5c, reparation awarded. Midland Linseed Products Co. v. N. Y. C. R. R., 96 I. C. C. 447.

(t) Complainant attacked commodity rates charged on crude, fuel and gas oils carloads from Clay Spur and Osage, Wyo., to South Dakota, Iowa, Minnesota and Wisconsin, as unjust and unreasonable to the extent they exceeded a basis 6c lower than the rates on refined oils from and to the same points, and otherwise unauthorized and unlawful. Clay

Spur and Osage are on the Burlington. Same rates appiled on refined and low grade oils from these points to the destinations in question. Rates from Clay Spur and Osage to these destinations were established in 1921, 1922 and 1923 and were made the same as those from Casper, Wyo. HELD, rates attacked not unreasonable or otherwise unlawful, complaint dismissed. Barber Co. v. C. & N. W. Ry., 96 I. C. C. 516.

(uv) Complaint attacked class rate charged on one car of balsam wool shipped Oct. 25, 1922 from Minnesota Transfer, Minn., to Tacoma, Wash., as unreasonable to extent it exceeded subsequently established rate of $1.22. Being a comparatively new article, commodity rates were not in effect, and it was rated by analogy to other insulating articles named in the classification. Charged third class rate. Rate on flaxlinum, fibrofelt, Linofelt and hair felt was $1.39. HELD, rate attacked unreasonable to extent it exceeded $1.39, reparation awarded. Dower Lumber Co. v. N. P. Ry., 98 I. C. C. 9.

(w) Complainant attacked commodity rates charged on unfinished wallpaper, oatmeal or ingrain, from North Hoosick and Walloomsac, N. Y., and Appleton and Neenah, Wis., to Jersey City and Philadelphia as unreasonable and unduly prejudicial. Defendants publish lower rates on unfinished wall paper than fifth class by exceptions. The exceptions or commodity rates provide for paper, blank wall, unfinished, in rolls weighing 70 pounds or over per single roll, minimum 40,000 pounds. The value of oatmeal paper is shown to be no higher than that of many unfinished wall papers and an inexperienced person has difficulty in distinguishing between oatmeal papers and certain unfinished wall papers. HELD, rates attacked not unreasonable but should not be higher than on unfinished wall paper. Becker Smith & Page v. B. & M. R. R., 98 I. C. C. 337.

(x) Complainant attacked class E rates charged on 23 cars of ground limestone from Ralston and Omaha, Neb., to Chicago, Ill., St. Louis, Mo., Kansas City, Mo., Detroit, Mich., Toledo, O., and Minneapolis, Minn., between July 14, 1919 and Sept. 1, 1920 as unreasonable. The rate to which reparation is asked was subsequently established. At the time of the application for these rates there were in effect commodity rates on ground limestone, from Chicago, Minneapolis, and St. Louis to Omaha, Ralston and Seymour Park, those rates were subsequently established in the reverse direction between these points. There were no shipments under the westbound commodity rates. The commodity was not plain limestone such as might be shipped in any kind of available car. It was shipped in sacks or barrels, in water tight cars. It was more analogous to whiting than to common limestone in its transportation characteristics. The rates charged were considerably lower than those subsequently published on whiting. But aside from the comparison with whiting neither the ton mile nor the car mile yields seem unreasonable for these shipments. HELD, rates charged not unreasonable or otherwise unlawful, overcharges ordered refunded complaint dismissed. Barker Evans Paint Co. v. Director General, 98 I. C. C. 414.

(y) Complainant attacked commodity rates charged on five cars of steel plates, gauge No. 11 or heavier from Johnstown, Pa., to Portland, Ore., between July 29 and Sept. 9, 1920 as unreasonable to extent they exceeded rates on plates, ship, and asked reparation. In 85 I. C. C. 629, Commission found rates charged not applicable and that lower rates on ship plates were applicable and awarded reparation. The term ship plates can mean only plates which might have been used in the construction of ships, and the records in both cases leave no room for doubt that complainants shipments consisted of plates all of which could have passed Loyds test for hull construction if such test had been made, and therefore all of the plates in these shipments might have been used in ship construction. HELD, rate on ship plates applicable, reparation awarded. Sabin v. S. P. & S. Ry., 98 I. C. C. 471.

(z) Complainant attacked joint commodity rate charged on two cars of wooden wagon bows, shipped April 11 and 12, 1923 from Columbus, O., to Sherman and Stamford, Tex., as unjust, unreasonable unduly discriminatory and preferential to extent they exceeded the rates on lumber. Both cars were routed and moved over B. & O., to St. Louis, Mo., M. K. & T., beyond, distances of 1,127 miles to Sherman and 1,526 miles to Stamford, applicable rate $1.21. The 94.5c rate applicable on wagon wood, n.

o. s., applies also on various vehicle parts, including wooden axles, coupling poles, double trees, plow beams and handles, rims, singletrees and spokes. HELD, rate attacked unreasonable to extent it exceeded 94.5c reparation awarded. Fort Smith Rim & Bow Co. v. B. & O. R. R., 98 I. C. C. 536.

(aa) Cereal-food rates on Cream of Wheat found applicable and not unreasonable or unduly prejudicial as compared with rate on flour. Complainant failed to establish that there is substantial competition between Cream of Wheat and flour, notwithstanding that in some of its secondary uses, such as making of pancakes and waffles, Cream of Wheat displaces and to that extent competes with flour. Cream of Wheat Co. v. A., T. & S. F. Ry. Co., 91 I. C. C. 45.

(bb) Frequently canned milk and canned goods are similar in character, so far as transportation is concerned, and ordinarily the rate should be the same. Carnation Milk Products Co. v. A. T. & S. F. Ry. 100 I. C. C. 254, 257.

(cc) Complainant attacked commodity rates on peanuts, in carloads, from Suffolk, Norfolk, Franklin, and Petersburg, Va., to Oklahoma City and Shawnee, Okla., as unreasonable; that rates on peanuts, carloads, from Suffolk and Petersburg and other points taking Group A rates to McAlester, Okla., were unreasonable. The shortest distance from Suffolk to Memphis, Tenn., is 926 miles, but this is over three lines. The distances from Suffolk, to McAlester, Shawnee, and Oklahoma City, via Memphis and Rock Island are 1,307, 1,387 and 1,426 miles, respectively. Over this route McAlester and Shawnee are intermediate to Oklahoma City. On July 1, 1922 the rate on peanuts from Suffolk to Memphis was reduced from 64.5c to 58c. On the same date the joint rate from Suffolk to McAlester, Shawnee and Oklahoma City was reduced from $1.86 to $1.675 and the rate to Dallas, Fort Worth and Waco, Tex., from $1.92 to $1.73. On June 11, 1923 the rate to the Oklahoma points named became $1.43. On Aug. 15, 1924 the carriers reduced the rate on shelled peanuts to Oklahoma City to $1.23 but left the rate on unshelled peanuts at $1.43. No reason for the maintenance of a higher rate on unshelled than on shelled peanuts to Oklahoma City was given. HELD, rates attacked unreasonable to extent they exceeded $1.365 prior to July 1, 1922 and $1.23 subsequent thereto, reparation awarded. Oklahoma Traffic Asso. v. C. R. I. & P. Ry., 100 I. C. C. 307.

(dd) Complainant attacked commodity rates on pecans, carloads, from Texas, Oklahoma, Louisiana, Florida, Georgia and Mississippi to St. Louis and Chicago as unjust, unreasonable, unjustly discriminatory, and unduly prejudicial as compared with rates on peanuts and hickory nuts from and to the same points, and unduly prejudicial with respect to the import rates on pecans from the Pacific coast to the same destinations. The record deals primarily with the rates from Texas and Oklahoma and to a less extent with those from Louisiana and from Natchez and Vicksburg, Miss. No showing was made of any movement of pecans from Pacific coast points. From Texas common points the commodity rate on pecans, carloads, is 129.5c to St. Louis and 142.5c to Chicago, as compared with commodity rates on peanuts of 69 and 79c respectively. From Oklahoma points the Commodity rates on pecans to St. Louis and Chicago are 129.5c and 140.5c as compared with 76 and 87c on peanuts. The general basis on pecans and hickory nuts, unshelled and on peanuts, shelled or unshelled, carloads, in official and western classifications is fourth class. It is a fair deduction from the mass of inconsistent testimony presented that pecans constitute a much higher grade of traffic than peanuts, and that the competition, if any, between these products is with pecans in their expensive shelled state, the rates on which are not before the Commission. Present rates were prescribed in 47 I. C. C. 542 allowing for the subsequent general increases and decreases. HELD, rates attacked not unreasonable or otherwise unlawful, complaint dismissed. Funsten & Co. v. A. & V. Ry., 100 I. C. C. 357.

(ee) Complainant attacked class rates charged on five cars of wood flour from Hercules, Calif., to Bacchus, Utah., from Oct. 8, 1918 to June 11, 1919, as unreasonable. Wood flour is made by grinding wood particles and sifting the product into the desired degree of fineness and is used as an absorbent in the manufacture of dynamite. Charged class C rate of 80c, later changed to fifth

class of $1.145 on the ground they consisted of ground walnut shells, which are also used as an absorbent in the manufacture of dynamite. The rate prayed is 48c, applicable on wood pulp, and this basis, increased to 60c, was made effective, on Oct. 30, 1920 on wood flour. Distance is 816 miles. HELD, commodity rate of 48c on wood pulp not applicable on wood pulp, applicable rate of 80c unreasonable to extent it exceeded 48c, reparation awarded. Hercules Powder Co. v. Director General, 100 I. C. C. 393.

(ff) Respondents proposed a general readjustment of the rates on various vegetable, fish, and sea animal oils, and the foots or sediments of these oils, in carloads between points in trunk line territory and from points in trunk line territory to destinations in central territory. Respondents have divided the oils into two groups, the paint oils and the soap oils. In the paint group are linseed, perilla, Chinawood, soyabean, and cottonseed oil; and in the soap group, are coconut (copra) peanut, palm, palm-kernel, fish, sea-animal, and sesame oil. Fifth class rates are proposed on the paint oils, and sixth class rates on the soap oils and on the foots or sediments of the oils in both groups. It was disclosed at the hearing that the proposed groupings at the fifth and sixth class rates had not been carried out in the tariffs naming rates between points in trunk line territory, and respondents therefore did not attempt to justify any of the proposed rates between points in that territory. The tariffs in which those rates appear should be cancelled. This readjustment is now proposed to correct the chaotic conditions into which the rates have fallen. The two principal questions presented are whether the proposed rates are reasonable, and whether the establishment of less than maximum reasonable rates on certain of the oils will unduly prefer those oils and unduly prejudice the others which are not accorded such treatment. In general the testimony respecting competition is that the paint oils can not economically be used in soap manufacture, but that the soap oils can be and are used in paint manufacture. It is established that the manufacturers of paint have been successful, through alterations of the mixing and boiling processes, in combining the paint oils with the cheaper soap oils in the production of paints for general purposes and that experimentation is constantly proceeding with a view to increasing the content of the cheaper oils without impairing the drying qualities of the paint. HELD, respondents have not justified the proposed rates as reasonable maxima, nor have they justified the proposal for a different basis of rates on the socalled paint oils and soap oils. Vegetable oils from trunk line points 100 I. C. C. 736.

(gg) Complainant attacked rates charged on wheat bran, car loads, from Colorado, Utah, Idaho, Wyoming, Montana, Nebraska, Kansas, Iowa, Missouri, Oklahoma, Texas and New Mexico, to New Mexico, Texas and Louisiana, since Jan. 7, 1923 as unreasonable and unjustly discriminatory and unduly prejudicial as compared with rates on wheat shorts and coarse grain products. Wheat bran is the coarse, fibrous outer covering of the wheat grain after the flour and middlings or shorts have been removed in the ordinary process of milling. Wheat bran and screenings, mixed, is the lowest grade of wheat product obtained from milling and is almost exclusively used as a stock or poultry food. Prior to June 25, 1918 the rates on wheat bran from the origin to the destination territory were on the wheat basis, which was higher than on coarse grain, including shorts and middlings. On that date the director general increased the rates on wheat 25 per cent subject to maximum of 6c, and rates on coarse grain same as the new wheat rates. On Jan. 7, 1922 the rates on wheat were reduced to the equivalent of the rates on August 25, 1920, plus one half of the general increase authorized in 1920, and the rates on coarse grain were revised so as to be 10 per cent lower than rates on wheat. Complainants produce wheat shorts and all of the coarse grain products. Their wheat bran comes in active competition with wheat shorts and coarse grain and products thereof, shipped from the territory of origin, and with that produced throughout the territory of destination. Wheat bran is considerably less valuable than wheat or wheat flour and based on value should properly be grouped with wheat shorts and coarse grain and products thereof. No explanation is offered why Louisiana, Texas, and New Mexico should be separated from other portions of the United States with rates on wheat bran higher than on wheat

shorts and coarse grains and products. HELD, rates not unreasonable in past but for future rates attacked unreasonable and unduly prejudicial to extent they exceeded rates on wheat shorts, coarse grain and products from and to same points. Abilene Flour Mills Co. v. A. & S. Ry., 101 I. C. C. 14.

(hh) Complainant attacked as unreasonable and unduly prejudicial commodity rates on various cars of bull wheel arms, cants and pins, from Tulsa, Okla., to Breckenridge and Graham, Tex. Shipments moved between February 1922 and May 1923. The rates attacked to Breckenridge over route of M. K. & T., to Cisco and C. & N. E., beyond were not higher than on common lumber except that effective July 1, 1922 and until Jan. 29, 1923 the rate on bull wheel material in the rough manufactured from common lumber, was 40c while the rate on common lumber was 39c. HELD, rates attacked not unreasonable or unduly prejudicial except shipments moving via M. K. T., and C. & N. E., unreasonable to extent they exceeded lumber rate, reparation awarded. Marion Machine Foundry & Supply Co. v. C. & N. E. Ry. 101 I. C. C. 71.

(ii) Complainant attacked commodity rates charged on peanuts, shelled carloads, from Alabama, Florida, Georgia, South Carolina, and Tennessee to Chicago. South Bend, Ind. Dubuque, Iowa, Atchison, Kas., St. Louis Mo. Milwaukee, Wis. and Canton and Cleveland, O., as unreasonable and that the failure to maintain a precise relationship between the rates on peanuts and those on peanut oil from and to the points named results in undue prejudice. Shelled peanuts are shipped in burlap bags which contain from 100 to 130 pounds of peanuts, shipments averaging 30,000 pounds. They do not require special equipment, except that they may not be made in box cars which have leaky roofs. There are no joint rates from the origin territory involved to any of the destinations except St. Louis. Rates to Chicago, Milwaukee, Dubuque and Cleveland are the combinations of proportional commodity rates to and from Ohio river and Mississippi river crossings. Rates to South Bend, Canton and Atchison are constructed on the basis of the proportional commodity rates to the rivers plus fourth class rates beyond. The rates to Cincinnati are at present 51c used as a factor in constructing the through combination rates on shipments via this crossing. While peanut oil is derived from peanuts its transportation characteristics are dissimilar from those of peanuts. It does not appear that any plant making peanut oil at any of the destinations concerned is prejudiced by the rates complained of or by the maintenance of a greater uniformity of rates between peanuts and peanut oil from the river crossings to St. Paul than to the destinations here involved. The real attack is directed against the factors for the movements beyond the river crossings. HELD, rates attacked to St. Louis not unreasonable, unjust or otherwise unlawful. Rates from points of origin unjust and unreasonable to extent they exceed 27c to Chicago, Milwaukee 30c, Canton 26c, Cleveland 26c, South Bend 27c and Dubuque 32.5c, reparation denied. United Fig & Date Co. v. A. C. L. R. R. 101 I. C. C. 138.

(jj) In 93 I. C. C. 689 the Commission found rate charged on two cars of bicycles from Middleton, O., to Los Angeles, Calif., applicable. Charged joint first class rate of $5.835. Contemporaneously there was a joint commodity rate of $2.765 on vehicles, non self propelling except as otherwise provided, and parts thereof, via: vehicles, light and heavy, freight or passenger, and finished parts thereon and a note provided: "Note 1. Rates named will not apply on self propelling vehicles nor on pneumatic rubber tires". The question is whether the description "light non-self-propelling passenger vehicles" comprehends bicycles. Effective Sept. 30, 1922 defendants established a commodity rate on bicycles from and to these points higher than the rate then in effect on vehicles as described in western classification under the heading "vehicles, horse-drawn." The Commission is of the opinion that the terms "passenger" and "freight" as used in this description are merely designations of the means of conveyance for persons and things, respectively; and that a bicycle is a means of conveyance or travel for persons, is non-self propelling and therefore comes within the definition of a "light non self propelling passenger vehicle." HELD, commodity rate of $2.765 applicable on these shipments, reparation awarded. United

Cycle & Supply Co. v. B. & O. R. R., 101 I. C. C. 334.

(kk) Complainant attacked class and commodity rates charged on three cars of scrap iron shipped from Mobile, Ala., to Birmingham, Ala., during March, April and May 1923 as illegal and unreasonable. During the early part of 1923 complainant shipped 10 cars of what it terms scrap iron from Mobile to Birmingham. The shipments moved over G. M. & N., and Frisco, partly through Mississippi. On 7 of the shipments complainant was charged scrap iron rate of $2.48 per ton, and on the other three iron bar rate of 27c per 100 pounds was assessed. Shipments consisted of strips of bar iron from 1.125 to 1.5 inches in diameter, ranging in length from 10 to 27 feet, which had been used for reinforcing concrete. They were cut from an old concrete ship which had been sold by the Government as scrap. The material was bought in the open market as scrap iron and sold as such. As the metal was originally billed as scrap iron, and was subsequently changed to iron bars by defendants, the burden rests upon them to justify the change. This they have failed to do. It follows that the application on these shipments of the rate on iron bars has not been justified. HELD rate attacked inapplicable, applicable rate $2.48 per ton, overcharge to be refunded, complaint dismissed. Knight Iron & Metal Co. v. G. M. & N. Ry., 101 I. C. C. 623.

(ll) Commodities of same nature and used chiefly for same purposes usually take same rates, and differences in value of same commodity shipped in different forms are frequently disregarded in rate making when articles are essentially of same nature and highly competitive. Chloride of Zinc to Texarkana, 92 I. C. C. 569, 572.

(mm) Rate on tank or furnace blocks found unreasonable to extent it exceeded rate on fire brick. Tank or furnace blocks are fire brick of large size, they move on fire-brick rates in and between various territories, and rating in the three major classifications is the same on both commodities. Reasonable basis of rates prescribed and reparation awarded. Chattanooga Bottle & Glass Mfg. Co. v. S. Ry., 93 I. C. C. 71.

(nn) Rates on solvent naphtha, a coal-tar product, l. c. l., found not unreasonable or otherwise unlawful as compared with rates on petroleum naphtha (not coal-tar naphtha). California Rand Silver v. C. & W., 93 I. C. C. 197.

(oo) Rates on wire-bound box material found unduly prejudicial to extent they exceed rates contemporaneously applicable on box shooks. Lange & Crist Box & Lbr. Co. v. B. & O., 93 I. C. C. 207.

(pp) Rates on cabbage, in bulk, found not unreasonable or unduly prejudicial as compared with rates on potatoes or on mixed carloads of potatoes and other class C vegetables, including cabbage. Rates on cabbage and other class C vegetables in territory here involved are uniformly higher than on potatoes; no instance is cited where rates from point here involved are as low on cabbage as on potatoes; cabbage is more valuable, loads lighter, and is more difficult to protect from freezing; and rates assailed compare favorably, distance considered, with rates heretofore found not unreasonable or prescribed by commission. Anderson Commission Co. v. C., R. I. & P., 93 I. C. C. 241.

(qq) The so-called analogy rule has no application where a commodity is clearly and definitely covered by a provision of the classification. Friedlander case, 85 I. C. C. 465. Toledo Cooker Co. v. N. & A. Ry., 93 I. C. C. 271, 272.

(rr) Rates on common pottery insulators, in barrels, found not unreasonable as compared with rates on wire nails, fruits and vegetables, glassware, and other commodities, the rates and earnings on which are not comparable with those on insulators. Jackson Traffic Bureau v. B. & O., 93 I. C. C. 342.

(ss) Complainant contended that class rate assessed under analogous article rule of the classification was inapplicable, and that under terms of that rule lower commodity rate should have been charged. HELD, language of analogous article rule definitely restricts its application to classification of commodities, and can not be used to determine application of commodity rates carried in commodity tariffs. Moreover, rule 6(b) of Tariff Circular 18-A provides that "Commodity rates must be specific and must not be applied to analogous articles." Cullum & Boren Co. v. C., B. & Q., 93 I. C. C. 354, 355.

(tt) Rates on ground iron ore found

not unreasonable as compared with rates on crude iron ore. Crude iron ore is iron ore as it is mined, whereas ground iron ore is a manufactured product which when ground in oil becomes paint. Crude iron ore moves in open-top equipment, ground iron ore is shipped in paper sacks, and, in order to avoid damage in transit, is loaded in water-tight box-car equipment, free from nails and slivers. Circumstances and conditions surrounding transportation of these commodities are so dissimilar as to warrant lower rates on crude than on ground iron ore. Winters Metallic Paint Co. v. C., M. & St. P., 93 I. C. C. 427.

(uu) Rate on petroleum oil, in tank cars, found not unreasonable or otherwise unlawful as compared with lower rates on liquid asphalt, ice, lumber, bottles, and sand and gravel. Huber v. C. R. R. Co. of N. J., 93 I. C. C. 539.

(vv) Applicable class rates assessed on electrical heating and cooking appliances from Marion, Ind., to San Francisco, found not unreasonable, discriminatory, or unduly prejudicial as compared with lower commodity rates contemporaneously in effect on water heaters and other articles of a like or competitive nature, or with commodity rate subsequently established at complainant's request to assist it in competing with Pacific coast manufacturers. Rutenber Electric Co. v. C., C., C. & St. L., 93 I. C. C. 541.

(ww) Rates on imitation leather found unreasonable to extent they exceed contemporaneously applicable rate on leather. Reparation awarded. Chevrolet Motor Co. v. Director General, 93 I. C. C. 544.

(xx) Contention that whole shells used in making buttons may properly take higher rates than crushed shells, a waste product used principally for mixing in poultry feed, not sustained. Such contention lays emphasis on use made of an article, a basis upon which the commission has repeatedly refused to sanction different rates. Pioneer Pearl Button Co. v. St. L.-S. F., 93 I. C. C. 599, 601.

(yy) Rate on returned paper-winding cores found unreasonable to extent it exceeded the rate contemporaneously in effect on newsprint paper. Subsequent to movement carrier provided in its tariff that rate on cores returned to mill point from which originally shipped wound with paper would not exceed rate on newsprint paper in reverse direction. Reparation awarded. Nelson Estate v. C., M. & St. P., 93 I. C. C. 607.

(zz) Rates on munition lint found unreasonable to extent they exceeded rates on cottonseed-hull shavings. Transportation characteristics of the two commodities are practically identical, and aside from the manufacture of munitions they are used for substantially similar purposes. Reparation awarded. Pearson & Co. v. S. L., B. & M., 93 I. C. C. 681.

(3a) Class rate on woven paper fabric bags found unreasonable as compared with rates on numerous paper articles and to extent it exceeded lower commodity rate contemporaneously in effect on paper bags. Reparation awarded. Cleveland Akron Bag Co. v. W. & L. E., 93 I. C. C. 694.

(3b) Rates on vehicles, assessed on army escort wagons, found applicable and not unreasonable as compared with rates on farm wagons. Further than to show that shipments loaded in excess of the minimum weight applicable to farm wagons and that no special type of equipment was required, complainant submitted no evidence in support of its contention that rates charged were unreasonable, discriminatory or unduly prejudicial. Neither is there any showing of further movement of escort wagons between points concerned in order to justify establishment of rates for the future. Taylor v. I. & G. N., 95 I. C. C. 55.

(3c) Rates on scrap brass and brass ingots or pigs found unreasonable to extent they exceeded rates on scrap copper and copper ingots or pigs. Reasonable rates for future prescribed and reparation awarded. Union Smelting & Rfg. Co. v. C. R. R. Co. of N. J., 95 I. C. C. 104.

(3d) Rates on wire rods from Acme and Peoria, Ill., Harriet, N. Y., and Johnstown, Pa., to Kansas City, Mo., found not unreasonable or otherwise unlawful. Complainants submitted comparisons with rates on billets and other commodities taking rates the same as on billets east of the Mississippi and showed that wire rods generally take rates equal to those on billets in eastern trunk line, c. f. a., and southern territories. Defendants, however, showed that density of traffic and element of competition produce a lower level and different basis of

rates in c. f. a. than in territory west of the Mississippi; also that wire rods are farther advanced in stage of manufacture than billets, can not be distinguished from other kinds of rods manufactured from billets, and that it is practically impossible from a classification standpoint to draw a line between the different commodities after they have passed the billet stage. Black Steel & Wire Co. v. A., T. & S. F., 95 I. C. C. 161.

(3e) Rates on lard substitutes, cottonseed, and other cooking oils, in peddler cars, found unreasonable and unduly prejudicial to extent they exceed the contemporaneous rates on lard, in peddler cars, for equal distances. From transportation and commercial standpoints lard substitutes are closely related to lard and in 32 I. C. C. 192, the commission prescribed same rate on lard substitutes as applied on packing-house products, in which group lard is included. Moreover, in important particulars lard substitutes have more favorable transportation characteristics as they do not require icing and may move in ordinary channels, whereas lard requires refrigeration. Interstate Cotton Oil Rfg. Co. v. A., T. & S. F., 95 I. C. C. 171.

(3f) Contention that rig irons are analogous to and should be accorded same commodity rate as iron and steel articles, not sustained. While some parts of rig irons are listed in tariffs as iron and steel articles, other parts such as wooden bull wheels and calf wheels, arms, clamps, and pins, are not included in that list. Moreover, it is probable that with possible exception of lumber there are no manufactured articles transported which move in the volume or cover so wide a field of distribution as iron and steel articles. Parkersburg Rig & Reel Co. v. C., R. I. & P., 95 I. C. C. 181, 187.

(3g) Rate on crushed asphalt rock from Dougherty, Okla., to Kansas City, Mo.-Kans., assessed under distance scale, found unreasonable as compared with rates contemporaneously in effect on similar commodities for comparable distances in same general territory. Reparation awarded to basis found reasonable and reasonable rate prescribed for future. Roudebush v. A., T. & S. F., 95 I. C. C. 319.

(3h) Rates on feldspar found unreasonable as compared with rates on brick, ice, cement, pig iron, iron ore, marble blocks, rough, dressed, or sawed sandstone, and iron and steel borings and turnings. Oxford Soap Co. v. B. & M., 95 I. C. C. 615, 616.

(3i) Third-class rates on oleomargarine found not unreasonable as compared with rates on butter. Both before and after shipments here involved moved, same rates applied on oleomargarine, butter, cheese, dressed poultry and eggs, but during period of movement lower emergency rates on all these commodities, except oleomargarine, were in effect, having been established by carriers as a temporary relief for farmers. Oleomargarine was not included in the reductions as it was not considered a direct product of the farm or ranch, but purely a manufactured product. Moreover, in Kansas Car-lot Egg Shippers' Asso., 53 I. C. C. 59, third-class rates were found by the commission to be just and reasonable maximum rates on butter, butterine, oleomargarine, dressed poultry, and eggs. Jelke Co. v. C. & N. W., 95 I. C. C. 643.

(3j) Rate on sporadic shipments of ferromanganese found not unreasonable as compared with lower rates on other raw materials used in the manufacture of steel, or with rates on various commodities which for similar distances yielded earnings in excess of those under rate assailed. Bush v. Director General, 95 I. C. C. 661.

(3k) Rates on talc found not unjustly discriminatory or unduly prejudicial, but unreasonable as compared with rates on ground and crude barytes, feldspar, and clay. Reparation awarded. Standard Mineral Co. v. N. S. R. R., 95 I. C. C. 704.

(3l) The competitive situation as to rates on green coffee is in many respects similar to that as to sugar. Coffee from Galveston and Other Gulf Ports, 58 I. C. C. 716. Omaha Chamber of Commerce v. A., T. & S. F., 95 I. C. C. 713, 716.

(3m) Shippers stressed fact that fresh meat, fruits and vegetables and dairy products all move in refrigerator cars and have like transportation characteristics, except as to volume of movement, and urged the establishment of rates on dairy products on basis of either the fruit and vegetable or fresh meat rates, preferably the latter. FOUND, same contentions have been urged in other cases wherein rates on dairy products have been in issue, but the commission has never been impressed with the

cogency of this reasoning. Butter, Eggs, Dairy Products, and Poultry, 96 I. C. C. 19, 29.

(3n) Shipper claimed that relationship between dressed and live poultry is analogous to that which exists between a manufactured product and its raw material, and directed attention to rates on livestock which in many instances are lower than those on fresh meat and packing-house products. Considered from this standpoint it contended that live poultry should be entitled to rates at least as low as those on dressed poultry. FOUND, even if dressed poultry should be regarded as a manufactured product of the live fowl as raw material, the latter need not necessarily take as low a rate; moreover, live and dressed poultry are not analogous from a transportation standpoint nor are the conditions surrounding their shipment substantially similar. Butter, Eggs, Dairy Products, and Poultry, 96 I. C. C. 19, 35.

(3o) Applicable rate on mixed shipment of various canned goods, including chili sauce, found unreasonable to extent it exceeded lower rate on all commodities included in the shipment, in straight or mixed carloads, except chili sauce, that commodity having been added to list taking the lower rate subsequent to movement. Waiver of undercharges authorized. Oakes & Co. v. O. S. L., 96 I. C. C. 95.

(3p) Following Wright & Wimmer, 81 I. C. C. 685, rates on cullet (broken glass) found not unreasonable or otherwise unlawful as compared with lower rates on oyster shells. While oyster shells are used to certain extent as a stucco finish and therefore come into competition with cullet they are used also in the manufacture of fertilizer material and chicken feed and move more extensively and regularly than cullet. Moreover, there is no showing that any of complainant's competitors are unduly preferred by the rates on oyster shells. Marion Glass Dash Co. v. P. R. R., 96 I. C. C. 172.

(3q) Rates on seed potatoes found not unreasonable as compared with rates contemporaneously applicable on wheat in same general territory. Wheat moves in box cars and loads on an average of 83,600 pounds, while potatoes move in refrigerator cars and load on an average 38,123 pounds, which is as heavy as proper ventilation will permit. Northwest Potato Exchange v. G. N., 96 I. C. C. 187, 189.

(3r) Fifth-class rates on brass and copper scrap from New York City to New England destinations, found not unreasonable, discriminatory, or unduly prejudicial, as compared with lower commodity rates accorded other commodities of a similar nature for same measure of service. Evidence introduced found too meager to warrant finding sought. Moreover, rates assailed are the basis in effect, without exception, on scrap brass and copper within New England territory and were approved by commission in 49 I. C. C. 421. Lissberger & Co. v. N. Y., N. H. & H., 96 I. C. C. 231.

(3s) Second-class rating and rates applicable on l. c. l. shipments of printed waxed wrapping paper between points in official territory, found not unduly prejudicial but unreasonable to extent they exceeded, exceed, or may exceed, third-class rating and rates contemporaneously applicable on l. c. l. shipments of waxed wrapping paper unprinted. Printed waxed paper weighs the same, occupies same amount of space in a car, and is shipped in same kind of container as unprinted waxed paper, the only difference being that the printed paper is slightly more valuable. Moreover, waxed paper, printed and unprinted, in official classification takes same c. l. rating and in both southern and western classification the same l. c. l. rating. Reparation awarded. General Baking Co. v. P. R. R. Co., 96 I. C C. 280.

(3t) Rates on peaches, pears, and plums, in baskets, in carloads, from points in the Yakima Valley to various interstate destinations found unreasonable and rates on apples, in bulk or in baskets, in carloads, between the same points found unreasonable and unduly prejudicial, to the extent in each case that such rates exceed the contemporaneous rates on those fruits from and to the same points in boxes, in carloads. Kloeber v. N. P. Ry. Co., 96 I. C. C. 437.

(3u) Rates on linseed-oil meal and oil cake from Edgewater, N. J., to Toledo, Ohio, and Waukegan, Ill., following finding in 89 I. C. C. 260, found to have been unreasonable to the extent they exceeded rates contemporaneously applicable on gluten feed and glucose feed. Reparation awarded. Midland Linseed Products Co. v. N. Y. C. R. R. Co., 96 I. C. C. 447.

(3v) Rates on linseed oil from New York Harbor points to Black Rock and Buffalo, N. Y., and Bridgeburg, Ont., following finding in 68 I. C. C. 522, found to have been unreasonable to the extent they exceeded the rates contemporaneously applicable from and to the same points on cottonseed oil. Reparations awarded. Pratt & Lambert v. N. Y. C. 96 I. C. C. 460.

(3w) Rates on crude, fuel and gas oils from Clay Spur and Osage, Wyo., to points in South Dakota, Iowa, Minnesota, and Wisconsin, found not unreasonable or otherwise unlawful. Although equal to rates contemporaneously maintained on refined oils to and from same points, such rates compare favorably with the rate on crude oil from Lander, Wyo., to Ardmore, S. Dak., found not unreasonable in 91 I. C. C. 563. Complaint dismissed. Barber Co. v. C. & N. W. Ry., 96 I. C. C. 516.

(3x) Rates and ratings applicable on electric table stoves, with equipment of cooking utensils, in less than carloads, from Huntington, W. Va., to interstate destinations throughout the United States found not unreasonable or otherwise unlawful as compared with rates and ratings on other similar electric appliances. Complaint dismissed. Armstrong Mfg. Co. v. A. & R. Ry. Co., 96 I. C. C. 595.

(3y) First-class and commodity rates assessed on shipments of hog bristles from Pacific coast ports to New York, N. Y., which were washed, sorted, and bunched prior to shipment, thus changing their character so that they could no longer be considered as coming within the designation "other than crude" within the meaning of the tariffs, found applicable. Cone & Co. v. Director General, 96 I. C. C. 629.

(3z) Rate charged on one carload of dried beet pulp from Bayard, Nebr., to Jackson, Miss., was unreasonable to the extent it exceeded the then existing rate on corn between same points, but present rate held not unreasonable. Complaint dismissed. Jackson Traffic Bureau v. C., B. & Q. R. R. Co., 96 I. C. C. 763.

(4a) Rates on hollow building tile from Alberhill, Calif. to Saticoy, Edfu, and Santa Paula, Calif. moving during Federal control, found unreasonable to extent they exceeded the rate contemporaneously in effect on fire and wirecut face brick between the same points following National Paving Brick Mfrs. Asso. 68 I. C. C. 213, and the Memphis-Southwestern Investigation, 77 I. C. C. 474. Reparation awarded. Los Angeles Pressed Brick Co. v. Director General 98 I. C. C. 45.

(4b) Hollow building tile is comparable with lime, cement, and plaster from the standpoint of value and transportation hazards. Los Angeles Pressed Brick Co. v. Director General, 98 I. C. C. 45, 46.

(4c) Complainant seeking a commodity rate in lieu of first-class rate on artificial silk made comparisons with various commodities rated first class, any quantity on which commodity rates between specific points are published. FOUND, that the commodity rates on these nonanalogous articles were established because of the volume of the movement and competitive and other conditions having no relation to the movement of artificial silk, which is not competitive with any of the articles named. Viscose Co. v. P. R. R. Co., 98 I. C. C. 97, 99.

(4d) Proposal to increase rating on jute packing in official, southern, and western classifications, designed to provide same ratings as those applicable on oakum and to prevent shippers from obtaining lower rates by billing this commodity as rope, found not justified. Jute packing in rope form is not, in fact, oakum or rope, and it is not evident how the proposed specific classification rating would serve to stop the practice of shipping this commodity as rope. Classification of Jute Packing, 98 I. C. C. 287.

(4e) The classification rule of analogy by its own terms can not be invoked to rate any commodity embraced in the classification as an article not otherwise indexed by name. See 85 I. C. C. 383. Classification of Jute Packing, 98 I. C. C. 287, 288.

(4f) Rates on coconut stearine, in c. l. and l. c. l., from Bayonne, N. J., to points in official territory, found unreasonable and unduly prejudicial to extent they exceed rates contemporaneously applicable on peanut, cottonseed, palm-kernel and mixed stearines. Reasonable and nonprejudicial rates prescribed for future and reparation awarded. Best Foods v. C. R. R. Co. of N. J., 98 I. C. C. 331.

(4g) Rates on, wall, oatmeal, ingrain paper, from North Hoosick and Walloomsac, N. Y., and Appleton and Neenah, Wis., to Jersey City, N. J., and Philadelphia, Pa., found not unreasonable as compared with corresponding contemporaneous rates on unfinished wall papers from and to same points. Becker, Smith & Page, Inc., v. B. & M. R. R., 98 I. C. C. 337.

(4h) Rates on tanning extract, from Newport, Tenn., to Olean, N. Y., found not unreasonable or unduly prejudicial as compared with lower contemporaneous rates on cottonseed oil from numerous southern points to Pittsburgh and Philadelphia, Pa., and New York, N. Y. Cottonseed oil is a liquid, moves in tank cars, and from a transportation standpoint is said not to differ materially from tanning extract. England Walton & Co. v. Sou. Ry. Co., 98 I. C. C. 449.

(4i) Rate on wooden wagon bows, from Columbus, Ohio, to Sherman and Stamford, Tex., specifically named in the tariff on this commodity, found unreasonable to extent it exceeded and exceeds lower contemporaneous rate on "Wagon wood, not otherwise specified," which latter rate is prescribed as reasonable for future. Reparation awarded. Fort Smith Rim & Bow Co. v. B. & O. R. R. Co., 98 I. C. C. 536.

(4j) Rates on clam and mussel shells, valuable for button manufacture, from points in Illinois to points on the Mississippi River in Illinois and Iowa, found not unreasonable or unduly prejudicial as compared with rates on fertilizer and on crushed, ground, or waste shells, valuable for fertilizer, stucco dash, and chicken grit, between points in same general territory for similar distances. Mississippi Pearl Button Co. v. A., T. & S. F. Ry. Co., 98 I. C. C. 560.

(4k) Complainant attacked classification rates charged on Chero Cola sirup shipped between Feb. and Sept. 1922 from Columbus, Ga., to Montgomery, Ala., as inapplicable and unreasonable in violation of section 1. Third class rates of 65.5c prior to July 1, 1922 and the less carload shipments and fifth class 59c subsequent thereto were charged on rate of 40.5c prior to July 1, 1922 on one carload, applicable in connection with the description and rating provided in the southern classification on flavoring sirup. The tariff in effect at time of movement provided lower commodity rates on molasses and sirup (except fountain and coloring.) While Chero Cola in a narrow sense may not be dispensed over fountains, nevertheless it is similar to Cocoa Cola and other fountain beverages and would come under the general classification of fountain sirups. HELD, applicable rates charged and not unreasonable complaint dismissed. Chero Cola Bottling Co. v. C. of Ga. Ry. 107 I. C. C. 355.

(4l) Rate on wood pulp found not applicable also on shipments of wood flour from Hercules, Calif., to Bacchus, Utah, at time shipments moved, and applicable rate on such shipments found unreasonable to extent it exceeded rate applicable on wood pulp, which was subsequently established on wood flour. Reparation awarded. Hercules Powder Co. v. Director General, 100 I. C. C. 393.

(4m) Unless contrary to decision in the Midland case, 68 I. C. C. 522, there is no substantial competition between the oils classed by the carriers as paint oils and those classed as soap oils, respondents' proposal to establish different rates on the soap oils between points in trunk-line territory and from such points to destinations in central territory is necessarily within the prohibition of section 3 of the act. Vegetable Oils from Trunk Line Points, 100 I. C. C. 736.

(4n) While peanut oil is derived from peanuts its transportation characteristics are dissimilar from those surrounding the movement of peanuts, and there is no sufficient showing in this record to justify the prescription of rates on peanuts that bear any fixed relationship to rates on peanut oil, nor are rate comparisons between commodities of such diverse transportation characteristics particularly helpful. United Fig & Date Co. v. A. C. L., 101 I. C. C. 138.

(4o) Complainants describe manufacture of strawboard and paper and name principal ingredients in these and various other like products; introduce evidence as to relative values and seek to have strawboard excepted from the general list of boards on which a rating of 90 per cent of sixth class, prescribed in 52 I. C. C. 84, applies, and given a rating of 80 per cent of sixth class, minimum 40,000 pounds. HELD, All these boards are so similar from standpoint of

manufacturing process, value, use, and transportation characteristics, that they naturally fall into one group and should be accorded a common basis of rates. This has been previously thoroughly established in Schulz Co., 20 I. C. C. 403, and other cited cases. Lafayette Box Board & Paper Co. v. A., C. & Y., 101 I. C. C. 273, 274, 278.

(4p) Rates on cedar pencil slats found unreasonable to extent they exceeded 120 per cent of the rates on lumber of same species. Reasonable rates prescribed for future and reparation awarded. Dixon Crucible Co. v. P. R. R., 101 I. C. C. 415.

(4q) Shippers contended that cheese throughout its transportation history had been improperly associated with butter, eggs, and dressed poultry, and that rates on cheese should not exceed 80 per cent of the rates on those commodities. FOUND: Record as a whole does not warrant a lower level of rates on cheese than would result under the scale prescribed on butter in the Dairy Products case, 96 I. C. C. 19. Cheese from Wisconsin, 101 I. C. C. 744, 754.

(4r) Complainant attacked first and fourth class ratings on metal columns, less carload and carload, in official classification as unreasonable and unduly prejudicial to extent such ratings exceed third and fifth on hollow wooden columns. Metal columns are listed in the classification under the heading of building sheet metal work. They are shipped in crates and almost exclusively in less carload lots inclosed equipment. The claims for loss and damage are negligible. Hollow wooden columns are made in the same sizes as metal columns and are used for substantially the same purposes and are sold in competition therewith, at least to some extent. The fact that they take lower ratings is not shown to have operated in any way to complainants injury or prejudiced the marketing of its commodity. Metal columns take the same rating in all three classifications, have a considerably lower weight per cubic foot and higher value per pound than other building sheet metal work or hollow wooden columns. The mere fact that they compete with the latter to some extent does not entitle them to the same ratings. HELD, ratings attacked not unreasonable, unjustly discriminatory or unduly prejudicial, complaint dismissed. Union Metal Mfg. Co. v. A. C. & Y. Ry., 109 I. C. C. 490.

(4s) The classification contains a limited number of ratings, and commodities possessing somewhat different transportation characteristics must often of necessity be assigned to the same class. French Battery & Carbon Co. v. C. & N. W. Ry., 112 I. C. C. 128, 131.

(4t) Complainant attacked commodity rates charged on canned evaporated milk, in cases, in carloads and less carloads, shipped between March 3, 1923 and Jan. 31, 1925 from Greensboro, Md., to Wilmington, Del., Chester and Philadelphia, Pa., Norfolk, Va., and Baltimore, Md., as unjust and unreasonable to extent they exceed the rates on canned goods. By exceptions to the classification the carload rating on evaporated and condensed milk is fifth class, and in less carloads, rule 26. On Dec. 1, 1916 commodity rates lower than the class rates were established and have since been maintained on canned goods, in carloads and less carloads, but not on canned goods. The rates on evaporated milk from Greensboro are on the same basis as all other rates on that commodity from Pennsylvania Railroad shipping points in trunk line territory. In no instance is there a commodity rate on evaporated milk. It is not in competition with canned goods. In previous cases the Commission has found the rates on condensed milk should be on the same basis as canned goods. HELD, rates attacked unreasonable to extent they exceeded rates on canned goods, reparation awarded. Pet Milk Co. v. P. R. R., 112 I. C. C. 155.

(4u) The Commission has frequently found that the rates on canned, condensed or evaporated milk should not exceed the rates on canned fruits and vegetables. Pet Milk Co. v. P. R. R., 112 I. C. C. 155, 157.

(4v) Complainant attacked rates charged on gum cigar box lumber, carloads, shipped between April 27, 1921 and Nov. 8, 1923 from Magazine, Ala., to Omaha, Neb., as unreasonable and in violation of the fourth section. Charged 56c and 50.5c, being joint commodity rates applicable on cigar box lumber, carloads. Rates of 45.5c and 41c were maintained on lumber, except cedar, cherry, mahogany and walnut and cigar box material and the tariffs also pro-

vided that lumber rates would apply on box and crate material, wood, wired, loose or in bundles. While the earnings were slightly higher than the earnings on the rates on lumber, such fact alone does not demonstrate that the rates attacked were or are unreasonable. The rates charged do not exceed the aggregate of intermediates, complaint dismissed. Eggerss O'Flyng Co. v. A. G. S. Ry., 112 I. C. C. 218.

(4w) Complainant attacked combination rates charged on 42 cars of composboard, shipped between May 26, 1921, and August 27, 1923 from Minneapolis, Minn., to New Rochelle and New York as unjust, unreasonable unjustly discriminatory to extent the rates charged exceeded the rates maintained on wallboard. Applicable rates prior to March 15, 1922 was 97c made up of 34c to Chicago and 63c beyond. Effective March 15, 1922 and until June 30, 1922 a combination rate of 86c was applicable and on that date reduced to 77c, and on Aug. 27, 1923 when a joint rate of 63.5c was established. Rates were on wall board prior to July 1, 1922 70.5c and subsequent thereto 63.5c. HELD, rates attacked not unreasonable but unduly prejudicial to extent they exceeded rates on wall board, reparation denied, complaint dismissed. Wright Lumber Co. v. A. A. R. R. 112 I. C. C. 337.

ALL OTHER CITATIONS

O-So-Ezy Products Co. v. Director General, as Agent, 85 I. C. C. 187; American Mills Co. v. C. R. R. Co., 85 I. C. C. 214; Nebraska Bridge Supply & Lumber Co. v. Director General, as Agent, 85 I. C. C. 327; West End Chemical Co. v. L. A. & S. L. R. R. Co., 85 I. C. C. 339; Ratings on Army Tractor Tanks, 85 I. C. C. 383; Decker & Sons v. Director General, as Agent, 85 I. C. C. 389; El Paso Bitulithic Co. v. E. P. & S. W. R. R. Co., 85 I. C. C. 425; Southern Cotton Oil Co. v. Director General, as Agent, 85 I. C. C. 433; Citizens Gas & Electric Co. v. A. T. & S. F. Ry. Co., 85 I. C. C. 435; Germain Co. v. L. & N. R. R. Co., 85 I. C. C. 449; General Iron Works v. Director General, as Agent, 85 I. C. C. 452; Friedlander v. Director General as Agent, 85 I. C. C. 465; Louisville Fire Brick Works v. Director General, as Agent, 85 I. C. C. 457; Lilly Co. v. O. S. L. R. R. Co., 85 I. C. C. 644; Atwood-Crawford Co. v. M. C. R. R. Co., 85 I. C. C. 651; Crown Willamette Paper Co. v. Director General, as Agent, 85 I. C. C. 657; Midwest Refining Co. v. Director General, as Agent, 85 I. C. C. 719; Sweet Dreams Co. v. L. & N. R. R. Co., 88 I. C. C. 33; Garrett-Callahan Co., v. A. C. L. R. R. Co., 88 I. C. C. 103; Mangelsdorf Seed Co. v. A. T. & S. F. Ry. Co., 88 I. C. C. 120; Hollingshead Co. v. A. & R. R. Co., 88 I. C. C. 191; American Splint Corp. v. C. P. Ry. Co., 88 I. C. C. 221; Midland Linseed Products Co. v. N. Y. S. & W. R. R. Co., 88 I. C. C. 329; American Linseed Co. v. N. Y. C. R. R. Co., 88 I. C. C. 427; Diamond Match Co. v. Director General, as Agent, 88 I. C. C. 435; Boher & Hosfeld v. B. & M. R. R., 88 I. C. C. 449; Steuart, Son & Co. v. Director General, as Agent, 88 I. C. C. 469; List & Gifford Construction Co. v. M. & O. R. R. Co., 88 I. C. C. 499; French Lick Spring Hotel Co. v. A. G. S. Ry. Co., 88 I. C. C. 503; Lakewood Engineering Co. v. B. & O. R. R. Co., 88 I. C. C. 588; Cutler-Hammer Mfg. Co. v. Director General, as Agent, 88 I. C. C. 600.

§18. Specific Comparisons.

See Supra §17; Comparative Rates.

(a) Where the classification provides a specific rating on an article, a broad description used in connection with a lower commodity rate under which such article may be included does not take it out of the classification. Cleveland Akron Bag Co. v. W. & L. E. Ry., 93 I. C. C. 694, 695.

§20. Different classification territories.

See Class Rates §2 (3k) (3w); Through Routes and Joint Rates §20¾.

(a) The commission has recognized that greater traffic density and more favorable operating conditions north of Ohio River than south thereof warrant lower rates north of the river. Commercial Club of Carrollton, 55 I. C. C. 697. Cincinnati Asso. of Purchasing Agents, v. L. & N. R. R. Co., 89 I. C. C. 285, 294.

(b) General level of rates in the southwest is higher than in c. f. a. territory. Liberty Glass Co. v. M. P. R. R. Co., 89 I. C. C. 362, 364.

(c) Respondents in the three general classification territories proposed some changes in their ratings and minimum weights on automobile fenders. The proposal contemplated absolute uni-

formity in less than carload ratings and practical uniformity in carload ratings. The entire set of classification items covering automobile fenders has been rewritten and a number of changes have been made, but the one to which the parties principally directed their evidence is that which provides an increase in the carload rating on finished fenders, nested, in boxes or crates. In this item respondents proposed to increase the rating from fourth class, minimum 30,000 pounds, to second class minimum 12,000 pounds, subject to the graded minimum rule for cars in excess of 36 ft. 6 inches in length. Finished fenders. nested and packed, weigh on the average about 7 pounds per cubic foot, and have an average value of about 10c per pound. Comparatively speaking, they do not constitute a commodity of very high value and are rather light and bulky. The classification provides fifth class rating in official and southern territories and class A in western territory on unfinished fenders, in carloads, minimum 30,000 pounds and no change in rating is proposed. A carload of finished fenders is considerably less valuable than a carload of unfinished, mainly because the former contains fewer fenders, more space being used per fender on account of the method of packing and loading. On finished fenders, nested, in boxes or crates, in less carloads, an increase from second to first class is proposed. On unfinished fenders, nested, in boxes, bundles or crates, in less carloads, an increase from third to second class is proposed in official classification, which would make the rating the same as that obtaining at present in the two other classifications. On unfinished fenders, not nested, less carloads, an increase from third to second class is proposed in official classification, which would make the rating the same as that obtaining at present in the two other classifications. On unfinished fenders, not nested, less carloads, a reduction from double first class to 1.5 times first class is proposed in western classification. HELD, suspended schedules justified except as to finished fenders, carloads. On such fenders, when loose or in bundles the rating should not exceed second class, minimum 10,000 pounds, and when nested, in boxes or crates, third class, minimum 14,000 pounds, in each instance subject to rule 34. Classification of automobile fenders, 92 I. C. C. 223.

(d) Complainant attacked fifth class rate of 63c charged on 22 cars of cottonseed hull shavings in compressed bales shipped during October and November 1922 from East St. Louis, Ill., to Hopewell, Va., as unreasonable to extent it exceeded the subequently established rate of 33.5c. Between December 21, 1919 and Nov. 20, 1922 rates on shavings from Cairo, Ill., Louisville, Ky., and Cincinnati, O., to Hopewell were uniformly the same as rates on hulls and that East St. Louis alone was singled out for a different rate basis. HELD, rate attacked unreasonable to extent it exceeded 36c, reparation awarded. East St. Louis Cotton Oil Co. v. B. & O. R. R., 92 I. C. C. 633.

(e) Higher unit cost of transportation and generally higher level of rates on all commodities in western territory as compared with c. f. a. territory is due to comparative traffic densities of the two territories. Rates and Charges on Grain and Products, 91 I. C. C. 105, 131.

(f) Differences in transportation conditions and density of traffic justify relatively higher rates in western territory than in the East. Wool Rates Investigation 1923, 91 I. C. C. 235, 272.

(g) Proposed changes in ratings and minimum weights on automobile fenders in the three general classification territories, involving both increases and reductions, for purpose of establishing absolute uniformity in l. c. l. ratings and practical uniformity in c. l. ratings, found justified, except as to finished fenders in carloads. Classification of Automobile Fenders, 92 I. C. C. 223.

(h) Comparisons of rate levels in the respective classification territories serve no useful purpose in a case involving reasonableness of a classification rating in a particular classification territory. Coca-Cola Co. v. B. & O., 92 I. C. C. 340, 343, 344.

(i) When an article is produced in two separate classification territories and there is competitive interterritorial distribution of the article, the base rates should be the same in opposite directions. See Houston Packing Co. 37 I. C. C. 584. Salt Cases of 1923, 92 I. C. C. 388, 422, 423.

(j) Quite generally the rate levels in the Southwest are somewhat higher than in the Southeast. Horse and Mule Rates in the Southwest, 1924, 93 I. C. C. 479, 489.

(k) Traffic density as a whole in southern district exceeds that in the western district, but general rate levels in western district are higher than in southern; also operating expenses of carriers in western district are proportionately higher than those of carriers in southern district and latter have been, and are, yielding a higher return on investment than the former. Alabama & Mississippi Ry. Co. v. A., T. & S. F., 95 I. C. C. 385, 402, 403.

(l) What would be a reasonable rate for a haul in a territory with no adverse transportation conditions would not be adequate to compensate carriers operating in another section of the country under adverse conditions. Carter Oil Co. v. C., B. & Q., 96 I. C. C. 217, 218.

(m) Joint rates from central, trunkline, and New England territories to the Twin Cities are published in tariffs subject to the official classification, while the rates from Chicago to Fargo are published in tariffs subject to western classification. Traffic moving on class rates to Fargo from points east of and basing on Chicago is entitled to proportional rates from the latter point which are somewhat lower than reasonable class rates on local traffic from Chicago. This is desirable in order to remove the present discrimination brought about by the existing differences in the classifications east and west of Chicago. Fargo Commercial Club v. A. & W. Ry. Co., 98 I. C. C. 691, 720, 724.

(n) The Commission can not consent to the proposition that the lower rate level in official classification territory can properly be offset by higher classification ratings. Classification of radio sets and talking machines 107 I. C. C. 175, 177.

(o) Protestants' conclusion with regard to proposed revision of all-rail and rail-and-water rates, c. l. and l. c. l., on furniture from southern district to eastern points, are based upon premises open to serious criticism. The assumption that capital cost and operating expense may be charged entirely to freight, for purpose of this case, disregards the immensely greater expense of passenger terminals in the eastern than in the southern district and entirely omits consideration of the fact that interterritorial traffic moving largely in eastern district and not furniture rates within southern district is under consideration. Whatever weight might be given to such evidence with regard to portions of the hauls in southern district is largely neutralized when considering hauls beyond. Ton-mile earnings should ordinarily decrease with increasing distance, but it must be borne in mind that the average number of miles hauled in the southern district is approximately one-third greater than in eastern district. Furniture from Southern Points, 100 I. C. C. 127, 144.

(p) The rate structure of official territory is very different from that of southern territory, and no concession in class rates for benefit of Kentucky or North Carolina which record herein would justify would be of material importance in reducing discrepancy between class rates in those States and those which prevail in official territory. Southern Class Rate Investigation, 100 I. C. C. 513, 623.

(q) The commission has condemned, expressly or in effect, in several recent important rate cases cited, the practice of basing interterritorial rates upon the combination of local rates to and from border points. Southern Class Rate Investigation, 100 I. C. C. 513, 661.

(r) So far as operating conditions are concerned, it appears that the only distinction which can be drawn with any degree of validity between interterritorial service between central and southern territories and intraterritorial service within southern territory to the disadvantage of the former is the fact that at the boundary line there is ordinarily a change of carriers. Southern Class Rate Investigation, 100 I. C. C. 513, 662.

(s) Commission is of opinion that a uniform and unmodified application between official and southern territories on all-rail traffic of southern territory class-rate scale herein approved would in many instances result in rates which would neither be reasonable nor free from undue preference and prejudice, particularly to and from border districts of southern territory. The situation should be corrected by means of a scale of differential rates. Southern Class Rate Investigation, 100 I. C. C. 513, 675.

(t) Interterritorial all-rail class rates from or to points on other than standard lines, as defined herein, may be made by

addition of arbitraries for that portion of the joint haul over a line not classed as standard. Southern Class Rate Investigation, 100 I. C. C. 513, 704.

(u) Percentage rates on strawboard from and to points in central territory and from points in that territory to Canadian and trunk-line territories found not unreasonable, unjustly discriminatory or unduly prejudicial as compared with lower rates prescribed for application on certain papers and paper articles to and within western territory in Certain-teed Products Corp., 73 I. C. C. 82, and other cited cases. Lafayette Box Board & Paper Co. v. A., C. & Y., 101 I. C. C. 273, 275.

(v) Contention that rates on strawboard between c. f. a. and trunk-line territories are unreasonable because they exceed rates based on scale prescribed in C. F. A. Class Scale Case, 45 I. C. C. 254, not sustained. That scale was not intended as a measure of interterritorial rates, it being recognized that c. f. a. rates would not entirely harmonize with rates between central and trunk-line territories. Lafayette Box Board & Paper Co. v. A. C. & Y., 101 I. C. C. 273, 276.

(w) The differences in l. c. l. rates on grain and grain products and cottonseed meal and hulls east and west of the Mississippi River are due in part to difference between two divergent class rate structures, differences between western and southern classification ratings and rules, transportation and traffic conditions, relative financial strength of principal carriers serving the two territories, and differences between rates prescribed in Meridian Traffic Bureau 60 I. C. C. 5, and other cases. Natchez Frt. & Traffic Bureau v. M. P., 101 I. C. C. 476, 481.

(x) Between points in c. f. a. territory crude sulphur takes 75 per cent of sixth-class by exception to the official classification. For movements within trunk-line territory, 80 per cent of sixth class is a reasonable basis. See 89 I. C. C. 383; 87 I. C. C. 613. Detroit Chemical Works v. C. R. R. Co., 101 I. C. C. 671, 672.

(xa) Transportation conditions are more favorable in Mississippi Valley than in the Southwest. Miss. R. R. Comm. v. A. & V., 102 I. C. C. 540, 545.

(y) It is well known that the level of rates not only on grain but on all traffic is much lower in western trunk line territory than in the southwest. Ballman Cummings Furn. Co. v. C. & E. I. Ry., 109 I. C. C. 413, 415.

(z) Manifestly it would be improper to attempt to overcome differences in rate levels by rating articles higher in the official than in the western and southern classifications. National Commercial Fixture Mfrs. Asso. v. A. A. R. R., 109 I. C. C. 479, 483.

(aa) Fact that level of rates on commodities generally is somewhat lower north and south of Ohio and Potomac rivers can not be accepted as basis upon which to build a special case under the fourth section, more especially where hauls involved are of great length and where substantial portions of rate-making routes are in same territory as major portions of petitioning routes. North Carolina Pine Asso. v. A. C. L. R. R. Co., 85 I. C. C. 270, 303.

ALL OTHER CITATIONS

O-So-Ezy Products Co. v. Director General, as Agent, 85 I. C. C. 187; Lehigh Lime Co. v. A. C. & Y. Ry. Co., 85 I. C. C. 341; Indiana Public Service Commission v. A. A. R. R. Co., 85 I. C. C. 533; Diamond Match Co. v. Director General, as Agent, 88 I. C. C. 435.

V. REASONABLENESS AND DISCRIMINATION.

See Supra §15 (a), §17; Advanced Rates §3 (m); Any Quantity Rates (g) (s); Commodity Rates §3.

§22. In general.

(a) In comparative rate adjustments consideration may and should be given to economic conditions surrounding the traffic, so that an adjustment may result which will reflect as high a degree of uniformity as is practicable and at the same time accord to all interested the fair opportunity to which the law entitles them. Southwestern Coal Operators' Asso. v. A. & W. Ry. Co., 89 I. C. C. 73, 82.

(b) Fact that carriers in the southeast have accorded to nitrate of soda the fertilizer basis of rates does not establish that in the southwest rates on nitrate of soda higher than on fertilizer are unreasonable. New Orleans Joint Traffic Bureau v. A. & V. Ry. Co., 89 I. C. C. 223, 227.

(c) Second-class rating in western classification territory on steam superheaters and parts thereof, found unreasonable to extent it exceeded third class rating applicable in official and southern classifications. Power Specialty Co. v. D. & M. M. R. R. Co., 89 I. C. C. 251.

(d) Third class rating in official and southern classification territories on steam superheater and parts thereof, found not unreasonable as compared with lower fourth class rating applicable to boiler parts. Second-class rating in western territory found unreasonable to extent it exceeded third class. Reparation awarded. Power Specialty Co. v. D. & M. M. R. R. Co., 89 I. C. C. 251.

(e) Rates on gas oil, fuel oil, and gasoline, in tank-car loads, from Brunswick, Ga., to Charleston, S. C., found not unreasonable. While the commission has condemned application of same rate on refined and crude oils, it does not follow that because they carry the same rate that the crude oil rate is unreasonable, for it may be that the refined oil rate is too low. Rate comparisons submitted merely cited lower rates for similar distances without showing of conditions under which established, volume of movement, or similarity of transportation conditions. Moreover, route traversed is through an area of low productivity, largely swamp lands, and ton-mile yield returned by rates between points in other territories is not persuasive as to what should be reasonable for haul here involved. Atlantic Refining Co. v. A., B. & A. Ry. Co., 89 I. C. C. 279.

(f) Classification ratings on vitrolite slabs and table and counter tops in excess of five-sixteenths inch in thickness found unreasonable and unduly prejudicial to extent they exceed the ratings contemporaneously applicable on marble slabs and table and counter tops, and on vitrolite scale platters to extent they exceed ratings greater than one class higher than on vitrolite slabs and counter and table tops. Reasonable and nonprejudicial ratings prescribed. Vitrolite Co. v. A., T. & S. F. Ry. Co., 89 I. C. C. 367.

(g) Present rates on tin cans, c. l. and l. c. l., from Buchanan, Va., to destinations in southern classification territory found not unreasonable or otherwise unlawful, but prior to voluntary establishment by carriers of present differential basis, Buchanan over Virginia cities group, c. l. rates found unreasonable and unduly prejudicial in favor of Bedford, Va., a competing point located within Virginia cities group. Reparation awarded. Virginia Can Co. v. A. & V. Ry. Co., 89 I. C. C. 558.

(h) Complainant attacked as unreasonable fifth class rates charged on linseed oil from Philadelphia, Pa., to Buffalo, N. Y., Pittsburgh, Pa., between May 1, 1922 and May 10, 1923, and to other points in trunk line and central territory between May 1, 1922 and Dec. 15, 1923. Effective May 10, 1923 commodity rates on linseed oil were established on the same basis as the rates on copra, peanut, soya bean oils, carloads. HELD, rates attacked unreasonable to extent they exceeded rates on copra, peanut, and soya bean oils, reparation awarded. Bisbee Linseed Company v. P. R. R., 91 I. C. C. 55.

(i) Complainant attacked joint fifth class rate of 68.5c charged on two cars of second hand side dump cars, shipped from Clyde, Ill., to McKenzie, Tenn., in March 1923, as illegal and unreasonable to extent it exceeded sixth class rate of 56.5c. Shipments moved over Burlington to Metropolis, Ill., P. & I., to Paducah, Ky., N. C. & St. L., beyond. Cars, railway, not moved on own wheels are rated fifth class. Outfits, bridge builders, contractors or graders, n. o. i. b. n., are rated sixth class. HELD, joint fifth class rate applicable and not unreasonable complaint dismissed. Johnson Porter Clay Co. v. C. B. & Q. R. R., 91 I. C. C. 71.

(j) Complainant attacked combination class rates charged on speedometers, less carloads, from New Rochelle, N. Y., to Pueblo, Colo., in November, 1920, as unjust and unreasonable. Speedometers and parts less carloads, were rated double first class in western territory and first class in official, charged $5.47 double first class west of the Mississippi river and $1.84 east thereof, first class. First class rates were subsequently established both east and west of the river, following 64 I. C. C. 541. HELD, rates attacked unreasonable to extent they exceeded first class, reparation awarded. Baker Steam Motor Car & Mfg. Co. V. A. T. & S. F. Ry., 91 I. C. C. 381.

(k) Complainant attacked fourth class rates charged on 10 cars of bichro-

mate of potash from Jersey City, N. J., to Waukegan and Chicago, Ill., between June and December, 1922, as unreasonable. Charged fourth class rate of 73.5c prior to July 1, 1922 and 66c thereafter. Bichromate of soda under exceptions takes sixth class rates, being 52.5c prior to July 1, 1922 and 47.5c thereafter. The value of bichromate of potash admittedly is greater than that of bichromate of soda. Bichromate of soda is produced much more extensively than bichromate of potash. Complainant uses less than one carload a month at its Waukegan and Chicago tanneries. No evidence introduced indicating that the earnings on this traffic are excessive, and the record does not warrant a finding that the fourth class rates are unreasonable per se. HELD, rates attacked not unreasonable, complaint dismissed. Griess Pflieger Tanning Co. v. C. R. R. of N. J., 91 I. C. C. 566.

(l) Complainant attacked class rates charged on 32 cars of Epsom salts from Atlanta, Ga., to Greensboro, N. C., during federal control as unreasonable. Shipments moved via Southern, applicable sixth class rate of 41.5c. There was a commodity rate of 31.5c on Epsom salts from Atlanta to Durham and Winston-Salem, N. C., to both of which Greensboro is intermediate over the Southern and on March 13, 1921 the Southern voluntarily reduced the rates to Greensboro to the basis applicable to the above named points, and that adjustment has since been maintained. No shipments moved to either destination from June 25, 1918 to the end of federal control, and none from Atlanta to any of the points named except to Greensboro. Sixth class are generally applicable on this traffic in the southeast. HELD, rates attacked not unreasonable, complaint dismissed. Proximity Mfg. Co. v. Director General, 91 I. C. C. 612.

(m) Complainant attacked second class rating in official classification on tinners snips or shears as unjust, unreasonable, and unduly prejudicial. These articles are shipped at any quantity rates. Effective Dec. 30, 1919 they were specifically rated third class and so remained until June 10, 1923 when they were increased to second class. They are rated second class in the southern and western classifications and have been so rated for some years. HELD, second class rating not unreasonable or unduly prejudicial, complaint dismissed. Peck Stow & Wilcox Co. v. N. Y. N. H. & H. R. R., 91 I. C. C. 747.

(n) Complainant attacked third class rate of $2.52 charged between May 1917 and March 1918 on automobile gear frames, carloads, from Detroit, Mich., to Oakland, Calif., as improper, unjust and unreasonable. The commodity shipped was the same as that considered in 78 I. C. C. 297. Gear frames, without attachments, are rated third class. There was a commodity rate of $2.15 on vehicle parts, self propelling, viz., automobile parts (metal), minimum 30,000 pounds. There is provision in the tariff for alternate application of these rates. HELD, third class rate applicable, subject to lower commodity rate and higher minimum as maxima. Rates attacked not unreasonable, complaint dismissed. Chevrolet Motor Co. v. Director General, 92 I. C. C. 73.

(o) Respondents proposed a change in the commodity description of beets, carrots and parsnips, carloads, from Texas points to eastern destinations. Rates on beets, carrots and parsnips from Texas points to destinations east of the Mississippi river are constructed by the addition of certain arbitraries to the base rate from point of origin to the Mississippi river. East of the river there are two sets of arbitraries to be added, the higher applying on beets with tops and the lower on beets without tops. To the present description beets with tops the proposed schedules add "or clipped tops". Fresh beets from other producing territories are generally shipped with the tops on, while the tops are cut from matured winter beets before shipment. The record shows that the lines serving the territory west of East St. Louis have always interpreted the present tariff description of "beets without tops" to include the beets as shipped from Texas, and are willing to continue to do so, but the eastern carriers, except the B. & A., are insisting upon the proposed changes. It is clear that beets shipped by these Texas growers are green vegetables, with their tender leafy tops removed, and are within the description of beets without tops. The suspended schedules provide a description of beets with clipped tops to take the same rates as beets with tops. This would effect increases in the rates properly applicable under the present tariff description. Respondents offered

no evidence in justification of any increases in the rates on beets shipped from Texas. HELD, schedules not justified. Beets and carrots from Texas, 92 I. C. C. 141.

(p) Complainant attacked class A rate of $1.48 charged on four cars of boilers shipped in January and February 1922 from Muncie, Ind., to Houston and Orange, Tex., as unreasonable and unjustly discriminatory to extent it exceeded subsequently established rate of $1.225. Boilers were included in the list of articles under the heading "machinery and machines" in western classification prior to Dec. 30, 1919, when boilers were removed from that list. This resulted in making commodity rates on machinery and machines inapplicable to boilers, leaving the full classification basis to apply. On Oct. 25, 1922 boilers were restored to the machinery commodity basis. HELD, rate attacked unreasonable to extent it exceeded $1.225, reparation awarded. National Supply Company v. C. C. C. & St. L. Ry., 92 I. C. C. 295.

(q) Complainant attacked fifth class rate of 32c on solder in pigs, slabs, or bars, carloads, from Newark, N. J., to Buffalo, Black Rock and other points in Buffalo district as unreasonable, unjustly discriminatory or unduly prejudicial. Rate attacked fifth class on solder, n. o. i. b. n., loose or in packages. With the exception of brazing solders, the classification rating on solder, n. o. i. b. n., comprehends all class of solders, many of which contain various components other than tin and lead. In many cases, these other components are of much greater value than either tin or lead. HELD, rates attacked not unreasonable, unjustly discriminatory or unduly prejudicial, complaint dismissed. Union Smelting & Refining Co. v. C. R. R. Co., of N. J., 92 I. C. C. 319.

(r) Complainant attacked third class rating, less carloads, in official classification territory on flour compound, in bulk, in barrels, as unreasonable to extent it exceeded fourth class. Original report found in 85 I. C. C. 416. From a transportation standpoint it is considered a desirable traffic. In 54 I. C. C. 1, Consolidated Classification case, the experts of the Commission recommend that a fourth class rating be established in all three classification territories. No explanation was offered by defendants for according higher ratings to floor sweeping compounds in official classification than in the southern or western classifications. HELD, rating of third class unreasonable to extent it exceeded fourth class in official classification. Fitch Dustdown Co. v. A. A. R. R., 92 I. C. C. 359.

(s) In 85 I. C. C. 753, the Commission found rates charged on 3 cars of pipe from Gahagan, South Mansfield and Harmon, La., and two cars of oil well supplies from Gahagan and Mansfield, La., to El Dorado, Ark., during Jan. and Feb. 1921 not unreasonable. Pipe and oil well supplies are rated fifth class and class A in western classification. Charged class rates of 64c from Gahagan and 63c from South Mansfield and Harmon on the pipe and 69.5c from Gahagan and 67.5c from South Mansfield on the oil well supplies. It appears from the record that there was no movement of these commodities from these particular points to El Dorado before or after these shipments. Shipments of pipe and oil well supplies from one oil field to another in the southwest are not infrequent; also that the rates attacked were excessive as compared with numerous rates fixed by the Commission in the southwest. HELD, rates attacked unreasonable to extent they exceeded 33c on pipe from South Mansfield, 34c on pipe from Gahagan and Harmon, 50c on oil well supplies from Mansfield and 51.5c from Gahagan, reparation awarded. Crawford & Sebastian v. C. R. I. & P. Ry., 92 I. C. C. 453.

(t) Complainant attacked ratings charged on speedometers, speedometer heads, and speedometer connections, shipped between January 1918 and February 1920, from Chicago, Ill., to San Francisco, and Los Angeles, Calif., as unjust, unreasonable and unduly prejudicial. In 64 I. C. C. 541 the Commission found rates attacked unreasonable and awarded reparation. HELD, rates attacked unreasonable, reparation awarded. California Sales Company v. Director General, 92 I. C. C. 619.

(u) Complainant attacked commodity rate charged of 48.5c charged on 10 cars of wrapping paper shipped from International Falls, Minn., to Chicago, Ill., between August 30 and Oct. 14, 1918 as unreasonable, unjustly discriminatory and unduly prejudicial to extent it ex-

ceeded 20c. Shipments moved to Duluth, Minn., 76 miles over M. D. & W., and D. W. & P., and from Duluth to Chicago over the C. St. P. M. & O., and C. & N. W., no through rates being in effect, charged fifth class of 26.5c to Duluth plus 22c commodity rate beyond. The 20c rate was a commodity rate on newsprint contemporaneously in effect from International Falls to Chicago, same subsequently being made applicable on wrapping paper. In 66 I. C. C. 571 the Commission found rates on wrapping paper should not exceed 110% of the rates on newsprint. HELD, rate of 48.5c charged unreasonable to extent factor up to Duluth exceeded 12c, reparation awarded. Minnesota & Ontario paper Co. v. Director General, 93 I. C. C. 139.

(v) Complainant attacked class rates charged on soapstone disks, loose, carloads, to Toledo, O., from Schuyler and Tye River, Va., and to Muncie, Ind., from Schuyler, as unreasonable, unjustly discriminatory and unduly prejudicial. Schuyler is on the Nelson & Albermarle, 8 miles west of Esmont, Va., and Tye River is on the Southern, 23 miles north of Lynchburg, Va., the short line distances over the C. & O., and connecting lines being 601 and 644 miles, to Toledo and Muncie from Esmont and 570 miles to Toledo from Lynchburg charged at commodity rates from Schuyler to Esmont, and applicable arbitrary, Tye river over Lynchburg and other Virginia common points, plus fifth class rates beyond on soapstone, slabs, dressed or dorms, n. o. i. b. n., in barrels, boxes or crates, carload minimum 30,000 pounds. The rating applicable to and beyond the junction points under rule 5 of the governing classification was third class. Soapstone foot warmers, griddles, laundry tubs, and sinks, in barrels, boxes or crates, minimum 30,000 pounds, take commodity rates from Esmont to Chicago, Ill., and St. Louis, Mo., 822 and 877 miles, or 38 and 47.5c respectively, equivalent to about 73% of the fifth class rates. Prior to March 25, 1923 commodity rates 3c higher were in effect from Tye River to the same destinations. Since July 31, 1922 a commodity rate of 7.5c has been in effect from Schuyler to Esmont on soapstone furnace linings. HELD, rates attacked from Schuyler to Toledo and Muncie unreasonable to extent the rates beyond Esmont exceed 42 and 45c prior to July 1, 1922, and 38 and 40.5c thereafter, and rates from Tye River to Toledo unreasonable to extent they exceeded 45c prior to July 1, 1922 and 40.5c thereafter, reparation awarded. Toledo Cooker Co. v. N. & A. Ry., 93 I. C. C. 271.

(w) Complainant attacked class rates as unreasonable, unjustly discriminatory and unduly prejudicial charged on two cars of electrical heating and cooking appliances from Marion, Ind., to San Francisco, Calif., in Sept. and Oct. 1921. Charged third class of $4.20 on articles other than toasters and first class of $5.835 on toasters. Effective Sept. 30, 1922 a commodity rate of $2.75 was published on electric heaters, hot plates, ranges, sadirons, table stoves and toasters, for distance of 2,400 miles. HELD, rates charged not unreasonable or otherwise unlawful, complaint dismissed. Rutenber Electric Co. v. C. C. C. & St. L. Ry., 93 I. C. C. 541.

(x) Complainant attacked commodity rates charged on lard substitutes in peddler cars from Houston and Sherman, Tex., to Oklahoma, Arkansas and Louisiana as unreasonable and unduly prejudicial in relation to movement in peddler cars, from the same points, and from Kansas City, Mo., Wichita, Kas., Oklahoma City, Okla., and Fort Worth and Dallas, Tex., to points in the same destination territories. Taft is a local point on the A. S. & A. P., 132 miles south of San Antonio. No peddler services are maintained from San Antonio or Taft, or from other points in the surrounding region, but complainants desire such services from San Antonio and Taft to points in Oklahoma, Arkansas and Louisiana. Shortly before the hearing peddler car service from Houston theretofore confined to hauls over S. P., lines to Louisiana points on that system, was extended to include hauls wholly over lines of the Gulf Coast system to Louisiana points, and hauls over certain connections to points on the V. S. & P., and Louisiana points on the Rock Island. Sherman is north of Dallas and near the Oklahoma line. It has extensive peddler car service, single line and joint line, over several railroads to Oklahoma, Arkansas and Louisiana points. Lard substitutes are the cheapest shortening material. The principal forms are made from cotton seed oil. They are used for the same purpose as lard, with which they come into active competition. In

important particulars lard substitutes have more favorable transportation characteristics than lard. Thus, lard requires refrigeration. The shipper pays for the ice, but there is delay incident to the placing of cars at icing stations. Lard substitutes are not iced, and may move in ordinary channels. From transportation and commercial standpoints lard substitutes are closely related to lard. They receive the same classification ratings in the three classification territories. The record does not warrant the requirement that defendants establish peddler car service over additional routes. Unlawful prejudice and preference may arise from difference in service as well as from difference in measure or rates, and defendants should so regulate their peddler car service as to avoid undue preference and prejudice. HELD, rates attacked unreasonable and unduly prejudicial to extent they exceed rates on lard, in peddler cars, for equal distances. HELD, further, failure of defendants to maintain peddler car service from Houston, San Antonio, Taft and Sheridan to Oklahoma, Arkansas and Louisiana substantially equivalent to peddler car service maintained by them from Kansas City, Wichita, Oklahoma City, Fort Worth and Dallas to same destinations not unreasonable or unduly prejudicial. Interstate Cotton Oil Refining Co. v. A. T. & S. F. Ry. 95 I. C. C. 171.

(y) Complainant attacked commodity rates charged on talc, carloads, from Hemp, on the Norfolk Southern between Charlotte and Raleigh, N. C., to points in Florida, Illinois, Pennsylvania, New Jersey and Maryland as unjust, unreasonable, unjustly discriminatory and unduly prejudicial. After the plant which complainant erected for the mining of talc was completed in 1921, complainant found that it could not compete with other talc producing points under the rates from Hemp and requested the carriers to establish lower rates. In the latter part of 1921 the carriers offered to publish rates on the basis of the talc rates from Poultney, Vt., a point with which complainant had represented itself to be in competition. The basis suggested by the carriers was not satisfactory to complainant, which then asked for the publication of rates to central and trunk line territories on the basis of the clay rates from Georgia to those territories. Rates on substantially this basis was published to all of the destinations here considered, effective Dec. 25, 1922. HELD, rates attacked unreasonable to extent they exceeded on and after July 1, 1922, to Jacksonville $5.07, York, $4.59, Philadelphia $4.59, Manville $5.22, Vandalia $5.76 and East St. Louis $5.76, reparation awarded. Standard Mineral Co. v. Norfolk Southern Ry. 95 I. C. C. 704.

(z) Complainant attacked commodity rates charged on 50 cars of wagons shipped during August, September and October 1920 from Jeffersonville, Ind., to Galveston, Tex., and reconsigned to Laredo, Tex., as illegal, unreasonable, unjustly discriminatory and unduly prejudicial. Shipments consisted of escort wagons, knocked down, purchased at a salvage sale from the United States Army. Charged $1.17 and $1.56 constructed by adding to commodity rate from point of origin to Texas common points, the class A differential thence to Laredo, applying on vehicles, minimum 12,000 pounds. The evidence fairly establishes that the wagons shipped were not farm wagons such as are contemplated under the description of agricultural implements. In the absence of a specific rating on escort wagons the rates on vehicles were applicable. HELD, rates charged applicable and not unreasonable or other wise unlawful, complaint dismissed. Taylor v. I. & G. N. Ry., 96 I. C. C. 55.

(aa) Complainant attacked combination rates charged on lepidolite, carloads, from Embudo, N. M., to Wheeling W. Va., since July 1, 1922 as unreasonable, unjustly discriminatory and unduly prejudicial as compared with rate on fluorspar from more distant points in New Mexico to the same destination. Embudo is 53 miles north of Santa Fe on a narrow gauge line of the Rio Grande. The two articles mentioned are somewhat analogous natural mineral products, and they have substantially similar transportation characteristics. Rate attacked is combination rate of 68c, composed of 38.5c to Missouri river and sixth class rate of 29.5c beyond. Rate sought 51c the rate on flourspar from conditions from Embudo were not shown Silver City to Wheeling. The operating to be any more difficult from Wagon Wheel branch, which is also on a mountain branch of the Rio Grande; and it does not seem probable that the transportation from Embudo can be more ex-

pensive than from Silver City which is over 300 miles more distant. HELD, rate attacked unreasonable to extent it exceeded 51c, reparation awarded. New Mexico Corp. Commission v. A. T. & S. F. Ry., 96 I. C. C. 412.

(bb) Complainant attacked commodity rates charged on carloads of apples, peaches, pears and plums in baskets and of apples in bulk from points in the Yakima Valley in Washington to all interstate destinations as unreasonable and unduly prejudicial. The present rates on shipments in boxes or in barrels from the Yakima Valley are $1.28 to destinations between and including Colorado common points and the Missouri river crossings, and $1.50 to all destinations east of the Missouri River, including the Atlantic seaboard and the southeast. On shipments in bulk or in baskets they are $1.92 and $2.25 respectively. Growers in southern Idaho and Colorado have the benefit of carload commodity rates which are the same whether the fruit is shipped in boxes, baskets or in bulk. Defendants offer no justification from a transportation standpoint for according competing shippers in southern Idaho and in other districts a rate relationship on this traffic different from that available to complainants. The maintenance by defendants of a rate relationship between the Yakima Valley and southern Idaho, for example, which subjects some growers and shippers in the former district to a rate disadvantage as compared with shippers in the latter district, if not justified by transportation conditions, is undue prejudice within the meaning of the act and can not be justified by the fears of other shippers as to the commercial effect upon the industry of its removal. HELD, rates on peaches, pears and plums, in baskets, carloads, from Yakima Valley unreasonable to extent they exceed rates on those fruits in boxes. Kloeber v. N. P. Ry., 96 I. C. C. 437.

(cc) Complainant attacked rates charged on live poultry between Jan. 1 and June 30, 1922 from interstate points to Philadelphia, Boston, Chicago, New York, Jersey City, Weehawken, Hoboken and Newark, as unjust and unreasonable. On Dec. 16, 1921 the Commission authorized tariffs containing 10% reductions effective Jan. 1, 1923. Reductions were not generally made in the rates on live poultry in eastern territory. Consequently shipments moving on combination rates basing on the Mississippi or Ohio rivers did not obtain the benefit of the reduction in so far as the eastern factors of the rates were concerned, although the rates in western and southern territories were reduced as well as the joint through rate. The reductions were made voluntarily by the carriers. The fact that other rates were not reduced and that such rates as were reduced caused a temporary disruption of a former rate relationship is not sufficient basing for a finding that the rates attacked were unreasonable. HELD, rates attacked not unreasonable. Risser v. A. T. & S. F. Ry. 96 I. C. C. 513.

(dd) Complainant attacked ratings and rates on cocoanut stearine, carloads, and less carloads, from Bayonne, N. J., to points in official territory two years prior to Oct. 8, 1923 as unreasonable, unjustly discriminatory, and unduly prejudicial to extent they exceed ratings and rates on stearine, n. o. i. b. n. In Dec. 1919 the description of cocoanut butter substitutes was eliminated, cocoanut stearine having been in 1914 specifically rated third class, carloads and second class less carloads. These ratings are now in effect. Stearines, n. o. i. b. n., which include animal stearines and all vegetable oil stearines except cocoanut, are rated fifth class, carloads, and rule 26, 20% less than third class, less carloads, except that in tubs, in less carloads, they are rated third class. The evidence indicates that the present ratings and rates on stearine, n. o. i. b. n., in official territory, are maximum reasonable ratings and rates. HELD, ratings attacked unreasonable and unduly prejudicial to extent they exceeded ratings and rates on stearines, n. o. i. b. n., reparation awarded. Best Foods, Inc. v. C. R. R. of N. J., 98 I. C. C. 331.

(ee) Complainant attacked ratings in southern and western classifications on pea hullers as unreasonable. The classification divisions between hand agricultural implements, mill or warehouse machinery, and agricultural implements other than hand, having been established for a number of years. When complainants pea hullers are thus divided the basis for the division, from the standpoint of any differences in transportation characteristics, seems rather unsubstantial; and doubtless complainant is correct in stating that it is inconveni-

enced thereby in billing its shipments. But the showing of an overlapping condition in an individual instance such as this does not establish that the existing groupings are basically unsound. The primary question for determination is whether the existing descriptions and ratings are shown by this record to be unreasonable. HELD, ratings on complainants type B hullers are not unreasonable and that applicable less carload rating of double first class on complainants type C hullers, set up, under southern and western classifications is unreasonable to extent it exceeds one and one half times first class. Star Pea Huller Co. v. C. N. O. & T. P. Ry., 98 I. C. C. 357.

(ff) Complainant attacked rates on moss, in machine pressed bales, carloads, from producing points in Louisiana to be unjustly discriminatory and unduly prejudicial. Moss is not readily susceptible to damage, but box cars with reasonably water tight roofs are required for its shipment. It is rated, carloads, fifth class in official and western classifications, and class D in southern. Few, if any, other articles rated fifth class in western classification are subject to a minimum as low as 20,000 pounds. The basis sought is a base rate of 42c to St. Louis plus the usual fifth class differential over or under St. Louis to the other refined territories. Complainants attack is directed to the rates from points in the territory immediately west of the river. HELD, rates attacked not unreasonable, unjustly discriminatory or unduly prejudicial except rates from Rosedale, La., to points intermediate to Albany, Rochester, Syracuse and Utica, N. Y., higher than to those farther distant points unreasonable to that extent, record held open as to reparation. National Asso. of Furniture Mfrs. v. A. A. R. R. Co., 98 I. C. C. 501.

(gg) Double first-class ratings and rates on adding machines, in boxes, l. c. l., in western classification, found not unreasonable in the past, but for the future found unreasonable to extent they may exceed one and one-fourth times first class. Burroughs Adding Machine Co. v. M. C. R. R. Co., 91 I. C. C. 378.

(hh) Second-class rating and rates on adding machines in boxes, c. l., in official southern and western classification found not unreasonable. Such rating, with minimum applicable thereto, can be easily loaded in standard equipment, was voluntarily established by carriers upon request and data submitted by complainant, and does not appear unreasonable when compared with rating and rates approved by commission in 64 I. C. C. 541 on speedometers, a commodity having similar transportation characteristics in many respects. Burroughs Adding Machine Co. v. M. C. R. R. Co., 91 I. C. C. 378.

(ii) Following Stewart-Warner Speedometer Corp., 64 I. C. C. 541, and other cases cited, double first-class rates and ratings on speedometers, l. c. l., found unreasonable to extent they exceeded first-class rates and ratings, subsequently established. Reparation awarded. Baker Steam Motor Car & Mfg. Co. v. A., T. & S. F. Ry. Co., 91 I. C. C. 381.

(jj) Second class rating in official classification territory on tinners snips or shears, found not unreasonable or unduly prejudicial as compared with third-class rating on mechanics' tools. Tinners' snips or shears are more closely related to cutlery and hand tree pruners and plant-cutting shears, which are accorded second-class ratings. Moreover, tinners' snips or shears are rated second class in southern and western classifications and such rating was recommended for them by commission's examiners in Consolidated Classification case, 54 I. C. C. 1. Peck Stow & Wilcox Co. v. N. Y., N. H. & H. R. R. Co., 91 I. C. C. 747.

(kk) In 83 I. C. C. 267 the Commission found fourth class rating and rates on corrugated galvanized pipe, U. S. standard gauge No. 16 or thicker, carloads, from Pueblo, Colo., to Kansas, Nebraska, South Dakota, Wyoming, Montana, Idaho, Utah, Arizona, and New Mexico applicable and not unreasonable but unduly prejudicial to extent they exceeded rating and rates from Pueblo on straight galvanized riveted sheet iron and sheet steel pipe U. S. standard No. 16 or thicker, of the same inside diameter as culvert pipe, carloads, minimum 24,000 pounds, subject to rule 34 of the consolidated classification. HELD, original finding affirmed. Colorado Culvert & Flume Co. v. A. T. & S. F. Ry., 100 I. C. C. 311.

(ll) Complainant attacked class rates charged on six cars of zinc dross during

January and Sept. 1922 from Middletown and Cincinnati, O., Ashland, Ky., and New York, N. Y., to Newport News, Va. as unreasonable. In 81 I. C. C. 645 the Commission found rates on this commodity unreasonable to extent they exceeded 85 per cent of the sixth class rates. HELD, rates attacked not unreasonable except that rate from New York unreasonable to extent it exceeded 29c, reparation awarded. Lissberger & Co. v. C. & O. Ry., 101 I. C. C. 23.

(mm) In 91 I. C. C. 45, the Commission found applicable rates on Cream of Wheat from Minneapolis, Minn., to Montana, Idaho, Washington, Oregon and California not unreasonable or unduly prejudicial and dismissed the complaint. Case was reopened. No further evidence was offered. HELD complaint dismissed. Cream of Wheat Co. v. A. T. & S. F. Ry., 101 I. C. C. 283.

(nn) Respondents proposed to change the description of glue stock appearing in their present tariffs in connection with rates and rating on that commodity between points in central territory, and from central territory to trunk line territory, to provide that sixth class rates will not apply on any articles (of glue stock) which are edible ingredients of food for human consumption. If permitted to become effective the proposed change will result in increasing from sixth to fifth class the rates on the excepted articles. Respondents say that the suspended schedules were published in order to remove any doubt as to the applicable rates and ratings on pieces of hog skin which protestants have been shipping as glue stock. It is contended by respondents that these articles should take fifth class rates under the rating provided in the classification for hog skins, whereas shippers contended that they were fleshings or hide trimmings, and as such were entitled to sixth class rates provided for glue stock in the exceptions to official classification. The record clearly shows that pork hide, trimmings or fresh frozen or green salted pig skin are used almost exclusively in the manufacture of edible gelatin. The Commission thinks that these articles may properly be eliminated from the glue stock description, but that no change has been justified with respect to the other articles under that description. HELD, schedules not justified without prejudice to the filing of new schedules proposing to eliminate pork hide trimmings or fresh frozen or green salted pig skin from the description of glue stock. Glue stock in official classification territory 101 I. C. C. 601.

(nna) Classification ratings on kitchen cabinets, crated or boxed, l. c. l., in official and southern classifications, found not unreasonable or unduly prejudicial as compared with ratings on buffets, dressers, chiffoniers, vanity dressers, and other articles of furniture. Indiana Public Service Commission v. A. A. R. R. Co., 92 I. C. C. 83.

(oo) Proposal to increase from first class to 1½ times first class the l. c. l. ratings on automobile wheels made of wood combined with iron or steel, with or without rubber tires, and weighing 200 pounds or more each, found not justified. Commodity here considered is not analogous to those to which a rating of 1½ times first class has been assigned by the commission in various cases, whereas a rating of first-class has been prescribed on speed indicators and automobile sound-warning signals, commodities having a much higher value than automobile wheels. Classification of Motor Vehicle Wheels, 92 I. C. C. 190.

(pp) Commodity rate on iron or steel scrap, when applied on manganese-steel scrap, found unreasonable as compared with lower rate on brass scrap. Transportation characteristics of manganese-steel scrap are no less favorable than those of brass scrap, and earnings under brass-scrap rate compare favorably with earnings on other articles, generally of higher value, moving between points in same general territory here involved. Reasonable rate for future prescribed. Chicago Heights Mfrs. Asso. v. P. R. R., 92 I. C. C. 194.

(qq) Rating of second class on Coca-Cola sirup, in bulk in barrels or kegs, l. c. l. in official classification territory found unreasonable to extent it exceeds rule 25. Reduction to rule 25 will result in approximately equal ratings in the three classification territories and in a better balanced relationship between ratings on the sirups and finished beverages, and will accord substantially with decision in Coca-Cola Co., 45 I. C. C. 461. Coca-Cola Co. v. B. & O., 92 I. C. C. 340.

(rr) Rating of fourth class on Coca-Cola sirup, in bulk in barrels or kegs, c. l., in official classification territory found not unreasonable or otherwise un-

lawful as compared with ratings on other liquids, such as acids, oils, chemicals, drugs, and medicines, moving in similar containers. While latter commodities exceed or equal Coca-Cola sirup in value, are not as heavy, and some are of a poisonous or inflammable nature and not as desirable from a transportation standpoint, force of such comparisons is lessened by consideration of fact that those articles are in general commodities of utility, if not of prime necessity, and some, in their uses in industry and the arts, are in nature of raw materials. Coca-Cola Co. v. B. & O., 92 I. C. C. 340.

(ss) Rating of 1½ times first class on aluminum articles, not decorated, not nested or flat, in barrels or boxes, l. c. l. in western classification territory found unjust and unreasonable to extent it exceeds 1¼ times first class. Present rating seems too high in itself and also in relation to rating on nested aluminum ware. Aluminum Goods Mfg. Co. v. A. & V. Ry. 92 I. C. C. 346.

(tt) Present third-class c. l. ratings, minimum 20,000 pounds, in official, southern, and western territories, applied to aluminum articles as a whole, found to result in unjust and unreasonable charges. Carriers ordered to establish, for alternative application, a rating of second class, minimum 12,000 pounds, subject to rule 34, making latter rating applicable when lower charges result. While maintenance of a minimum which can be loaded only by certain shippers seems improper, it would be equally unfair to such shippers to reduce minimum to a figure reflecting actual loadings of other shippers with a compensating increase in the c. l. rating. Aluminum Goods Mfg. Co. v. A. & V. Ry., 92 I. C. C. 346.

(uu) Proposed increased rating in official classification on soap, n. o. i. b. n., in pails or tubs, l. c. l., from fourth class to rule 26, found not justified. Ratings on soap in pails or tubs and on soap in barrels or boxes have been maintained on a parity in official classification for many years and carriers are not warranted in disrupting this long-existing parity. It is not shown why a box could be more easily or cheaply handled than a pail; and under general rules of the consolidated classification, freight in drums and other containers can be shipped at rating applicable on freight in barrels. Classification of Soap, 92 I. C. C. 353.

(vv) Upon further consideration, official classification rating of third class, l. c. l., on floor-sweeping compound, in bulk, in barrels, found unreasonable to extent it exceeds fourth class. The commodity is of low grade and heavy density and is not easily damaged, from a transportation standpoint it is desirable traffic, and no explanation was offered by carriers for according it higher ratings in official than in southern or western classifications. Former report, 85 I. C. C. 416, reversed. Fitch Dustdown Co. v. A. A. R. R. Co., 92 I. C. C. 359.

(ww) Rates on speedometers, speedometer heads, and speedometer connections found unreasonable to extent they exceeded rates applicable under ratings prescribed in Stewart-Warner Speedometer Corp., 64 I. C. C. 541. Reparation awarded. California Sales Co. v. Director General, 92 I. C. C. 619.

(xx) Rates on peanuts, shelled, found unreasonable as compared with lower rates on peanut butter and unshelled peanuts and to extent they exceeded rates prescribed in Fidelity Cotton Oil Co., 47 I. C. C. 542. Reasonable rate for future prescribed and reparation awarded. Oklahoma Traffic Asso. v. A., T. & S. F. 92 I. C. C. 695.

(yy) Rating and rates on brooms, bahia and bassine fiber, found not unreasonable. The classification of brooms, other than wire, has been general for many years, irrespective of material from which made and brooms here considered compete with ordinary broomcorn brooms. In absence of differentiating transportation conditions competitive articles such as these should be accorded a parity in rates and ratings. Edlund Broom Corp. v. B. & M. R. R., 92 I. C. C. 749.

(zz) Rate of 1½ times first class applicable on "jugs, glass, insulated and metal jacketed," and under analogous article rule of the governing classification assessed on earthenware jugs, insulated and metal jacketed, found unreasonable to extent it exceeded fourth class subsequently established when classification was amended so that same rating applied to the commodity whether of glass or earthenware. Glass and earthenware jugs, insulated and metal jacketed, are adapted to similar uses, both have similar transportation characteristics, and are competitive. Reparation awarded. Cullum & Boren Co. v. C., B. & Q., 93 I. C. C. 354.

(3a) First-class rate on cotton shirt

forms, l. c. l., from Baltimore to Washington, N. C., found not unreasonable as compared with lower commodity rate formerly in effect, or with rate on finished shirts in opposite direction. Commodity rate was canceled because other manufacturers of shirt forms in North Carolina requested establishment of similar rates lower than first class and defendants urged that it would be unduly prejudicial to charge first-class rates from other points while maintaining lower commodity rates from Washington. The finished shirt rate in the opposite direction was also subsequently cancelled because considered subnormal, and first-class rates now apply in both directions. Moreover, defendants instanced first-class rates for similar and greater distances which are higher than rates charged. Flowers & Stell v. N. S. R. R., 93 I. C. C. 388.

(3b) Official classification ratings on peanut butter; butter, sugar or corn sirup and sugar combined; comb or strained honey; honey and sugar mixtures; olive oil; ground spices; and vinegar, in glass, packed in barrels or boxes; l. c. l., found not unreasonable; but similar ratings in said classification on olives; mince meat; pickles and table sauces, n. o. i. b. n.; fish, other than fresh; preserved fruit, fruit butter; crushed fruit; fruit jam; fruit jelly; fruit pulp; edible jams, jellies, or preserves, n. o. i. b. n.; and corn sirup jelly, in glass, found unreasonable to extent they exceed the first numbered class above the l. c. l. ratings contemporaneously applicable on same articles in metal cans. Indian Packing Corp. v. Director General, 93 I. C. C. 400.

(3c) Upon rehearing, findings in original report, 64 I. C. C. 205, prescribing third class rating on sliced dried beef in glass, l. c. l., modified, and rating not in excess of first numbered class above the l. c. l., rating contemporaneously applicable on the same commodity in metal cans found reasonable. Reparation denied. Indian Packing Corp. v. Director General, 93 I. C. C. 400.

(3d) Having regard for difference in structure of freight and express classifications, the commission can not predicate a condemnation of the freight rate for a light and bulky article like furniture frames solely upon a showing that express rates are lower between many points. Parlor Frame Mfrs. Asso. v. A. A. R. R., 93 I. C. C. 506, 509.

(3e) Proposed increased rating on acid carboys, returned empty, from and to points in western trunk-line territory, found justified. Acid carboys are not desirable freight and can not be handled as expeditiously or cheaply as other empty returned containers which can be tiered. There is considerable danger involved in their handling, and many restrictions not operative with respect to mineral-water and other empty returned containers increase cost of their transportation. Moreover, rating proposed is the same as that now applicable from intermediate points and will have effect of removing fourth-section departures, is the same as that generally applicable in western trunk-line territory east of Missouri River, does not appear unreasonable, and it is not shown that it will result in undue prejudice or preference. Carboys, Returned Empty, in Western Territory, 93 I. C. C. 672.

(3f) Third-class rating and rates in southern classification on oleine, coconut, found not unjustly discriminatory or unduly prejudicial but unreasonable to extent they exceeded fifth-class rating and rates contemporaneously applicable on coconut oil. Oleine and refined coconut oil are analogous, are used for same purposes, the only difference between them being in the melting point. Reasonable rating prescribed for future and reparation awarded. Best Foods v. C. R. R. Co. of N. J., 95 I. C. C. 738.

(3g) Report of the commission in response to Senate Resolution 314, setting forth existing classification ratings on canned fish, fruits, meats, mincemeat and jams, jellies, and preserves, in metal cans, in barrels, boxes or crates; the increased ratings on these articles proposed by carriers in official classification territory; and the percentage increases which the advanced classification would mean in the freight rates applicable on these canned food products. Canned Foods, 95 I. C. C. 748.

(3h) Answering complainant's contention that rating on cast-iron toys should be same as that applicable on iron and steel hardware, n. o. i. b. n., defendants urge that a mere showing that such toys are cheaper, with similar transportation characteristics, does not prove that rating should be same; that such toys are in the nature of nonessentials and properly are rated higher than general utility articles included within description of hardware, n. o. i. b. n. HELD,

evidence is not persuasive that ratings on cast-iron toys in classification territories are unreasonable as compared with strikingly nonuniform ratings on hardware, nor is there any competitive reason for such rating. See Daisy Mfg. Co., 81 I. C. C. 44. Grey Iron Casting Co. v. A. & V. Ry. Co., 96 I. C. C. 199.

(3i) Proposed changes including increases and reductions in l. c. l. ratings in official classification on canned food products, packed in barrels, boxes, or crates, the effect of which will bring about the classification relationship prescribed in Indian Packing case, 93 I. C. C. 400, in purported compliance with which proposed schedules were filed, found justified, except proposed increases on corn-sirup jelly. Classification of Canned Goods, 98 I. C. C. 166.

(3j) There is no fixed measure for the reasonableness of a classification rating. Classification is largely a matter of comparison of all the commodities that move as freight and the assignment of ratings such that each shall bear its fair share of the transportation burden. Classification of Canned Goods, 98 I. C. C. 166, 176.

(3k) Where classification divisions have been established for a number of years and an individual instance arises showing an overlapping condition which causes the complainant to be inconvenienced in billing its shipments, it does not establish that the existing groupings are basically unsound. Star Pea Huller Co. v. C., N. O. & T. P. Ry. Co., 98 I. C. C. 357, 358.

(3l) Rates and ratings on grain flour, edible flour, and corn meal, in ropestock paper bags, in c. l. and l. c. l. when carried under tariffs governed by southern classification, and in l. c. l. when carried under tariffs governed by western classification, found not unreasonable, but are and for future will be unjustly discriminatory, of shipments in cloth bags, to extent they exceed or may exceed corresponding rates and ratings contemporaneously maintained on same commodities when in cloth bags. Rope Paper Sack Bureau v. A. &. V. Ry. Co., 98 I. C. C. 511.

(3m) Class rate charged on automobile heaters in l. c. l. from Chicago, Ill., to San Francisco, Calif., found applicable and not shown to be unreasonable. Under the tariff governing, provision is made for a lower commodity rate on automobile parts, but heaters can not be classed as a part of an automobile, being more in the nature of an accessory or added feature. Neither are heaters included in the list of automobile parts specifically named in the classification, they being separately provided for under the heading "Heaters." Complaint dismissed. Western Auto Supply Agency of Los Angeles, Calif., v. C., B. & Q. 98 I. C. C. 647.

(3n) Respondents proposed to cancel application of present rating of 83.33% of sixth class on calcined and wall plaster, gypsum rock, and plaster board, from Grand Rapids, Mich., and other points in c. f. a. territory to Canadian territory, leaving the full sixth class rates in effect. Respondents in United States state that their purpose is to rectify a condition which would never have existed but for their unauthorized action in including plasterboard in the exceptions among articles in the plaster list when for shipments into Canada without first obtaining the consent of the Canadian lines. HELD, schedules not justified. Classification exceptions on plaster board 102 I. C. C. 94.

(3o) Respondents proposed carload and less carload ratings on radio receiving sets and on talking machines and radio sets combined, in the official, southern and western classifications. On account of the comparatively recent development of radio receiving sets, specific provision has not heretofore been made for them in the classification. Respondents admit that they are electrical appliances. Electrical appliances, n. o i. b. n., are uniformly rated first class in less carloads and third class carloads. Radio loud speakers are specifically rated one and one-half times first class less carloads and second class carloads. Specific provision is likewise made for radio bulbs or tubes, at double first class, less carloads and first class carloads. Where a set is designed for the reception of tubes or a loud speaker or both, and those parts, or either of them, are shipped with the set, whether installed or separately packed, the whole constitutes a single electric appliance, and must be rated as such. In the absence of specific provision in the classification for talking machines and

radio sets combined, they are ratable under the combination article rule as a talking machine and an electric appliance, n. o. i. b. n., combined. Talking machines are rated first class less carloads and second class carloads. By the schedules under suspension respondents proposed to establish less carload ratings on radio sets and talking machines and radio sets combined of one and one-half times first class in official and western classifications, and double first class in southern, and uniform car load rating of second class. HELD, proposed ratings justified except to extent the less carload rating proposed in southern classification exceeds one and one-half times first class. HELD, further proposed ratings on talking machines and radio sets combined, less carloads, justified except to extent rating proposed in southern classification exceeds one and one-half times first class, and proposed ratings on talking machines and radio sets combined, in carloads not justified. Classification on radio sets 102 I. C. C. 140.

(3oa) Finding in original report, 83 I. C. C. 361, that fourth-class rating, minimum 16,000 pounds, on Radiantfire heaters, in carloads, would be unreasonable for the future to extent it exceeded fifth-class, minimum 24,000 pounds, the rating applicable on stoves and ranges, iron or steel, for charcoal, coal, or wood, with or without burning attachments, reversed and fourth-class rating found not unreasonable. Carriers point out that the average weight per cubic foot of stoves and ranges is considerably in excess of that on Radiantfire heaters; that fifth-class ratings apply on various commodities of relatively low value which load heavily and move in large volume; and that ratings of fourth class are accorded various other types of heaters similar to Radiantfire. General Gas Light Co. v. A. G. S., 102 I. C. C. 181.

(3p) Complainant attacked third class rates charged on cylindrical cheese boxes, carloads, from Marshfield and other producing points in Wisconsin to destinations in western trunk line territory as unjust, unreasonable, unjustly discriminatory and unduly preferential of wooden drums and other wooden containers which are accorded class D rates under exceptions to the classification. On intrastate shipments in Wisconsin lower bases are applicable, 150% of the lumber rate in some instances, and arbitraries in addition to the lumber rate in others. The class D rates, minimum 14,000 pounds, set forth in the complaint as applicable on drums and butter tubs, were established many years ago to assist and encourage new industries on the Missouri river which had to obtain practically all their cooperage requirements from distant points. Complainants case rests primarily on comparisons of cheese boxes with butter tubs. In general the latter are more valuable. Butter tubs and drums do not compete directly with cheese boxes. The revenue on shipments from Merrill, Wis., indicates that to destinations in Illinois, Iowa, Missouri Nebraska and Minnesota the present third class rates on cheese boxes yield car mile earnings from 2 to 12c lower than the average earnings of 23.5c received by the Milwaukee during 1923. Considering the light car loading of this commodity the third class rates do not produce earnings which maybe regarded as excessive. HELD, rates attacked not unreasonable or otherwise unlawful, complaint dismissed. Wisconsin Cheese Box Mfrs. v. A. T. & S. F. Ry. 102 I. C. C. 279.

(3q) Complainant attacked class rate charged on ground calcined magnesite, carloads, from Joliet, Ill., to Omaha, Neb., as unreasonable, shipments moving in April, May and October 1921. The commodity under consideration must be shipped in water tight equipment unless packed in waterproof bags. Both crude and calcined magnesite, carloads are rated fifth class, charged fifth class rate of 46c. By exceptions to the clasification effective June 15, 1921 provision was made for the application of class D rates in this territory and last shipment was charged class D rate of 31c. Stucco is rated class C in western classification and by exceptions class D is provided on magnesite stucco, dry, in packages and liquid, in barrels or drums. Stucco is generally accorded within this territory commodity rates applicable on wall plaster at rate to Omaha of 25.5c. Class D rates apply on this commodity from Joliet to various Mississippi and Missouri river cities and contiguous points. HELD, rate attacked subsequent to June 15, 1921 not unreasonable but fifth class rate prior to that date unreasonable to extent it exceeded class D rates reparation award-

ed. Mineralite Stucco Corp. v. C. R. I. & P. Ry. 102 I. C. C. 654.

(3r) Complainant attacked commodity rates charged on boxes fibreboard, pulpboard, or strawboard, knocked down, flat or folded flat, with or without fillers, in straight or mixed carloads, from Nashville, Tenn., to Birmingham, and Montgomery, Ala., Atlanta, Augusta, Macon and Savannah, Ga., and Jacksonville, Fla., as unreasonable. Paper boxes generally moved throughout the southeast under fifth class rates, but commodity rates were in effect from Nashville. Subsequent to the hearing defendants filed schedules to become effective July 15, 1924 which contained proposed increases and reductions in rates on paper boxes between southeastern points including those from Nashville. The rates therein proposed from Nashville would have resulted in reductions to all points except to Chattanooga, Jacksonville and Savannah. The report in that case 93 I. C. C. 559, is controlling here and the rates prescribed have become effective. HELD, present rates not unreasonable, complaint dismissed. American Tri-State Paper Box Co. v. L. & N. R. R. 104 I. C. C. 442.

(3s) Complainant attacked fourth class ratings, minimum weight, 30,000 pounds, in official, southern and western classifications on cocoa powder, in bulk, in barrels, carloads, as unreasonable unjustly discriminatory and unduly prejudicial. No special equipment is needed, although it is desirable that the cars have a tight roof, as cocoa is susceptible to damage by becoming wet. Claims for loss or damage are negligible. The present ratings apply whether the shipments are in glass or earthenware containers, in cartons, in cans or in bulk in barrels. Defendants offered no evidence as to the fourth class rating in western or southern classifications. HELD, rating attacked of fourth class unreasonable to extent it exceeds fifth class, minimum 36,000 pounds. Opler v. A. & R. Ry. 104 I. C. C. 468.

(3t) Complainant attacked combination rate charged on wooden bull wheel arms, cants and pins, carloads, from Tulsa, Okla., to Scottdale, Pa., as unreasonable, unjustly discriminatory and unduly prejudicial. Shipments moved MKT to East St. Louis, Ill., and Pennsylvania beyond, 1,194 miles, applicable rate composed of class B rate of 67c to East St. Louis plus 6th class rate of 36.5c beyond. Prior to July 1, 1923 the rate on lumber from Tulsa to Scottdale was 56.5c, minimum 34,000 pounds, composed of 29.5c to East St. Louis plus 33c beyond, subject to the combination rule. This rate was superseded on that date by a joint rate of 48c. The Commission has repeatedly found rates on these commodities unreasonable to the extent that they exceeded corresponding rates on lumber unless the latter are shown to be below the general level of lumber rates in the immediate territory. HELD, rates attacked unreasonable to extent they exceeded 56.5c prior to July 1, 1923 and 48c thereafter, reparation awarded. Marion Machine Foundry & Supply Co. v. Pennsylvania R. R. 104 I. C. C. 471.

(3u) Complainant attacked class rates charged on magnesite stucco carloads, from Cedar Rapids, Iowa to Nebraska, Colorado, Wyoming, Kansas and southwestern Missouri. Rocbond is used as an exterior wall coating, similar to the ordinary pebble dash covering. The base is magnesite to which is added sand and granulated cork, to make the so-called stucco mix. Other ingredients are magnesium chloride and crushed rock dash. The three articles are shipped in separate containers in the same car, the stucco mix in 100 pound paper bags, the magnesium chloride in 100 pound burlap bags, waterproof lined; or in 300 pound metal drums, and the crushed rock dash in 100 pound burlap bags. The governing classification, by an exception, rates magnesite stucco in class D. A commodity rate under the general description "stucco" is provided for the movements here considered. In 74 I. C. C. 567 the Commission denied to carriers in western trunk line territory permission to make class D rates applicable on magnesite stucco by excepting that commodity from the application of commodity rates then in effect on stucco. The magnesite stucco mix resembles ordinary stucco in appearance, and is shipped in the same general kind of containers. It appears to be no more susceptible to damage than the ordinary stucco if as much. There is no doubt that the three ingredients combined constitute only the complete commodity magnesite stucco. Damage claims are light. HELD, rates on magnesite stucco, shipped as above described, the magnesium chloride not to exceed 20%, and the crushed rock dash not to exceed 50% of the gross weight of the shipment, for future, unreasonable to extent they ex-

ceed rates on stucco, reparation awarded. Rocbond Co. v. A. T. & S. F. Ry., 104 I. C. C. 517.

(3v) Respondents proposed to change the description on bolt, nail, rivet and wire rods, in coils, so as to restrict the application of the so-called billet basis of rates on carload shipments throughout official classification territory to rods round in cross section. In carloads the rods described are accorded the billet basis of commodity rates which, especially for the longer hauls approximate sixth class rates throughout official territory. The proposed description would definitely limit the application to the round rods. Coiled iron or steel rods of other class section would take the rates applicable on articles in the general iron and steel list which approximate fifth class. Upon the preponderance of the evidence the Commission finds that the billet basis of rates applies on steel rods other than round which otherwise conform to the present description. It is incumbent upon respondents to justify the resulting increased rates. The effect of the proposed description would be to increase the rates now effective on rods, in coils, which are not round in cross section. The distinction between round and not round does not reflect any substantial difference in material, stage or process of manufacture value, or transportation characteristics other than volume of movement. The burden resting upon respondents to justify this proposed increase has not been borne, nor has it been made to appear that the resulting difference in rate level would be free from undue preference or prejudice as between round rods and rods of other shapes, when shipped in coils. HELD, tariffs not justified. Iron and steel articles 104 I. C. C. 616.

(3w) Respondents proposed increased classification ratings on insulating material, flax felt and wood fibre felt, in carloads and less carloads, in western and southern territories. At present higher ratings apply on these insulating materials in the official than in the western or southern classifications, and that the proposed changes will have the effect of making the ratings uniform. The proposed increased ratings were prompted in the first instance by complaints of manufacturers of cork insulating material that a higher rating is assigned to their product than to the competitive articles and to others of the same character. The proposed changes would provide the same ratings and carload minimum for the several varieties. The evidence does not indicate that earnings under the proposed ratings will be unduly high in comparison with those yielded by class rates applicable on analogous and comparable articles. The reasonableness of a classification rating on any article can not be determined solely by a showing of the effect in increased revenue acruing to the carriers thereby. Considering the ratings applicable to other similar and heavier loading articles, and to the very light weight density of most of these insulating materials, the suggested ratings do not appear unreasonably high. HELD, schedules justified. Classification ratings on insulating material 104 I. C. C. 713.

(3x) Carriers parties to the official classification proposed to increase the rating on talking machines and radio sets combined, from second to first class, continuing the minimum weight at 16,000 pounds. The combined machines are rated second class, minimum 16,000 pounds, in the official, southern and western classifications. They have been so rated for several years, or since their manufacture began. The minimum is subject to rule 34 of the classification. Effective Feb. 10, 1925 carriers parties to the three classifications proposed to increase the carload minimum weight on the combined machines to 20,000 pounds continuing the rating at second class. In 102 I. C. C. 140 the Commission found the proposed minimum could not be loaded. The Commission has not fixed the carload rating for these combined machines in any of the three classifications; but whatever rating is proper for the official classification is in all likelihood proper, at least so far as the higher classes are concerned, for the western and southern classifications as well. The combined machines are well packed in boxes and loss or damage claims are infrequent. Radio loud speakers or talkers are rated second class, minimum 16000 pounds, and radio tubes or bulbs are rated first class, minimum 14,000 pounds in all three classifications. Apparently the only transportation difference between the combined machines and loud speakers is that the latter are somewhat more expensive per pound. The lower minimum weight for radio bulbs or tubes indicates that they are lighter per cubic foot than combined machines. Granting respondents contention that the freight

charge is a relatively small burden in marketing such a high grade specialty, it nevertheless is incumbent upon respondents to show that the rating which they propose is reasonably consistent with the ratings maintained by them on other comparable articles. HELD, suspended schedules not justified. Classification of radio sets and talking machines 107 I. C. C. 175.

(3y) In 93 I. C. C. 697 the Commission found first class rates charged on bicycles, carloads, from Westfield, Mass. and Little Falls, N. Y., to San Francisco., Calif., and from Middletown, O., to Oakland, Calif., as applicable. Countiss westbound tariff I. C. C. 1067 contained commodity rates of $2.075 and $3.085 minimum 20,000 pounds under the following description: Vehicles, non-self propelling, except as otherwise provided, and parts thereof, viz: Vehicles, light and heavy, freight or passenger, and finished parts thereof (see note 1) Note 1. Rates named will not apply on self propelling vehicles nor on pneumatic rubber tires. In 93 I. C. C. 689 and 101 I. C. C. 334 the Commission found that a bicycle came within the definition of a "light, non-self propelling passenger vehicle." HELD, rates applicable were $3.085 and $2.075. reparation awarded. Jones v. Pennsylvania R. R. 107 I. C. C. 483.

(3z) Complainant attacked sixth class rates of 25c charged on inedible tallow and inedible grease, carloads, from Georgetown and Bennings, D. C., to Jersey City, N. J., Port Ivory, N. Y., Brooklyn, N. Y., and New York harbor lighterage points, as unreasonoble, that lower rates were maintained on cottonseed oil from Relee and Rosslyn, Va., to New York and that on these commodities, defendants maintained lower rates for similar transportation under like conditions between other points in trunk line and central territories. Average distance 230 miles. The class rates between points in this territory are now subject of a comprehensive investigation, and this record is not sufficiently developed to warrant a finding that the sixth class rates are unreasonable. HELD, rate attacked not unreasonable, complaint dismissed. Hopfenmaier v. B. & O. R. R. 107 I. C. C. 577.

(4a) Proposed general revision of all-rail and rail-and-water rates on furniture, including chairs and mattresses, c. l. and l. c. l., from southern manufacturing points to eastern territory, which would result in both increases and reductions, found justified. Proposed schedules purport to comply with findings in original report, 91 I. C. C. 27; are designed to restore rates from southern manufacturing points to the East to a basis comparable with central-territory basis; and to bring about a greater uniformity in rates and carload minima. Findings in original report affirmed and order of suspension vacated. Furniture from Southern Points, 100 I. C. C. 127.

(4b) Upon further hearing, finding in original report, 83 I. C. C. 267, that fourth-class rating and rates on galvanized corrugated riveted sheet-iron and steel culverts or culvert pipe, from Pueblo, Colo., to points in certain other States were applicable and not unreasonable, but unduly prejudicial, affirmed. Rate alleged applicable was restricted in its application to pipe, n. o. i. b. n., and since culverts were specifically indexed by name, was obviously inapplicable. Colorado Culvert & Flume Co. v. A., T. & S. F., 100 I. C. C. 311.

(4c) First-class rating on barrack bags, in official classification found unreasonable to extent it exceeded or exceeds second-class, any quantity, which is prescribed as reasonable rating for future. Charges collected on such shipments from Jeffersonville, Ind., to New York, N. Y., at first-class rate found unreasonable to extent they exceeded those which would have accrued at second-class rate. Triad Corp. v. E. R. R. Co., 100 I. C. C. 402.

(4d) Rates on wrapping paper, in straight and mixed carloads with toilet paper and paper towels, from Wisconsin and Michigan points to Wichita, Kans., found unreasonable to extent they exceeded basis prescribed in the Paper case, 66 I. C. C. 571. Reparation awarded. Wichita Chamber of Commerce v. A., T. & S. F., 101 I. C. C. 55.

(4e) Third-class and first-class rates applicable on c. l. and l. c. l. shipments of printed matter n. o. i. b. n., assessed on shipments of paper envelope blanks, or paper wrappers, in sheets, printed or lithographed, moving over an interstate route from New York, N. Y., to Buffalo, where they are put through a further

process of manufacture and made into envelopes which are reshipped to New York, found not unreasonable or otherwise unlawful, as compared with the second-class and fifth-class rates applicable on "envelopes, other than Government stamped, printed or not printed," assessed on envelopes reshipped to New York. Rates higher on unfinished than on finished products are unusual, but in other cases the commission has declined to disturb the classification as applied to particular kinds of printed matter. American Lithographing Co. v. L. V. R. R., 101 I. C. C. 100.

(4f) Complainant attacked rates charged on linoleum and asphalt paper felt covering, carloads, from North Philadelphia, Pa., and other eastern points to Memphis, Tenn., as unreasonable, unjustly discriminatory and unduly prejudicial compared with St. Louis, Mo., and Ohio river cities. Linoleum and oilcloth are rated fourth class in carloads, minimum 30,000 pounds, in both official and southern classifications, and the movement in those territories appears to be exclusively on class rates. As the general level of class rates from the east to Memphis is higher than that within official classification territory, complainants sought the establishment of commodity rates which would more nearly equal the fourth class rates to St. Louis than do the fourth class rates to Memphis. It is not denied that such commodities as linoleum and oilcloth generally and properly take class rates in official and southern territories. HELD, rates attacked not unreasonable or otherwise unlawful, complaints dismissed. Memphis Freight Bureau v. A. C. L. R. R., 109 I. C. C. 31.

(4g) Complainant attacked fourth class rate, minimum 36,000 pounds, which defendants collected on barber chair parts from North Chicago, Ill., to Cincinnati, O., since Sept. 25, 1922 as unreasonable to extent it exceeded fifth class rate, 30,000 pounds. Shipments consisted of bases and pedestals, seat rims, arm rims and back rims. The classification provided a specific rating on the pedestals or bases, in carloads of fifth class, minimum 30,000 pounds, under the heading of furniture parts, bases or pedestals, chair, stool or table, iron or steel. Back rims, seat rims and arm rims were and are subjected to fourth class rating and 36,000 pound minimum on iron or steel castings, n. o. i. b. n., further advanced than in the rough by being enameled. The real issue is whether the fourth class rating and rate was and is reasonable on shipments of arm rims, back rims and seat rims. The attacked rating does not appear inconsistent with the value and weight per cubic foot of the articles, and it compares favorably with that on rough iron or steel castings, on iron and steel hardware, and on various iron or steel furniture parts. HELD, rating and rates attacked not unreasonable, complaint dismissed. Berninghaus Co. v. C. & N. W. Ry., 109 I. C. C. 104.

(4h) Complainant attacked class rates charged on carload and less carloads to the return to Kalamazoo, Mich., from numerous points in Illinois, Indiana, Iowa, Michigan, Pennsylvania, West Virginia and New York of steel shipping drums in which rosin size had been shipped from Kalamazoo to such points were and are unreasonable, unjustly discriminatory and unduly prejudicial. Complainant attacked carload and less carload rates and carload minimum applicable to the return to Ivorydale and Port Ivory from all points in official territory of iron or steel shipping drums in which glycerine and silicate of soda had been shipped to such points as unreasonable. This traffic moves at class rates subject to the official classification. There is no suggestion that the reduction in rates here sought would produce any increase in the return movement of empty drums. The evidence in these cases does not establish that the volume of movement between any particular points is sufficiently heavy to warrant requiring the defendants to establish rates on other than the class basis. On the contrary, so far as volume of movement is concerned, the class basis would appear to be peculiarly appropriate for this traffic, involving, as it does, shipments from numerous points scattered throughout the territory but with no considerable volume from any one point. The Commission has recognized that in many instances the rates provided by the carriers for the movement of returned empty containers were upon less than a maximum reasonable basis. The Commission has repeatedly approved the cancellation of exceptionally low rates on empty used packages and containers. HELD, neither from the standpoint of volume of movement nor otherwise is the Commission justified in

requiring the defendants to remove the drum traffic here under consideration from the classification and substitute some other and different basis thereon. It follows that if complainants have just cause for complaint against the charges which they now pay, it is because the classification is wrong or the class rates, as such, are too high. It would appear that no change should be made in the carload minimum without at the same time giving consideration to whether or not a change should also be made in the rating. HELD, rates and carload minima not unreasonable or otherwise unlawful, complaints dismissed. Western Paper Makers Chem. Co. v. A. A. R. R., 109 I. C. C. 133.

(4i) Respondents proposed to increase the ratings on hand pea hullers in the official, western and official classifications. Pea hullers are machines designed to hull peas for use as seed. Protestant ships only in less carloads and its shipments are always crated. Protest against the proposed carload ratings was withdrawn and evidence is confined to crated less carload shipments. Protestants hand hullers are both heavier per cubic foot and cheaper per pound than the power hullers considered in 98 I. C. C. 357. HELD, respondents have not justified the suspended schedules, under which hand and power hullers would be rated alike. The record, however, leaves no doubt as to the propriety of increasing the present ratings. One and one fourth times first class will be an appropriate rating for hand hullers in crates less carloads. HELD, proposed minimum weight in carloads justified as well as proposed carload ratings in the southern and western classifications, but in the official classification a carload rating higher than rule 25 has not been justified. Classification of hand pea hullers, 109 I. C. C. 143.

(4j) Complainant attacked fourth class rates charged on automobile bow sockets, carloads, since May 19, 1921 from Binghamton and Cortland, N. Y., and Pontiac, Mich., to destinations in Michigan, Missouri, New York, Ohio and Wisconsin as unjust, unreasonable and inapplicable, in violation of sections 1 and 6. Fifth class rates are asserted to have been applicable prior to June 10, 1923 instead of fourth class charged, and fifth class basis is sought on and after that date and for the future. Automobile bow sockets are used on open types of passenger vehicles to support the bows and fabric tops. The mechanism differs from carriage or buggy bow sockets only in detail, but it is somewhat heavier. Their functions are analogous. Automobile bow sockets are not wagon or carriage irons. They are designed and manufactured solely for automobiles and are not interchangeable with the analogous parts of horse drawn vehicles. The tariff description of the latter was specific and the analogous article rule was not applicable. Hence these shipments prior to June 10, 1923 must be considered to have been embraced in item of automobile parts, n. o. i. b. n., overcharges should be refunded. Automobile bow sockets move in large volume, usually in carload quantities, are separately wrapped, generally in paper, and are shipped in wooden boxes. Wrapping and packing of automobile and carriage bow sockets are similar. Claims for loss or damage are negligible. Bow sockets should be rated the same as the majority of other automobile parts, fifth class, and mimimum should be 36,000 pounds. HELD, fourth class rates unreasonable to extent they exceed fifth class, minimum 36,000 pounds, reparation denied. Chevrolet Motor Co. v. B. & O. R. R., 109 I. C. C., 184.

(4k) Complainant attacked first class rate on overalls in less carloads from Middlesboro, Ky., to Tupelo, Miss., as unjust, unreasonable and unjustly discriminatory, and, as compared with the rates from the same points to Memphis, Tenn., unjustly prejudicial to Tupelo. Tupelo is on the M. & O., and Frisco 50 miles south of Corinth, Miss., and 106 miles east of Memphis. The principal route of movement from Middlesboro to Tupelo is over Southern to Corinth and M. & O., beyond about 447 miles. There is another possible route by way of Southern to Birmingham, Ala., and Frisco beyond. From Middlesboro to Memphis by way of the Southern the distance is about 489 miles. Applicable rate $1.41 to Tupelo, to Memphis commodity rate of 84.5c. In 98 I. C. C. 627 the Commission found justified the proposed cancellation of less carload commodity rates and the commodity rate to Memphis was canceled on Nov. 5, 1925 leaving in effect first class rate of $1.52. HELD, rate attacked not unreasonable reparation denied on undue prejudice al-

legation, complaint dismissed. Northeast Mississippi Traffic Bureau v. M. & O. R. R., 109 I. C. C. 246.

(4l) Complainant attacked class A rate charged on one road wheel crane from Huntington, Ind., to Merced, Calif., July 20, 1922 as unreasonable. Shipment moved via Erie to Chicago, Northwestern to Omaha, U. P., to Ogden, Utah, S. P., to destination, 2,424 miles, charged class A rate of $2.73. Prior to March 15, 1918 defendants maintained a commodity rate of $1.73 on machinery and machines, and parts thereof taking class A rates, minimum 30,000 pounds and there was also in effect on machinery and machines under alternative provisions of the tariff a rate of $1.71 made by adding a class A arbitrary of 21c to a commodity rate of $1.50. On that date this rate was canceled allowing class rate to apply of $1.82. Effective June 1, 1922 there was established a rate of $2.61 on machinery and machines and parts thereof. HELD, rate attacked unreasonable to extent it exceeded $2.61, reparation awarded. Valley Paving & Construction Co. v. S. P. R. R., 109 I. C. C. 255.

(4m) Complainant attacked combination rate charged on a car of rig irons and 12 kegs of nails shipped June 10, 1922 from Ranger, Tex., to Comanche, Okla., as unreasonable. Shipment moved W. F. R. & Ft. W., to Dublin, Tex., Ft. W. & R. G., to Fort Worth, Rock Island through Ringgold, Tex., to destination 256 miles, charged 74.5c to Ringgold and 30.5c beyond on rig irons, and 34c to Dublin and 90.5c beyond on the nails. Ranger is in Texas common point territory 95 miles west of Fort Worth over the T. & P., at the junction with the W. F. R. & Ft. W. When the shipment moved a rate of 79.5c applied on rig irons, carloads, from Ranger to Comanche over T. & P. and Rock Island, distance 224 miles. Rig irons and the necessary quantity of nails are generally included in oil well outfits and supplies. When the shipments moved a mileage rate of 76.5c applied on oil well outfits and supplies from Ranger to Comanche, and complainant contends the rate should be 85 per cent thereof or 79.5c. HELD, rates charged unreasonable to extent they exceeded 79.5c, and for future 71.5c, reparation awarded. Lone Star Gas Co. v. C. R. I. & G. Ry., 109 I. C. C. 258.

(4n) Complainant attacked as unreasonable the carload rating in the western classification on carpets and carpeting made of cork, linoleum, or asphalted and decorated paper felt, and mats or rugs made of linoleum or of asphalted and decorated paper felt. Floor coverings are rated third class in carloads, minimum 30,000 pounds, in the western classification, and fourth class, same minimum in the official and southern classifications. The less carload ratings are fourth in the three classifications. The record shows that there is a substantial carload movement of floor coverings under rates governed by the western classification. The weight density of these commodities when packed for shipment in high. The average value is between 13 and 14c per pound. These two factors make for the proposed reduction in rating. To deny a reduced rating on floor coverings to the smaller jobbers and communities in the west solely because to do so would enable them to compete on more nearly equal terms with jobbers in the larger centers of population would be in contravention of one of the primary purposes of the act. From the standpoint of car space alone, it is easily possible to load 60,000 pounds of floor coverings in a 36 foot car. Defendants can not reasonably be required to maintain a lower minimum than 36,000 pounds on these commodities in the western classification. HELD, carload rating in western classification is unreasonable to extent it exceeded fourth class, minimum 36,000 pounds. Congoleum Nairn, Inc., v. C. & N. W. Ry., 109 I. C. C. 447.

(4o) Complainant attacked class A rate of $1.055 charged on two cars of electric starters and electric transformers on Jan. 7 and 12, 1918 from Glen Rock, Wyo., to St. Louis, Mo., as illegal and unreasonable. Allegation of unreasonableness was barred by the statute at time formal complaint was filed. The commodity rate was applicable on machinery or oil well supplies as described on page 42 of the tariff. The list on that page contains electrical machinery consisting of dynamos and motors and parts thereof. Electric starters and electric transformers are not specifically named, but transformers are. The latter would include electric transformers. An electric starter is an electric motor. HELD, applicable rate was commodity of 75c, reparation awarded. Wagner

Electric Corp. v. Director General 112 I. C. C. 57.

(4p) Complainant attacked official classification rating of fourth class, and rates governed thereby, on shipments of crushed carbon, or carbon flour, carloads, from Kaulmont, Pa., to Madison, Wis., as unreasonable to extent they exceed sixth class rating and rates. In 80 I. C. C. 344, Commission found fourth class rating not unreasonable. Carbon flour is a product of petroleum coke, the solid residue of petroleum refining. The material is not readily inflamable or susceptible to damage by water and is not injured when spilled in the car floor as the result of breakage of the container. Complainant has filed no loss or damage claims. In southern and western classification territories carbon flour, carloads, is rated fourth and fifth class, respectively. It is true that sixth class rating sought is applicable on petroleum coke, the raw material from which carbon flour is made and that the manufacturing process changes the nature of the coke and considerably enhances the value. But petroleum coke usually moves under rates that are 80 per cent of sixth class. Carbon flour is shown by this record to be a heavy low grade commodity, more closely associated with the carbons and carbon articles rated sixth class, carloads, than those rated fourth or fifth class. HELD, ratings and rates attacked unreasonable to extent they exceeded sixth class minimum 50,000 pounds, reparation awarded. French Battery & Carbon Co. v. C. & N. W. Ry., 112 I. C. C. 128.

(4q) Complainant attacked third class rates charged on four cars of camp outfits shipped between Sept. 11, 1923 and May 14, 1924 between Louisiana and Arkansas as unreasonable, unjustly discriminatory and unduly prejudicial to extent they exceeded class A rates applicable on contractors outfits. The cars are loaded and unloaded on public team tracks by complainant. Defendants expressed a willingness to establish class A rates on camp outfits. HELD, rates attacked on camp outfits unreasonable to extent they exceeded class A. rates on contractors outfits, reparation awarded. Standard Pipe Line Co. v. T. & P. Ry. 112 I. C. C. 186.

(4r) Complainant attacked carload ratings and rates on numerous articles included in the designation of furniture in official classification, as unreasonable and, as compared with ratings and rates on the same articles in western, southern, and Illinois classifications, unjustly discriminatory and unduly prejudicial. Generally, in official classification, the articles with which the complaint is concerned are rated, in carloads, second class, minimum 10,000 or 12,000 pounds, in most instances the latter, subject to rule 34. An exception is school chairs, which are rated rule 25, mimimum 14,000 pounds. The rating sought in all cases is third class, subject to present minima. Furniture, in carloads, is generally rated second class in official classification and third class in western and southern. Complainants dissatisfaction with the present furniture rating in official territory is induced largely by the concept that it is not in alignment with the rating accorded furniture traffic elsewhere. Apart from this, however, one of the cardinal contentions is that the classification elements fully warrant a rating of third class in official classification. Although the matter of claims will be accorded separate notice, it is not out of place at this point to observe that suitable packing is advantageous not only to the carrier but also to the trade, since it manifestly is better for the dealer to have satisfied customers receiving consignments in good and merchantable condition than to have one of the parties to the transaction burdened with a loss or damage claim and attendant delays and vexations. Comparisons of rate levels in different sections simply show that the class rate structures within the several classification territories are by no means homogeneous. In official territory class rates move traffic more generally than do class rates in other territories. This situation is reflected in respect to the transportation of furniture which in official territory moves largely on class rates and in other territories principally on commodity rates materially lower than class rates. HELD, ratings and rates not unreasonable. Complaint dismissed. Commission will institute a general investigation as the general basis of rates on furniture throughout the country. National Council of Furniture Asso. v. A. A. R. R., 112 I. C. C. 289.

ALL OTHER CITATIONS

Varnish, Chicago, Memphis, and St. Louis to Texas, 85 I. C. C. 33; O-So-Ezy Products Co. v. Director General, as

Agent, 85 I. C. C. 187; Fitch Dustdown Co. v. A. A. R. R. Co., 85 I. C. C. 416; Du Pont De Nemours & Co. v. Director General, as Agent, 85 I. C. C. 475; Larkin Co. (Inc.) v. C. & E. R. R. Co., 85 I. C. C. 649; Guggenheim Bros. v. Director General, as Agent, 85 I. C. C. 725; Armacost & Co. v. M. & M. T. Co., 88 I. C. C. 185; Indiana Public Service Commission v. A. T .& S. F. Ry. Co., 88 I. C. C. 721.

§23. Uniform or Consolidated Classification.

(a) The commission is inclined to view with favor any steps which may be taken by carriers to simplify the present system of publishing rates from Southwestern territory to the East, with the important qualification, however, that the resulting rates must be reasonable. Butter, Eggs, Dairy Products, and Poultry, 96 I. C. C. 19, 29.

§24. Exceptions to classification.

See Advanced Rates §5 (2) (bb); Class Rates §1 (n), §2 (3j) (3k) (5b).

(a) Respondents proposed to cancel the present exception to the western classification on cotton batting, leaving in effect the classification rating. The exception provides for second class rates on cotton batting, minimum 10,000 pounds. The western classification names ratings of second class on cotton batting in boxes, paper lined crates, or bales not machine compressed, carloads, minimum 10,000 pounds, and third class in machine pressed bales, carload, minimum 18,000 pounds. HELD, suspended schedules in so far as they provide for the application of third class on cotton batting, in machine pressed bales, carloads, minimum 18,000 pounds subject to rule 34, justified, but that in so far as they provide for the application of the graduated scale to the minimum of 10,000 pounds on cotton batting, in boxes, paper lined crates, or bales not machine pressed, carloads, not justified. Cotton batting in W. T. L. territory, 91 I. C. C. 535.

(b) Respondents proposed to cancel various exceptions to the official classification on wool in the grease, scoured wool, wool noils, and wool tops, applicable between points in New England, and in lieu thereof to apply the full classification basis, except, on certain wool in the grease, when compressed to a density of not less than 19 pounds per cubic foot. If allowed to become effective it will result in the same basis of rates on wool within New England as is generally applied in official territory. HELD, suspended schedules justified. Wool between New England territory, 92 I. C. C. 236.

(cd) Proposed cancellation of exceptions to official classification on wool in the grease, scoured wool, and wool noils and tops, applicable between points in New England, and in lieu thereof to apply the full classification basis; also to increase ratings on wool, in the grease, washed or unwashed, not scoured, in bales, c. l., when compressed to density of not less than 19 pounds per cubic foot, found justified. To continue present exceptions would mean continuation of a basis of rates in favor of New England shippers. Higher basis proposed will result in same basis of rates within New England as is generally applied in official territory and is part of the general revision of rates of New England carriers. Wool between New England Points, 92 I. C. C. 236.

(e) Exceptions to the governing classifications, as well as commodity rates, are usually established only when there is a considerable volume of movement in particular channels. Indian Packing Corp. v. Director General, 93 I. C. C. 400, 404.

(f) Exceptions to the classification and commodity rates are often founded on the conditions surrounding the transportation of the excepted commodity between particular points or in comparatively limited sections. A mere reference to certain tariffs in which such commodity rates or exceptions appear is not in itself persuasive of any impropriety in the classification. Classification of Canned Goods, 98 I. C. C. 166, 175.

(g) Maintenance of classification exceptions on various commodities from St. Paul, Minneapolis, and Duluth, Minn., Superior, Wis., and points taking same rates to Fargo, N. Dak., while contemporaneously failing to maintain such exceptions from same points of origin to Valley City and Jamestown, N. Dak., found unduly prejudicial to latter two points and unduly preferential of Fargo. Fargo Commercial Club v. A. & W. Ry. Co., 98 I. C. C. 691.

(h) L. & N., respondent, proposed to eliminate alcoholic liquors, less carloads, from certain tariffs. The only justification offered by respondent for the proposed exception is that since the Federal prohibition law went into effect it has found it necessary to police each shipment from the time of receipt until arrival at destination or delivery to a connecting carrier if the destination is beyond its line, and that the expense of policing liquor in transit in less carload lots is greater in most instances than the revenue received under the first class rate applicable. The question here presented is whether the respondent can, as common carrier, under the law, refuse to accept alcoholic liquor for transportation merely upon the ground that the cost of guarding it under the facilities for transportation provided by respondent is not remunerative under the present rate. Respondent has the right and duty under the law to establish just and reasonable rates for transporting alcoholic liquors in any quantity, and in establishing such rates may consider the value of the service performed for the shipper and the cost to respondent of performing it. Respondent has expressly held itself out to accept this traffic by obtaining the necessary Government permit. It does not appear that the traffic is inherently any more dangerous or otherwise objectional from a transportation point of view in less than carloads than in carloads, or that the requests for transportation in less carloads have been or are likely to be unreasonable. HELD, suspended schedules not justified. Alcoholic liquors via L. & N. 102 I. C. C. 202.

(i) Respondents proposed to cancel the application of exception note 4 of Agent Dulaneys exceptions to southern classification I. C. C. 20, to class rates on certain water and rail traffic from Baltimore, Md., and north Atlantic ports to Lynchburg, Va., and other Virginia points. Present rates from north Atlantic ports to Lynchburg are governed by southern classification subject to exception note 4 above referred to. This provides that various specified commodities, such as canned goods, cigarettes, coconuts other than desiccated, sugar, and smoking tobacco, in less carloads, moving by water and rail between north Atlantic ports and Lynchburg shall take certain class ratings which are one class lower than the southern classification ratings. The cancellation proposed would restore the ratings on the commodities mentioned moving by water and rail to the full southern classification basis the same as applies in connection with all rail movements, and would result in material increases in rates. Respondents offered little justification for the proposed cancellation other than a statement by the publishing agent that the present application of note 4 was provided for by mistake, due to a clerical error. HELD, proposed schedules not justified. Cancellation of note 4 exceptions to southern classification on water and rail traffic from north Atlantic ports to Lynchburg, Va. 102 I. C. C. 205.

(ia) Proposed cancellation of exceptions to southern classification, under which certain commodities l. c. l. moving water-and-rail from north Atlantic ports to Lynchburg and other Virginia points take ratings one class lower than those provided in southern classification and restoring of such ratings to the full southern classification basis applying all-rail, found not justified. Respondents offered little justification other than a statement that exceptions were erroneously published, no evidence concerning reasonableness of the rates proposed being adduced, or justification for fourth-section departures which would result thereunder offered. Moreover, a considerable volume of business has developed under the present rates which have been in effect approximately two years. Exceptions to Southern Classification, 102 I. C. C. 205.

(j) Upon general investigation, on commission's own motion, of l. c. l. ratings in exceptions to southern classification, FOUND: There is no justification for requiring the maintenance or establishment on l. c. l. traffic of exceptions to southern classification. Southern Class Rate Investigation, 100 I. C. C. 513, 549, 641, 706.

(k) Complainant attacked exception to classification rate of 17.5c charged on four cars of prepared roofing, between Sept. 4 and April 26, 1924 from Chicago, Ill., to Terre Haute, Ind., as inapplicable to extent it exceeded 13c. Rate charged 90 per cent of sixth class. Defendant was a party to a specific joint commodity rate of 13c from Chicago to Midland City, Ill., applicable through Terre Haute. Subsequently defendant cancelled

routing via Terre Haute. HELD, rate attacked inapplicable, applicable rate was 13c, reparation awarded. Elaborated Ready Roofing Co. v. C. & E. I. Ry., 109 I. C. C. 401.

(l) The exception to the classification required reference to the tariff naming class rates, and can not be considered as a specific commodity rate. Elaborated Ready Roofing Co. v. C. & E. I. Ry., 109 I. C. C. 401, 402.

ALL OTHER CITATIONS

Classification Exceptions on Empty Egg Cases, 88 I. C. C. 376.

§27. Reparation.

See Reparation.

(a) An award of reparation does not necessarily follow from a finding that a classification rating is unreasonable. Bissinger & Company v. G. N. Ry., 92 I. C. C. 577, 581.

ALL OTHER CITATIONS

O-So-Ezy Products Co. v. Director General, as Agent, 85 I. C. C. 187; Albers Bros. Milling Co. v. Director General, as Agent, 85 I. C. C. 747; Garrett-Callahan Co. v. A. C. L. R. R. Co., 88 I. C. C. 103.

VI. TARIFFS AND CONSTRUCTION

§28. In general.

See Advanced Rates §17 (gg); Tariffs.

(a) Condensed buttermilk is made by subjecting buttermilk to a patented process in the course of which a portion of the water content is removed and lactic acid developed. In physical appearance it resembles lard. The change produced in condensation is due to extraction of water and chemical action and not to medication or the addition of condiments. Consolidated Products Co. v. C., B. & Q. R. R. Co., 89 I. C. C. 103, 104.

(b) The hulled product of oats is called oat groats, and in that form is used only as a poultry food. When oat groats are steamed and passed between steam rollers the product becomes rolled oats, which is used generally as a food for human consumption. Oat groats ground up is called oat flour and is used only as a poultry food. Atlas Cereal Co., v. A., T. & S. F. Ry. Co., 89 I. C. C., 212, 213.

(c) In the process of milling rice there is a by-product of broken rice, and rice flour is made by grinding this broken rice. Grosjean Rice Milling Co. v. Director General, as Agent, 89 I. C. C. 395, 397.

(d) No classification can be so minute as to conform to the differing varieties and conditions of traffic, and to separate different grades of densities of the same article into different classes with varying rates, even if it could be accomplished, would go far to defeat the real purpose of classification. Edlund Broom Corp. v. B. & M. Ry., 92 I. C. C. 749, 751.

(e) Complainant attacked first class rates applied to various carloads of bicycles, crated, from eastern points to Oakland and San Francisco, Calif., as unjust, unreasonable, unduly prejudicial and inapplicable to extent they exceeded commodity rates in effect on passenger vehicles. The issue presented is one of tariff interpretation only. At time of movement the tariff contained commodity rates of $2.075, $2.315 and $3.085 from Middletown to Oakland, from Westfield to San Francisco and from Little Falls to San Francisco, respectively, on vehicles, nonself-propelling, and parts thereof. The Commission is of the opinion that a bicycle is neither a freight nor a passenger vehicle, and rates charged were applicable and not unreasonable or otherwise unlawful. Complaint dismissed. Jones v. Pennsylvania R. R., 93 I. C. C. 697.

(f) Respondents proposed to change the item in the official classification covering rags, n. o. i. b. n., in machine pressed bales, less carloads, so as to increase the rating from fifth class to fourth class on rags having value for purposes other than conversion into fiber. Under the schedules here proposed shippers and carriers would be required to determine in the first instance, as at present, whether a given lot of material was in fact rags, and following that it would be necessary, before the legal rate could be known, to relate the rags to some standard of value or usefulness which the record shows is quite indefinite and indeterminate, if it exists at all. HELD, schedules not justified. Classification of rags, 98 I. C. C. 591.

(g) Tariffs carried description on "fabrics, made wholly of cotton, in original piece—but not finished articles ready

for use—in rolls covered with burlap or in bales or boxes, any quantity," and on "cotton-piece goods, any quantity, viz, cotton fabrics (made wholly of cotton), in original piece (but not finished articles ready for immediate use), packed in rolls covered with burlap, or in boxes or bales." Contention that terms "wholly manufactured articles" and "finished articles" in above descriptions had effect of limiting application thereof to unfinished cotton fabrics or cotton fabrics requiring some further process of manufacture to render them suitable for commercial use as fabrics, not sustained. More apt terms would have been employed to give expression to such meaning if intended. Rosenblatt & Sons v. Director General, 91 I. C. C. 18, 19.

(h) Cotton denim is a coarse cotton fabric, and clearly comes within description "cotton-piece goods, n. o. i. b. n." Rosenblatt & Sons v. Director General. 91 I. C. C. 18, 20.

(i) "Cream of Wheat" is that part of so-called first break in process of milling wheat into flour, known to the milling trade as Number 1 middlings, wheat grits, farina, or semolina, and is the portion of wheat grain which, when subjected to from six to eight additional processes, becomes finest grade of flour. Cream of Wheat Co. v. A., T. & S. F. Ry. Co., 91 I. C. C. 45.

(j) When complainant discovered that wheat grits had been included in tariff item taking flour rates it thereafter ceased to bill its product, Cream of Wheat, as a cereal-food preparation and availed itself of flour rate by billing as wheat grits. HELD: Such billing was improper, and fact that commodity is prepared and represented to the trade solely as a cereal food and not as grits is sufficient to make rates on cereal foods applicable. Andrews Soap Co., 4 I. C. C. 41. Cream of Wheat Co. v. A., T. & S. F. Ry. Co., 91 I. C. C. 45, 47.

(k) Wool in the grease, fleece wool, pulled wool, and scoured wool, defined. Wool Rates Investigation, 1923, 91 I. C. C. 235, 238.

(l) "Fluorspar" is a nonmetallic mineral consisting of about 51 per cent calcium and 49 per cent fluorine and is primarily used as a flux in metallurgy. About 85 per cent of production in this country is used by steel industry and remaining portion is used in production of glass, enamel ware, hydrofluoric acid, and aluminum. Rosiclare Lead & Fluorspar Mining Co. v. M. & O. R. R. Co., 91 I. C. C. 577, 578

(m) A lamb is any sheep under 15 months old, either a wether, ewe, or buck. Standfield v. O. W. R. R. & N. Co., 91 I. C. C. 598, 601.

(n) As between two ratings prescribed by different classification items, each item describing article shipped in general terms, and neither one being more definite than the other, applicable rating is the lower of the two. Peck Stow & Wilcox Co. v. N. Y., N. H. & H. R. R. Co., 91 I. C. C. 747, 748.

(o) Complainant attacked class A rate charged on electrical appliances, including electric fans and electric motors, of $3.035 May 13, 1922 from Springfield, O., to San Francisco, Calif., as illegal, unreasonable, unjustly discriminatory unduly prejudicial and in violation of fourth section to extent it exceeded $2.84. The main issue is one of tariff interpretation. The tariff provided a car load commodity rate from Chicago to San Francisco of $2.53 under the general heading of machinery, sugar making, among the items being motors and fans. The tariff also authorized the application of any combination of intermediate rates of less than the through rate. The electric fans and motors shipped could not be put to any normal use in connection with machinery in a sugar mill. Consequently there were not within the descriptive term of the tariff, and the class rates properly applied. HELD, rate charged applicable not unreasonable or otherwise unlawful, complaint dismissed. Robbins & Meyers Co. v. C. C. C. & St. L. Ry., 100 I. C. C. 418.

(p) Lime Cola "syrup" held to take third class rating under southern classification No. 40, item 25, as fountain syrups, fruit syrups, or syrups not otherwise classified, term "syrup," as used, in G. F. O. 3004, which fixes commodity rate as addendum to molasses, having narrower meaning, and, in view of section 24, was not intended to include syrups used merely as basis for a beverage. Louisville & N. R. Co. v. Lime Cola Bottling Co., (Ala., 1924) 101 So. 678.

(q) Terms "clipped tops" indicates a removal of leaves from beets, carrots,

and parsnips, from 3 to 6 inches of stems being retained to permit tying in bundles. Beets and Carrots from Texas, 92 I. C. C. 141, 142.

(r) In the western classification boilers were included in list of articles under heading "Machinery and Machines" but carriers removed it from that list resulting in making commodity rates on machinery and machines inapplicable to boilers, and leaving the full classification basis to apply. After shipments moved, boilers were restored to machinery commodity basis. No adequate explanation or justification for singling out boilers and placing them upon full classification basis having been offered by carriers, who also failed to sustain burden of proof cast upon them to justify rates as increased, class rate assessed on shipments of boilers from Munice, Ind., to Houston and Orange, Tex., found unreasonable to extent it exceeded lower commodity basis and reparation awarded. National Supply Co. of Texas, v. C., C., C. & St. L., 92 I. C. C. 295.

(s) Commodities of same nature and used chiefly for same purpose usually take same rates, and differences in value of same commodity shipped in different forms are frequently disregarded in rate making where articles are essentially of same nature and highly competitive. Chloride of Zinc to Texarkana, 92 I. C. C. 569, 572.

(t) A lower rate properly may be applied to a product when in an unfinished condition than that applicable to it when finished. U. S. v. Gulf Refining Co., 45 Sup. Ct. 597.

(u) At time of movement there was no specific rate or rating on "earthenware jugs, insulated and metal jacketed," and under analogous article rule rate applicable on "jugs, glass, insulated and metal jacketed," was assessed. Contemporaneously lower rates applied on "pottery, earthenware, stoneware, common brown or gray jugware." FOUND, an earthenware jug, when insulated and metal jacketed, completely loses its identity as an ordinary earthenware jug or jar and value of insulated metal-jacketed articles greatly exceeds that of ordinary earthenware jugs. Article under consideration does not fall within generic term "pottery, earthenware, stoneware, common brown or gray jugware," and rate charged was applicable. Cullum & Boren Co. v. C., B. & Q., 93 I. C. C. 354.

(v) Where classification provides a specific rating on an article, a broad description, used in connection with a lower commodity rate under which such article may be included does not take it out of the classification. Cleveland Akron Bag Co. v. W. & L. E., 93 I. C. C. 694, 695.

(w) Bicycles were classified under heading of "hand vehicles" upon which first-class rates applied. Contemporaneously a lower commodity rate was maintained on "light and heavy non-self-propelling freight and passenger vehicles." HELD, since a bicycle is neither a freight nor a passenger vehicle, first-class rates assessed were applicable. United Cycle & Supply Co. v. B. & O., 93 I. C. C. 689; Jones v. P. R. R., 93 I. C. C. 697.

(x) Minimum charge of $15 per car, applicable on freight generally, collected on intrastate shipments of pine stumps, boughs, limbs, and wood fragments moving during Federal control, found assessed without tariff authority. Shipments were billed as wood and were used in the extraction of oil, rosin, and turpentine. No specific rates were applicable and while governing classification carried the so-called analogy rule, the practically refuse material comprising the shipments finds no analogy in lumber which embraces a prepared, sawed, product of the forests. Nor can analogy be found in tariff item on fuel wood since applicable rates thereon were measurable in cords and shipments here in question could not be corded. Charges based upon those applicable on lumber, without regard to minimum charge per car, found reasonable and reparation awarded. National Reduction Corp. v. Director General, 95 I. C. C. 284.

(y) To fall properly within the tariff designation "other than crude," bristles need not necessarily be completely finished, ready for use in the manufacture of brushes. It is sufficient that some of the work be performed in preparation for such use. Cone & Co. v. Director General, 96 I. C. C. 629.

(z) Where a classification provided two ratings for same commodity, under equally specific descriptions, the legal rating is the lower of the two. Classification of Targets, 98 I. C. C. 178, 180.

(aa) Rate on wooden wagon bows from Columbus, Ohio, to Sherman and Stamford, Tex., specifically named in the

tariff on this commodity, found unreasonable to extent it exceeds lower contemporaneous rate on "wagon wood, not otherwise specified," which latter rate is prescribed as reasonable for future. Fort Smith Rim & Bow Co. v. B. & O. R. R. Co., 98 I. C. C. 536.

(bb) Class rate charged on automobile heaters, l. c. l. from Chicago, Ill., to San Francisco, Calif., found applicable and not shown to be unreasonable. Under the governing tariff provision is made for a lower commodity rate on automobile parts, but heaters can not be classed as a part of an automobile, being more in the nature of an accessory or added feature. Neither are heaters included in the list of automobile parts specifically named in the classification, they being separately provided for under the heading "Heaters." Complaint dismissed. Western Auto Supply Agency of Los Angeles, Calif., v. C., B. & Q., 98 I. C. C. 647.

(cc) Complainant apparently deduces that any special feature or attachment which some manufacturer might include as a part of regular equipment, even though not ordinarily considered as essential to the operation of a motor car, should, when shipped by itself, be regarded as an automobile part, and so rated. In practical effect this would nullify the classification which is intended to govern the rates on articles listed therein, except where specific commodity rates or exceptions are provided. Western Auto Supply Agency of Los Angeles, Calif., v. C., B. & Q., 98 I. C. C. 647, 648.

(dd) Complainant attacked class rate charged on three cars of scrap iron during 1923 from Alexandria, Va., to Harrisburg and Lebanon, Pa., as unreasonable. The shipments consisted of parts of 1,400 horsepower engines which were removed from ships. The parts shipped weighed about 15 tons each. It was and is the practice of complainant to break similar parts into smaller pieces, but this was not done when these shipments moved, because of lack of space and accumulation of work. There is no evidence in the record to indicate whether or not the commodities were sold for remelting purposes or were remelted. A witness for complainant conceded that some one desiring to construct a marine engine of the type of these could add the missing parts to the pieces shipped and save considerable expense, inasmuch as these pieces were expensive because of their size. The conclusion must be reached that the articles shipped were not scraps or pieces of iron or steel, having value for remelting purposes only. To come within that tariff description the articles must not be shipped in their original form, but must be so reduced into fragments, scraps, or pieces as to be useless for any purpose other than remelting. HELD, fifth class rate applicable and not unreasonable, complaint dismissed. Simon v. Southern Ry. 102 I. C. C. 325.

(ee) Rate on wood pulp found not applicable on shipments of wood flour from Hercules, Calif., to Bacchus, Utah, at time shipments moved, and applicable rate on such shipments found unreasonable to extent it exceeded rate applicable on wood pulp, which was subsequently established on wood flour. Reparation awarded. Hercules Powder Co. v. Director General, 100 I. C. C. 393.

(ff) Ice-cream mix sold and shipped under the trade name of Kim, as herein described, found to be a form of condensed milk. Kentwood Ice Mfg. & Bottling Works v. Amer. Ry. Ex. Co., 101 I. C. C. 93, 99.

(gg) Rating for dry goods, n. o. i. b. n. found applicable to bed sacks, and not unreasonable. Following 16 I. C. C. 405, commission found not warranted in removing bed sacks, a textile article little used or known, from the broad classification for dry goods and in prescribing a rating based on the classification characteristics of the article. Triad Corp. v. C. of G. Ry., 101 I. C. C. 687.

(hh) Where a radio set is designed for the reception of tubes or a loud speaker, or both, and those parts, or either of them, are shipped with the set, whether installed or separately packed, the whole constitutes a single electrical appliance and must be rated as such. Classification of Radio Sets, 102 I. C. C. 140, 141.

ALL OTHER CITATIONS

Ratings on Army Tractor Tanks, 85 I. C. C. 383; Southern Cotton Oil Co. v. Director General, as Agent, 85 I. C. C. 433; Friedlander v. Director General, as Agent, 85 I. C. C. 465; Willamette Iron & Steel Works v. Director General, as Agent 85 I. C. C. 629; Guggenheim Brothers v. Director General, as Agent, 85 I. C. C. 725; Newport Milling Co. v.

Director General, as Agent, 88 I. C. C. 17; Parkersburg Rig & Reel Co. v. B. & O. R. R. Co., 88 I. C. C. 49; Marine Products Co. v. S. P. Co., 88 I. C. C. 227; National Poultry, Butter & Eggs Asso. v. A. A. R. R. Co., 88 I. C. C. 673; Van Dyke Smelting & Refining Works v. P. R. R. Co., 88 I. C. C. 743.

CLAYTON ACT

(a) The distribution or sale of standard patterns to retail dealers, the sale of catalogues, fashion sheets, and other advertising matter to the same dealers, inseparably connected with the sale or agreements regarding delivery of patterns to retail distributors throughout the country, held interstate commerce, within the terms of the Clayton Act. Butterick v. Federal Trade Commission 4 Fed. (2d) 910.

COASTWISE TRAFFIC

See Export Rates and Facilities §6 (f); Import Traffic; Port to Port Rates; Proportional Rates II (kk); Rail and Water Rates.

(a) Relationship of rates on certain commodities for export, import, or coastwise movement via Galveston, Tex., from or to points in Texas, Oklahoma, western Louisiana, Arkansas, and Kansas found unduly prejudicial to Galveston and unduly preferential of New Orleans, La. Such undue prejudice should be removed by establishing the same rates to or from New Orleans or Galveston, as the case may be, in instances where the differences in distance from and to the two ports are not greater than 100 miles, and by establishing rates to or from Galveston, as the case may be, certain prescribed differentials, under New Orleans in instances where the differences in distance in favor of Galveston are greater than 100 miles. The record is not sufficiently complete to warrant the commission in prescribing relationships between the rates to or from Galveston and New Orleans on other commodities or from or to points other than those embraced in the foregoing findings. Relationships herein prescribed will serve as a guide to defendants in readjusting the rates on other export, import, and coastwise traffic. Galveston Commercial Asso. v. G., H. & S. A. Ry. Co., 100 I. C. C. 110.

(b) That coastwise water service is materially cheaper than rail service admits of no doubt. This is particularly true of l. c. l. freight, which is carried by boat in practically the same manner as c. l. freight. Southern Class Rate Investigation, 100 I. C. C. 513, 687.

COMBINATION RULE

See Local Rates and Combinations (yy) (3t); Long and Short Hauls §6¾b (m); Tariffs §9a.

COMMODITIES CLAUSE

I. CONSTITUTIONALITY.

II. APPLICATION AND CONSTRUCTION.

I. CONSTITUTIONALITY.

(a) Contention as to violation of the commodities clause, interjected into the case for the first time in oral argument, found to be without relevancy in the proceeding. International Harvester Co. v. N. Y. C., 101 I. C. C. 89, 90.

COMMODITY RATES

I. CREATION AND PURPOSE
- §1. Nature in general.
- §2. Relation to class rates.

II. APPLICATION AND CONSTRUCTION.
- §2½. In general.
- §3. Specific commodity rating.
- §4. Creation subsequent to shipment.

III. REASONABLENESS AND DISCRIMINATION.
- §5. In general.

CROSS REFERENCES

See Advanced Rates §18 (4); Alternative Rates; Class Rates; Classification §4; Differentials; Evidence §13 (1½); Special Rates and Services; Tariffs.

I. CREATION AND PURPOSE.

§1. Nature in General.

(a) There is no good reason for maintaining commodity rates on articles which move in small volume and in l. c. l. quantities. Burlap Bags and Iron and Steel Articles, 89 I. C. C. 131, 134.

(b) Commodity tariffs must be read in the light of the governing classification. Grosjean Rice Milling Co. v. Director General, 89 I. C. C. 220, 396.

(c) Consideration of volume of movement of a given article between given points in determining the commodity rates on that article between those points tends to ignore any percentage relation of commodity rates to class rates between other points where the volume of movement is not similar. Fresh Fruits and Vegetables, 89 I. C. C. 473, 475.

(d) Commodity rates applicable to less carload traffic constitute departures from the usual practice, and their establishment should be required only upon a clear showing of compelling reasons. Arkansas Fertilizer Co. v. A. & S. Ry., 92 I. C. C. 504, 509.

(e) Commodity rates must be specific and must not be applied to analogous articles. Cullum & Boren Co. v. C. B. & Q. R. R., 93 I. C. C. 354, 355.

(f) Commodity rates are ordinarily established when special treatment not afforded by the classification is required, and while heavy loading and volume of movement are not the only consideration in the establishment of commodity rates, they are important elements, which, other considerations being equal, may and frequently do become determinative. Parkersburg Rig & Reel Co. v. C. R. I. & P. Ry., 95 I. C. C. 181, 187.

(g) Commodity rates must be applied strictly, from which it follows that only the article or articles clearly comprehended within the descriptive terms of the commodity rate could be considered as having been removed from the classification. St. Louis Fruit & Vegetable Asso. v. L. & N. R. R., 98 I. C. C. 553, 556.

(h) Respondents proposed the cancellation of numerous carload and less carload commodity rates from points in southeastern and Carolina territories to destinations in the Mississippi Valley territory, and in a few instances, to Ohio river crossings, thereby making applicable class rates between the respective points. On conference held at the office of the commission on Nov. 7, 1923 the matter of carload rates was disposed of by agreement between the shippers and the carriers and by order of the Commission the orders of suspension were vacated and set aside except in so far as they affect less carload and any quantity rates. The present less carload commodity rates from the southeast and the Carolinas were made with relation to less carload and any quantity commodity rates from the Ohio river crossings to the valley, which, have been canceled, with a few exceptions. The class rates bear the same percentage relationship to each other as do the rates from the Ohio and Mississippi river crossings, and are in accord with the fourth section over all direct routes. Many of the commodity rates are obsolete and there is no objection to their cancellation. **Marble Granite and Stone.** The marble and granite interests are not averse to the ultimate elimination of the less carload commodity rates when a proper level of class rates and appropriate classification has been prescribed to take care of the commodity without any undue increase in the rates. If the less carload commodity rates are canceled the resulting class rates would in some instances be three or four times that of the carload rate on the same commodity. This relationship is abnormal and there should be a closer spread between the carload and less carload rates. **Furniture.** Class rates apply northbound from New Orleans to High Point, N. C., and defendants proposed to make applicable same rate southbound. Furniture is bulky, fragile, and susceptible to damage in transportation. It is a high grade commodity which, generally speaking, should move on class rates in less carload quantities. **Other Commodities.** Harness and saddlery is shipped in large quantities from Buford, Ga. The evidence shows that 90% of the movement from Buford is on class rates and no valid reason is shown for the further continuation of commodity rates to the Gulf ports. It is proposed to cancel the less carload commodity rates on excelsior packing mats from Woodland, Ga., to New Orleans and Vicksburg. There has been no movement under the commodity rates during the past year. Less carload commodity rates are published on meats and lard compounds or substitutes from Moultrie, Ga., to lower Mississippi river points and to Gulf ports. Shippers at Moultrie are agreeable to this cancellation. Liquid carbonic gas moves generally on class rates in south-

ern territory and from other points in the valley. The proposed adjustment on hats and caps will restore the original basis. This also applies to patent medicines, window glass, starch, stationery, leather, paints, trunks, boots and shoes, and various other articles. Less carload commodity rates are applicable on alcohol in wood on which there has been no movement, the same being true on ale, beer, porter, and other malt liquors. Axes move at commodity rates from Montgomery to New Orleans and Vicksburg while third class rates apply to other valley points and from Birmingham. An any quantity rate of 21.5c on jute bagging will become 28.5c to Meridian and 31.5c to Jackson. HELD, proposed rates on marble granite and stone have not been justified, but proposed schedules on other commodities have been justified. Commodity rates between points in southern territory, 98 I. C. C. 627.

(i) Commodity rates are ordinarily established when special treatment not afforded by the classification is required, and while heavy loading and volume of movement are not the only considerations in establishment of commodity rates, they are important elements, which, with other considerations being equal, may and frequently do become determinative. Parkersburg Rig & Reel Co. v. C., R. I. & P., 95 I. C. C. 181, 187.

(j) It is believed that the new distance scale of class rates herein prescribed for application in southern territory, if applied both interstate and intrastate, will more than maintain present revenues, particularly if many of the l. c. l. exceptions and commodity rates are gradually eliminated. The possible increase in revenue, if the maximum rates are uniformly applied, is believed to be justified by fact that class-rate traffic is in general of such a character that in revising the rates upon its revenue doubts may well be resolved in favor of carriers, or, in other words, in favor of commodity rates on traffic of a more basic character, the revision of which is pending. Southern Class Rate Investigation, 100 I. C. C. 513, 649.

(k) Proposed revision of distance commodity rates on commodities other than those treated in Memphis-Southwestern Investigation, 77 I. C. C. 473, for application between points in southwestern territory between points in such territory, on the one hand, and defined territories in c. f. a., western trunk-line, and southern territories and related points, on the other, designed for the purpose of complying with the commission's orders in the above-cited case, found justified with respect to certain commodities and not justified with respect to others. Reasonable rates in specific instances prescribed for the future and fourth section relief granted. Commodity Rates in Southwestern Territory, 101 I. C. C. 308.

(l) Departure from the percentage formula in making commodity rates is not in and of itself a violation of section 1 of the interstate commerce act. In principle there is no more reason under section 3 than under section 1 for requiring either conformity to, or equal departures from, the percentage formula. The earnings and transportation conditions are matters for the exercise of judgment as much in the one case as in the other. Detroit Chemical Works v. C. R. R. Co., 101 I. C. C. 671, 673.

(m) Proposal to cancel commodity rates on brick, draintile, and other clay products from Mason City, Des Moines, Acme, and Rockford, Iowa points on Rock Island, to Ashland, Wis., on Soo Line, leaving in effect considerably higher class rate and creating many violations of long-and short-haul provision of fourth section of the act, found not justified. Combination Rule on Brick and Draintile, 101 I. C. C. 729.

(n) Proposed cancellation of commodity rates on cheese from Wisconsin points, Chicago, Missouri and Mississippi River points, and points in defined territories to destinations in Arkansas, Louisiana, Oklahoma, and Texas, and application of third-class rates in lieu, thereof, found not justified. Cheese from Wisconsin, 101 I. C. C. 744.

(na) Following 102 I. C. C. 79 in which the commission quoted its statement in Southern Class Rate Investigation, 100 I. C. C. 513, that with a reasonable level of class rates, there would appear to be little if any justification for requiring l. c. l. commodity rates in southern territory, proposed cancellation of l. c. l. commodity rates on clean rice between points in southern territory, which would result in increases, found not justified. Rice between Points in Southern Territory, 102 I. C. C. 2, 317.

(o) It has long been recognized that volume of movement, present or prospective, is one of the controlling factors in the establishment of commodity rates. Western Paper Makers Chem. Co. v. A. A. R. R., 109 I. C. C. 133, 135.

(p) A commodity rate on less carload traffic is a pronounced departure from the usual practice and the Commission should require its establishment only upon a clear showing of compelling reasons. Western Paper Makers Chem. Co. v. A. A. R. R., 109 I. C. C. 133, 137.

(q) A commodity rate applicable on less carload traffic is a pronounced departure from the usual practice. Given a reasonable level of class rates, it seems that under few, if any, circumstances, will the Commission be justified in requiring the maintenance or establishment of less carload commodity rates. Bananas from Gulf ports, 109 I. C. C. 211, 218.

(r) Under the circumstances the shipment of 12 carloads in one direction and 2 carloads in the other does not justify a commodity rate and the record does not establish the necessity of a commodity rate for the future. Dolese Bros Co. v. C. R. I. & P. Ry., 109 I. C. C. 561, 564.

(s) Given a reasonable level of class rates, it seems that under few, if any, circumstances will the Commission be justified in requiring the maintenance or establishment of less carload commodity rates. Provided that no undue preference results, the carriers may establish them voluntarily for competitive reasons or even for the purpose of aiding in the development of the territory which they serve. But those are not reasons which may govern the action of the Commission. Dixie Peanut Mills v. A. G. S. R. R., 112 I. C. C. 167, 170.

(t) The mere fact that a commodity moves in considerable volume during an annual period of 60 days does not entitle it to a commodity rate. Commodities may move in considerable volume and yet remain on a class rate basis. Heinz Co. v. Director General, 112 I. C. C. 206, 212.

ALL OTHER CITATIONS

Cutler-Hammer Mfg. Co. v. Director General, as Agent, 88 I. C. C. 600.

§2. Relation to Class Rates.

See Class Rates.

(a) Charges on fuller's earth, moving in tank cars furnished by shipper because of inability of carriers to furnish adequate box-car equipment, from Georgia and Florida points to Richmond, Calif., based on combinations to and from Mississippi River, found unreasonable to extent class rates for haul east of New Orleans, La., exceeded the contemporaneous commodity rates applicable on shipments moving in box cars. Reparation awarded. Standard Oil Co. v. A. T. & S. F. Ry. Co., 89 I. C. C. 27.

(b) Commodity rate on agricultural implements moving from Memphis, Tenn., to Jackson, Miss., found unreasonable to extent it exceeded the contemporaneous sixth class rate to and from same points. Prior to the general adjustments prescribed on class rates in 55 I. C. C. 515, and on commodity rates in 64 I. C. C. 306, these rates were on an equality, but the commodity rate became higher than the class rate due to "a chance result of the general adjustments" under which the class rates were revised in advance of the commodity rates. Reparation awarded. McCleland Hardware Co. v. I. C. R. R. Co., 89 I. C. C. 129.

(c) Consideration of volume of movement of a given article between given points in determining the commodity rates on that article between those points tends to ignore any percentage relation of commodity rates to class rates between other points where volume of movement is not similar. Fresh Fruits and Vegetables, 89 I. C. C. 473, 475.

(d) Where a commodity moves in considerable volume and carriers prefer to move them on class rates instead of providing commodity rates, they must provide an application of class rates that is reasonable and nonprejudicial in view of all circumstances and conditions surrounding the traffic. The class rate basis can not be justified by a mere showing that rates are group rates, when the group is extensive and the particular commodity considered moves from only one point in the group, competition being with a point a few miles away and outside of that group. Virginia Can Co. v. A. & V. Ry. Co., 89 I. C. C. 562, 564.

(e) A comparison of earnings on a specified commodity with average earn-

ings on all traffic is generally of little if any value in measuring the reasonableness of rates, for reasons, among others, that averages are based on class as well as commodity rates, divisions of joint rates as well as local rates, and c. l. and l. c. l. traffic; and because of differences between average and actual hauls. Iron and Steel Articles, 89 I C. C. 606, 622.

(f) Complainant attacked commodity rates charged on Cream of Wheat, from Minneapolis, Minn., to Montana, Idaho, Washington, Oregon and California as unreasonable, unjustly discriminatory and unduly prejudicial to extent they exceeded rates on flour. It is shipped in wooden cases, average weight 59,500 lbs. On Nov. 30, 1922, the defendants established rates of 95c to Washington, Oregon, Montana and Idaho and 99c to California. The fact that the commodity is prepared and represented to the trade solely as a cereal food and not as grits is sufficient to make the rates on cereal foods applicable. Flour is a prime necessity that moves in volume everywhere. Every consideration dictates that flour should move at comparatively low rates in all sections. Flour is the most valuable article to which the grain or grain products rates are generally accorded. Complainants principal competition is with the other cereal breakfast foods and not with middlings, which is normally an animal food. It is not established that there is substantial competition between Cream of Wheat and flour, notwithstanding in some of its secondary uses, such as making of pancakes and waffles, Cream of Wheat displaces and to that extent competes with flour. Such competition is not comparable with that existing between ordinary flour and prepared flour. HELD, rates attacked not unreasonable or unduly prejudicial, complaint dismissed. Cream of Wheat v. A. T. & S. F. Ry., 91 I. C. C. 45.

(g) Complainant attacked joint commodity rate on asbestos fiber from Sherbrooke, Que., to Milwaukee, Wis., charged on a car of asbestos refuse originating at Thetford Mines, Que., as unreasonable to extent it exceeded rate on asbestos plaster or finish from Sherbrooke to Milwaukee. In 88 I. C. C. 600, rate attacked found unreasonable to extent it exceeded rate on asbestos plaster. Rate on asbestos fiber was 52c, the contemporaneous rate on asbestos plaster was 33c. HELD, reparation awarded on basis of 33c. Cutler Hammer Mfg. Co v. Director General, 92 I. C. C. 9.

(h) Complainant attacked commodity rates charged on shelled peanuts, carloads, from Denison, Fort Worth, Weatherford, De Leon, and Tyler, Texas, to Oklahoma City, Okla., as unreasonable. Rates on shelled and unshelled peanuts from points in the southwest are frequently the same. The western classification rates peanuts, shelled and unshelled, fourth class. Peanut butter, a product of peanuts, is rated fifth class in western territory, the rates and rating being the same as those on canned goods. In 47 I. C. C. 542 the Commission prescribed a rate of 45c on peanuts, shelled or unshelled, from Houston, Tex., to St. Louis, Mo., 798 miles. Rate is now 69c or 47.2 per cent of the fourth class rate. This percentage of the fourth class rates in force on and after July 1, 1922 from the points here considered to Oklahoma City would result in rates of 33c from Denison, 34c from Fort Worth, 38.5 from Weatherford, 44c from De Leon and 43c from Tyler. HELD, rates attacked unreasonable to extent they exceeded rates enumerated above, reparation awarded. Oklahoma Traffic Association. v. A. T. & S. F. Ry., 92 I. C. C. 695.

(i) Complainant attacked fourth class rate of 59c charged from Barberton, O., to Duluth, Minn., on less carload shipment of iron pipe fittings weighing 7,000 pounds, destined to Virginia, Minn., as unreasonable and inapplicable to extent it exceeded commodity rate of 33c. Shipment moved over Pennsylvania to Cleveland Pier, O., thence Great Lakes Transportation Co. to Duluth, July 17, 1922. No joint rates to Virginia were in effect. Charges beyond Duluth not questioned. There was published on page 53, section 2 of the tariff carrying the class rate, a commodity rate of 33c on iron and steel articles, carloads, as described in note 8, pages 39 and 41. Note 8 provided "where reference is made on pages 50 to 54 to this note, rates apply on the following commodities, in either carloads or less carloads, unless otherwise specified". Pipe fittings, not including valves, without limitation as to whether carload or less than carload,

were included in the list of commodities shown. The record shows that while it was the intention to omit all reference to less carload rates in connection with list of articles of iron and steel manufacture, through oversight this was not done in this tariff. HELD, 33c commodity rate applicable to Duluth, reparation awarded. Murray-Egan-McLeod Co. v. Pennsylvania R. R., 93 I. C. C. 79.

(j) Respondents proposed to establish a commodity rate substantially lower than the prevailing class basis on various kinds of insulators and metal accessories, pole brackets, and cross arm pins, in straight or mixed carloads, from Emeryville, Calif., to transcontinental rate Groups F to J inclusive. Present applicable fifth class rates are $2.40 to group F, $2.25 to group G and H and $1.97 to group J, minimum 36,000 pounds. Proposed commodity rate is $1.06, to all groups. Present output of the Emeryville plant is from four to six cars a month, and this is the only production in rate basis 1 territory. Carriers took as a constructive transcontinental rate eastbound to Group D, which includes most of Illinois and Wisconsin, the rate of $1.18 applying in the reverse direction and made the proposed rate 90% thereof, the usual basis for constructing rates to points on and west of the Missouri river. Considering the extensive areas of the respective groups, the proposed rate can not be said to be materially out of line with the present rates from Macomb, Ill., and other eastern producing points. HELD, schedules justified. Eastbound transcontinental rates on insulators, 93 I. C. C. 282.

(ja) Complainant attacked commodity rate charged on pig iron carloads from Toledo, O., to Holland, Mich., as unreasonable, unjustly discriminatory and unduly prejudicial. Holland is on the P. M., 178 miles west of Detroit, 25 miles southwest of Grand Rapids and 159 miles northeast of Chicago. It is 210 miles from Toledo over the P. M., via Plymouth, Mich. By the present adjustment both Toledo and Detroit are accorded the same rates on this article to a large territory of destination. From both Detroit and Toledo, Holland, Grand Rapids are accorded the same rates on pig iron, although distances to the matter are materially shorter. A difficulty in comparing these commodity rates with class rates is that they are not made upon the same principles. The class rates which are designed to move a variety of articles are based primarily upon distance, while the pig iron rates are influenced by the peculiar conditions surrounding that traffic, including competition among the producers and also among the users of this article. In this territory the commodity rates on pig iron from Toledo and Detroit are generally the same, but the class rates are not. HELD, rate attacked not unreasonable or otherwise unlawful, complaint dismissed. Holland Furnace Co. v. P. M. Ry., 101 I. C. C. 19.

(k) Complainant attacked commodity rates charged on 8 cars of cereal beverages shipped between April 3 and Sept. 11, 1922 from Milwaukee, Wis., to Emporia, Kas., as unjust, unreasonable and unduly prejudicial. Emporia is on the Santa Fe and MKT. Shipments moved via C. & N. W., C. G. W., and Santa Fe; C. & N. W., I. H. B., and Santa Fe; and C. M. & St. P., and Santa Fe. Charged 72c prior to July 1, 1922 and 64.5c thereafter, applicable rates 70c and 63c, shipments overcharged. Effective Dec. 1, 1922 rate reduced to 51.5c. Rates made effective on this date were based on 80 per cent of fifth class rates. HELD, rate attacked not unreasonable or unduly prejudicial, overcharges ordered refunded, complaint dismissed. Emporia Wholesale Coffee Co. v. A. T. & S. F. Ry., 101 I. C. C. 391.

(l) The classification generally imposes the highest rate which a particular commodity should bear under normal conditions. A commodity rate which is higher than the class rate is an abnormality which on its face requires special justification. Traffic Bureau Chamber of Commerce v. M. & M. T. Co., 101 I. C. C. 424, 425.

(m) Proposed cancellation of commodity rates on furniture, c. l. and l. c. l., from and to points in c. f. a. territory, and substitution therefor of the classification basis and in certain instances the exception basis, which would result in both advances and reductions, found not justified except as to l. c. l traffic. Proposed cancellation while at same time continuing the relatively lower commodity basis from producing points in adjoining territories would seriously disturb long-standing and important relationships, and create undue prejudice

against southern Indiana manufacturers. Furniture from C. F. A. Territory, 92 I. C. C. 97.

(n) Commodity rate on pig iron from Toledo, Ohio, to Holland, Mich., found not unreasonable or otherwise unlawful as compared with contemporaneous class rates on like traffic from and to points involved and from Toledo to other destinations for comparable distances. Holland Furnace Co. v. P. M. Ry. Co., 101 I. C. C. 19.

(o) Commodity rate on grape fruit found unreasonable to extent it exceeded lower class C rate contemporaneously in effect on fresh fruits and vegetables. Reparation awarded. Levy & Zentner Co. v. A., T. & S. F., 101 I. C. C. 361.

(p) Upon contention of complainant that a commodity rate that exceeds the class rate which would otherwise apply raises a presumption of unreasonableness and is, "an abnormality which on its face requires special justification," FOUND: That the principle laid down in Morrell & Co., 81 I. C. C. 200, is sound, and one to which the commission adheres, but it does not wish to be understood as holding that the presumption of unreasonableness is by any means conclusive, but what it does say is that such an adjustment is abnormal and on its face unreasonable, and requires substantial evidence to justify it. A mere recital of its continued existence is not sufficient. Traffic Bureau-Chamber of Commerce v. M. & N. T. Co., 101 I. C. C., 424, 425, 426.

(q) In absence of other evidence that it is unreasonable or discriminatory, the fact that a commodity rate is a greater or less proportion of the corresponding class rate is not a sufficient ground for condemning the commodity rate as unreasonable. Decker & Sons, 30 I. C. C. 547. Procter & Gamble Distributing Co. v. St. L. F., 101 I. C. C. 563, 587.

(r) So many elements enter into the determination of a commodity rate that it can not be said that a commodity rate must bear a fixed relation to the corresponding class rate, even as between competing points. Bliss Sirup Refining Co. v. A. T. & S. F. Ry., 109 I. C. C. 392, 394.

ALL OTHER CITATIONS

Indiana Public Service Commission v. A. A. R. R. Co., 85 I. C. C. 533; Radiant Glass Co. v. Director General, as Agent, 88 I. C. C. 295; Barker Produce Co. v. S. P. Co., 88 I. C. C. 385; Babbitt Bros. Trading Co. v. A. T. & S. F. Ry. Co., 88 I. C. C. 614.

II APPLICATION AND CONSTRUCTION.

See Application of Rates; Tariffs §7.

§2½. In General.

(a) Proposed reduced rates on numerous commodities from New York, N. Y., piers of Southern Pacific Co.—Atlantic S. S. Lines (Morgan Line), applying by water to Galveston, Tex., and New Orleans, La., thence by rail to points on lines of Southern Pacific system in New Mexico, Arizona and California designed for purpose of meeting rates of competing water carriers operating thru the Panama Canal, found justified. Reduced Commodity Rates to Pacific Coast, 88 I. C. C. 512.

(b) Proposed cancellation of commodity rates on burlap bags and on iron and steel hinges, door hangers, and related articles, from c. f. a. territory to Mississippi Valley destinations, and apply class rates which are higher, found justified. There are many fourth section departures under present commodity rates which have failed to develop a c. l. movement; carriers' revenues as a whole will not be materially increased; proposed schedules will not work a hardship upon any locality; no good reason appears for maintaining commodity rates on articles moving in small volume and in l. c. l. quantities; and propriety of harmonizing the rates to conform with those already in effect to southeastern territory, and from Ohio River crossings and St. Louis to Mississippi Valley points, can scarcely be questioned. Burlap Bags and Iron and Steel Articles, 89 I. C. C. 131.

(c) Commodity tariffs must be read in the light of the governing classification. Grosjean Rice Milling Co. v. Director General, 89 I. C. C. 395, 396.

(d) Commodity tariff, under heading of "Cereals and Cereal Products," named a joint commodity rate on "Wheat (except Buckwheat) and Flour." Whether or not it was intention to restrict this rate to wheat flour, since it

is apparent that the tariff does not so restrict such rate found applicable on rice flour. Grosjean Rice Milling Co. v. Director General, 89 I. C. C. 395, 396.

(e) Where an article is clearly embraced within a general commodity designation, and neither tariff nor governing classification discloses a contrary intention, the commodity rate is applicable, even though the classification description is more specific. Frost & Co., 57 I. C. C. 755. This principle applies even though the particular article was not in contemplation when the commodity item was framed. Texas State Highway Dept., 69 I. C. C. 220. Grosjean Rice Milling Co. v. Director General, 89 I. C. C. 395, 396.

(f) Commodity tariff provided rate on "Cereals and Cereal Products, viz: Flour," but no list of commodities thereunder was provided. Governing classification did not list any commodities under designation "Cereals and/or cereal products," but under heading, "Flour: Rice," a fifth class rating was provided. HELD, since rice is a cereal, and as neither commodity tariff nor classification clearly discloses an intention to exclude rice flour from benefit of commodity rate on cereal products, the commodity rate must be considered as covering this article. Grosjean Rice Milling Co. v. Director General, as Agent, 89 I. C. C. 395, 396.

(g) Tariff naming commodity rate contained no list of commodities intended to be embraced within designation "Grain, grain products, . . . " Classification, however, provided rates on common grains under heading "Grain" in which rice was not included, that commodity being specifically rated under its own name. There is no heading "Grain products," but in commodity tariff under heading "Flour, Rice, in bulk in bags," an any-quantity class rating is provided. HELD, from standpoint of the governing classification rice is not a grain and rice flour not a grain product. Class rating provided in the commodity tariff found applicable on rice flour. Grosjean Rice Milling Co. v. Director General, 89 I. C. C. 395.

(h) Carriers may for competitive or other reasons establish rates which the commission could not initiate for them; and equality of distance from competing markets is not an absolute test of whether an equality of rates results in undue prejudice and preference. Reduced Commodity Rates to Pacific Coast, 89 I. C. C. 512, 524.

(i) Proposal to add a new commodity description, viz., stone chips or granules (roofing granules), for the purpose of differentiating this commodity, used in the manufacture of roofing materials, from crushed stone used for other purposes, found justified. Crushed Stone from Maryland and Pennsylvania, 89 I. C. C. 681.

(j) Although rates may not be based upon use, use is a factor which may be considered in determining the proper description of a commodity. Crushed Stone from Maryland and Pennsylvania, 89 I. C. C. 681, 684.

(k) Sixth-class rates on spelter from Locust Point, Baltimore, Md., to Apollo, Pa., found unreasonable to extent it exceeded lower commodity rate contemporaneously in effect via route other than route of movement, which lower rate also applied from Baltimore to a large number of consuming points for greater distances. Reasonable rate for future prescribed and reparation awarded. Apollo Steel Co. v. Pennsylvania R. R. Co., 89 I. C. C. 747.

(l) Complainant attacked combination rates charged in September, October and November, 1918, from Keyton, Ala., charged on manure to Quincy, Fla., and two cars to Mount Pleasant, Fla., as excessive, unreasonable, unduly prejudicial and preferential and in violation of section four. Keyton is on the C. of Ga., 4 miles east of and intermediate to Montgomery. Quincy and Mount Pleasant are on the S. A. L. Short line route from Keyton to Quincy is over originating line to Cuthbert, Ga., and G. F. & A. beyond, 202 miles. Mount Pleasant is about 9 miles east of Quincy. Charged $5 per car to Montgomery, $4 per ton to Quincy or Tallahassee, and $1.425 to Mount Pleasant. Effective Nov. 10, 1918, through rates from Keyton of $2.60 to Quincy and $2.70 to Mount Pleasant were established. HELD, rates attacked unreasonable to extent they exceeded rates subsequently established, complaint dismissed. Wedeles Tobacco Co. v. Director General, 92 I. C. C. 80.

(m) Complainant attacked commodity rates charged on cement from Humboldt, Kans., to Slick, Okla., during October and November, 1920, as unreasonable. No

evidence was offered to show the dates on which the shipments were delivered, but the original freight bills, which were subsequently introduced in evidence, are dated prior to November, 1920. Complaint is barred. HELD, complaint dismissed. Monarch Cement Co. v. A. T. & S. F. Ry., 92 I. C. C. 325.

(n) Complainant attacked commodity rate of 93.5c charged on three cars of broom handles from Glidden, Wis., to Wichita, Kans., as unreasonable, between August, 1921, and February, 1922, this rate being applicable on broom handles. They were in the white and were turned to shape with two holes in the end. They were tied together in bundles, not wrapped or packed with special case. All of which indicates that additional work was to be done on each handle before it was fastened to the broom and that the manufacturer did not consider it a finished handle. A commodity rate of 55.5c was applicable on handle timber, in the rough, sawed or turned to shape, not further finished; will not apply on finished handles. The handles were complete and not "handle timber," therefore the item did not apply. HELD, rate attacked unreasonable to extent it exceeded 55.5c, reparation awarded. Wichita Board of Commerce v. C. R. I. & P. Ry., 92 I. C. C. 574.

(o) Decision of the District Court that as between the commodity rates and class rates in an established tariff, the commodity rates governed as to certain shipments, which followed the decision of the Interstate Commerce Commission, HELD correct and affirmed. Davis, Director General of Railroads v. Prairie Pipe Line Co., 298 Fed. 393.

(p) Respondents proposed to cancel the application of wrought iron pipe commodity rates on iron or steel sucker and pull rods, carloads, from St. Louis, Mo., and points in central territory to Kansas and Missouri, leaving in effect the higher fifth class rates on sucker rods and class A rates on pull rods. For the past ten years, or longer, commodity rates considerably lower than fifth class have been maintained by respondents on sucker and pull rods to the Kansas and Missouri territory herein considered, and on the same basis as that applied on wrought iron pipe. The record indicates that the present rates on sucker and pull rods are in need of revision and that the present relationship of these rates with those to Oklahoma points results in prejudice to localities in the latter territory. On the other hand the proposed application of class rates would result in some instances in rates higher than those to Oklahoma points, and considerably higher in many cases than those proposed by carriers in another case. HELD, schedules not justified. Sucker and pull rods from St. Louis, 95 I. C. C. 599.

(q) Complainant attacked commodity rates charged on 15 cars of gasoline from Wichita Falls, Burkburnett and Fort Worth, Tex., to Milwaukee, Wis., during March and April 1921 as illegal in violation of section six. Charged 57.5c prior to August 26, 1920 which was the rate on August 25, 1920 increased 35%. The factors of that through rate prior to the above date were 14.5c to Vicksburg and 28c beyond. Complainants did not allege unreasonableness or a violation of the fourth section and no evidence of unreasonableness of the rate charge was offered. HELD, rate charged applicable, complaint dismissed. Producers Refining Co. v. St. L. S. W. Ry., 96 I. C. C. 701.

(r) Commodity rates applicable to l. c. l. traffic constitute departures from usual practice, and their establishment should be required only upon a clear showing of compelling reasons. Arkansas Fertilizer Co. v. A. & S. Ry., 92 I. C. C. 504, 509.

(st) Over a period of two years, 106 shipments of unfinished cotton hosiery were made from Rockford, Ill., to Philadelphia, North Philadelphia, and Germantown, Pa., 13 of which were in c. l. quantities and 93 in l. c. l. quantities. FOUND Such a movement is not sufficient in volume to warrant establishment of c. l. commodity rates on this traffic. Burson Knitting Co. v. B. & O., 92 I. C. C. 607, 608, 609.

(u) Upon contention of complainants that commodity rates in effect when shipments moved were not legally published, in that the tariffs did not show proper cancellation of the previous issues, and therefore no through commodity rates were established, leaving the class rates to apply, FOUND: Tariff carrying the rates charged states on its title-page "cancels I. C. C. No. 166,", and this is sufficient to constitute cancellation of that tariff in full, notwithstanding an item on another page under

the heading "Cancellation" which explains the reason of the noninclusion of rates from or to certain stations which theretofore had been named. Failure to comply with the requirement of the railroad administration that freight-rate authority shall be obtained for all changes in rates of carriers under Federal control does not invalidate the tariff. Nash Spokane Co. v. Director General, 100 I. C. C. 223, 226.

(v) Commodity rates on watermelons and vegetables from points in California to Spokane, Wash., found applicable. Complainant contended that a lower proportional Class C rate was applicable but tariff carrying that rate provided that the rates therein could not be used where through rates were established. There was no tariff authority for departing from the use of the published through commodity rate. Nash Spokane Co. v. Director General, 100 I. C. C. 223, 225, 226.

(w) Complainant attacked commodity rates charged on two cars of granite shipped August 18, 1922 and Jan. 26 1923 from Montello, Wis., to Muscatine, Ia., as unreasonable and unjustly discriminatory. Shipments moved Soo Line to Chicago, Rock Island beyond 504 miles, charged 24.5c and 21c. Under the rule of the classification pertaining to mixed carloads, the applicable rate was class C rate of 24.5c. The class C rate is the same as, and was originally made in competition with, the class C rate from Red Granite, Wis., to Muscatine, 353 miles over the Northwestern to Milwaukee and C. M. & St. P., beyond. Complainant does not receive dressed granite in straight carloads. There is no contention that the rule governing mixed car loads of this commodity and polished or traced granite is unreasonable or otherwise unlawful. HELD, applicable rate not unreasonable or otherwise unlawful, complaint dismissed. Olsen v. M. St. P. & S. S. M. Ry., 109 I. C. C. 526.

(x) Complainant attacked commodity rate of 38.5c charged on two cars of scrap iron shipped Sept. 6 and 11, 1922 from New Orleans, La., to Birmingham, Ala., as unjust, unreasonable and inapplicable. The shipments consisted of specially designed vehicle axles for army ambulances. Defendants classified them as vehicle axles, n. o. i. b. n., iron or steel, sixth class rate of 56.5c per 100 pounds, although they were billed as scrap iron. The scrap iron rate was $3.72 per ton, to apply on scraps or pieces of iron or steel having value for remelting purposes only. At the destination the axles, heated until they were melted together, and then passed through a roller producing 1 inch bars or billets. HELD, shipments undercharged, applicable rate 56.5c, complaint dismissed. Southern Steel & Rolling Mill v. L. & N. R. R., 109 I. C. C. 539.

(y) Complainant attacked commodity rate of $2.625 charged on one car of carbide of calcium shipped on August 13, 1921 from Duluth, Minn., to Kingman, Ariz., and routed by consignor "G. N. Sioux City, C. B. & O. Fremont, U. P., Denver, C. S., Pueblo, A. T. & S. F." as unreasonable to extent it exceeded rate of $1.665 applicable over other routes. Distance over route of movement is 2,011 miles, and is the short line route. The rate of $1.665 was clearly applicable in connection with all other workable lines, except the U. P. The rate collected was combination on Denver. Effective July 15, 1925 defendants removed the ambiguity in the tariff by adding "whether interchanged direct or via other intermediate lines" after the words "Denver, Colo." HELD, rate collected inapplicable to extent it exceeded $1.665, reparation awarded. Central Commercial Co. v. A. T. & S. F. Ry., 109 I. C. C. 639.

(z) Complainant attacked commodity rates charged on 30 cars of scrap steel rails shipped from Detroit, Mich., to Kenosha, Wis., between May 4 and Oct. 31, 1918, as unreasonable and illegal. Scrap steel rails were bought by complainant from the M. C., while that carrier was under federal control on basis of F. O. B. M. C., tracks Blue Island, Ill., or F. O. B. M. C. tracks Chicago. Shipments moved, M. C., I. H. B., and Belt, to Chicago thence Northwestern, covered by through bills of lading as No. 1 scrap steel rails, charged joint rate Detroit to Kenosha of $3.60 applicable on old rails. While it is true that complainant would have been entitled to the lower of the two rates published in the tariffs from Chicago to Kenosha if the shipments had originated at Chicago, or if the billing had indicated that the rails were company material of the M. C., and as such entitled to free transportation to Chicago, the Commission can not ignore the facts that the shipments originated at Detroit and not at Chicago,

that they moved from Detroit on through bills of lading which correctly described the commodity and did not indicate it was company material of the M. C., and that they were assessed the applicable rates from Detroit to Kenosha, which rates are in no way shown to have been unreasonable or otherwise in violation of the act. Complainants claim for further refund also arises out of the terms of the contract of sale and, if not barred by lapse of time, is one for a court of law, if such refund can not voluntarily be obtained from defendant. HELD, rates not unreasonable or otherwise unlawful, complaint dismissed. Briggs & Turivas v. Director General, 112 I. C. C. 313.

ALL OTHER CITATIONS

Southern Cotton Oil Co. v. Director General, as Agent, 85 I. C. C. 433; Mid-Continent Equipment & Machinery Co. v. M. Ry. Co., 88 I. C. C. 217; Cutler-Hammer Mfg. Co., v. Director General, as Agent, 88 I. C. C. 600; Headington & Hedenbergh v. Director General, as Agent, 88 I. C. C. 745.

§3. Specific Commodity Rating.

See Tariffs §18.

(a) Commodity rate on agricultural implements moving from Memphis, Tenn., to Jackson, Miss., found unreasonable to extent it exceeded the contemporaneous sixth-class rate to and from the same points. Prior to the general adjustments prescribed on class rates in 55 I. C. C. 515 and on commodity rates in 64 I. C. C. 306, these rates were on an equality, but the commodity rate became higher than the class rate due to "a chance result of the general adjustments" under which the class rates were revised in advance of the commodity rates. Reparation awarded. McCleland Hardware Co. v. I. C. R. R. Co., 89 I. C. C. 129.

(b) Commodity tariff provided rate on "Cereals and Cereal Products, viz: Flour," but no list of commodities thereunder was provided. Governing classification did not list any commodities under designation "Cereals and/or cereal products," but under head "Flour: Rice," a fifth-class rating was provided. HELD, since rice is a cereal, and as neither commodity tariff nor the classification clearly discloses an intention to exclude rice flour from benefit of the commodity rate on cereal products, the commodity rate must be considered as covering this article. Grosjean Rice Milling Co. v. Director General, as Agent, 89 I. C. C. 395, 396.

(c) Where an article is clearly embraced within a general commodity designation, and neither the tariff nor governing classification discloses a contrary intention, the commodity rate is applicable, even though the classification description is more specific. Frost & Co., 57 I. C. C. 755. This principle applies even though the particular article was not in contemplation when the commodity item was framed. Texas State Highway Dept., 69 I. C. C. 220. Grosjean Rice Milling Co. v. Director General, 89 I. C. C. 396.

(d) When a commodity is not distinctly within some common designation, its use and the ratings of competitive products are important factors with its transportation characteristics in the determination of what rating is appropriate for it. Procter & Gamble Co., 9 I. C. C. 440, 482; Drake Marble & Tile Co., 37 I. C. C. 512. Vitrolite Co. v. A., T. & S. F. Ry. Co., 89 I. C. 367, 371.

(e) Tariff naming commodity rate contained no list of commodities intended to be embraced within designation "Grain, grain products, ... " Classification, however, provided rates on common grains under heading "Grain," in which rice was not included, that commodity being specifically rated under its own name. There is no heading "Grain products," but in commodity tariff under heading, "Flour, Rice, in Bulk in Bags," an any quantity class rating is provided. HELD, from standpoint of governing classification rice is not a grain and rice flour not a grain product. The class rating provided in the commodity tariff found applicable on rice flour. Grosjean Rice Milling Co. v. Director General, 89 I. C. C. 396, 397.

(f) Carbon black is the soot which collects against a steel channel when natural gas is burned with sufficient combustion. Goodyear Tire & Rubber Co. v. A. C. & Y. Ry. Co., 89 I. C. C. 401.

(g) Complainant attacked commodity rates charged on cars of hay and straw between St. Louis, Mo., on the one hand, and East St. Louis, Madison, Granite City, and National Stock Yards, Ill., as unreasonable, unduly prejudicial and illegal. Specific rates are published on other commodities. A rate of 2.5c is applicable on commodities on which specific rates are not named, with minimum of

$12 per car, reduced to 2c in June, 1920, increased to 3c August 26, 1920, reduced on July 1, 1922, to 2.5c, minimum $12 per car. The hauls necessary in local movements of hay and straw between St. Louis and East St. Louis vary from 3.5 to 15 miles through congested districts and over expensive bridges across the Mississippi. HELD, rate attacked not unreasonable or unduly prejudicial, complaint dismissed. Toberman Mackey & Co. v. T. R. R. Co., 91 I. C. C. 79.

(h) The subsequent establishment of a commodity rate has effect of removing article covered thereby from the classification and class-rate tariffs which theretofore applied. Rule 7 (a) of Tariff Circular 18-A. Furthermore, under rule 8 (a) of that tariff circular, it is not a condition precedent to application of such a commodity rate that tariff containing it make cross-reference to tariff in which class rates are named. Singer v. St. L. S. F., 95 I. C. C. 667, 668.

(i) A commodity rate on a specific article of transportation, stated definitely as so many cents per 100 pounds, is a specific commodity, rate, notwithstanding the fact that the same rate is not repeated in the tariff in connection with each point of origin and each point of destination from and to which the rate is made to apply. There are several methods of indicating the points from and to which specific commodity rates apply. Miller & Lux v. S. P. Co. 102 I. C. C. 137, 139.

(ia) Specific commodity rates from farther distant points, applied at intermediate points of origin, found to have been legally assessed. Lower class rates were carried in another tariff, but neither it nor the commodity tariff specifically named the intermediate point as a point of origin, such point being specifically included in both tariffs in index of stations. Both also provided that rates from next farther distant origin points would apply from intermediate points not specifically named. The class rate tariff, however, was limited to apply where commodity rates are not otherwise specifically provided. Fact that commodity tariff did not name the intermediate point "specifically" as an origin point does not mean that there was no "specific" commodity rate in effect. The intermediate provision established the specific commodity rates just as positively, plainly, and legally from the unnamed intermediate point as from the farther distant point. Miller & Lux v. S. P. Co., 102 I. C. C. 137.

(j) Where an article is clearly embraced within a generic commodity designation, and neither the tariff nor governing classification discloses a contrary intention, the Commission has found the commodity rate applicable, even though the classification description was more specific, and have done so even though the particular article was not in contemplation when the commodity was framed. Thilmany Pulp & Paper Co. v. N. & A. Ry. 104 I. C. C. 186, 187.

§4. Creation Subsequent to Shipment.

See Evidence §64.

(a) Class D rate on nut coal from Cornell, Kans., to Fairview, Mo., found unreasonable to extent it exceeded lower commodity rate subsequently established. Reparation awarded. Midland Coal Co. v. M. P. R. R. Co., 89 I. C. C. 101.

(b) Proposed cancellation of commodity rates on burlap bags and on iron and steel hinges, door hangers and related articles from c. f. a. territory to Mississippi Valley destinations, and apply class rates which are higher, found justified. There are many fourth-section departures under present commodity rates which have failed to develop a c. l. movement; carriers' revenues as a whole will not be materially increased; proposed schedules will not work a hardship upon any locality; no good reason appears for maintaining commodity rates on articles moving in small volume and in l. c. l. quantities; and propriety of harmonizing the rates to conform with those already in effect to southeastern territory, and from Ohio River crossings and St. Louis to Mississippi Valley points, can scarcely be questioned. Burlap Bags and Iron and Steel Articles, 89 I. C. C. 131.

(c) Fifth-class rates assessed on evaporated milk from Lodi, Wis., to Chicago and Clearing, Ill., found unreasonable as compared with lower rates from competing milk-producing points in Wisconsin in same general territory as Lodi, and to extent they exceeded lower commodity rate from Reedsburg, Wis., to which Lodi is intermediate, which lower commodity rate was subsequently established from Lodi. Reparation awarded. Nestle's Food Co. v. Director General, as Agent, 89 I. C. C. 340.

(d) Combination fourth-class rates on

carbon black from Lem, Ky., to Akron, Ohio, found unreasonable as compared with lower commodity rate from Elk View and Turner, W. Va., competing points, and to extent they exceeded commodity rate subsequently established. Reparation awarded. Goodyear Tire & Rubber Co. v. A., C. & Y. Ry. Co., 89 I. C. C. 401.

(e) Complainant attacked commodity rate charged on canned goods, carloads, from Mobile to Montgomery, Ala., carloads, shipped by water to Mobile from interstate points, since July 1, 1923 fifth class rate was in effect and on that date commodity rate of 38c was established. Distance 178 miles. HELD, rate attacked unreasonable to extent it exceeded 35c, reparation awarded. Schloss & Kahn Grocery Co. v. L. & N. R. R., 95 I. C. C. 618.

(f) It is well settled that subsequent establishment of a commodity rate has the effect of removing the article covered thereby from the classification and from the class rate tariffs which theretofore applied. Singer v. St. L. S. F. Ry., 95 I. C. C. 667, 668.

ALL OTHER CITATIONS

Grasselli Chemical Co. v. B. & O. R. R. Co., 88 I. C. C. 337; Interstate Sugar Co. v. D. & R. G. R. R. Co. 88 I. C. C. 432.

III. REASONABLENESS AND DISCRIMINATION.

§5. In General.

See Advanced Rates §5 (3); Class Rates §2 (o); Discrimination; Distance Rates; Reasonableness of Rates.

(a) Proposed cancellation of commodity rates on burlap bags and on iron and steel hinges, door hangers, and related articles, from c. f. a. territory to Mississippi Valley destinations, and apply class rates which are higher, found justified. There are many fourth-section departures under present commodity rates which have failed to develop a. c. l. movement; carriers' revenues as a whole will not be materially increased; proposed schedules will not work a hardship upon any locality; no good reason appears for maintaining commodity rates on articles moving in small volume and in l. c. l. quantities; and propriety of harmonizing the rates to conform with those already in effect to southeastern territory, and from Ohio River crossings and St. Louis to Mississippi Valley points, can scarcely be questioned. Burlap Bags and Iron and Steel Articles, 89 I. C. C. 131.

(b) Rate on dressed poultry from Springfield, Mo., to Key West, Fla., for export to Cuba, found unreasonable to extent it exceeds rate on like traffic from Kansas City, Mo. Ordinarily traffic from Kansas City would move through Springfield, and class and commodity rates, generally, from Springfield to the southeast are not higher than from Kansas City. Reasonable basis of rates prescribed and reparation awarded. Armour & Co. v. A. C. L. R. R. Co., 89 I. C. C. 162.

(c) Rates on copper matte from Bella Vista, Calif., to Tacoma, Wash., found unreasonable as compared with lower rates on same commodity between other points in same general territory. Reasonable maximum rate prescribed and reparation awarded. Afterthought Copper Co. v. Director General, as Agent, 89 I. C. C. 346.

(d) Complainant attacked commodity rates charged on fresh fruits and on fresh or green vegetables, in straight and mixed carloads, and on fruits and vegetables, fresh or green, in mixed carloads, from San Francisco and Los Angeles, Calif., as unreasonable, unjustly discriminatory and unduly prejudicial to Douglas and Bisbee, Ariz. Douglas is on the E. P. & S. W., 217 miles west of El Paso and 124 miles east of Tuscon. Bisbee is on a branch line of that carrier, 7 miles from Osborn, which is 22 miles west of Douglas. In recent cases the commission has prescribed rates from California to Arizona and New Mexico on the basis of class C rates. Since July 1, 1922, rates on these commodities have been on the class C basis. HELD, rates attacked unreasonable to extent they exceeded class C, reparation awarded. Buxton Smith Company v. A. T. & S. F. Ry., 89 I. C. C. 373.

(e) Complainant attacked combination rates charged on four cars of rice flour shipped in September, 1919, from Seattle, Wash., to New Orleans, La., as inapplicable and unreasonable. Shipments moved via N. P. to Billings, Mont., Burlington to Kansas City, Mo., Frisco to Memphis, Tenn., and I. C. beyond, charged 80c. Through fifth class rate was $2.10 and a rate of 83.5c on cereals and cereal products. The governing

western classification does not list any commodities under this designation. Rice is a cereal, and as neither the commodity tariff nor the classification clearly discloses an intention to exclude rice flour from the benefit of the commodity rate on cereal products, the joint commodity rate must be considered as covering this article. The same tariff named a joint commodity rate of 61c on wheat and flour, which is applicable to rice flour. The class C rate beyond of 19c made a combination lower than the through rate of 83.5c. HELD, applicable rate 80c. HELD, rate attacked not unreasonable, complaint dismissed. Grosjean Rice Milling Company v. Director General, 89 I. C. C. 395.

(f) Complainant attacked commodity rate of 49c charged on 129 tank cars of petroleum gas oil between Oct. 12 and Dec. 2, 1922, from Burkburnett, Henrietta and Wichita Falls, Tex., to Louisville, Ky., as unreasonable, unjustly discriminatory and unduly prejudicial to extent it exceeded rate of 41.5c applicable on crude and fuel oils. Respondents proposed to cancel joint rates on crude and fuel oils to Louisville and to Jeffersonville and New Albany, Ind., from several groups in northern Texas. The effect would have been to substitute for the present joint through rates from north Texas points on crude and fuel oils the lowest combination, thereby placing those rates on the same basis as gas oil. Shipments moved through East St. Louis, Ill., except three through Memphis, Tenn., and nine through Hattiesburg, Miss. Charged 26.5c to East St. Louis and 22.5c beyond. The parties agree that crude, fuel, and gas oils should take the same rate. HELD, rate attacked not unreasonable, unjustly discriminatory or unduly prejudicial, and proposed tariffs justified, complaint dismissed. Standard Oil Company v. M. K. T. R. R., 89 I. C. C. 463.

(g) Proposed reduced rates on numerous commodities from New York, N. Y., piers of Southern Pacific Co.—Atlantic S. S. Lines (Morgan Line), applying by water to Galveston, Tex., and New Orleans, La., thence by rail to points on lines of Southern Pacific system in New Mexico, Arizona and California, designed for purpose of meeting rates of competing water carriers operating through the Panama Canal, found justified. Reduced Commodity Rates to Pacific Coast, 89 I. C. C. 512.

(h) Complainant attacked commodity rates charged on draintile, carloads, from Commerce, Mo., to points in northeastern Arkansas as unreasonable, unjustly discriminatory and unduly prejudicial. Commerce is on the Frisco 13 miles south of Cape Girardeau, Mo. Points of destination are on the Frisco and J. L. C. & E. R. R., within the triangle in northeastern Arkansas formed by the Frisco from St. Louis to Memphis and from Kansas City to Memphis. The Frisco connects with the Jonesboro at Leachville and Blytheville, Ark. Shipments moved outbound either through Brooks Junction or Cape Girardeau, between Oct. 5, 1916, and Dec. 31, 1920. Complainant's principal competitors are at Rich Hill, Mo., and Pittsburgh, Kans. From Rich Hill and Pittsburgh to all points in Arkansas except Helena the rates on paving brick also apply on draintile. There are no commodity rates on paving brick from Commerce to points in Arkansas. Draintile is similar in many respects to sewer pipe, but it is a cheaper commodity, somewhat softer and more liable to breakage. Defendants admit that some readjustment is necessary in the rates from Commerce as compared with those from Rich Hill and Pittsburgh. HELD, rates attacked not unreasonable but unduly prejudicial in favor of Rich Hill and Pittsburgh, and for future rates from Commerce should be based on 6c single and 8c joint line for 5 miles and 21c single and 22c joint line for 500 miles. Post Bros. Tile Co. v. Director General, 89 I. C. C. 544.

(i) Complainant attacked commodity rates charged on tin cans, carloads, and less carloads, from Buchanan, Va., to destinations in southern classification territory as unreasonable and unjustly discriminatory, prejudicial and preferential. Buchanan is on the N. & W., 25 miles northeast of Roanoke, and on the C. & O., 49 miles northwest of Lynchburg. There are manufacturing plants at Roanoke and at Bedford, Va., on the N. & W., 29 miles east of Roanoke and 25 miles west of Lynchburg. Roanoke and Lynchburg are the junction points on substantially all shipments from Buchanan and Bedford to the territory here involved. The loaded weight varies from around 10,000 pounds of the largest size to about 17,000 pounds of the smallest size, average 14,000 pounds and they move in ordinary box cars in bulk, in crates and in cartons. Loss and damage claims have not been frequent or large

in amount. There is no evidence that the carrier assumes unusual risk of damage or that unusual care in transportation is required. Tin cans are classified fifth class in carloads and first class less carloads in the southern classification. Throughout southern territory they generally move under class rates, but in a number of instances rates less than the class rates have been established. The rates generally in the territory involved for a long time have been and now are made to apply from groups of points of origin to groups of points of destination. These groups include widely separated points both of origin and of destination. The difference in distance between the nearest points in an origin group and a destination group and the most distant points in the same groups often exceeds 200 miles, and amounts to from 20 per cent of the distance between the nearest points in an origin and a destination group to the same or more than that distance. The evidence does not warrant any general readjustment of groups. Buchanan is within the Basic-Charlottesville-Orange group of points of origin which generally take rates higher to southern territory than those applicable from the Virginia cities group. This group embraces points about 100 miles north of Buchanan, which is 22 miles from the southern boundary of the group. There is no evidence of any production of soldered tin cans at any other point in the group. So far as concerns the shipment of tin cans from this group into the territory involved, Buchanan seems to stand out from other points in the group, and the imposition of the class rates would be, in effect, to constitute it a production group by itself. Defendants seem to have recognized this condition by the establishment of carload rates from Buchanan into the territory involved at differentials over the rates from Roanoke, Lynchburg, Bedford and other points in the Virginia cities group. HELD, rates attacked not unreasonable or otherwise unlawful, but carload rates attacked prior to the establishment of the present differential basis unreasonable to extent rates from Buchanan exceed rates from Roanoke by 4.5c and 4c prior to July 1, 1922, to Carolina and southeastern territories and 2.5c and 2c prior to July 1, 1922, to Mississippi valley territory, reparation awarded. Virginia Can Company v. A. & V. Ry., 89 I. C. C. 558.

(j) A comparison of earnings on a specified commodity with average earnings on all traffic is generally of little if any value in measuring the reasonableness of rates, for the reasons, among others, that averages are based on class as well as commodity rates, divisions of joint rates as well as local rates, and c. l. and l. c. l. traffic; and because of differences between average and actual hauls. Iron and Steel Articles, 89 I. C. C. 606, 622.

(k) Rates on fresh fruits and vegetables from Indiana points to Chicago, Ill., found unreasonable and unduly prejudicial as compared with rates on the same commodities from Illinois points to Chicago. No conditions affecting the transportation which would justify a differential level of rates on this intrastate and interstate traffic was shown. Reasonable and nonprejudicial rates prescribed. Indiana Public Service Comm. v. B. & O. R. R. Co., 89 I. C. C. 651.

(l) Proposal to add a new commodity description, viz., stone chips or granules (roofing granules), for purpose of differentiating this commodity, used in the manufacture of roofing materials, from crushed stone used for other purposes, found justified, but proposal to apply a higher rating on the former than on the latter, found not justified. Crushed Stone from Maryland and Pennsylvania, 89 I. C. C. 681.

(m) Complainant attacked commodity rates on special iron in the southern classification in carloads, from Cincinnati and Ironton, O., and Pittsburgh, Pa., on tin and terne plate from Cincinnati and Pittsburgh and on nails, carloads, from Ironton to Knoxville, Tenn., as unreasonable and unduly prejudicial to Knoxville and unduly preferential of Chattanooga, Nashville and Memphis, Tenn., Bristol, Va., Asheville, N. C., and Charleston and Spartanburg, S. C. Complainant attacked rates on iron and steel articles rated special iron in the southern classification from Buffalo, N. Y., and Pittsburgh to Chattanooga, Tenn., as unreasonable and unduly preferential of rates to Memphis, Helena, Greenville, Vicksburg and Natchez, Miss., Mobile, Ala., and New Orleans, La. Knoxville is in the eastern part of Tennessee and is served by the Southern and L. & N. Chattanooga is southwest of Knoxville and is served by the Southern and N. C. & St. L. Bristol, Asheville, Charleston and Spartanburg are served by the Southern; Nashville by the L. & N., and N. C. & St. L.; and Memphis, New Orleans and

Mobile by the Southern and L. & N. **Special iron and steel articles and tin and terne plate from Cincinnati to Knoxville.** The rate on special iron and steel articles and tin and terne plate, carloads from Cincinnati to Knoxville 292 miles via the L. & N. is 33c. The same rate is maintained on this traffic to Knoxville from Louisville, Ky., 277 miles over the L. & N., and from a number of points in the immediate vicinity of Cincinnati, including Newport, Ky., and from all of the points named to Chattanooga. Both the class and commodity rates from Cincinnati and Louisville generally are and for a number of years have been the same to Knoxville and Chattanooga. **Special iron and steel articles and nails from Ironton to Knoxville.** Prior to July 1, 1923, the rates from Ironton to Knoxville were joint commodity rates of 42c on nails and 44.5c on special iron and steel articles. On that rate they were reduced to 39c. From Pittsburgh and Buffalo districts the rates to Knoxville and Chattanooga are joint commodity rates. When originally established they were made on basis of the lowest combination on the Ohio river crossings. The combination basis has been changed as the result of the different percentage increases in rates in the eastern and southern groups, and at the present time the joint rates are less than the combinations. The rates apply via both Cincinnati and eastern gateways. Over routes through the latter gateways Knoxville is intermediate to Chattanooga, Nashville and Memphis and Chattanooga is intermediate to Nashville and Memphis. Prior to July 1, 1923, the rates from Pittsburgh to Knoxville were higher than to Nashville and Memphis, although the short line distances shown to these points are 16 and 206 miles, greater than to Knoxville. The L. & N. forms the direct line from Cincinnati to Nashville and Memphis, and to Knoxville its line is only 10 miles longer than the direct route. Transportation conditions on the line to Knoxville are substantially similar to those on the line to the two other points. Fourth section relief denied. HELD, rates attacked unreasonable and unduly prejudicial to extent they exceeded the following: on special iron and steel articles and on tin and terne plate from Cincinnati to Knoxville, 27.5c prior to August 26, 1920, 34.5c on and after that date to June 30, 1922, and 31c thereafter; on special iron and steel articles and on nails from Ironton to Knoxville, 28.5c prior to August 26, 1920, 38c from that date to June 30, 1922, and 34c subsequently; on special iron and steel articles and tin and terne plate from Pittsburgh to Knoxville, 41.5c prior to August 26, 1920, 55.5c from that date to June 30, 1922, and 50c from that date to June 30, 1923, and since the latter date not unreasonable or unduly prejudicial on special iron and steel articles and on boiler tubes, structural iron and steel, bar iron, bar steel, wrought iron and steel pipe, iron and steel plates, and iron and steel rivets from Buffalo to Chattanooga, 59c prior to July 1, 1922, 53c from that date to June 30, 1923, and since that date not unreasonable or unduly prejudicial; and on special iron and steel articles and boiler tubes, structural iron and steel, bar iron, bar steel, wrought iron and steel pipe, iron and steel plates, and iron and steel rivets from Pittsburgh to Chattanooga 55.5c prior to July 1, 1922, 50c from that date to June 30, 1923, and since that date not unreasonable or unduly prejudicial, reparation denied. Knoxville Traffic Bureau v. Southern Ry., 89 I. C. C. 708.

(n) Sixth-class rates on spelter from Locust Point, Baltimore, Md., to Apollo, Pa., found unreasonable to extent it exceeded lower commodity rate contemporaneously in effect via route other than route of movement, which lower rate also applied from Baltimore to a large number of consuming points for greater distances. Reasonable rate for future prescribed and reparation awarded. Apollo Steel Co. v. Pennsylvania R. R. Co., 89 I. C. C. 747.

(o) Complainant attacked commodity rates charged on roofing talc, carloads, from Johnson, Vt., to Chicago, Ill., and St. Louis, Mo., between Jan. 15, 1921, and Jan. 2, 1922; to Grays Ferry, Pa., between Jan. 15 and Oct. 6, 1921; from Rochester, Vt., to Erie, Pa., between Jan 15 and May 15, 1922, and from Braintree, Vt., to Erie, Pa., between Jan. 15, 1921, and Jan. 2, 1922, as unjust and unreasonable. Johnson is on the St. J. & L. C. Braintree is on the Central Vermont, and Rochester is on the White River R. R. Roofing talc is a low grade commodity used to surface roofing, paper and to improve its appearance. Effective June 25, 1918, the Director General prescribed increases of 1c on slate and 25 per cent on talc, thus increasing the difference which had existed between the rates on those two commodities prior to that date. The reduced rates on roofing talc became effective from Johnson to

trunk line territory on Oct. 6, 1921, and from Johnson, Braintree and Rochester to central territory on Jan. 2, 1922. HELD, rates attacked unreasonable to extent they exceeded those subsequently established, reparation awarded. Barrett Company v. St. J. & L. C. R. R., 91 I. C. C. 9.

(p) Complainant attacked combination commodity rates charged on 32 cars of coke shipped between July 5 and Dec. 28, 1918, from Everett, Mass., to Auburn, R. I., as unreasonable. Shipments moved over B. & A., to Boston and New Haven to destination, 57 miles, charged 50c to Boston and $1.40 beyond. Effective Feb. 20, 1919, a joint rate of $1.40 was established. No evidence was introduced by complainant bearing upon the unreasonableness of the rate attacked. These shipments were the first received from complainant from Everett. HELD, rates attacked not unreasonable, complaint dismissed. General Fire Extinguisher Co. v. Director General, 91 I. C. C. 13.

(q) Complainant attacked commodity rates charged on corrugated strawboard and fiber board boxes, knocked down flat, and fillers, in straight or mixed carloads, from Carthage, Ind., to Sand Springs, Sapulpa and Blackwell, Okla., as unreasonable and unduly prejudicial. Carthage is on the Big Four, 297 miles from St. Louis. Sand Springs is 30 miles from Tulsa. Sapulpa is on the Frisco and Blackwell served by the Frisco and Santa Fe. Complainant is in competition with manufactures of paper boxes at Chicago, Joliet, and Rockford, Ill., Milwaukee, Chippewa Falls and other points in Wisconsin. Rates applicable 78.5c, claims for damage on these commodities are negligible. The rating is fifth class, but by exceptions to official classification sixth class rates are applicable from Carthage to St. Louis. Rates on paper boxes from Carthage to Sand Springs and Sapulpa were first requested in 1919 and were established by making rates from Carthage as much higher than the commodity rate from Chicago to those destinations as the fifth class rate from Carthage was higher than the fifth class rate from Chicago. Subsequent rate changes disturbed this relationship but at the hearing defendants proposed to establish rates from Carthage on substantially the same basis with some modifications in order to comply with the fourth section, or 72c minimum 30,000 pounds and 65.5c minimum 40,000 pounds. HELD, rates attacked prior to July 1, 1922, unreasonable to extent they exceeded 67c to Sand Springs, 72c to Sapulpa, 73c to Blackwell, all minimum 40,000 pounds; and minimum 30,000 pounds 75c to Sand Springs, 76c to Sapulpa and 77c to Blackwell, reparation awarded. American Paper Products Company v. A. T. & S. F. Ry., 91 I. C. C. 383.

(r) Respondent, M. C., proposed to cancel its commodity rate of 6.5c on scrap paper, carloads, via Gary, Ind., between Chicago and Joliet, Ill., which would result in application of class C rate of 11.5c. Distance from Joliet to Chicago over respondent's line is 79.5 miles, rates applying at intermediate points including Griffith, Ind., which is 45 miles from Chicago. Short line distance Chicago to Joliet is 37 miles and to Griffith 29 miles, present rate over latter route Chicago to Joliet is 6.5c, same as that applicable over respondent's line, and present rate from Chicago to Griffith is 11.5c, the same as that here proposed by respondent. Respondent established the rate of 6.5c to Joliet to meet competition over the direct route and the proposed rate to Griffith would be the same as that now applicable over the direct route. HELD, proposed schedules justified. Scrap Paper Between Chicago and Joliet, Ill., 91 I. C. C. 569.

(s) Complainant attacked commodity rates charged on 7 cars of printing paper from Hamilton, O., and one car of strawboard from Peoria, Ill., to San Antonio, Texas, as unreasonable and unduly prejudicial. Applicable rates $1.125 prior to July 1, 1922, and $1.015 thereafter on the paper and $1.02 on the strawboard. In 66 I. C. C. 571 the commission found reasonable rates on paper from the points in question to destinations shown. HELD, rates attacked on paper unreasonable to extent it exceeded 86.5c prior to July 1, 1922, and 78.5c on strawboard to extent it exceeded 78c reparation awarded. San Antonio Paper Co. v. C. & A. R. R., 91 I. C. C. 589.

(t) Complainant attacked commodity rates of 90c charged on 55 cars of hollow building tile shipped between December, 1918, and June, 1919, from Kankakee, Ill., to Chicago, Ill., as unjust and unreasonable to extent it exceeded 60c. Shipment moved via I. C., 55 miles route via N. Y. C. being 75 miles. Prior to June 25, 1918, the I. C. carried a rate of 50c increased on that date to 90c under G. O. 28. HELD, rate attacked not unreasonable, complaint dismissed. Illinois Fireproof Construction

Co. v. Director General, 91 I. C. C. 753.

(u) Complainant attacked joint commodity rates charged on glass sand, carloads, shipped between Nov. 1, 1916, and Feb. 14, 1919, from Berkeley Springs, W. Va., to Charleroi, Pa., as unreasonable, unjustly discriminatory and unduly prejudicial. Berkeley Springs is on the B. & O., 6 miles south of Hancock, W. Va., and Charleroi is southeast of Pittsburgh, Pa., on the Pennsylvania. Charged $1.62 prior to April 26, 1918, $1.90 from that date to June 24, 1918, and $2.10 thereafter. Shipments moved over B. & O. to Everson, Pa., and Pennsylvania beyond, 207 miles. Lower rates were maintained to Pittsburgh, 211 miles, Glassport, Pa., 211 miles, Corapolis, Pa., 223 miles, Rochester, Pa., 237 miles, Beaver Falls, Pa., 242 miles. HELD, rates attacked unreasonable and unduly prejudicial to extent they exceeded $1.32 prior to April 26, 1918, $1.50 from that date to June 24, 1918, and $1.70 thereafter, reparation awarded. Macbeth Evans Glass Co. v. B. & O. R. R., 91 I. C. C. 758.

(v) Complainant attacked commodity rates charged of 79.5c on three cars of roofing paper, shipped in January, April and June, 1922, from Madison, Ill., to Oklahoma City, Okla., as unreasonable to extent it exceeded 50.5c. Two shipments were routed via Rock Island and one over M. K. & T. 50.5c was prescribed in 66 I. C. C. 571 and was published on June 15, 1922, when it was reduced on July 1, 1922, to 45c, and is the present rate. HELD, rate attacked unreasonable to extent it exceeded 50.5c, reparation awarded. Turner Sheet Metal Co. v. C. R. I. & P. Ry., 91 I. C. C. 763.

(w) Complainant attacked commodity rate of 10c per 100 pounds on ice, carloads, in refrigerator cars owned and furnished by them, from Tobyhanna, Pa., to Trenton, N. J., on and after May 18, 1923, as unjust and unreasonable in that it equals the rate on ice in refrigerator cars furnished by defendants, and exceeds by one cent the rate on ice in box cars furnished by defendants. The present rates of $1.80 per ton on ice in box cars and $2 when in refrigerator cars, are the outgrowth of rates fixed in 15 I. C. C. 305. The compensation paid for the use of complainant's refrigerator cars is the usual mileage rate paid under the tariffs to all private owners of similar equipment. From a statement introduced by defendants, it appears that the carriers' gross earnings on ice shipped to complainants in complainant's private refrigerator cars during July and August, 1923, were lower than on ice shipped to complainants during the same period in either carrier owned box cars or carrier owned refrigerator cars. HELD, rate attacked not unreasonable, complaint dismissed. Holcombe & Sons v. C. R. R. of N. J., 92 I. C. C. 27.

(wa) Complainant attacked combination commodity rates charged on 23 cars of pulpwood between December, 1920, and February, 1921, from Idaho to Spokane, Wash., thence to Millwood as unreasonable to extent they exceeded rates found reasonable in 61 I. C. C. 159. HELD, rate attacked unreasonable to extent factor to Spokane exceeded by more than $4 per car the corresponding factor subsequently established under 61 I. C. C. 159, reparation awarded. Inland Empire Paper Co. v. C. M. & St. P. Ry., 92 I. C. C. 29.

(x) Complainant attacked commodity rate charged on 158 cars of slack coal, shipped from Spadra, Ark., to Chanute, Kas., between Oct. 15 and Dec. 17, 1920, as unreasonable and unduly prejudicial. Shipments moved and routed over M. P. to Coffeyville, Kas., M. K. & T. beyond, 276 miles, charged $3.645, applicable on lump coal and slack coal. Subsequently it was reduced to $2.43 on June 20, 1921, and to $2.19 on July 1, 1922. At time of movement a combination rate of $2.835 was in effect over the route of movement, composed of commodity rate on slack coal to Coffeyville of $2.295 and proportional rate of 54c beyond. There was also in effect a rate of $2.43 from Spadra to Iola, Kas., a competing point on the M. P., north of Chanute, which was applicable over the M. K. T. as an intermediate carrier. HELD, rates attacked unreasonable to extent they exceeded $2.43, reparation awarded. Ash Grove Lime & Portland Cement Co. v. M. P. R. R., 92 I. C. C. 51.

(y) Complainant attacked commodity rate of 8.9c prior to June 25, 1918, and 11c on and after that date charged on 46 cars of broken plaster molds shipped between June 18, 1918, and June 16, 1919, from Chicago, Ill., to Hannibal, Mo., via the Burlington and tenth class rate of 12.5c between July 5 and August 12, 1918, from Chicago to Hannibal over the Wabash as unjust and unreasonable to extent they exceeded the rates on brick. The brick rates were made applicable on broken plaster molds by the Burlington

on June 25, 1919, and by the Wabash on Dec. 15, 1919. There was no rating or rate applicable on these shipments. In the absence thereof it becomes necessary to determine whether the charges collected were unreasonable. HELD, charges not unreasonable, complaint dismissed. Atlas Portland Cement Co. v. Director General, 92 I. C. C. 171.

(z) Complainant attacked commodity rate of $9.05 maintained on manganese steel scrap, carloads, from New Castle, Del., to Chicago Heights, Ill., as unreasonable. Rate attacked is maintained on iron or steel scrap. The $6 rate sought would earn $300 per car and 35.84c per car mile for distance of 837 miles from New Castle to Chicago Heights. HELD, rate attacked unreasonable to extent it exceeds $6 per long ton, minimum 50 tons. Chicago Heights Mfrs. Assn. v. P. R. R., 92 I. C. C. 194.

(aa) Complainant attacked commodity rates charged on dead coal and dead slack carloads for fluxing purposes from Huntington, Bonanza and Midland, Ark., to South Fort Smith, Ark., as unreasonable, unjustly discriminatory and unduly prejudicial to extent they exceeded slack coal rates. Points of origin are on the Frisco and complainant's smelter is on the M. P. Rates on lump coal were assessed and subsequently slack coal rates were published to apply on dead coal and dead slack. Dead coal and dead slack have no value as domestic or commercial fuel and are sold to smelters for fluxing purposes. They are coal or slack which has been placed on the ground and which has lost its fuel properties because of exposure. HELD, rates attacked unreasonable to extent they exceeded rates on slack coal, reparation awarded. Athletic Mining & Smelting Company v. A. C. R. R., 92 I. C. C. 233.

(bb) Complainant attacked commodity rates charged on 982 bales of cotton shipped from Louisiana to Galveston, Tex., between Sept. 1 and Dec. 31, 1921, as unjust and unreasonable. Rate charged on some joint commodity rate; on others combination of commodity rates, no routing instructions being given by shippers. Originating carriers moved the shipments over routes from 30 to 266 per cent longer than by reasonably direct connections. Since little regard was had for distance in fixing rates on cotton in this region, and since the rates hereinafter used for comparison were also applicable over routes much longer than the distances stated in connection therewith, the length of the movement is of little significance. As stated in 77 I. C. C. 388, the rate adjustment on cotton generally in this territory was chaotic, and greatly in need of revision. The rates approved in 85 I. C. C. 5, modified to reflect the higher general rate level prior to July 1, 1922, the rates so approved would result in compressed in transit rates to Galeston as follows: From Cypress, Natchitoches, and Boyce, 85.5c, from St. Landry and Ville Platte, 75c, from Morrows, Ross, Palmetto, and Melville, 82c and from Coushatta and Campti, 85c. HELD, rates attacked unreasonable to extent they exceed from Robeline, Cypress, Natchitoches, Boyse and New Roads, 85.5c; from St. Landry and Ville Platte, 75c; from Morrows, Palmetto and Melville 82c; on uncompressed cotton, from Coushatta, and Campti 98.5c; from Robeline and Boyce, New Roads and Natchitoches, 99c; from St. Landry and Ville Platte 88.5c; from Morrows Rosa and Palmetto 95.5c, reparation awarded. Harris Irby & Vose v. B. S. L. & W. R. R., 92 I. C. C. 304.

(cc) Complainant attacked rates on refined and low grade oils in tank cars from Oklahoma and Kansas to Milwaukee, West Allis and Racine, Wis., between August 28, 1920, and March 18, 1921, as unjust and unreasonable to extent they exceeded 44c on refined and 37c on low grade oils. In 85 I. C. C. 705, the commission found rates attacked unreasonable and awarded reparation. Rates attacked were in effect because defendants published in accordance with the letter of the order in 57 I. C. C. 597, wherein the commission modified the relationship resulting from the rates prescribed in 36 I. C. C. 109, to Chicago and Milwaukee, rates which were suspended and subsequently found not justified in 59 I. C. C. 499. Rates to the basis of which reparation is sought were published effective March 18, 1921, after the suspended schedules had been canceled. It is true that under the terms of the order defendants could comply therewith in the alternative. But that fact did not relieve them from the responsibility of publishing rates which would not contravene the act. They proposed to establish the 3c differential prescribed by increasing the rates to both Chicago and Milwaukee. That was, of course permissible under the order, but as the Commission had prescribed no specific rates, defendants were thereby subject to those provisions of the act under which the

commission is given power to suspend the operation of proposed increased rates and carriers are required to justify them. The result was that the rates attacked became effective. Whether defendant's action in proposing these increased rates or action of the commission in suspending them led to this result is immaterial and not controlling in so far as an award of reparation is concerned. The fact remains that the rates attacked were assessed. If those rates were unreasonable defendants are not entitled to retain the excessive portion even though it be said that the rates were in effect despite defendant's efforts. HELD, reparation awarded. Wadhams Oil Co. v. C. & N. W. Ry., 92 I. C. C. 361.

(dd) Complainant attacked commodity rates charged on gasoline, carloads, from the midcontinent field and from Colorado, Wyoming and California to Salt Lake City, Ogden and Provo, Utah, as unreasonable and unlawful In 66 I. C. C. 8, rates attacked were found unreasonable but not otherwise unlawful. HELD, rates attacked unreasonable to extent they exceeded 93c from midcontinent field, 60c from Florence, Colo., 66c from Casper, Wyo., 70c from Greybull, Wyo., 73c from Wilmington, Calif., reparation denied. Utah State Automobile Asso. v. A. T. & S. F. Ry., 92 I. C. C. 376.

(ee) Complainant attacked commodity rates charged on sheep and goat pelts and skins, straight carloads, or in mixed carloads with the horse and cow hides, from Utah, Wyoming, Idaho, Montana, and Washington to Portland, Ore,, as unreasonable and unduly prejudicial to extent they exceeded fourth class. Commodity rates, without restriction as to package or baling requirements, have been maintained on this traffic to Portland from many points in this territory. Generally, at least, those rates were lower than the class rates. After the commodity rates were established the classification ratings were changed in various particulars and during the period of movement the commodity rates in a number of instances were higher than the class basis, although, under alternative provisions of the tariffs, the lower rates applied. The classification rating on pelts, loose or in bundles, straight carloads, has at no time been lower than second class, and in the absence of a satisfactory showing that a reduction of the rating is warranted by reason of the loadings the rating should not be condemned. On Sept. 10, 1920, the minimum weight on straight cars of loose hides was increased to 20,000 pounds, subject to rule 34, and since that date, through the operation of the mixing rule, a rating of second class and a minimum of 20,000 pounds subject to rule 34 have been applicable on mixed cars of loose hides and pelts. Pelts are not ordinarily more valuable than hides and the difference in the classification ratings on these commodities is apparently based on different relative loading. HELD, rates attacked on straight cars not unreasonable or unduly prejudicial, but rates from Utah, Wyoming, Idaho, Montana and Washington to Portland on mixed cars of dry untanned cattle or horse hides, loose or in packages, and dry untanned sheep or goat pelts or skins, loose, in bundles, or in bales, not machine pressed, are for the future unreasonable to extent they exceed fourth class, minimum 20,000 pounds subject to rule 34, reparation denied. Bissinger & Co. v. G. N. Ry., 92 I. C. C. 577.

(ff) Complainant attacked commodity rates of $2.24 charged on clay, carloads, shipped from Centerpoint, Ind., to Chicago, Ill., between October, 1920, and June, 1922, as unreasonable and unduly prejudicial to extent it exceeded $1.96. Centerpoint is in the Brazil, Ind., district and takes the same rates to Chicago as other points in the district on articles in the brick list. Prior to February, 1920, the rate from Centerpoint to Chicago, 190.7 miles, was $1.60 on common and other brick, hollow building tile, other clay products and clay, minimum 50,000 pounds. The rate on that date on brick, other than common was reduced to $1.40 in accordance with 56 I. C. C. 687; on August 26, 1920, these rates of $1.60 and $1.40 became $2.24 and $1.96, respectively, and on June 1, 1922, the rate on the other commodities, except common brick, was reduced to $1.96. Effective Oct. 16, 1922, the rate on all commodities in the brick list from Brazil and Centerpoint to Chicago became $1.90. HELD, rate attacked unreasonable to extent it exceeded $2.11, reparation awarded. Midland Terra Cotta Co. v. P. C. C. & St. L. Ry., 92 I. C. C. 601.

(gg) Complainant attacked commodity rates charged on 34 cars of riveted steel conduit pipe shipped between June 10 and Nov. 15, 1920, from Duluth, Minn., to Howells, Calif., as illegal, unreasonable, unjustly discriminatory and unduly

prejudicial to extent they exceeded rates on iron conduits. Howells is on the W. P., 263 miles northeast of San Francisco The pipe was designed and constructed for use in conducting water at high pressure from a penstock to electrical power generators. The shipments were made on flat or gondola cars. Shipments were billed as sections of black steel riveted pipe 1-inch and heavier, 42-inch diameter, by 30 feet long. Charged commodity rates of $1.44 prior to August 26, 1920, and $1.92 thereafter, applicable on articles of iron and steel—Pipe, riveted, minimum 30,000 pounds. Rates of $1.125 prior to August 26, 1920, and $1.50 thereafter, were applicable on articles of iron and steel conduits (not insulating nor flexible) iron, coated or enameled. HELD, shipment consisted of riveted steel pipe, rates attacked applicable, not unreasonable, unjustly discriminatory or unduly prejudicial, complaint dismissed. Duluth Boiler Works v. A. T. & S. F. Ry., 92 I. C. C. 692.

(hh) Complainant attacked commodity rates charged on coal carloads during May, June, July and August, September, 1922, from Leesburg, Pa., to Conneaut Harbor, O., as unreasonable. Shipments moved over Pennsylvania to Shenango, Pa., and B. & L. E., beyond, 104 miles. Shipments originally billed to complainant steamship company at Conneaut harbor for reshipment beyond by lake and charged at joint cargo rate of $1.54. Some of the shipments were used by the steamship company in fueling its vessels at Conneaut harbor and others were diverted to complainant dock company either for its use locally at Conneaut harbor or for fueling ships at that point because of the failure of its ordinary supply as a result of the coal strike. Defendant issued an amended bill for charges on such shipments as were not handled beyond Conneaut harbor as cargo shipments at the combinations of $2.73 prior to July 1 and $2.46 on and after that date, composed of $1.19 and $1.07 to Shenango and $1.54 and $1.39 beyond. On Sept. 10, 1922, the cargo rate was reduced to $1.34 under 68 I. C. C. 676, the delay in making the reduction being due solely to tariff complications. On August 22, 1922, complainants asked defendants to establish a rate of $1.51 to apply to Conneaut harbor proper, and this was made effective Sept. 2, 1922. HELD, rates to Conneaut Harbor proper unreasonable to extent they exceeded $1.68 prior to and $1.51 subsequent to July 1, 1922, and that the cargo rate is unreasonable to extent it exceeded $1.34, reparation awarded. Pittsburg & Conneaut Dock Co. v. P. R. R., 92 I. C. C. 719.

(ii) Complainant attacked combination rates charged on acid phosphate, carloads, as unreasonable and unduly prejudicial, to Seymour, Ind. Seymour is on the Pennsylvania and B. & O., 4 miles north of Louisville, Ky. Complainant disposes of its fertilizer in southern Indiana, the manufacturers at New Albany and Jeffersonville being its principal competitors. New Albany and Jeffersonville are on the B. & O., and Pennsylvania, just across the river from Louisville. Rate on acid phosphate from Nashville to Seymour is $4.70 composed of a proportional commodity rate of $1.80 to Louisville plus sixth class rate of 14.5c beyond. The rate from Nashville to New Albany and Jeffersonville is a joint commodity rate of $2.48. The distances from Nashville are 186 miles to Louisville, 190 miles to New Albany and Jeffersonville and 240 miles to Seymour. HELD, rate attacked unreasonable to extent the component from Louisville to Seymour exceeded $2.22 per ton prior to July 1, 1922, and $2.00 per ton thereafter, reparation awarded. Buhner Fertilizer Co. v. B. & O. R. R., 92 I. C. C. 756.

(jj) Complainant attacked commodity rates charged on soft coal, carloads, from mines in Illinois and western Kentucky to Ladysmith, Wis., as unreasonable and unduly prejudicial. Ladysmith is on the Soo Line, local. The rates from the origin groups to Ladysmith are lower than the scale rates on bituminous coal for like distances prescribed by the Commission in 69 I. C. C. 11, for application from Duluth and other Lake Superior points to destinations in Minnesota, North Dakota and South Dakota. The record contains nothing to indicate that the rates from the southern Illinois and other origin groups named in the complaint to Ladysmith are unreasonable. The evidence relied upon by complainant to prove undue prejudice is too meager and indefinite to justify such a finding. HELD, rates attacked not unreasonable or unduly prejudicial, complaint dismissed. Great Western Paper Co. v. C. & E. I. Ry., 93 I. C. C. 95.

(kk) Complainant attacked commodity rates charged on scrap paper in machine pressed bales carloads from Atlanta, Inman Yards, and Marietta, Ga., to

Chattanooga, Tenn. In 1923 a heavy movement took place from Atlanta. Atlanta and Marietta are 138 and 116 miles from Chattanooga over the N. C. & St. L. In Sept. 1919 commodity rates of 16.5c and 17.5c were established, increased to 29.5c and 22c and reduced July 1, 1922 to 18.5c and 20c. In 1923 the rate from Marietta was reduced to 17c and from Atlanta to 18c. The rates on which complainants chiefly rely by way of comparison appear to be below the general level of rates on scrap paper in the south, and the record as a whole does not indicate that the rates attacked are in excess of a reasonable maximum. HELD, rates attacked not unreasonable, complaint dismissed. Sutphin Co. v. Southern Ry., 93 I. C. C. 147.

(ll) Complainant attacked commodity rates charged on 7 cars of newsprint paper, in rolls and bundles, from Port Edwards and Ladysmith, Wis., International Falls, Minn., and Alexandria, Ind., to McAlester, Okla., between May 1920 and March 1922, as unjust and unreasonable and unduly prejudicial as compared with rates to Muskogee. in 66 I. C. C. 571, the Commission fixed rates for the future from and to the points named. McAlester is 62 miles south of Muskogee on the M. K. & T., and Rock Island. HELD, rates attacked unreasonable to extent they exceeded 46, 64, 65 and 72c, reparation awarded. News Capital Co. v. M. K. & T. Ry., 93 I. C. C. 161.

(mm) Complainant attacked commodity rate of 16c charged for transportation of eight cars of ground fluorspar shipped between Jan. 9 and Feb. 17, 1920 from Newell, Pa., to Camden, N. J., as unjust and unreasonable to extent it exceeded 14.5c. Newell is local on the P. & L. E., about 25 miles south of Pittsburg, Pa. Shipments moved via P. & L. E., through Homestead Transfer, Pa., and Pennsylvania beyond 427 miles, charged at rate of 16c. Complainant offered no evidence to indicate that the earnings under the rate attacked were excessive. HELD, rate attacked not unjustly or unreasonable, complaint dismissed. General Chemical Co. v. Director General, 93 I. C. C. 193.

(nn) Complainant attacked commodity rates charged on 194 cars of steel billets from South Kearney, N. J., 10 cars from Canton (Baltimore), Md., and 11 cars from Philadelphia, Pa., to Huntington, Va., Nov. 15, 1921 as unjust, unreasonable and unduly prejudicial. Huntington is on the main line of the C. & O., and Ohio river division of the B. & O., 161 miles east of Cincinnati, O., and 281 miles southwest of Pittsburgh. Rates charged $8.60 from South Kearney, $8.20 from Philadelphia and $8 from Baltimore. When the general rate reductions of 1922 were effected these rates were reduced slightly beyond the extent required, but on Nov. 1, 1923 subsequent to the hearing they were increased to $7.80, $5.40 and $7.20. Steel billets are rated sixth class. The rates applied, which published as commodity rates, are based upon the sixth class rates. This basis is also employed in making commodity rates to Chicago. The commodity rates applied on these shipments, as well as those now in effect, are substantially 82% of the rates to Chicago. HELD, rates attacked not unreasonable or unduly prejudicial, complaint dismissed. West Virginia Rail Co. v. Pennsylvania R. R., 93 I. C. C. 216.

(oo) Complainant attacked combination commodity rate charged on one car of oak bridge flooring shipped from Lonoke, Ark., to Nowata, Okla., Oct. 16, 1920, as unreasonable. Lonoke is on the Rock Island, 22 miles east of Little Rock, Ark. Shipment moved west over that line to Shawnee, Okla., thence north on Santa Fe through Newkirk, Okla., to Winfield, Kas., and south to Nowata, 610 miles, charged 40.5c to Winfield and 23.5c beyond. The direct route from Lonoke to Nowata is over the Rock Island to Little Rock and M. P., beyond 326 miles. Shipment was originally consigned to Deer Creek, Okla., a local point on Santa Fe. Its sale was canceled and complainant directed diversion to Nowata but it had passed Little Rock and Shawnee before this could be affected. A joint commodity rate of 38c applied over the direct route from Lonoke to Nowata. This shipment was unusual and moved over a circuitous three line route at the instance and for the convenience of complainant. HELD, rate 59.5c attacked not unreasonable, complaint dismissed. Nebraska Bridge Supply & Lumber Co. v. A. T. & S. F. Ry., 93 I. C. C. 301.

(pp) Complainant attacked commodity rates charged on newsprint paper, wrapping paper, and paper napkins, carloads, shipped between Oct. 19, 1921 and June 20, 1922, from Little Falls, Minn.,

and Port Edwards, Nekoosa, Rhinelander, and Green Bay, Wis., to San Antonio, Tex., as unjust, unreasonable and unduly prejudicial. Rate charged on newsprint and wrapping paper $1.17 and on paper napkins from Green Bay $1.96. In 66 I. C. C. 571, the Commission found 82 and 83 on newsprint paper from Port Edwards and Little Falls; on wrapping paper from Nekoosa and Rhinelander 90 and 91.5c; and $1.095 on paper napkins from Green Bay, these rates being effective to destinations shown June 20, 1922. HELD, rates attacked unreasonable to extent they exceeded rates next above shown, reparation awarded. San Antonio Paper Co. v. S. A. & P. Ry., 93 I. C. C. 352.

(qq) Complainant attacked commodity rate charged on 36 cars of wheat from Bridgeport, Dalton, Lorenzo, Gurley and Sidney, Neb., to Great Falls, Mont., between Oct. 29 and Nov. 22, 1919, as unreasonable. Points of origin are on the Burlington, shipments moving north and west over the Burlington to Billings and the G. N., beyond, distance from most central point of origin being 773 miles to Great Falls. Rate charged 56c, applicable from Group J under transcontinental grouping. Group J includes points from the Missouri river west to Denver. The destinations under that rate are blanketed from Montana to Pacific coast. A 36c rate was established by the director general in order to relieve drought conditions, and complainant had full use of that rate from Nov. 28, 1919 until it expired by limitation on June 1, 1920. HELD, rate charged not unreasonable or unlawful, complaint dismissed. Royal Milling Co. v. Director General, 93 I. C. C. 377.

(rr) Complainant attacked commodity rate of 44c charged between August 28, 1920 and Dec. 17, 1921 on newsprint paper, carloads from Sault Ste Marie, Ont., to St. Joseph, Mo., as unreasonable to extent it exceeded 41c. St. Joseph is on the Missouri river about 60 miles north of Kansas City, Mo. For many years the two cities, which by direct lines are about equidistant from the Soo, have taken the same rates on newsprint paper from that point. Shipments moved via C. P., Soo Line and Rock Island, 957 miles. In 26 I. C. C. 13, the Commission approved a rate of 26c from Soo to Kansas City and Omaha. This rate, subjected to general increases was charged. In 64 I. C. C. 33 the Commission prescribed a rate of 41c which was established to St. Joseph Dec. 20, 1921. HELD, rate attacked not unreasonable, complaint dismissed. News Corporation v. M. P. R. R., 93 I. C. C. 381.

(ss) Complainant attacked commodity rates on ground iron ore from Neda, Wis., on C. M. & St. P., 2 miles from Iron Ridge, Wis., and 49 miles west of Milwaukee, Wis., to interstate destinations as unreasonable. **Unreasonableness.** Evidence is extremely meager. Ground iron ore is rated class C in western and sixth class in southern classifications, and sixth class under exceptions to the official. Rates of 14c to Chicago and Bensenville and 23c to East St. Louis are equivalent to class D rates. Class D is the basis prescribed from Iron Ridge to western trunk line territory in 16 I. C. C. 587. Generally speaking the class rates to destinations in central territory are on a relatively higher basis from Wisconsin points than from East St. Louis. The rate of 88c to New Orleans is the full class C basis. Rate of 85c to Pacific coast 54% of the class D rate to those points. **Minimum Weight.** Present minima to Pacific coast is 60,000 pounds and 36,000 pounds to other destinations. **Undue Prejudice.** Crude iron ore and ground iron ore, are not like kinds of traffic within the meaning of section 2 and the allegation of unjust discrimination is wholly unfounded. The circumstances and conditions surrounding the transportation of these commodities are so dissimilar as to warrant lower rates on crude than on ground iron ore. HELD, rates attacked not unreasonable or otherwise unlawful, complaints dismissed. Winters Metallic Paint Co. v. C. M. & St. P. Ry., 93 I. C. C. 427.

(tt) Complainant attacked combination commodity rate charged on petroleum coke from Casper, Wyo., to Delta, Utah in July 1919 as unreasonable. Delta is on the L. A. & S. L., 134 miles southwest of Salt Lake City, shipments moving over Burlington and C. & S., to Cheyenne, Wyo., U. P., and O. S. L., to Salt Lake City, L. A. & S. L., beyond charged 32c to Provo, Utah and 20.5c beyond, both factors being increased but one providing that the increase should be added but once. Rate properly applicable was 49c. When the shipments moved there was in effect on coke a

commodity rate of 32c from Casper to competitive sugar producing points in Idaho and Utah for distances approximately the same as that to Delta. Effective Feb. 28, 1920 a combination rate of 39.75c was published from Casper to Delta. HELD, rate attacked unreasonable to extent it exceeded 32c reparation awarded. Delta Beet Sugar Corp. v. Director General, 93 I. C. C. 547.

(uu) Complainant attacked commodity rate of $1.96 charged on 161 cars of soft coal from Harrisburg, Ill., to Lafayette, Ind., from Oct. 1922 to June 1923 as unjust and unreasonable. Harrisburg is in the southern Illinois coal group. Shipments moved over the Big Four to Danville, Ill., N. Y. C., to Sheff, Ind., and Big Four to Lafayette, 273 miles. HELD, rate attacked not unreasonable, complaint dismissed. Lafayette Box Board & Paper Co. v. C. C. C. & St. L. Ry., 93 I. C. C. 579.

(vv) Complainant attacked commodity rate charged on pop corn, carload, of 30c shipped between March 20, 1921 and June 1, 1922, from Arthur, Iowa, to Chicago, Ill., as unreasonable, unjustly discriminatory and unduly prejudicial. Shipments were in bulk in box cars. Loss and damage claims on this commodity are negligible. Pop corn is rated fifth class in western classification. Prior to March 20, 1921 the rate from Arthur was 34.5c. On that date the rate was reduced to 30c but the spread in the rates as between Odebolt and Arthur was increased from 0.5c to 2c. On June 1, 1922 defendant reduced rates from both points to 26.5c, reduced further July 1, 1922 to 24c. Complainant is satisfied with the present rates and grouping. Little evidence was introduced bearing upon the reasonableness of the rate attacked. HELD, rate attacked not unreasonable but unduly prejudicial to extent it exceeded rate from Odebolt, no damage shown to complainant, complaint dismissed. Shotwell Mfg. Co. v. C. & N. W. Ry., 93 I. C. C. 587.

(ww) Complainant attacked commodity rates charged on five cars of munition lint shipped from Brownsville, Belleville, and La Grange, Tex., to Des Moines and Dubuque, Iowa, between Oct. 14, 1921 and Jan. 4, 1922, as unreasonable to extent they exceeded by more than 9 and 8c prior and subsequent to Jan. 1, 1922, rates contemporaneously in effect on cottonseed hulls. Defendants published an emergency rate from Texas on basis of 125% of the rates on cottonseed hulls with maximum of 9c, effective Sept. 29, 1921, limited to expire March 31, 1922, to all points in this destination territory except Des Moines and Dubuque. La Grange and Belleville are in the southern portion of the Texas common point territory, former on the M. K. & T., and latter on G. C. & S. F. The rates sought applied to all points in Omaha-Davenport territory, in which Des Moines is located, as well as to all points in Chicago territory, in which Dubuque is located. The transportation characteristics of munition lint and of cotton seed hull shavings are practically identical. HELD, rates attacked unreasonable to extent they exceed 76.5c from Brownsville to Des Moines, 66.5c from Belleville to Des Moines and 64c from La Grange to Dubuque, reparation awarded. Pearson & Company v. St. L. B. & M. Ry., 93 I. C. C. 681.

(xx) Complainant attacked commodity rate charged on gasoline and kerosene, tank cars, shipped from Tulsa, Okla., to Clayton, N. M., via Pueblo, Colo., between June 22 and Oct. 6, 1920 as unreasonable and unduly prejudicial. While during the period of movement all alternative routes except those of the Santa Fe met the rate in effect via Quanah, the shortest route, the only route now doing so is that via Pueblo. Clayton is a distributing center for complainants products. Prior to July 16, 1919 complainants shipments to Clayton moved via Fort Worth. Thereafter, until Jan. 1, 1920, they moved via Quanah, but averaged 20.6 days in transit. From Jan. 1 to June 22 1920, they moved via Colorado Springs, the longest route, average 18 days in transit. Complainant routed the shipments here considered via Pueblo with a view to more expeditious movement, the shipments moving as routed and averaging 10.4 days in transit. A rate of 51.5c prior to August 26, 1920 and 69.5c thereafter applied via Pueblo to Clayton from points on the Santa Fe as far east as Joplin, Mo., 875 miles. It also applied via Pueblo from Kansas City, Mo., to Colorado common points, including Clayton, 825 miles, and Cheyenne, Wyo., 840 miles. The same rate applied via Pueblo from Tulsa to Colorado common points, including Cheyenne, 892 miles, but not including Clayton, 877 miles. HELD,

rate attacked unreasonable to extent it exceeded 51.5c prior to August 26, 1920 and 69.5c thereafter, undercharges waived, complaint dismissed. Texas Company v. A. T. & S. F. Ry. 93 I. C. C. 691.

(yy) Complainant attacked commodity rates charged on four cars of cotton twine and one car of cotton factory sweepings from Uniontown, Ala., to Pacsteel, Calif., between October 1921 and Jan. 1922 as unreasonable. Shipments moved over Southern to New Orleans and S. P., beyond. Fifty foot cars were ordered but the initial carrier supplied in each instance two smaller cars. Each shipment was partially loaded into one car and the remainder forwarded as a follow lot in the second car. Charged $1.585 on the cotton twine and $1.92 on the cotton factory sweepings. HELD, rates attacked not unreasonable, complaint dismissed. California Cotton Mills Co. v. Southern Ry., 95 I. C. C. 7.

(zz) Complainnt attacked rates charged on rig irons, car loads, shipped since March 10, 1921 from Parkersburg, W. Va., to Louisiana and Arkansas, Kansas, Oklahoma, Montana and California as unreasonable, unduly preferential, and prejudicial. Rig irons are generally used for drilling through hard formations, and when oil deposits lie at greater depths than can be reached with a drilling machine. The articles included in rig iron outfits are put together as shipped, there being no further manufacturing. No special equipment is required for the traffic, ordinary box cars or livestock cars being used. Rating is class A on oil well supplies including rig irons. Commodity rates are asked in straight carloads lower than rates on oil well outfits and supplies. On oil well outfits and supplies, including rig irons, within official and southern classifications, the rates are the same as those contemporaneously applicable on iron and steel articles. **Rates to Louisiana and Arkansas.** Rates on oil well supplies to Louisiana and Arkansas are generally made by adding the Pittsburg differential to the rate from St. Louis. **Rates to Oklahoma.** There is no uniform basis of rates on oil well outfits and supplies to Oklahoma. There is a blanket commodity rate of 143.5c from Parkersburg to all points in Oklahoma; through class A rates to the same points and a combination of local rates to and from St. Louis. The applicable rate is the lowest of the three. **Rates to Kansas.** There are no joint through commodity rates to Kansas. Joint through class A rates are published which are higher than the combination of intermediates. Applicable rates were made by combination of fifth class of 40.5 at present 36c to St. Louis and class A rate beyond. **To Montana.** No joint through commodity rates. Joint through class rates are published but applicable rates are combinations of intermediates. **Rates to California.** No joint through commodity rates but through class rates are published higher than combination of intermediates. HELD, rates attacked on rig irons, carloads, from Parkersburg to Louisiana, Arkansas, Oklahoma, Kansas, Montana and California unjust and unreasonable to extent they exceed 85% of rates on oil well outfits, reparation awarded. Parkersburg Rig & Reel Co. v. C. R. I. & P. Ry., 95 I. C. C. 181.

(3a) Complainant attacked commodity rates of 42 and 41c charged prior to July 15, 1923 and 34.5c and 33c thereafter on fresh meat and packing house products, carloads, from Sioux Falls, S. D., to Lincoln, Neb., as unjust, unreasonable and unduly preferential to competitors at Kansas City, Mo., Minneapolis and Duluth, Minn., and other points to extent they exceeded 23.5c on fresh meat and 18.5c on packing house products. In western classification fresh meat, carloads, is classified third class, and packing house products fifth class. Generally throughout western trunk line territory the rates on fresh meat and packing house products are considerably lower than third and fifth class rates. HELD, rates attacked unreasonable to extent they exceeded between July 26, 1921 and July 1, 1922 38.5c on fresh meat and 33c on packing house products and between July 1, 1922 and July 15, 1923 34.5c on fresh meat and 29.5c on packing house products and subsequent to that date not unreasonable on fresh meat but on packing house products unreasonable to extent it exceeded 29.5c, reparation awarded. Morrell & Company v. C. B. & Q. R. R., 95 I. C. C. 255.

(3b) Complainant attacked commodity rates charged on bituminous coal, carloads, from mines in southern Illinois to Ste. Genevieve and Mosher, Mo., since April 11, 1920, as unreasonable, unjustly discriminatory, unduly prejudicial and

in violation of the fourth section. Ste. Genevieve and Mosher are in southeastern Missouri on the Missouri Illinois R. R. Ste. Genevieve is also on the Frisco, 65 miles south of St. Louis, Mo. Mosher is 2.4 miles west of Ste. Genevieve. Practically all the coal consumed by complainants comes from mines in southern Illinois in what are known as the Belleville, DuQuoin, Murphysboro and southern Illinois groups. Prior to Dec. 12, 1919 the Illinois Southern was the short line or formed a part of the short route, from all of these mines to Ste. Genevieve and Mosher. On that date this road discontinued operations because of financial difficulties, and subsequently the property was purchased by the Missouri Illinois, which commenced operation between Illinois points and Ste. Genevieve and Mosher on March 27, 1921 and of its entire line on June 1, 1921. The Missouri Illinois crosses the Mississippi river by steam car ferry, which operates between Kellogg, Ill., and Little Rock, Mo. Since March 26, 1921 complainants coal has moved and now moves over the Missouri Illinois direct when from mines on that road, and over the Missouri Illinois in connection with the M. P., at Flinton, Ill., or the I. C., at Coulterville, Ill., when from mines on the other defendants line. When the Missouri Illinois commenced operations in March 1921, in order to meet fourth section requirements, the Crystal City rate was extended to Ste. Genevieve from Missouri Illinois and I. C., mines via Kellogg. Subsequently this rate was extended to mines on the M. P., and C. & E. I. via Thebes, necessitating reductions at all points on the Frisco from Cape Girardeau to and including Ste. Genevieve. HELD, rates attacked not unreasonable or otherwise unlawful, complaint dismissed. Peerless White Lime Co. v. C. & E. I. Ry., 95 I. C. C. 260.

(3c) Complainant attacked commodity rate charged on eight cars of portable railway track shipped between Oct. 5 and Nov. 5, 1921 from Tullytown, Pa., to Phoenix, Ariz., as unreasonable. Shipments moved 2,599 miles over Pennsylvania to Chicago, C. M. & St. P., to Kansas City, thence Rock Island E. P. S. W., and S. P. Rate charged $2.255, this basis being the present rate. HELD, rate attacked not unreasonable, complaint dismissed. State of Arizona v. A. E. Ry., 95 I. C. C. 658.

(3d) Complainant attacked commodity rates charged on newsprint paper, book printing paper, printing paper, wrapping paper, flat writing paper, cardboard, strawboard, and tagboard from and to numerous points as unreasonable. Points of origin are in Wisconsin, Minnesota, Michigan, Indiana, Illinois, Ohio, Pennsylvania, New York, Massachusetts, Vermont, New Hampshire and Maine. The destinations are Dallas, Houston, Tyler, and Fort Worth, Tex.; Denver, Colo., Fargo, N. D., Des Moines and Sioux City, Iowa, Lincoln, Neb., Little Rock, Ark., Memphis, Tenn., Oklahoma City, Hartshorne and Hobart, Okla., Sioux Falls, S. D., Wichita, Kas., Council Bluffs, Kansas City, Omaha and Moorhead. In 66 I. C. C. 571 the Commission found that there should be a general readjustment of the rates on certain classes of paper and paper articles, carloads, including those here considered, from Wisconsin, Minnesota and Upper Peninsula of Michigan to western, southwestern and other territories. The present rates on this traffic from and to the foregoing points are in accordance with the rates fixed in that case less the general reduction of July 1, 1922. The present rates on newsprint from Fox River group are 29c to Omaha, 517 miles, and 30.5c to Kansas City, 603 miles. The evidence does not warrant a finding that rates to these points are unreasonable. The rates from points in central territory, to Omaha and Kansas City are and always have been made by combination of local or proportional rates to and from the Mississippi river or Chicago. The through rate of 43.5c on newsprint from Alexandria, Ind., to Omaha and Kansas City appears somewhat high as compared with the prescribed rates in the Paper case on this class of paper to a number of points in western trunk line territory. The short line distance from Alexandria are, to Omaha, 646 miles over Big Four to Peoria, Ill., and C. B. & Q., beyond, and to Kansas City, 583 miles over Big Four to St. Louis and M. P., beyond. Newsprint is not shown to have moved from, and apparently is not produced at, other points in central territory referred to of record. The shipments therefrom consisted of printing paper and paper grouped therewith. The evidence adduced with respect to the present rates on this class of paper from these points and on this and other classes of paper from these points and on this

other classes of paper from eastern points does not warrant a finding that there rates are unreasonable. Rail water and rail rates on newsprint from New England to Texas destinations are under consideration in other cases, and a finding will be deferred. HELD, rates attacked to Omaha and Kansas City, except on newsprint from Alexandria, not unreasonable; rate attacked on newsprint from Alexandria to Omaha and Kansas City not unreasonable as to the past but for the future unreasonable to extent it exceeded 39c; rates charged on evelopes from Waukegan to Moorhead unreasonable to extent they exceeded the aggregate of intermediates. Reparation awarded. Western Newspaper Union v. A. T. & S. F. Ry., 96 I. C. C. 5.

(3e) Complainant attacked commodity rates charged on five cars of paper bags and wrapping and printing paper from Nov. 25, 1921 to June 7, 1922 from Illinois, Michigan and Wisconsin to Pueblo, Colo. as unreasonable. Two cars from Port Edwards and Nekoosa, Wis., charged 90c, from Otsego, Ill., 21.5c to Chicago and 90c beyond and from Decatur, Ill., 92c, and from Neenah, Wis., $1.015. In 66 I. C. C. 571 the Commission prescribed reasonable rates on newsprint and paper articles from Wisconsin and related points to various destinations, including Colorado common points. HELD, rates attacked unreasonable to extent they exceeded 82.5c from Port Edwards, Nekoosa and Neenah, $1.04 from Otsego and 78c from Decatur, reparation awarded. Colorado Paper Co. v. A. T. & S. F. Ry., 96 I. C. C. 73.

(3f) Complainant attacked commodity rates charged on crushed slag, in bulk, carloads, from Lebanon, Bethlehem, Emaus and Hokendauqua, Pa., to New Jersey, Maryland, and Delaware and New York as unreasonable. In 92 I. C. C. 554, the Commission found rates attacked unreasonable to extent they exceeded the basis prescribed therein. Defendant contended shipments to New York were not brought in issue except on shipments from Lebanon, and complainant concedes this is correct. HELD, original order modified so as to exclude New York, N. Y., as a destination on all shipments except those originating at Lebanon, Pa. Buckland v. A. C. R. R., 96 I. C. C. 79.

(3g) Complainant attacked commodity rates charged on a car of canned goods shipped Dec. 17, 1920 from Fairport, N. Y., to Boise, Ida., as unreasonable and unduly prejudicial. Shipment consisted of various kinds of canned goods, including 9,880 pounds of chili sauce. A rate of $1.835 was applicable on all of the commodities including in the shipment, in straight or mixed carloads, except the chili sauce. A less carload rate of $4.155 applied on the chili sauce. At time of movement rates from and to the points in question were $2.42 minimum 40,000 pounds and $1.835 minimum 60,000 pounds. Chili sauce was included in the list of commodities taking the $2.42 rate but was not added to the list taking the $1.835 rate until June 30, 1921. HELD, rates charged unreasonable to extent they would have exceeded those applicable at rate of $1.835, undercharges waived, complaint dismissed. Oakes & Company v. O. S. L. Ry., 96 I. C. C. 95.

(3h) Complainant attacked commodity carload rates charged on 20 cars of lumber from Florida and Georgia to Waverly, N. J., between Dec. 13, 1919 and August 24, 1920 as unreasonable. Shipments moved from Roux, Sorento, and Lake Helena, Fla., and Willacoochee, Douglass, and Thomasville, Ga., charged 38c, 37c, 40c and 36c, respectively. The first cars were consigned to complainant at the siding of the General Leather Co., Newark, N. J. That siding is near the station designated by defendant in its tariffs at Waverly. In order to obtain delivery there the cars had to be reconsigned from Newark. Complainant was then requested by a representative of the defendant to notify consignors to consign future cars to the siding of the General Leather Co. at Waverly. All other cars were so consigned and there were no further charges for reconsignment. The rates to Newark were 34c from Roux, 33c from Sorento, 36c from Lake Helen and 31c from Thomasville and Willacoochee. The rates charged were higher than the rates to all other deliveries in Newark and were higher than the rates to New York City, which included lighterage in New York harbor. HELD, rates attacked unreasonable to extent they exceeded rates to Newark, reparation awarded. Stailey Lumber Co. v. P. R. R., 96 I. C. C. 175.

(3i) Complainant attacked commodity rates on straw, carloads from points in Illinois on the I. C., to Noblesville,

Ind., on the L. E. & W., since July 1, 1922 as unreasonable and unjust. The rates attacked represent joint commodity rates established in 1904 as modified by increases and reductions since that time. Straw is rated fifth class in central territory, the class rate for 200 to 225 miles being 26c. HELD, rates attacked not unreasonable, complaint dismissed. American Strawboard Co. v. I. C. R. R., 96 I. C. C. 289.

(3j) Complainant attacked commodity rates charged on tripoli, carloads, from Seneca, Mo., to St. Louis and East St. Louis, Ill., to Peoria and Chicago, Ill., and to destinations in central, trunk line and Canadian territories as unreasonable, unduly prejudicial. From Feb. 15 to Dec. 11, 1923 class C rates of 33, 36.5c and 40.5c were applicable to St. Louis, Peoria and Chicago, 326, 482, and 610 miles. On December 11, 1923 commodity rates of 22, 26 and 30c became effective. The rates to the other destinations are combinations composed of the commodity rate to St. Louis, plus the sixth class rates to destinations in central and Canadian territories and plus specific commodity rates to trunk line territory. From Tamms, Ill., and other producing points silica takes 80% of sixth class to central and Canadian territories and specific commodity rates lower than the rates on tripoli to trunk line territory. This basis also applies proportionally on silica from St. Louis and other gateways. HELD, rates on tripoli, carloads, from Seneca not unreasonable between August 20, 1921 and Feb. 15, 1923; present rates not unreasonable; but except to St. Louis and East St. Louis, Peoria and Chicago they are unduly prejudicial to extent the components beyond St. Louis exceed amounts which have the same percentage relationships to the sixth class rates from St. Louis to the respective destinations as the rates on silica, carloads, from Tamms, Ill., to the same destinations bear to the sixth class rates from Tamms. American Tripoli Co. v. A. & W. Ry., 96 I. C. C. 421.

(3k) In 88 I. C. C. 582 the Commission found commodity rates on soft coal, carloads, from Duluth and West Duluth, Minn., to Ladysmith, Wis., of $1.89 prior to July 1, 1922 and $1.70 thereafter, unreasonable to extent they exceeded $1.78 prior to July 1, 1922 and $1.60 on and after that date. Case was reopened. HELD, rates attacked not unreasonable or unjustly discriminatory, complaint dismissed. Great Western Paper Co. v. M. St. P. & S. S. M. Ry., 96 I. C. C. 444.

(3l) Complainant attacked commodity rate of 23c charged on 34 cars of condensed and evaporated milk from Lodi and Reedsburg, Wis., between Oct. 21, 1921 and Jan. 30, 1922 to Chicago and Clearing, Ill., as unreasonable, unjustly discriminatory and unduly prejudicial. Lodi and Reedsburg are on the C. & N. W., 182 and 149 miles from Chicago. Clearing is within the Chicago switching district. Effective Feb. 15, 1923 rates of 15.5c from Lodi and 17c from Reedsburg to Chicago were established. HELD, rates attacked not unreasonable, unjustly discriminatory or unduly prejudicial, complaint dismissed. Nestles Food Company v. C. & N. W. Ry., 96 I. C. C. 452.

(3m) Complainant attacked commodity rates charged on 83 cars of coal screenings shipped between Jan. 2, 1918 and Jan. 3, 1920 from Cantrall, Springfield and Pana, Ill., to Lyons, Iowa, as unreasonable, unjustly discriminatory and unduly prejudicial. Distance 178, 190 and 240 miles. Lyons is within the switching limits of Clinton, Iowa, 3 miles beyond the latter station, lower rates being applicable to that point. The rates from Springfield and Cantrall to Lyons were the same as to Clinton prior to Oct. 18, 1917 and on and after Oct. 5, 1918. From Pana the rates to both destinations were the same until Dec. 29, 1919. HELD, rates attacked not unreasonable, complaint dismissed. Ford Roofing Products Co. v. Director General 96 I. C. C. 471.

(3n) Complainant attacked commodity rates charged on 232 cars of fuel oil shipped between August 20, 1922 and April 11, 1923 from Arkansas, Oklahoma and Texas to Steelton, Minn., as unjust, unreasonable and unduly prejudicial. HELD, rates attacked unreasonable to extent they exceeded 43c from Arkansas and Oklahoma and 45.5c from Texas, a differential under the refined oil rates, reparation awarded. Minnesota Steel Co. v. A. T. & S. F. Ry., 96 I. C. C. 483.

(3o) Complainant attacked combination rate charged on a car of dried beet pulp shipped on Jan. 22, 1921 from Bayard, Neb., to Jackson, Miss., as unjust, unreasonable and unduly prejudicial. The distance from Bayard to Jackson is

1,397 miles over route of movement and 1,304 miles via the short line. Applicable rate 86c compared to 56c to Memphis, Tenn., and class D rate of 30c beyond. Present rate is a joint rate of 54.5c effective July 1, 1923 and is on the corn rate basis. At time of movement rates from Bayard to lower Mississippi river crossings were materially lower than the rates to Jackson and other southeastern points. These rates, however, were lower than the rates to intermediate points, and the lower rate to Jackson, subsequently established, was the result of the elimination of fourth section departures under orders of the Commission, and the general 10% reductions. At the time of the movement the rate on corn from Bayard to Jackson was 81c. Dried beet pulp is rated as low or lower than corn in the classifications. Rates on dried beet pulp at the time of movement were the same as the rates on corn in numerous instances, including the rates from Bayard to Mississippi river crossings, used as factors in making up the rates to southeastern points. The present rates to Jackson are the same on both commodities. HELD, rate of 86c unreasonable to extent it exceeded 81c but present rate not unreasonable, undercharge waived, complaint dismissed. Jackson Traffic Bureau v. C. B. & Q. R. R., 96 I. C. C. 763.

(3p) Complainant attacked commodity rates charged on six cars of uncompressed cotton linters shipped Dec. 2, 1921 from Magnolia, Ark., to St. Louis, Mo., as unreasonable and in excess of that applicable. Shipments moved as routed by shipper over the La. & N. W., to McNeil, Ark., and St. L. S. W., beyond 513 miles, charged $1.23, basis for which does not appear. Rates ranging from 79 to 89c applied on cotton linters from numerous points in Arkansas and Louisiana contiguous to Magnolia to St. Louis for distances ranging from 471 to 599 miles, and a rate of 81c to Kansas City applied from Little Rock and Pine Bluff, Ark., 506 and 548 miles. Effective June 23, 1922 defendants established a rate of 86.5c from Magnolia to St. Louis over the route of movement and that rate as reduced under general reductions of 1922 is still in effect. HELD, rates attacked unreasonable to extent it exceeded 86.5c, reparation awarded. O'Donnell Mercantile Co. v. L. & N. W. R., 98 I. C. C. 1.

(3q) Complainant attacked commodity rates on crude oil, in carloads, from Mexia, Tex., to Shreveport, La., as unreasonable and unduly prejudicial to extent they exceeded rates from Mexia to Beaumont and Port Arthur, Tex. The Mexia district is served by the T. & B. V., and S. P. Short route Mexia to Shreveport is over the T. & B. V., St. L. S. W., and T. & P., 212 miles. To Beaumont and Port Arthur the short route is over S. P., 254 and 274 miles. The distance scale under 48 I. C. C. 312 is the same to Shreveport as to Beaumont and Port Arthur but the specific commodity rate to the latter points kept Shreveport at a disadvantage during the various periods of the complaint ranging from 0.5c to 5.5c. Up to the time of the hearing no crude oil had moved under the rate to the preferred points and complainants competitors at those points had not taken advantage of that rate, but preferred to ship by pipe line. If the rate to Beaumont and Port Arthur had been the same as that to Shreveport complaint would have been in no better position in respect of its competitors, because the inducement to ship by rail being still less, the latter would have continued to move all of their crude oil by pipe line. Even if there is now a rail movement under the lower rate to the ports, the circumstances of pipe line competition to Beaumont and Fort Arthur, which has depressed the rate to these ports to its present level, and the absence of such competition to Shreveport, presents a situation which distinguishes the transportation conditions under the rate to Beaumont and Port Arthur from those under the rate complained of, and removes it from the purview of section 3. HELD, rate attacked not unreasonable or unduly prejudicial, complaint dismissed. Caddo Central Oil & Refining Co. v. K. C. S. Ry., 98 I. C. C. 39.

(3r) Complainant attacked commodity rates on clean rice and rice flour, carloads, from Arkansas, interior Louisiana and Texas to Salina, Kans., two years prior to April 30, 1924 as unreasonable, unjustly discriminatory and unduly prejudicial as compared with the rates from the same points of origin to other destinations in Kansas and Missouri. Salina is 186 miles west of Kansas City, Mo., and 182 miles west of what is known as the lower Missouri river group of cities, which includes Kansas City and St. Joseph, Mo., and Atchison

and Leavenworth, Kas. It is served by the Santa Fe, Rock Island M. P., and U. P. For some years rates from points at which clean rice originates have been related. The rates to Salina are much higher than those to the lower Missouri river cities and that from Texas points for an average additional distance of 27 miles to the lower Missouri river cities the rates are 22.5c less than the rates from the same points of origin to Salina. The attacked rates apply on both clean rice and rice flour, in straight or mixed carloads, and both commodities are rated fifth class, carloads, in the western classification. In 93 I. C. C. 517, the Commission found a rate of 61c on clean rice, carloads, from Arkansas to Salina would be reasonable for the future. Based upon the differential of 10c, interior Louisiana mills over Arkansas mills, and also upon rates prescribed in the above case for distance substantially similar to those from interior Louisiana and Texas points to Salina, the rates to Salina would be 71c from mills in interior Louisiana and 67c from mills in Texas. HELD, rates attacked unreasonable to extent they exceeded 61c from Arkansas, 71c from Louisiana and 67c from Texas. Reparation awarded. Salina Chamber of Commerce v. A. & W. Ry., 98 I. C. C. 290.

(3s) Complainant attacked commodity rate charged on tanning extract, carloads, from Newport, Tenn., to Olean, N. Y., between August 27, 1920 and Dec. 31, 1922 as unreasonable, unduly prejudicial and in violation of the fourth section. Newport is on the Southern 62 miles northeast of Knoxville, Tenn. Shipments moved over Southern to Potomac Yards, Va., Pennsylvania beyond, charged 44.5c and 40c. There were in effect from Knoxville to Olean rates of 42c prior to July 1, 1922, 38c July 1 to Oct. 31, 1922 and 38.5c thereafter applicable over the same route. The fourth section departure was not set for rearing in connection with this case. HELD, rates charged not unreasonable or otherwise unlawful, complaint dismissed. England Walton & Co. v. Southern Ry., 98 I. C. C. 449.

(3t) Complainant attacked commodity rates on coal, carloads, on the Virginia to interstate destinations as unreasonable and unduly prejudicial. When this complaint was filed the New River district of the C. & O., comprised all mines on its main line between Meadow Creek on the east and Fort Defiance on the west; all mines on its branch lines and subbranch lines served through junction points on its main line between those points; all mines on the Sewell Valley, an independent short line connecting with it at Meadow Creek and extending in an northeastwardly direction to G. & E. Junction; and certain mines on the main line or branch lines of the Virginian. Since the filing of this complaint the Commission has prescribed the New River district rates, eastbound and westbound, from mines on the Kanawha, Glen Jean & Eastern, an independent short line connecting with the C. & O., at Kilsythe Junction, W. Va., and from mines on the Greenbrier & Eastern a short line connecting with the Sewell Valley at G. & E. Junction. From all the mines within these districts, which form a part of the so called Outer Crescent, 46 I. C. C. 66, the rates to any given point in central territory are the same. Complainant pays combination rates to and from the junction point between the Virginian and the C. & O. Other mines on the Virginian within its New River district receive the benefit of district rates to central territory under trackage agreements between the Virginian and the C. & O. Complainants mines and others served exclusively by the Virginian are the only mines in the districts thus far named of the Outer Crescent which are denied the benefit of district rates to central territory. They are entirely surrounded by mines taking the district rates which they seek. No sufficient reason from an operating standpoint appears why the mines on the Virginian discriminated against should be kept on a different rate footing from other mines on the Virginian or on the branch lines of the C. & O., or on independent short lines within the district. HELD, rates attacked unreasonable and unduly prejudicial to extent they exceed New River district rates. Wyoming Coal Co. v. Virginian Ry., 98 I. C. C. 488.

(3u) Proposed cancellation of commodity rate on scrap paper via Gary, Ind., between Chicago and Joliet, Ill., and intermediate points, leaving in effect higher class rate, found justified. Commodity rate to Joliet was established to meet competition over direct route, and proposed rate would be same as that now applicable over direct route. Scrap Pa-

per between Chicago and Joliet, Ill., 91 I. C. C. 569.

(3v) Proposed cancellation of commodity rates on boots and shoes from various New York points to trunk-line and New England territories, and application of higher class rates in lieu thereof, found not justified. Only justification assigned for proposed cancellation to Boston, Mass., is that New England carriers requested that this be done in order to prevent its extension to other points, while cancellation to such points as Philadelphia, Richmond, and Norfolk, is proposed in order to satisfy a complaint of Baltimore, Md., for removal of unjust discrimination. However, present rates have been long in effect, have evidently been satisfactory to carriers, and it was not shown that there has been such a change in conditions as to warrant adjustment sought, or that present rates are unremunerative or unreasonably low. Boots and Shoes from New York Points, 91 I. C. C. 591.

(3w) Proposed restriction of commodity rates on sash, in mixed carloads, with common unglazed doors and millwork, from certain points in Iowa, Illinois, and Wisconsin to trunk line and New England territories, so as not to apply on common glazed sash, found not justified. Glazed Sash to Trunk Line and New England Territories, 91 I. C. C. 731.

(3x) Complainant attacked commodity rates charged on iron or steel sheets and plates, tank iron, galvanized roofing, angles and rivets, carloads, from Ohio, Kentucky, Indiana, Alabama Illinois, Pennsylvania, New York and Missouri to Dallas, Fort Worth and Harrys, Tex., since June 22, 1920, as unreasonable. The points of destination are in what is known as the northeast Texas group. The rates attacked are the same as to Texas common point territory. The factors from points of origin to St. Louis are generally fifth class differentials, which are less than the local rates to that point. The evidence is directed mainly to the factor from St. Louis. In 40 I. C. C. 619, 41 I. C. C. 552 the Commission found the rates on 98 commodities from St. Louis to that group were unreasonable to extent of 5c per 100 pounds. HELD, rates attacked unreasonable to extent the factors from St. Louis exceeded prior to July 1, 1922, 60c to Dallas, and 61.5c to Fort Worth and Harrys, and from and including July 1, 1922 54c to Dallas and 55.5c to Fort Worth and Harrys, reparation awarded. Atlas Metal Works v. A. C. & Y. Ry., 100 I. C. C. 173.

(3y) Complainant attacked commodity rates charged on liquid and solid asphalt, carloads, from Port Neches, Tex., and points taking same rates, to Tulsa, Okla., between Feb. 1, 1922 and Jan. 25, 1923 as unreasonable, unduly prejudicial as compared with rates from St. Louis, Kansas City and Joplin, Mo., and in violation of the fourth section. Allegation of undue preference was withdrawn at the hearing. All shipments moved over T. & Ft. S., to Shreveport, La., K. C. S., to Panama, Okla., and M. V., beyond, prior to July 1, 1922 charged 38c, reduced on that date to 34c, and effective Feb. 15, 1923 reduced to 31.5c, reparation being sought to 25.5c. HELD, rates attacked not unreasonable, complaint dismissed. Standard Paving Co. v. A. T. & S. F. Ry., 100 I. C. C. 233.

(3z) Complainant attacked commodity rates on condensed milk, in cans, in carloads, from Lupton and Johnston, Colo., to Oklahoma as unreasonable and, as compared with rates on other canned goods, unduly prejudicial. A commodity rate of 76c applied on condensed and evaporated milk, in cans, carloads, from Colorado producing points to destinations in Oklahoma. The commodity rate on canned goods generally is 63.5c. The adjustment to the adjacent states of Kansas and Texas is constructed on a different principle, in that canned goods and canned milk now take the same rates to destinations generally in those states, commodity rates of 53.5c and 78c applying to Kansas and Texas, respectively. HELD, rates attacked not unreasonable but unduly prejudicial to extent they exceeded rates on canned goods, reparation denied. Carnation Milk Products Co. v. A. T. & S. F. Ry., 100 I. C. C. 254.

(4a) Complainant attacked commodity rate of 90c charged on 41 cars of doors shipped between March 31, 1921 and June 30, 1922 from Portland, Ore., and Tacoma, Hoquiam, and McLeary, Wash., to Memphis, Tenn., as unreasonable unjustly discriminatory and unduly prejudicial to extent it exceeded subsequently established rate of 83c. The evidence indicates that each group of car-

riers is fostering its own business and that the rates were reduced as a result of competition. Proof is unsufficient to prove damage. HELD, rates attacked not unreasonable, complaint dismissed. Memphis Freight Bureau v. C. & E. I. Ry., 101 I. C. C. 26.

(4b) Complainant attacked commodity rate of 82c charged on wrapping paper, in straight or mixed carloads with toilet paper and paper articles, from Menominee, Mich., and Green Bay and other Wisconsin points to Wichita, Kas., between Nov. 24, 1921 and June 2, 1922, as unreasonable, unjustly discriminatory and unduly prejudicial. Hauls are 804 to 867 miles, average distance of 840 miles, at Chicago, Ill., base rate. Complainants case is based mainly on the fact that rates on a much lower basis apply from the same points of origin to Kansas City, Mo., Topeka, Kas., and other points in the same general territory. Rate prescribed in 66 I. C. C. 571 to Wichita is 151.5 per cent of that prescribed to Kansas City, or 58c on wrapping paper in straight carloads and 70c in mixed cars with toilet paper and paper towels. HELD, rates charged unreasonable to extent they exceeded rates last named, reparation awarded. Wichita Chamber of Commerce v. A. T. & S. F. Ry., 101 I. C. C. 55.

(4c) Complainant attacked commodity rate of 83.5c prior to July 1, 1922 and 75c thereafter, charged on 77 cars of cedar pencil slates from Shelbyville, Murfreesboro, Lewisburg, South Pittsburgh and Chapel Hill, Tenn., to Jersey City, N. J., and New York, between April 1, 1922 and Dec. 31, 1923 as unreasonable to extent it exceeded 66.5c prior to July 1, 1922 and 60c thereafter. Complainant attacked commodity rate of 65c prior to July 1, 1922 and 58.5c thereafter charged on 27 cars of cedar pencil slats from Shelbyville to Savannah, Ga., between March 1, 1922 and Nov. 30, 1923 as unreasonable to extent it exceeded rate from Huntsville and Chase, Ala., which was 40c prior to July 1, 1922 and 36c thereafter. In 25 I. C. C. 203 the 50c rate from South Pittsburgh was found not unreasonable. Distances to New York are 882 miles from South Pittsburgh, 950 miles from Shelbyville, 966 miles from Murfreesboro, 972 miles from Lewisburg and 996 miles from Chapel Hill. The rates on lumber to New York are 46.5c from South Pittsburgh, 47.5 cents from Chapel Hill, 49c from Murfreesboro, 50 cents from Lewisburg and 50.5c from Shelbyville. Subsequent to the hearing the rate from Huntsville and Chase to Savannah was increased from 36c to 58.5c. The rate of 36c from Nashville to Savannah was canceled after the filing of the complaints in these proceedings. The distance from Shelbyville to Savannah is 498 miles, distances from Huntsville and Nashville are 511 and 545 miles, respectively. The rate on lumber from Shelbyville to Savannah is 33c. The rates from the producing points in Tennessee to New York and Savannah are not shown to be out of line with rates from those points to other destinations. Pencil slats are a manufactured product to the extent that lumber is a manufactured product and no more. Both are transported in ordinary box cars and load about the same weight. The risk of damage in transit is practically the same, but the financial loss is greater in the case of slats because of their higher value. Damage so seldom occurs that this consideration is not of much significance. Pencil slats are entitled to reasonable rate as long as they move. HELD, rates attacked unreasonable to extent they exceeded 120 per cent of the lumber rates, reparation awarded. Dixon Crucible Co. v. P. R. R., 101 I. C. C. 415.

(4d) Complainant attacked commodity rate charged on four cars of rig irons shipped from Marion, Ind., to Burnett, Calif., in Oct. and Nov. 1922 as unreasonable, unjustly discriminatory and unduly prejudicial. Shipments moved over Big Four, C. & N. W., U. P., and L. A. & S. L., charged $2.61, minimum 36,000 pounds. Rate charged was applicable on oil well outfits and supplies and was the same in amount as the rate on machines and machinery, except that the minimum weight on these commodities was 30,000 pounds. Effective Nov. 30, 1922 the rate on oil well outfits, was reduced to $2.35 minimum 36,000 pounds, and on machines and machinery to the same amount, minimum 30,000 pounds. Rig irons are rated fifth class in official classification, sixth in southern and class A in western. Oil well supplies are rated fifth class in official and southern and class A in western. No comparisons intended to show that the level of the rate charged was unreasonable was in-

troduced. The record, which is meager, does not conclusively show whether the contents of the cars under consideration consisted chiefly of castings or of partly finished and partly assembled machines or machinery. It is clear that the commodities comprising the shipments were oil well outfits to be used as rig iron drilling outfits for drilling oil or gas wells. The record does not support the allegations of unreasonableness, unjust discrimination or undue prejudice. HELD, rates attacked not unlawful, complaint dismissed. Marion Machine Co. v. L. A. & S. L. Ry., 101 I. C. C. 599.

(4e) Complainant attacked commodity rates charged on handle billets and handle material, carloads, from Marengo and Corydon, Ind., in Sept. 1920 as unreasonable, and in violation of the fourth section in that it exceeded rates from New Albany, Ind., a point farther distant. Marengo is a local station on B. & O. From Huntingburg, 36.7 miles west of Marengo, a branch line of defendant extends northeasterly to French Lick, Ind., where it connects with the Monon. Corydon is the southern terminus of the L. N. A. & C., which connects with the Southern at Corydon Junction, 15 miles east of Marengo. Shipment of Sept. 10. 1920 was routed by shipper care M. C., at Dyer, Ind., and moved over defendants line to French Lick, C. I. & L., to Dyer and M. C., beyond, charged fifth class rate of 32c on wooden handles, n. o. i. b. n. Contemporaneously commodity rates of 24c on handle timber, sawed square, rived or split from the bolt, not further finished, and 26c on handle timber in the rough, sawed or turned to shape, not further finished, were in effect from both Marengo and Corydon to Chicago Heights over the above route to Dyer, E. J. & E., beyond, and also by way of defendant to Princeton, Ind., and C. & E. I. Effective Oct. 1, 1921 these rates were established over lines of defendant and C. I. & L., via French Lick in connection with the M. C., through Michigan City, Ind. Complainant contends rates charged are unreasonable to extent they exceed lumber rates, and lumber rates are unreasonable to extent they exceed rates from New Albany. The record indicates that handle material not further finished than shaved or cut to shape are not in any more advanced stage of manufacture than handle material not further finished than turned to shape, the only difference between the two being that one is produced by hand and the other by machinery. The record indicates that the distance over the route of movement of this shipment is identical with that over the route of defendant and C. I. & L., to Dyer, and E. J. & E., in connection with which joint commodity rates were in effect at time of movement. These rates were subsequently established for application in connection with the M. C., as a delivering carrier through Michigan City, Ind., and the distance over the route by way of that point is greater by about 37 miles than by way of Dyer. HELD, rates attacked unreasonable to extent they exceeded rates on lumber, reparation awarded. Chicago Heights, Mfgrs. Asso. v. B. & O. C. T. R. R., 101 I. C. C. 675.

(4f) Proposed cancellation of commodity rates on furniture, c. l. and l. c. l., from and to points in c. f. a. territory, and substitution therefor of classification basis and in certain instances exception basis, which would result in both advances and reductions, found not justified except as to l. c. l. traffic. Proposed cancellation while at same time continuing relatively lower commodity basis from producing points in adjoining territories would seriously disturb long-standing and important relationship, and create undue prejudice against southern Indiana manufacturers. Furniture from C. F. A. Territory, 92 I. C. C. 97.

(4g) In 77 I. C. C. 473 commodity rates from Memphis to western Louisiana points were found unduly prejudicial to Memphis and unduly preferential of New Orleans. Upon further hearing, former finding modified with respect to rates on sugar. There is no present or probable movement of that commodity from Memphis to Louisiana points and application of rates prescribed would materially increase present rates from New Orleans while other producing points would continue to enjoy lower intrastate rates, thus creating a discriminatory situation against New Orleans and disrupting present origin groupings. Memphis-Southwestern Investigation, 92 I. C. C. 447.

(4h) Commodity rates higher than class rates charged on strawberries from Sarcoxie, Mo., to Kansas City, Mo., via an interstate route, found applicable. While carrier's individual tariff provided class rates on strawberries by not in-

cluding them in list of articles taking commodity rates, the subsequent establishment of a commodity rate had effect of removing that article from the classification and class-rate tariffs which theretofore applied. Furthermore, it is not a condition precedent to application of such a commodity rate that tariff containing it make cross-reference to tariff in which class rates are named. General index to carrier's tariffs contained a reference that commodity rates on fruits and vegetables, including strawberries, were to be found in tariff under which rates were assessed, and this was a sufficient compliance with rule 4(c) of Tariff Circular 18-A. Singer v. St. L. S. F., 95 I. C. C. 667.

(4i) Upon complaint attacking c. l. commodity rates on canned goods from Wisconsin points and from St. Paul, Minn., to destinations in the Mississippi Valley, and proposing adjustment by the rezoning of the State of Wisconsin and adoption of basis of rates prescribed on commodities, c. l., from Chicago to Mississippi Valley in 64 I. C. C. 306, 335. FOUND, that rates from Middleton, Wis., are and for the future will be unreasonable to extent they exceed or may exceed by more than 2 cents the contemporaneous rates from Madison, Wis.; that rates from St. Paul and points basing thereon are and for the future will be unreasonable to extent they exceed or may exceed rates 5 cents lower than present rates; and that throughout the balance of territory under consideration, rates are unreasonable only in instances where, and to extent, existing joint rates exceed those based upon the lowest combination, using St. Louis, Milwaukee, and Chicago, as basing points. Carnation Milk Products Co. v. A. & W. Ry. Co., 96 I. C. C. 208.

(4j) Proposed cancellation of commodity rates on wet phosphate rock, from interior Florida points to Jacksonville, Fla., for export or to be dried and reshipped by rail or water, necessitating the movement of such traffic to the port of Fernandina, Fla., and the disruption of the business of the drying terminals at Jacksonville, found not justified. Neither is the action justified by contention that continuance of such rates is not warranted by volume of movement. Wet Phosphate Rock to Jacksonville, 96 I. C. C. 711.

(4kl) Present commodity rates on iron and steel articles from St. Louis, Mo., to Mississippi Valley points, adjusted in harmony with commission's decision in 64 I. C. C. 306, found not unreasonable as compared with lower rates from Louisville, Ky., to same destinations nor, as applied from Louisville and other points in the St. Louis-Louisville group, unduly prejudicial in relation to corresponding rates from competing points in central territory, on the Ohio River, and in the Southeast, to same destinations. St. Louis Chamber of Commerce v. A. & V. Ry. Co., 98 I. C. C. 29.

(4m) Present commodity rates on sewer pipe from St. Louis, Mo., and points grouped therewith, to Mississippi Valley destinations, found not unreasonable, but these rates and corresponding rates from southeastern producing points to same destinations found to embody a maladjustment of rates due to the revision of rates from St. Louis group pursuant to commission's decision in 64 I. C. C. 306. Defendants notified to make equitable readjustment of rates by June 1, 1925, record being held open for such further action or proceedings as may be necessary or appropriate. St. Louis Chamber of Commerce v. A. & V. Ry. Co., 98 I. C. C. 29, 34, 35.

(4n) Complainant seeking a commodity rate in lieu of first-class rate on artificial silk made comparisons with various commodities rated first class, any quantity on which commodity rates between specific points are published. FOUND, that the commodity rates on those nonanalogous articles were established because of the volume of the movement and competitive and other conditions having no relation to the movement of artificial silk, which is not competitive with any of the articles named. Viscose Co., v. P. R. R. Co., 98 I. C. C. 97, 99.

(4o) Rates on lump coal from northern Colorado to Northport, Nebr., found unreasonable for future to extent it may exceed $3.40 per net ton. Colo. & N. Mex., Coal Operators Asso. v. D. & R. G. W. R. R. Co., 98 I. C. C. 377, 391.

(4p) Commodity rate charged on shipments of tomatoes from St. Louis, Mo., to New Orleans, La., during 1922 and 1923 and the present rate, which equals the rate on this commodity between same points in the reverse direction, found not unreasonable or unduly

preferential, as compared with the adjustment of northbound rates on same commodity established pursuant to Fruits and Vegetables, 43 I. C. C. 291, and with rates on like traffic between other points for similar distances. Complaint dismissed. St. Louis Fruit & Vegetable Asso. v. L. & N. R. R. Co., 98 I. C. C. 553.

(4q) The commission has consistently found that commodity rates must be applied strictly, from which it follows that only the article or articles clearly comprehended within the descriptive terms of the commodity rate can be considered as having been removed from the classification. Contention that commodity item on "Vegetables and fruits, viz, Pears, peaches, and plums," was applicable on tomatoes on ground that classification description of "Vegetables" included tomatoes not sustained. St. Louis Fruit & Vegetable Asso. v. L. & N. R. R. Co., 98 I. C. C. 553, 556.

(4r) Respondents proposed to cancel less carload commodity rates on clean rice from, to, and between points in southern territory. Rice, cleaned, whole or broken, in barrels, boxes or double bags, less carloads, is rated sixth class in southern and fourth class in official and western classifications. Rice in packages, in car loads, minimum 40,000 pounds, is rated sixth class in southern and official classifications and fifth class in western classification. Less carload commodity rates on rice do not, as a rule, apply from interior points in the southeast such as Atlanta, Ga., and Birmingham, Ala., but they are published in about 20 tariffs from certain points, including particularly New Orleans, La., Memphis, Tenn., Mobile, Ala., and south Atlantic ports. The increases which would result from the cancellation of the commodity rates range from 12% to over 40%. The marked increase in some instances is due to the absence of joint class rates to certain of the destinations. There appears to be a considerable movement of less carloads of rice from New Orleans to a few of the farther distant points, but the bulk of the traffic is to distances much less than 1,000 miles. Unquestionably the favorable rates accorded New Orleans are responsible for some of the longer hauls. There appears to be no reason why less carload commodity rates on clean rice on basis of the sixth class rates should not be established. HELD, proposed schedules not justified, but without prejudice to establishment of rates on clean rice in less carloads not in excess of sixth class rates approved in Southern Class Rate Investigation. Rice between points in southern territory 102 I. C. C. 79.

(4s) Complainant attacked combination rate of 50c charged on gasoline and kerosene, carloads, from Cushing, Okla., to Perryville, Mo., as unjust unreasonable and in violation of section four. Shipments moved since Nov. 22, 1923 over MKT and Frisco to Perryville Junction about 559 miles, and C. G. N., beyond, 10 miles, charged 34.5c to Perryville Junction and fifth class 15.5c beyond. Complainant seeks reparation to 29.5c the rate to socalled Missouri A territory. The rate to Missouri B territory, where Perryville Junction is located is 34.5c. A rate somewhat higher than 34.5c is justified. HELD, rate attacked unreasonable to extent it exceeded 42c, reparation awarded. Illinois Oil Co. v. C. G. N. Ry. 102 I. C. C. 154.

(4t) Complainant attacked commodity rates charged on two cars of wire rope shipped in Sept. 1922 from Kansas City, Mo., to Medicine Bow and Rawlins, Wyo., as unreasonable, unduly prejudicial and in violation of section four. Shipments moved over U. P., 819 miles to Medicine Bow and 879 miles to Rawlins, charged $1.26. During the time of movement the rate on oil well supplies or mining machinery, including steel was $1.13 or the same as the rate on like commodities from St. Louis, Mo., to the same points, 1,034 and 1,094 miles, respectively. On Nov. 15, 1922 the rate from Kansas City was reduced to 97.5c and on April 10, 1923, its application was broadened so as to include wire rope. HELD, rate attacked unreasonable to extent it exceeded $1.13 reparation awarded. Black Steel & Wire Co. v. U. P. R. R., 102 I. C. C. 163.

(4u) Complainant attacked commodity rate charged on 3 cars of cowpeas from Navojoa, Sonora, Mexico, to San Francisco, Calif., during Nov. 1923 as unreasonable. Charged $1.33. At the time the shipments moved there was a rate of 94c on peas, Mexican, and this rate was made applicable on cowpeas April 19, 1924 and is now in effect. Shipments moved S. P., of Mexico, West Coast Route, 377 miles to Nogales, Ariz. and S. P., 1,036 miles, total distance 1,413 miles. HELD, rate attacked un-

reasonable to extent it exceeded 94c, reparation awarded. Lewis Simas Jones Co., v. S. P. Co., 102 I. C. C. 245.

(4v) Complainant attacked commodity rates charged on scrap iron or steel borings, old cable, old rails, and old car wheels, and second hand rails, carloads, between Denver, Colorado Springs, Pueblo and Trinidad, Colo., and points taking same rates, on the one hand, and points in the Mississippi river, Peoria, Chicago, St. Paul, Duluth and Missouri river groups, on the other hand, as unjust and unreasonable and unjustly discriminatory. Any class of equipment may be used for its transportation and it usually loads in excess of the minimum of 50,000 pounds. The evidence does not indicate that the rates in issue are out of line with rates on the same or similar commodites moving in the same general territory. HELD, rates attacked not unreasonable or otherwise unlawful, complaint dismissed. Denver Metal & Machinery Co. v. A. T. & S. F. Ry. 102 I. C. C. 255.

(4va) Proposal to cancel commodity rates on salt cake from Pacific coast and related points to certain destination in Wisconsin, leaving in effect higher class rates, found not justified. The present rates compare favorably with those on like and similar traffic between points in same general territory. Carriers propose their cancellation here, but such rates would continue in effect to other destinations in that territory. Salt Cake from Pacific Coast, 102 I. C. C. 261.

(4w) Complainant attacked commodity rates charged on slack coal from mines in Missouri, Oklahoma and Kansas to Superior, Neb., as unreasonable, and that, in their relationships to the rates from the same mines to Omaha and Lincoln, Neb:. they subject Superior to undue prejudice and disadvantage. Superior is on the M. P., Santa Fe Burlington and Northwestern. The rates from Bevier, Mo., to Omaha, Lincoln and Superior apply over the Burlington direct. This carrier also serves Concordia, Kas., to which point the rate from Bevier is $2.33 for 334 miles, compared with a rate of $2.86 from Bevier to Superior for 334 miles. HELD, rates on slack coal attacked are unreasonable to extent they exceed $2.25 from Bevier, $2.45 from Pittsburgh and $3.45 from Henryetta. Nebraska Cement Co. v. A. T. & S. F. Ry. 102 I. C. C. 265.

(4x) Complainant attacked commodity rates charged on 21 cars of refined petroleum products from Mobile, to Gilbertown, Ala., between Feb. 2 and June 29, 1923, and rates charged on 16 cars as unreasonable, unduly prejudicial as compared with rate from Mobile to Waynesboro, Miss. Shipments moved wholly within Alabama over the Southern to Calvert, Ala., thence A. T. &. N., to destination. Charged 29 and 32c, the rate to Waynesboro, a point beyond being 20c. The distance from Mobile to Waynesboro is 83 miles and that over the route of movement to Gilbertown is 102 miles via route of movement. Waynesboro is just west of the Mississippi-Alabama state line and Gilbertown is just east of it. Gilberton is served only by the A. T. & N., and Waynesboro only by the M. & O., not a defendant. The record will not support a finding of undue prejudice. HELD, rate attacked not unduly prejudicial, complaint dismissed. Gulf Refining Co. v. Southern Ry. 102 I. C. C. 274.

(4y) Complainant attacked commodity rate of 53.5c charged on 31 tank cars of liquified petroleum gas from Burkburnett to Tulsa, Okla., during May and June 1921 as unreasonable to extent it exceeded 30.5c. Distance 352 miles, charged 53.5c refined oil rate, reduced to 38c on April 25, 1922 and to 34c on July 1, 1922 the present rate. The rate of 30.5c was found reasonable in 66 I. C. C. 426 for application on refined oil on and after August 26, 1920 from Burkburnett to West Tulsa. HELD, rate attacked unreasonable to extent it exceeded 30.5c, reparation awarded. Tidal Western Oil Co., v. M. K. & T. Ry., 102 I. C. C. 322.

(4z) Complainant attacked commodity rate charged on cotton bagging, carloads, from Nashville territory to Dallas and other points in Texas common point territory since Sept. 20, 1922 as unreasonable, unjustly discriminatory and unduly prejudicial. Prior to July 1, 1922 the applicable rate on cotton bagging and cotton bags was $1.055 except that on bagging from Georgia it was $1. On that date these rates became 95 and 90c. Effective Sept. 20, 1922 the 95c rate on bags was reduced to 75c without any change in the rates on bagging. HELD, rates attacked not unreasonable but unduly prejudicial to extent they exceeded rates on bags, repar-

ation denied. Fulton Bag & Cotton Mills v. A. & V. Ry. 102 I. C. C. 335.

(5a) Complainant attacked commodity rate charged on 40 cars of nut flats shipped from Lackawanna, N. Y., to Milldale, Conn., and fifth class rate charged on four cars of nut flats from Youngstown, O., to Milldale, subsequent to Jan. 29, 1921 as in violation of sections 1, 2 and 3 of the act to extent they exceeded rates on wire rods; iron or steel, in coils. The rates collected were those applicable on bar iron or steel, the fifth class rate from Youngstown and from Lackawanna, a commodity rate lower than fifth class rate by 2c prior to July 1, 1922 and 1.5c thereafter. The commodity rates on wire rods, iron or steel, in coils, were applicable. HELD, rates charged inapplicable, reparation to basis of rate on wire rods, iron or steel in coils, reparation awarded. Clark Bros. Bolt Co. v. N. Y. C. R. R. 102 I. C. C. 355.

(5b) In 95 I. C. C. 66, the Commission found the rate on newsprint paper, carloads, from Thorold, Ont. Can., to New York as unreasonable to extent it exceeded 32c prior to July 1, 1922 and 29.5c thereafter. The rate of 29.5c has been published by the Canadian National under its general concurrences from the other defendants, who consider the rate too low. HELD, findings affirmed. Ontario Paper Co. v. C. N. Ry. 102 I. C. C. 365.

(5c) Complainant attacked commodity rates charged on iron and steel pipe, carloads, from Texas to Oklahoma and from Oklahoma to Texas as unreasonable. It is the general practice of oil companies in the southwest to move pipe from one location where it has served its purpose to another where it is needed. Shipments moved between May 27, 1922 and Feb. 28, 1924. The Texas points of origin are in Texas common point territory, except Alanreed and Channing, in the Panhandle section. The applicable 53.5c rate was blanketed from the northern half of Texas common point territory to all destinations in Oklahoma. The class rates between these points are based on distance to a certain extent and are not so blanketed. The rates asked by complainant are based on the Memphis Southwestern scale prescribed in 77 I. C. C. 473, 595, except that to and from the Panhandle section of Texas a differential over this scale is asked. HELD, rates attacked unreasonable to extent they exceed Memphis Southwestern scale plus fifth class differential to Texas differential territory reparation awarded. Texas Pacific Coal & Oil Company v. C. R. I. & G. Ry. 102 I. C. C. 369.

(5ca) Rates on automobiles and automobile parts from eastern defined territories to all points on Northwestern Pacific R. R. north of Willits, Calif., found unjust, unreasonable, and unduly prejudicial to extent they exceed lower contemporaneous rates on like traffic from same territories to California coast-group points. Reasonable and nonprejudicial rates prescribed and reparation awarded. Eriksen v. A. A. R. R., 102 I. C. C. 374.

(5d) Complainant attacked commodity rates on vegetable oils, carloads, from Oklahoma to Houston, Tex., as unreasonable, unjustly discriminatory and unduly prejudicial. Complainant purchases vegetable oils in Oklahoma in competition with buyers at Kansas City and Dallas, Tex. In 39 I. C. C. 497 the the Commission prescribed a scale of reasonable maximum rates on cottonseed oil from Oklahoma producing points to Kansas City. That scale, graded down for the shorter distances and as increased under the general increases of 1918 and 1920 was prescribed in 64 I. C. C. 213 from Oklahoma, Arkansas and Louisiana to Dallas. In 78 I. C. C. 151 this scale, less the general reductions of 1922, was extended from Arkansas and Louisiana to Houston. HELD, rates attacked unreasonable to extent they exceeded the rates prescribed in 78 I. C. C. 151, reparation awarded. Houston Packing Co. v. A. T. & S. F. Ry. 102 I. C. C 385.

(5da) Commodity rates, reflecting 78 per cent of class basis, on helical springs from Chicago and Waukegan to New Orleans found not unreasonable when applied to occasional shipments. Crescent Bed Co. v. A. & V. Ry., 102 I. C. C. 419.

(5e) Complainant attacked commodity rates on lumber, carloads, from Tishomingo, Belmont, and Golden, Miss., and Red Bay and Vina, Ala., to St. Louis, Mo., and to Buffalo, N. Y., Pittsburgh, Pa., as unjust, unreasonable and unduly prejudicial and to Buffalo-Pittsburgh district as in violation of section four. Tishomingo, Belmont, Golden, Red Bay and Vina are on the I. C., which extends

southeasterly from Corinth. Miss., to Haleyville and Birmingham, Ala. Corinth is on the main line of the Southern between Memphis and Chattanooga, Tenn. Distances to Corinth are from Tishomingo, 27 miles, Belmont, 36 miles, Golden, 38 miles, Red Bay, 42 miles, and Vina 49 miles. TO ST. LOUIS TERRITORY. To St. Louis the short line distance over direct route of the I. C., from Golden through Corinth is about 352 miles, and rate of 27c. The rate of 23.5c from Corinth also applies from stations south thereof on the M. & O., as far as Prairie, Miss., about 84 miles south of Corinth. The lower rate from this group on the M. & O., extends about 35 miles farther from St. Louis than does the higher rate of 27c from Vina, the most distant in the group of complaining points. The M. & O., also maintains rates from much farther distant points than Vina. The rate of 23.5c also applies from stations southwest of Corinth on the G. M. & N., such as Ripley and New Albany, Miss., from stations such as New Albany and Tupelo on the Frisco; and from stations on the Mississippi division of the I. C., southeast of Memphis, such as Holly Springs, Miss. HELD, rate attacked to St. Louis not unreasonable or unduly prejudicial. TO BUFFALO PITTSBURGH TERRITORY. Present rate is 42.5c or 6c higher than rate of 36.5c from Corinth. HELD, rate attacked not unreasonable or unduly prejudicial. HELD, further rate of 43c from Tishomingo, Golden, and Red Bay to Buffalo Pittsburgh territory from July 10, 1922 to May 6, 1924 unreasonable to extent it exceeded 42.5c the aggregate of intermediates on Corinth, this being the present rate, reparation denied, complaint dismissed. Northeast Mississippi Traffic Bureau v. A. &. V. Ry. 102 I. C. C. 611.

(5f) Complainant attacked commodity rates charged on fruits and vegetables, carloads, from Bowling Green, Oakland, and Smiths Grove, Ky., Gibson and Humboldt, Tenn., and Mobile, Ala., to Logansport, Ind., as unreasonable, unduly prejudicial and in violation of section four. L. & N. filed application asking for authority to charge to South Bend and Fort Wayne, Ind., rates lower than to Logansport. Combination rates applied and apply from the points of origin to Logansport, composed of local commodity rates to Louisville or Evansville and class rates beyond. Contemporaneously there were in effect joint commodity rates from the same points of origin to Fort Wayne, South Bend and Lafayette, Ind., and to Chicago, Ill. These rates in most instances were lower than the rates to Logansport, which is intermediate to South Bend and Fort Wayne over the Pennsylvania as delivering carrier. These later rates were originally constructed on the combination basis, but commencing in 1914 with the Five Percent case, 31 I. C. C. 351, various changes have been made in the rates north and south of the Ohio river without corresponding changes in the joint rates, thereby destroying the relationship which formerly existed between the joint rates and those constructed on combination. HELD, rates attacked not unreasonable but unduly prejudicial to extent the rate to Logansport exceeded the rate to Fort Wayne and South Bend, reparation denied. Caruso & Co. v. C. & E. I. Ry. 102 I. C. C. 619.

(5g) Complainant attacked commodity rates charged on fuel and gas oils, carloads, from Okmulgee and Tulsa., to Davenport, Iowa, as unreasonable, unjustly discriminatory and unduly prejudicial. One car of fuel oil shipped June 3, 1921 upon which a rate of 33c was charged and two cars of gas oil shipped on Oct. 2 and 18, 1922 upon which a rate of 29.5c was charged. Reparation is sought to basis found reasonable in 73 I. C. C. 251 which was 5c lower than rates on refined oil. HELD, rates charged unreasonable to extent they exceeded 29.5c prior to July 1, 1922 and 26.5c thereafter, reparation awarded. Davenport Locomotive Works v. C. M. & St. P. Ry. 102 I. C. C. 639.

(5h) Complainant attacked commodity rates charged on green salted hides, carloads, from Nashville, Tenn., since Jan. 15, 1922 to Woburn, North Woburn, Mass., Manchester, N. H., Portville and Ballston Spa, N. Y., and Curwensville and Chester, Pa., as unreasonable, unjustly discriminatory, unduly prejudicial and in violation of the fourth section. The hides composing the shipments were for the most part "country hides" as distinguished from "packer hides." The latter are more valuable than the former Green salted hides are rated sixth class in southern and fifth in official, minimum 36,000 pounds. Defendants concede that the class rates applied were

relatively unreasonable and unduly prejudicial as compared with the rates on green salted hides from other producing points in the south but contend that the rates requested are too low. The skillful handling of "packer hides" is undoubtedly the cause for the higher average weight in central territory in which are located many of the larger packing houses. The violation of the fourth section has been corrected. HELD, rates attacked unreasonable and unduly prejudicial to extent they exceed from Nashville prior to July 1, 1922 to Boston rate points 79c, to Portville, 72c to Ballston Spa 77c, to Curwensville 72c and to Chester 73c, subsequent thereto, 71c, 65, 70, 65 and 66c, respectively, reparation awarded. Tolman Dow & Co. v. T. C. Ry. 104 I. C. C. 37.

(5i) Complainant attacked commodity rate charged on sulphuric acid, carloads, from Grasselli, Ind., to Toledo, O., as unreasonable. Shipments moved between Oct. 25, 1922 and March 9, 1923 via I. H. B., and M. C., charged $4.80, being 90% of fifth class rate, and reparation is sought to basis of $4.30, which became effective May 10, 1923, this being the equivalent of the sixth class rate. The general basis for rates on sulphuric acid between points in central territory was 90% of fifth class when the shipments moved. HELD, rates attacked not unreasonable, complaint dismissed. Royster Guano Co. v. M. C. R. R. 104 I. C. C. 151.

(5j) Complainant attacked commodity rates charged on broom handles, carloads, from Atlantic and Ewen, Mich., and Crandon and Glidden, Wis., to Des Moines, Kansas City, North Kansas City, Mo., and Deshler, Neb., as unreasonable and unduly prejudicial. Shipments moved from Atlantic and Ewen to Kansas City between Oct. 5, 1921 and Dec. 23, 1922; from Atlantic to Des Moines between Sept. 7, 1921 and Nov. 5, 1923; and from Crandon to Des Moines on Oct. 8, 1923. Charged at commodity rates on finished handles. Complainants claim that commodity rates provided for handle timber in the rough, sawed or turned to shape, not further finished, but not applicable on finished handles, were applicable on the shipments. The handles contained in the shipments were turned to shape, with a hole through them near one end. They were shipped in bundles and were not wrapped or packed. The record does not show that the shipments were entitled to the commodity rates applicable to handle timber. HELD, rates attacked unreasonable to extent they exceed rates 1.5c over the lumber rates, reparation awarded. Deshler Broom Factory v. A. T. & S. F. Ry. 104 I. C. C. 183.

(5k) Complainant attacked commodity rates charged on furnaces and furnace parts, carloads, from Holland, Mich., to Milwaukee, Wis., and Chicago, Ill., as unreasonable, unjustly discriminatory and unduly prejudicial and to Chicago prior to Oct. 3, 1921 as in violation of the fourth section. Holland is on the P. M., only. Distance Holland to Chicago is 159 miles and to Milwaukee by defendant is 226 miles. The direct route from Holland to Milwaukee is over defendants line to Grand Haven, 22 miles, and G. T., car ferry beyond, 109 miles, which is less than half of that via the P. M. No joint rates have ever been maintained by defendant to Milwaukee in connection with the G. T., and the combination basis on Grand Haven has applied to shipments routed via the short route, which has always been higher than the rate via defendants indirect single line through Ludington. Defendant maintains joint rates to Milwaukee over its rail and car ferry lines to Manitowoc and the Northwestern beyond, and prior to June 3, 1923 in connection with the line of the same carrier via Chicago, which rates were or are the same in amount as those via defendants single line to Milwaukee. Commodity rates the same as the rates from Detroit have been in effect from Holland to Chicago since Oct. 3, 1921 and from Holland to Milwaukee since Jan. 29, 1923. While the actual distance from Holland to Milwaukee via defendant is 226 miles, the record shows that on traffic to Milwaukee, the carriers have included Holland in a group of points in western Michigan which take scale rates corresponding to distance of 160 miles under the central territory scale. Since the distance from Holland to Chicago is 159 miles it will be seen that the carriers have practically equalized distances from Holland to Milwaukee and Chicago, and the class rates are the same from Holland to each of these points. The conditions of record make it clear that the differences in distances of Detroit and Holland from the destinations herein make it inequitable to charge as high a rate from Holland as from Detroit. Prior to Oct. 3,

1921 when the rate from Holland to Chicago was higher than the rate from Detroit the tariffs naming the rate from Detroit to Chicago carried a rule 77 provision, and complainant is entitled to reparation to the basis of a rate equal to that from Detroit. HELD, charges attacked not unreasonable except that prior to Oct. 3, 1921 the rate of 27c from Holland to Chicago was unreasonable to extent it exceeded 24.5c, and for future will be unduly prejudicial to extent they exceed those based upon rates bearing the same relationship to the fifth class rates from Holland to Chicago that the commodity rates from Detroit to Chicago bear to the fifth class rates from Detroit, reparation awarded. Holland Furnace Co. v. A. T. & S. F. Ry. 104 I. C. C. 286.

(51) Complainant attacked commodity rates charged on numerous carloads of lubricating oils, lubricating greases and paraffine wax, shipped between Jan. 11 and July 10, 1922 from Port Arthur, Tex., to Morgan City, New Iberia, Vinton, Lafayette, Baton Rouge, Welsh, Lake Charles, Crowley, and Jennings, La., as unjust and unreasonable. Shipments were packed in cans, barrels and other packages and were loaded in carrier equipment. They originated on the T. & N. O., and moved beyond over the L. W., or L. W., and M. L. & T. The applicable rates were those on refined petroleum oil of 19c to Vinton and Lake Charles, 20.5c to Welsh, Jennings, Crowley, New Iberia, and Baton Rouge, 21c to Lafayette and 22.5c to Morgan City. Prior to Oct. 8, 1922 these rates applied on shipments in either packages or tank cars. On that date a rate of 16.5c was established to all of these points on shipments in tank cars, and on July 12, 1923 it was established also on shipments in packages. At the time of movement rates on refined petroleum from Shreveport and New Orleans to these points were, and now are, the same on shipments in packages as on shipments in tank cars. The existence of the contemporaneously lower rates on shipments in tank cars and the subsequent establishment of lower rates on shipments in tank cars do not alone demonstrate the unreasonableness of the rates assessed, nor in the opinion of the Commission is it established by the comparisons of record with other rates. HELD, rates attacked not unreasonable, complaint dismissed. Texas Oil Co. v. T. & N. O. R. R. 104 I. C. C. 337.

(5m) Complainant attacked joint commodity rate charged on 63 cars of flour from Grand Rapids, Mich., to Birmingham, Ensley, Bessemer and Montgomery, Ala., between Sept. 1, 1920 and May 1, 1921 as unreasonable, unjustly discriminatory and unduly preferential. Shipments moved defendants lines to Ohio river crossings and L. & N., beyond. Charged joint rate of 62.6c, while aggregate of intermediate to and from Ohio river, based on Jeffersonville, Ind., was 61.5c. The joint rate had been the same as or lower than the combination on Jeffersonville for a number of years prior to Sept. 1, 1920 and was restored to the level of the Jeffersonville combination on April 9, 1921. HELD, rate attacked not unreasonable, reparation denied, complaint dismissed. Valley City Milling Co. v C. & O. Ry. 104 I. C. C. 634.

(5n) Complainant attacked commodity rates charged on sand and gravel from their shipping points to destinations in Ohio, West Virginia, New York and Pennsylvania, as unjust and unreasonable and unduly prejudicial. There is no interstate scale of rates on sand and gravel, as such, in central territory, the rates being published as specific commodity rates to the main consuming points and applied as maxima at intermediate points. They have been established as the business developed under competition, both among the railroads and the shippers, each carrier publishing such rates as its own particular situation called for, resulting in what defendants on brief admit to be a hodge podge of rates. They generally show but little, if any, regard to distances. The marked lack of uniformity in the rates has been commented upon in every case that has been before the Commission dealing with the particular situation. Sand and gravel are among the lowest grade commodities known to commerce, and can not move except at low rates. They are transported exclusively in open top cars, loaded to and beyond the marked capacity of the car, the average being in excess of 50 tons, and move generally in as great a volume as slag and crushed stone. An ample supply of cars is generally near at hand, and loading is usually accomplished within 24 hours. The risk and liability of loss and damage is negligible. The movement is often in train lots, and it is considered desirable traffic. Generally speaking there is no

transportation reason why the rates on sand and gravel should be higher than the rates on slag or crushed stone. In most territories, and in the states, they are given the same rates, and where the Commission has prescribed scales in any territory on all of them they have been rated the same. HELD, rates attacked unreasonable to extent they exceed rates ranging from 60c for 20 miles to 140c for 200 miles, 20c per ton to be added for joint hauls. Penn. Sand & Gravel Prod. Asso. v. B. & O. R. R. 104 I. C. C. 717.

(5o) Complainant attacked commodity rates charged on strawberries and tomatoes, carloads, from points on the L. & N., in Kentucky and Tennessee to Youngstown, O., during May and July 1922 as unjust, unreasonable, unjustly discriminatory, unduly prejudicial and in violation of the fourth section. Woodburn, Franklin and Portland are on the main line of the L. & N., between Bowling Green, Ky., and Nashville, Tenn., and Bristow is just north of Bowling Green. Milan and Gibson are on the Memphis division in Mississppi valley territory. The shipments moved over the L. & N., to the Ohio river crossings and the B. & O., the Pennsylvania lines and Erie beyond, charged at combination of commodity rates to Ohio river and class rates beyond. A lower combination rate of 94.5c made 47c to Louisville and 47.5c beyond was applicable on the tomatoes and one shipment was overcharged to that extent. At time shipments moved defendants maintained a joint commodity rate of 90c on strawberries from these points to Pittsburgh, Allegheny and Erie, Pa., Buffalo, N. Y. and other C. F. A. points in the Buffalo-Pittsburgh district. To Cleveland and Detroit a rate of 88c was maintained, and from Milan a joint rate of $1.025 was in effect to Pittsburgh and Allegheny and $1.05 to Erie and Buffalo. At the time the shipment moved from Gibson a joint rate of 81.5c was in effect on tomatoes from that point to Pittsburgh rate points and 83c to Buffalo rate points. Most of these rates were applicable through Youngstown. HELD, rates attacked unreasonable to extent the rates on strawberries from Milan exceeded $1.025 and from other points of origin 90c, minimum 18,000 pounds and on tomatoes from Gibson unreasonable to extent it exceeded 81.5c, reparation awarded. Coulbourn Fruit Co. v. B. & O. R. R. 104 I. C. C. 734.

(5p) Complainant attacked commodity rate charged on wrapping paper, carloads, and less carloads, from Hartsville, S. C., to Jackson, Miss., as unjust, unreasonable and unduly prejudicial. Since the filing of the complaint the defendants have voluntarily reduced the rate to the level of the Vicksburg rate, the basis sought. Jackson is 44 miles east of Vicksburg on the A. & V., and is intermediate between Hartsville and Vicksburg. The present rate to Jackson is 29c higher than to Vicksburg a more distant point. Jackson is in active competition with Vicksburg in the distribution of wrapping paper and feels the effect of this departure from the fourth section. HELD, rates not unreasonable but are unduly prejudicial to extent they exceeded the rate to Vicksburg, reparation denied. Jackson Paper Co. v. A. G. S. Ry. 104 I. C. C. 758.

(5q) Complainant attacked commodity rate of 22.5c charged on crude petroleum oil, carloads, from El Dorado, Ark., to Houston, Tex., as unreasonable, unjustly discriminatory and unduly prejudicial in its relation to the rate of 14c to New Orleans, La. The Smackover-El Dorado oil fields is within the south central part of Arkansas, El Dorado being a representative producing point therein. The defendant lines directly serving the field are the Mo. Pac. and the Rock Island. From this district a rate of 14c has been recently maintained on crude oil, for export and coastwise movement, to New Orleans and Houston alike. The adjustment on domestic traffic, however, has been different, in that the rate to Houston has been 22.5c, whereas via the foregoing carriers and connections the rate to New Orleans has been 14c, established August 18, 1924. Taking defendants own figures, the average distance to Houston is about 13% greater than to New Orleans. On the other hand, the 22.5c rate to Houston is almost 61% higher than the 14c rate to New Orleans. This spread in the rates is indefensibly disproportionate, the only differentiating consideration disclosed of record being that of distance, and an unduly prejudicial result to the Houston interests is shown. A rate to Houston 13% in excess of the rate to New Orleans would closely approximate 16c. Since the submission of the case and in 104 I. C. C. 651, the carriers concerned sought to equalize the rates to New Orleans and Houston, among other points,

by increasing the New Orleans rate, and by reducing the Houston rate, to 16c. The proposed increased rate was found not justified, and the proposed reduction found justified. Pursuant thereto a domestic rate of 16c to Houston has been published, effective Feb. 26, 1926. HELD, complaint dismissed. United Central Oil Corp. v. M. P. R. R. 107 I. C. C. 1.

(5r) Complainant attacked commodity rates charged on flaxseed, carloads, from South Dakota to Minneapolis and Duluth, Minn., Chicago, Ill., Milwaukee, Wis., Des Moines, Iowa, Omaha, Neb., and Kansas City, Mo., as unreasonable and, compared with the rates on flaxseed from Iowa, Minnesota, Montana and North Dakota to the same destinations unduly prejudicial. Defendants proposed schedules of rates on flaxseed from and to the points in question which are about 120% of the rates on wheat between the same points. The present rates on flaxseed from South Dakota bear no uniform relationship to the rates on wheat. The spread varies from station to station. From Minnesota points to Minneapolis and Duluth, the principal markets for flaxseed, the rates on flaxseed and wheat generally are the same, but in some instances flaxseed rates are 0.5c or 1c higher than the rates on wheat. The interstate rates from North Dakota range from 0.5 to 3c higher than the wheat rates, with a maximum spread of 10% of the wheat basis. From Montana points to North Dakota the flaxseed rates are 0.6c higher than the wheat rates, and to Minneapolis and Duluth certain rates from Montana average 4.5c higher, while from other points the flaxseed rate is 48c and the wheat rate 42c. The wheat rates from this general territory to most of the markets have either been sanctioned or prescribed by the Commission in various grain cases, but not corresponding changes have been made in the flaxseed rates. The question of relationship of flaxseed to wheat rates has not been passed upon by the Commission. It is desirable in arriving at the proper level of flaxseed rates to give consideration to the level of the wheat rates. This is peculiarly true with respect to the rates from South Dakota, first, because the level of the rates on wheat, an analogous commodity which moves steadily and in larger quantity throughout the same territory, has been fixed by the Commission. and thus affords a reasonable standard for comparison, and, second, because the rates on flaxseed from North Dakota and Minnesota points to Minneapolis and Duluth, the markets to which most of the flaxseed moves, are either the same as the wheat rates or 110% thereof as a maximum. The relationship between flaxseed and wheat from a rate making standpoint is affected by the difference between the two commodities in value, volume of movement, character of equipment, loss and damage claims, loading, and supply and demand. The record indicates that the price of flaxseed does not exceed the price of wheat by a greater percentage than the price of wheat exceeds the price of oats and corn, which take rates 90% of the wheat rates. The rates on flaxseed reasonably should be related to the wheat rates. The relatively small volume of movement of flaxseed from South Dakota points to Fredonia do not warrant the Commission in departing from the general rate basis to be adopted on flaxseed from South Dakota to all markets, and in prescribing in lieu thereof a distance scale of rates applicable to Kansas City only. HELD, rates on flaxseed under attack unreasonable to extent they exceed the wheat rates by more than 12%. Schedules under suspension ordered canceled. South Dakota R. R. Commissioners v. C. & N. W. Ry. 107 I. C. C. 35.

(5s) Complainant attacked commodity rate of 30.5c charged on numerous cars of gas oil from Parco, Wyo., to Denver, Colo., made between Sept. 1 and 23, 1924 and rate of 30c subsequently, as unreasonable and unduly prejudicial to extent they exceeded 26.5c and unduly preferential of Ogden, Utah, and contiguous points. The eastbound rates from Wyoming producing points are blanketed over an extensive territory. The rate of 30c from Parco to Denver 260 miles also applies to all points on defendants lines from Wilcox, Wyo., to Omaha, Neb., or for distances ranging from 67 to 673 miles from Parco. While the rate of 26.5c from Parco and Laramie to Ogden and Salt Lake City may be somewhat subnormal, considering the distances to those points, the evidence on the whole shows, however, that that rate is reasonably high for the distance of 260 miles from Parco to Denver. HELD, rate attacked unreasonable to extent it exceeds 26.5c, reparation award-

ed. Colorado Public Service Co. v. U. P. R. R. 107 I. C. C. 97.

(5t) Complainant attacked commodity rates charged on fresh fruits and vegetables, in straight or mixed carloads and in less carloads, from San Francisco and Los Angeles, Calif., and related points, to Prescott, Ariz., as unreasonable. Rates charged were the commodity rates which exceeded the class rates, except that since April 12, 1922, the carload commodity rates have been the same as the class rates. Fresh fruits and vegetables are rated class C in straight or mixed carloads and fourth class in less carloads by exceptions to the western classification applicable generally in the territory west of El Paso, Tex. HELD, rates attacked from Los Angeles group unreasonable to extent they exceeded 86.5c prior to April 12, 1922; on less carloads from the same group unreasonable to extent they exceeded $1.55 prior to July 1, 1922 and thereafter $1.395 rates attacked on less carloads from San Francisco group unreasonable to extent they exceeded $1.60 reparation awarded. Hill v. A. T. & S. F. Ry. 107 I. C. C. 101.

(5u) Complainant attacked commodity rates on products of the farm, including grain and grain products, from points in Washington south of the Snake river to Portland, Oreg., Seattle and Tacoma, Wash., and other north Pacific ports as unjust unreasonable and unduly prejudicial. The evidence does not challenge the intrinsic reasonableness of any of the rates in issue and there is little evidence relating to the rates on farm products generally. The terminal price of wheat is controlled by the principles of supply and demand, and there is no relationship between this price and the freight rates from the fields of production to the terminals. At times the price of wheat at Portland is higher than at Puget Sound ports, and at other times the reverse is true. This is explained by the fact that the Puget Sound markets are dominated by the millers, whereas the Portland market is influenced by the exporters, and the requirements of the millers are not always the same as those of the exporters. In general, the price received by the farmer for wheat represents the price at the terminal less transportation and warehouse charges and various discounts such as for smut and weight. The evidence shows that that part of the basin north of the Snake constitutes a well balanced territory from which a parity of rates properly prevails, but that the portion of the basin south of the Snake is not fairly a part of the parity territory. North of the Snake, the distances favor the Puget Sound ports, and advantages, however, which is offset by the greater costs of the mountain hauls; south of the Snake the distances favor Portland an advantage which is accentuated by the water level hauls. Astoria also possesses water level routes, but the distance is 100 miles longer than to Portland. HELD, rates attacked not unreasonable or otherwise unlawful, complaint dismissed. Walla Walla County Farm Bureau v. N. P. Ry. 107 I. C. C. 110.

(5v) Complainant attacked commodity rates charged on limestone, carloads, between August 5, 1921 and Sept. 29, 1923 from Buffalo, Iowa, to destinations in Illinois on the Burlington as inapplicable and unreasonable. Shipments moved over the Rock Island and Burlington to destinations. During the period of movement and on and after Jan. 24, 1922 joint commodity rates on crushed stone ranging from $1.11 to $2.07 were maintained from Buffalo to all of the destinations but Oliver, and in the absence of specific rates on agricultural limestone, these rates were applicable. The applicable rate to Hooppole was made by combination on Tampico and only the factor to that point is in issue. Two of the shipments moved prior to Jan. 24, 1922 one on Aug. 5, 1921 to Malden and the other on Aug. 5, 1921 to Neponset on which the applicable rate was a joint class E rate of 12.5c. Effective Sept. 29, 1923 defendants established specific joint commodity rates on stone having value for soil treatment only, from Buffalo to all the destinations except Oliver. The specific joint commodity rates established are the same as or somewhat lower than combinations made up of crushed stone rates to Davenport or Rock Island or on agricultural limestone ground or pulverized, to Galva, and the rates in the lower of the two distance scales of the Burlington on the latter commodity beyond those points. They are in all cases substantially lower than the rates applicable on complainants shipments. HELD, rates to Oliver unreasonable to extent they exceeded $1.03 per ton. HELD, rates to other destinations unreasonable on

and after July 1, 1922 to extent they exceeded joint commodity rates established, reparation awarded. Dolese Bros. Co. v. C. R. I. & P. Ry. 107 I. C. C. 127.

(5w) Complainant attacked commodity rates charged on three cars of stone ware from Roseville and Crooksville, O, to Philadelphia, Baltimore and Bushwick, L. I., as unjust, unreasonable, unjustly discriminatory and unduly preferential of glassware, glass bottles and jugs. Allegations under section 1 and 2 were withdrawn and the issue is thus narrowed to one of undue prejudice. The shipments consisted of stone jugs or other containers commonly used for holding liquids or preserves. The rates from Huntington, although lower than the contemporaneous fifth class rate from that point, were as high or higher than the rates paid by complainant. There is no basis in the pleading or in the record for a finding of undue prejudice by reason of the rates from Huntington. Complaintant bases its whole case upon the fact that commodity rates, lower than fifth class, have been accorded to glassware from points in socalled 74% territory in which Roseville and Zanesville are located. The rates attacked form part of a long standing adjustment which should not be disturbed in the absence of clear and convincing proof of their unlawfulness. HELD, rates attacked not unduly prejudicial, complaint dismissed. American Clay Products Co. v. P. R. R. 107 I. C. C. 153.

(5x) Complainant attacked commodity rates of $1.85 and $1.89 charged on crushed stone, carloads, between Jan. and Sept. 1924 from Columbia, S. C., to Wilford and Edwards, N. C., as unjust, unreasonable unjustly discriminatory and unduly prejudicial as compared with rates from other points on the A. C. L., to extent they exceeded $1.71 and $1.76 respectively. Shipments moved A. C. L., 310 miles to Washington, N. C., thence W. & V., to destination. Wilford and Edwards are 4 and 19 miles southeast of Washington. Subsequent to movement $1.89 rate to Edwards was published to Dean Siding. To various stations on its main and branch lines the A. C. L., publishes commodity rates on crushed stone, which are on the basis of its single line distance scale. Prior to Dec. 7, 1923 rates on crushed stone from points on that line to destinations on the Vandemere were a combination on Washington. This basis was and is generally applicable as to all other commodities. Joint rates to the three points considered were published upon request of complainant. The Vandemere, a Class III road in eastern North Carolina, extends southeastward from its junction with the A. L. C., at Washington on the Pamlico river to Vandemere, N. C., on the Bay river, distance 40 miles. It also has rail connection with the Norfolk Southern at Porter Junction, 3 miles east of Washington. The territory served is sparsely settled, and the density of traffic is light. Water competition is encountered on this line, except as to heavy commodities such as stone, sand and gravel. Complainants contention, in substance, is that defendants status is that of a single line and that rates on the single line basis should be applied to the destinations here considered. For joint line hauls complainant admits that the applicable rates, except that to Dean Siding, would be reasonable. The record in this case establishes the fact that the A. C. L., and the Vandemere are carriers under the same management and control. HELD, rate attacked not unreasonable, except to Dean Siding to which point rate attacked unreasonable to extent it exceeded $1.89, reparation awarded. Raleigh Freight Traffic Bureau v. A. C. L. Ry. 107 I. C. C. 156.

(5y) Complainant attacked commodity rates on lumber shingles, poles, pilings and other forest products, in carloads, from points in Washington, Oregon, Idaho, Montana, Nevada, and California to destinations in Iowa as unjust and unreasonable and unduly preferential of dealers at the Missouri river, Twin Cities and Chicago, Ill. Lumber shipping points in the territory under consideration are divided into groups, the most extensive of which are the north Pacific coast and California coast groups. The grouping is described in 78 I. C. C. 746. The interior groups are differentially related to the coast groups. The destination territory is also grouped, the Missouri river and Twin Cities, and certain territory west thereof, being a Group F, Iowa, southern Minnesota, and northern Missouri in Group E, and Chicago and intermediate territory east of the Mississippi river in Group D. Forest products from the northern territorial groups are arranged in commodity groups for rate publication purposes, Group A rates applying

on cedar shingles, Group B rates on cedar lumber, Group C rates on timbers, poles and piling too long to be loaded on single cars, and Group D rates on fir spruce, hemlock, birch and pine lumber. From California the rates are generally equal to the rates on corresponding commodities from the north coast groups but are published on the commodities individually instead of by groups. Complainant asked for a rate of 66c from the coast groups on Group D commodities and for the maintenance of the existing differentials from the other groups of origin and on the other commodities under consideration. The 62.5c rate to the Missouri river cities extends back through the states of Kansas and Nebraska to destinations in Colorado east of Colorado common points. The joint through rate to Chicago at present is 6c lower than the Twin Cities combination, and the proportional from the Twin Cities used in making such combination is 3c less than the local rate. Although the matter of zoning the state of Iowa has been before the Commission in several cases, this is the first attempt to secure for Iowa, treated as a unit, a uniformly lower level of lumber rates from the far west than applies to Chicago and territory east of the Mississippi river. Many of the difficulties that might arise from an attempt to establish different zones in the state would not be encountered under the group plan now suggested. From the standpoint of distance the routes through Omaha are more favorable from the greater part of the cost groups, although history indicates that the routes through the Twin Cities have fixed the rates. The record disclosed that the preponderance of the lumber shipped into Iowa from the far west goes to the Mississippi river cities where extensive manufactories are located, but it does not comprehensively disclose how the movement into Iowa is divided as between the Missouri river and Twin Cities gateways. A large part of the Iowa shipments originating on the G. N., and N. P., and affiliated lines, move through the Twin Cities, although there is a substantial movement from off those lines via Billings, Mont., and Burlington to Omaha. The California tonnage and the tonnage originating on the Union Pacific system lines in the northwest would normally move through the Missouri river gateways. It also appears that a large part of the tonnage originating on the Milwaukee moves via Sioux City. The record herein discloses that the preponderance of empty car movement is westbound. Lumber dealers in the interior of Iowa compete with dealers located at the Missouri river cities in retailing lumber in Iowa. Under the present adjustment the Missouri river dealer has a distinct advantage over the interior dealer. This is in part due to the material spread between the inbound rates to the Missouri river and to the interior points. The record also shows that under the present adjustment manufacturers at the Mississippi river are under a rate disadvantage as compared with Chicago manufacturers at points in the vicinity of Chicago and east. HELD, (a) that the present rate on group D commodities from the north Pacific coast and California coast groups to Iowa is and for future will be unreasonable and unduly prejudicial to extent it exceeds 68c; (b) that the existing rates on the commodities included in the Group A and B descriptions from the north coast, and on the commodities taking equal rates from the California groups are, and for the future will be, unreasonable and unduly prejudicial to extent they respectively exceed the rates herein found reasonable on group D commodities by more than the differences existing under the present rates; and (c) that rates on the commodities in question from the interior groups are, and for the future will be, unreasonable and unduly prejudicial to extent they exceed rates herein found reasonable from the coast groups by more than the existing differentials between the interior and the coast groups. Burlington Shippers Asso. v. A. T. & S. F. Ry. 107 I. C. C. 198.

(5z) Complainant attacked commodity rate of 29.5c charged on four cars of cottonseed between November and December, 1922 from Light, Ark., to Cairo, Ill., was and that rate of 26.5c since Nov. 27, 1923 unreasonable and unduly prejudicial. Shipments were unrouted and moved over the Cache Valley, 10 miles, to Sedgwick, Ark., and thence to destination over the Frisco, C. & E. I., and M. & O., 183 miles. The distance over the short line route of the first two named defendants to Delta, Mo., and M. P., beyond is 173 miles. Effective Sept. 15, 1925, following 98 I. C. C. 183, defendants established on this traffic from Light rates of 25.5c to Cairo and 30c

to East St. Louis. The alleged undue prejudice has been removed. HELD, rate attacked not unreasonable, complaint dismissed. Cairo Cotton Oil Mill v. M. & O. R. R. 107 I. C. C. 299.

(6a) Complainant attacked as unreasonable commodity rates charged on zinc dross, carloads, from Ashland, Ky., to Newport News, Va., July 18 and Sept. 28, 1922 as unreasonable. In 101 I. C. C. 23, rates found not unreasonable, case reopened. Shipments moved over C. &. O., direct, charged commodity rate of 30c. Previous to the movement of the shipment of Sept. 28, 1922 the commodity rate was canceled leaving in effect the sixth class rate of 33.5c Contemporaneously with both shipments the sixth class rate was 33.5c and applying 85%, 81 I. C. C. 645, of the sixth class rates to zinc dross produces a rate of 28.5c. HELD, rate attacked unreasonable to extent it exceeded 28.5c undercharges waived, reparation awarded. Lissberger & Co. v. C. & O. Ry., 107 I. C. C. 308.

(6b) Complainant attacked commodity rates charged on 69 cars of common brick from Iola, Kas., to Kansas City, Mo., between Jan. 16 and Nov. 27, 1923 of 8.5c unreasonable and unduly prejudicial to extent it exceeded 7c. Prior to Oct. 16, 1922 a rate of 8.5c applied on all kinds of brick. In 68 I. C. C. 213, 80% of brick rates were applied on common brick, and rate of 7c was established. Complainants brick was made of a composite of clay and shale and did not come within the description of common brick. In 80 I. C. C. 179 the description of common brick was amended to include brick made from shale as well as from low grade clay, effective Nov. 27, 1923. HELD, rate attacked unreasonable to extent it exceeded 7c, undercharges waived. Reliance Brick Co. v. M. K. & T. Ry. 107 I. C. C. 381.

(6c) Complainant attacked commodity rate of 82c charged on two cars of window glass shipped on May 15, 1922, from Okmulgee, Okla., to Jackson, Miss., as violative of sections 1, 2 and 3 of the act. In 88 I. C. C. 188 the Commission found the rate charged unreasonable to extent it exceeded 69.5c. HELD, reparation awarded. Binswanger & Co. v. St. L. S. F. Ry. 107 I. C. C. 383.

(6d) Complainant attacked commodity rate of 98c charged on 7 cars of fresh meat shipped between Jan. 22 and May 6, 1918 from South St. Joseph, Mo., and Kansas City, Kas., to Camp Wadsworth, S. C., as inapplicable. Charged proportional commodity rate of 30c from points of origin to Cincinnati, O., plus 68c beyond. Bills of lading consigned shipments to Camp Quartermaster, Camp Wadsworth, Spartanburg, S. C., but the shipments were delivered at Camp Wadsworth direct. HELD, rate charged applicable, complaint dismissed. Armour & Company v. Director General 107 I. C. C. 604.

(6e) Complainant attacked commodity rates of 46c on less carloads of certain iron articles, viz., nails, washers, nuts and bolts from Birdsboro, Coatesville, Lebanon, and Pottstown, Pa., to Lynchburg, Va., as unjust, unreasonable, unjustly discriminatory and unduly prejudicial to extent they exceeded the class rates. The joint sixth class rates on nails, iron or steel, in kegs, were and are 33.5c fifth class on washers, nuts, bolts, iron or steel, 40.5c. All of the shipments originated on the Reading and some were unrouted some were routed over the Reading and N. & W., and some over the Reading, Western Maryland and N. & W. HELD, rates attacked not unreasonable nor unduly prejudicial, complaint dismissed. Lynchburg Chamber of Commerce v. R. Co. 107 I. C. C. 610.

(6f) Complainant attacked commodity rates charged on numerous cars of bituminous coal during April, 1922 from Folks and Marva, located in eastern Ohio, on the Pennsylvania, to Munhall, Pa., and from mines in Kentucky, Virginia and West Virginia to Clairton, Pa., as unreasonable, unjustly discriminatory and unduly prejudicial. The destinations are in the vicinity of Pittsburgh. The coal from the Ohio mines originated on the Pennsylvania. That from the other mines originated on the C. & O., N. & W. or their connections, and moved to destination over the Pennsylvania thus receiving a line haul both west and east of Pittsburgh. Combinations of rates to and from Pittsburgh were charged. The movement was unusual. Complainant ordinarily obtains its coal from other sources, in or near Pittsburgh district, but the 1922 coal strike necessitated purchases elsewhere. Complainant shipped this coal regardles of the rates in order to keep its furnace in operation. In the meantime it negotiated for joint

rates from and to the points considered and in the latter part of April, 1922, such rates were made effective based on a differential of 30c over Pittsburgh. Rates charged from Ohio mines to Munhall was $2.29 made up of rates of $1.54 to Pittsburgh and 75c beyond. The rate subsequently established for a limited time, to the basis of which reparation is asked, was $1.84. The rates from the Kentucky, Virginia and West Virginia mines to Clairton were $4.34 and $4.44 and the rates subsequently established were and are $3.38 and $3.48 for hauls ranging from 300 to 550 miles. Under the particular circumstances of this case defendants admit that the rates charged on the shipments considered were unreasonable to the extent they exceeded the rates established subsequent to the movement. Although the publication of these rates was originally intended as a temporary expedient, the carriers have now no objection to continuing them indefinitely. HELD, rates from the Ohio mines to Munhall unreasonable to extent they exceeded $1.84 made on basis of 30c per ton over Pittsburgh; rates from Ohio mines in excess of that rate for future unreasonable, reparation awarded. Rates from Kentucky, Virginia and West Virginia to Clairton not unreasonable. Carnegie Steel Co. v. Pennsylvania R. R. 107 I. C C. 676.

(6g) Complainant attacked commodity rate charged on nine cars of cabbage from Kent and OBrien, Wash., and Troutdale, Oreg., to Denver, Colo., Wichita and Wellington, Kas., Oklahoma City, Okla., Kansas City, Mo., and Peoria and Herrin, Ill., during Nov. and Dec. 1921 as unreasonable and unjustly discriminatory. Distance averaged 2,138 miles, charged $1.46 on fresh vegetables, and effective Nov. 18, 1922 specific commodity rates on cabbage, in carloads of $1.06 to Denver and $1.10 to the other points, minimum 24,000 pounds, were established. HELD, rates attacked unreasonable to extent they exceeded $1.25 reparation awarded. Harmon v. A. T. & S. F. Ry., 109 I. C. C. 90.

(6h) Complainant attacked commodity rate charged on two cars of fresh vegetables shipped in August 1924 from Denver, Colo., to Jacksonville, Fla., as unreasonable, unduly preferential and in violation of the fourth section. Shipments originated on U. P., and moved under refrigeration to East St. Louis, Ill., in connection with the Burlington on one shipment and M. P., on the other, thence, over L. & N., to Montgomery, Ala., thence S. A. L., G. S. & F., and S. A. L., to destination, charged $1.75 through rate. The joint rate exceeded a contemporaneous combination commodity rate over route of movement of $1.74 consisting of a proportional rate of 70c to Evansville, Ind., and $1.04 beyond. HELD, rate attacked unreasonable to extent it exceeded $1.74, reparation awarded. Hulsey Bessent Co. v. S. A. L. Ry., 109 I. C. C. 389.

(6i) Complainant attacked commodity rates on cans, iron, steel, tin and galvanized, in carloads, from Kansas City, Mo., to Fort Smith, Ark., Wichita, Kas., and Sioux City, Ia., as unreasonable unjustly discriminatory and unduly prejudicial. No. 15081. 12 cars of tin coffee cans moved to Fort Smith over M. P., 360 miles, four over K. C. S., 327 miles, and four M. K. & T., and Ft. S. & W., 383 miles, between Sept. 28, 1922 and March 20, 1924, charged commodity rate of 75.5c. No. 15081 Sub. 2. Rate charged 48.5c for 36 ft. car minimum of 14,000 pounds and 33.5c minimum 18,-000 pounds, on tin cans car loads from Kansas City to Sioux City and Wichita, for short line distances of 290 miles to Sioux City and 213 miles to Wichita. HELD, rates attacked not unreasonable or otherwise unlawful, complaints dismissed. Gille Mfg. Co. v. K. C. S. Ry., 109 I. C. C. 408.

(6j) Complainant attacked commodity rates charged on crude feldspar, carloads, from New Hampshire to Manchester, Conn., since April 1, 1923 as unreasonable, unjustly discriminatory, unduly prejudicial and in violation of the fourth section. With the exception of the rate from Canaan which is the sixth class rate, the rates attacked are commodity rates minimum 60,000 pounds. In 92 I. C. C. 675 the Commission found rates on crude feldspar, carloads, from the groups in which Keene and Rumney are located to Trenton, N. J., for average distances of 271 and 362 miles, unreasonable to extent they exceeded 18 and 19c also rate from the Connecticut group to Trenton for an average distance of 136 miles unreasonable to extent it exceeded 16c. HELD, rates attacked unreasonable to extent they exceed to Manchester, 13.5c from Keene, 18c from Rumney, Cardi-

gan, Canaan, and Swainboro, 15c from Cold River and South Lyndeboro, 17c from Burleyville and 16c from Matthews and Ossippee. HELD, reparation awarded. Orford Soap Co. v. B. & M. R. R., 109 I. C. C. 434.

(6k) Complainant attacked commodity rate charged on 560 cars of crushed stone between May and October 1923 from Gary, Ind., to Stillwell and Kankakee, Ill., as unjust, unreasonable, unjustly discriminatory and unduly prejudicial. Gary, Ind., is within the Chicago switching district on the C. & I. W., charges paid at rate of $1.01. Average distance 103 miles to Kankakee and 107 miles to Stillwell. During the period these shipments moved defendants maintained from Chicago rate points other than Gary a rate of 95c to Michigan City, 20 miles north of and beyond Stillwell, and effective August 23, 1923 also established a rate of 95c to LaPorte, Ind., 8 miles north of and beyond Stillwell. The lawful rate was joint sixth class rate of $2.80 per ton. HELD, rate attacked unreasonable to extent it exceeded $1.01, reparation awarded. Taylor v. N. Y. C. & St. L. R. R., 109 I. C. C. 441.

(6l) Complainant attacked commodity rates charged on sheet metal automobile parts, carloads, from March to Dec. 1917, April 5 1918 to Feb. 28, 1920 from Detroit, Mich., to Forth Worth, Tex., as unreasonable and unjustly discriminatory. Charged 76.9c prior to June 25, 1918, and 96c thereafter. Class A rates were 95.9c prior to June 25, 1918 and $1.20 thereafter. Effective Feb. 29, 1920 defendants voluntarily established a commodity rate of $1.20 minimum 22,000 pounds, subject to rule 34. The applicable charges assessed were higher than the charges that would have accrued under the class A rates. HELD, rates charged unreasonable to extent they exceeded class A rates, reparation awarded. Chevrolet Motor Co. v. C. & A. R. R., 109 I. C. C. 462.

(6m) Complainant attacked commodity rates charged on lard substitutes and vegetable cooking oils, carloads, from Houston, Tex., to Arkansas and Louisiana are unreasonable and unduly prejudicial. In 101 I. C. C. 563 the Commission found these rates on and after Nov. 20, 1925 unreasonable to extent they exceeded rates therein prescribed. HELD, based upon decision in 101 I. C. C. 563, reparation awarded. Merchants & Planters Oil Co. v. A. T. & S. F. Ry., 109 I. C. C. 477.

(6n) Complainant attacked commodity rates charged on mine timbers, including mine props, mine bars and mine ties, carloads, between Sept. 1, 1922 and June 12, 1924 from Missouri on the M. P., and Frisco to Ziegler, West Frankfort, Benton, Herrin, Livingston and Virgen, Ill. In 87 I. C. C. 622 the Commission found the rates here in issue since June 30, 1922 unreasonable to extent they exceeded a distance scale prescribed therein. HELD, rates attacked unreasonable and reparation awarded on basis of rates prescribed in 87 I. C. C. 622. Bell & Zoller Mining Co. v. I. C. R. R. 109 I. C. C. 484.

(6o) Complainant attacked commodity rate charged of 13.5c per 100 pounds on core sand, fire sand and sea sand, carloads, since Jan. 1, 1923 from Provincetown, Mass., to Norwich, Conn., as unreasonable to extent it exceeded 7.5c. Core sand is used by complainant for making cores for iron boiler castings. It is high in silica and differs also from common sand in its grain or sharpness. common or building sand, usually must be screened before it is fit for use, whereas core sand is not screened or processed in any way. Shipments moved via the New Haven, distance 171 miles. Core sand always loads in excess of the marked capacity of the car, is not liable to loss or damage and constitutes desirable traffic. The 7.5c rate claimed is applicable on common sand. HELD, rate attacked unreasonable to extent it exceeds 11c, reparation awarded. Richmond Radiator Co. v. N. Y. N. H. & H. R. R., 109 I. C. C. 497.

(6p) Complainant attacked commodity rate of $1.445 charged on 10 cars of gasoline shipped between Feb. 9 and 21, 1921 from Somerset, Tex., to Phoenix, Ariz., as unduly prejudicial to extent it exceeded $1.26. Somerset is on the San Antonio Southern, 4.6 miles from Kirk, Tex., a point on the I. & G. N., 16 miles south of San Antonio, Tex. Rate charged combination of 18.5c to Kirk and $1.26 applicable from Texas refining points generally to Phoenix and California. On Jan. 16, 1922 the $1.26 rate was established from Somerset. HELD, rate attacked unduly prejudicial to extent it exceeded $1.26, reparation

awarded. Pioneer Oil & Refining Co. v. S. A. A. Ry., 109 I. C. C. 551.

(6q) Complainant attacked commodity rates on lumber, carloads, from Ashland, Wis., to points in Illinois, Central and trunk line territories as unreasonable, unjustly discriminatory and unduly prejudicial to extent they exceed rates from Wisconsin points in Hurley group to the same destinations. Ashland is at the extreme edge of the Duluth group. Hurley group lies adjacent, immediately east of the Duluth group. Both groups extend along the southern shore of Lake Superior. Rates from Ashland group apparently range from 0.5c to 3.5c higher than those from the Hurley group. Complainants prayer for a rate parity is based primarily on commercial conditions. Prior to 1915 the rates from the Duluth group to the destinations in question were lower than those from the Hurley group, this being due to water competition, but after the denial of fourth section relief the rates from the Duluth group were made higher to reflect the longer hauls. To apparently typical points in the destination territory involved, the average short line distance from Ashland is about 39 miles greater than that from Hurley. HELD, rates attacked not unreasonable, unjustly discriminatory or unduly prejudicial, complaint dismissed. Schroeder Lumber Co. v. A. C. & Y. Ry., 109 I. C. C. 553.

(6r) Complainant attacked commodity rate of 2.5c charged on 129 cars of sand and gravel shipped between Aug. 21, 1919 and Oct. 21, 1919 from Hammond, Ill., to Chicago, Ill., as illegal and unreasonable and in violation of the fourth section. Shipments moved entirely over the Milwaukee, charged 2c to Chicago. Contemporaneously a commodity rate of 2.5c was published in the same tariff to Division St. Ill. Prior to June 25, 1918 the rate to both points was 1.5c, but on that date it became 2.5c. On Aug. 15, 1919 the rate to Chicago was reduced to 2c but no change was made in the 2.5c rate to Division St. On Dec. 18, 1919 the rate to Chicago was increased to 2.5c, thus restoring the former parity in rates. The rate to Chicago was unrestricted as was that to Division St. Hammond is on the main line of the Milwaukee, 34.1 miles west of Chicago, cars being billed to and unloaded by complainant at its siding on the Milwaukee at North Branch and Halsted Sts. within the City of Chicago. All freight bills, accounts, and other shiping documents are handled through the agency at Divison St. Station as are those for shipments to or from complainants siding. No specific rates were published to Division St. Station or North Branch and Halstead Sts. The tariffs are ambiguous and uncertain in their application. Although it may have been intended to apply the Division St. rate to all points within what the carrier considers its Division St., district, that fact can not be definitely determined from the tariffs. HELD, rate of 2.5c charged inapplicable and rate of 2c applicable, complaint dismissed. American Sand & Gravel Co. v. Director General, 109 I. C. C. 557.

(6s) Complainant attacked commodity rate of 45c charged on numerous cars of lubricating oil and gasoline shipped during the period March to August 1920 from Okmulgee, Ponca City, Cushing and Tulsa, Okla., and Independence and Augusta, Kas., to Detroit, Mich., as unreasonable, unreasonable, illegal and unduly prejudicial. Shipments moved through East St. Louis, no joint rates in effect. Rate charged combination of proportional commodity rates, 22.5c to East St. Louis and a like factor beyond. The tariff which named the eastern factor carried the combination rule. The combination in effect in June 24, 1918 was 40c composed of 20c to and from East St. Louis. The applicable rate was the sum of the local rates in effect on June 24, 1918 plus a single increase of 4.5c. HELD, shipments overcharged to extent they exceeded 44.5c, reparation awarded. White Star Refining Co. v. A. T. & S. F. Ry., 109 I. C. C. 577.

(6t) Complainant attacked commodity rates charged on wheat bran, in straight carloads, and in mixed carloads with grain and grain products from Colorado, Utah, Wyoming, Idaho, Montana, Nebraska, Kansas, Iowa, Missouri, Oklahoma, Texas and New Mexico to points in Louisiana, Texas and New Mexico as unreasonable and unduly prejudicial. In 101 I. C. C. 14 the Commission found the rates on wheat bran, carloads, from and to the points here in question for the future would be unreasonable and unduly prejudicial to extent they might exceed the rates on wheat middlings or shorts, coarse grain and coarse grain products from and to the same points, and reparation denied. HELD, rates at-

tacked not unreasonable, unjustly discriminatory or unduly prejudicial, complaint dismissed. Robinson Milling Co. v. A. & S. Ry., 109 I. C. C. 595.

(6u) Complainant attacked commodity rate of 25c on crude feldspar, carloads, from Dekalb Junction, N. Y., to Manchester, Conn., as unreasonable and unduly prejudicial. Dekalb Junction is on the N. Y. C., 51 miles north of Watertown, N. Y. Manchester is on the New Haven 31 miles south of Springfield, Mass. Shipments moved N. Y. C., to Albany, 207 miles, B. & A., to Springfield 102 miles, and New Haven beyond 31 miles, total 340 miles. HELD, rate attacked unreasonable to extent it exceeded 19c, reparation awarded. Green Hill Mining Co. v. N. Y. C. R. R., 109 I. C. C. 632.

(6v) Complainant attacked commodity rate of $1.45 charged on brick, carloads, from Joliet, Ill., to Gary and Indiana Harbor, Ind., and South Chicago, Ill., as unreasonable to extent it exceeded $1. Shipments are packed in straw and loss and damage claims are small. In 68 I. C. C. 213 the Commission prescribed a base rate of $1.75 from Danville and Attica, Ind., to Chicago and prescribed a fixed differential for Joliet of 30c under those points, and also prescribed a distance scale for short haul traffic in central territory. The rate of $1.75 fixed from the Danville-Attica group for an average short line distance to Chicago of 121 miles is 5c under the rate for that distance under the scale. Joliet for a short line haul of 37c is 25c over the scale. On the scale basis this rate would be $1.20. HELD, rate attacked unreasonable to extent it exceeds $1.20 per ton. General Refractories Co. v. E. J. & E. Ry., 109 I. C. C. 635.

(6w) Complainant attacked commodity rate of 33.5c charged on 97 cars of fuel and crude oils from Smackover, Ark., to Lincoln, Neb., as unreasonable, unjustly discriminatory and unduly preferential Shipments moved between Dec. 1922 and April 8, 1923. Rate to Omaha was 33.5c on refined oil and 27.5c on crude and fuel oils, Lincoln usually being accorded the same rates as Omaha. The distance from the Smackover field is about the same to Lincoln as to Omaha. Effective April 8, 1923 defendant reduced the rate to Lincoln to the Omaha basis. HELD, rate attacked unreasonable to extent it exceeded the rate to Omaha of 27.5c, reparation awarded. Lincoln Traction Co. v. M. P. R. R., 109 I. C. C. 653.

(6x) Complainant attacked commodity rate of 19c charged on candle pitch, carloads, from New York to Lancaster, Pa., as unreasonable and unduly prejudicial. Prior to March 12, 1925 the sixth class rate of 22.5c was applicable and on that date a commodity rate of 19c was established which was the rate then in effect from Jersey City to Lancaster. Distance New York to Lancaster is 157 miles. HELD, rate attacked not unreasonable or otherwise unlawful, complaint dismissed. Armstrong Cork Co. v. Pennsylvania R. R., 109 I. C. C. 655.

(6y) Complainant attacked commodity rate charged on curtain poles, dowel pins and broom and mop handles from Lumberton, Miss., to New Orleans, La., as unjust, unreasonable, unjustly discriminatory and in violation of the fourth section. Rate attacked is 15c and on the commodities when finished 19c. No commodity rate on these articles is published by the G. & S. I., from Lumberton to New Orleans and sixth class rate of 40.5c applies, distance 90 miles and lumber rate 9c. HELD, rate attacked unreasonable to extent they exceeded 11c or 2c over lumber rate on unfinished articles and on curtain poles and dowel pins 12.5c, reparation awarded. Lumberton Broom & Mop Handle Factory v. N. O. & N. E. Ry., 109 I. C. C. 659.

(6z) Complainant attacked commodity rate of 52c charged on three cars of linseed oil from St. Louis, Mo., to New Orleans, La., in August and October 1922 as unreasonable, unjustly discriminatory and unduly prejudicial to extent it exceeds rates on cottonseed, soya bean and analogous vegetable oils from and to the same points. Like the other oils, linseed oil is usually shipped in tank cars and barrels, and in other respects has similar transportation characteristics. Its value weight use and physical characteristics are in many respects similar to those of the other oils. The commission has found in many cases that the carload rates on these analogous oils should be the same. HELD, rate attacked unreasonable to extent it exceeded 41.5c, reparation awarded. Glidden Co. v. I. C. R. R., 109 I. C. C. 721.

(7a) Complainant attacked commod-

ity rates charged on meat animals, carloads, from Alabama to Moultrie, Ga., as unreasonable compared with intrastate rates in Alabama for similar distances; that by reason of the disparity complainant is subjected to undue prejudice. Moultrie is in the southwestern part of Georgia and is served by the A. B. & A., G. N., and G. & F. Prior to Dec. 19, 1921 the rates on livestock from Alabama to Moultrie were based on combination of intermediate rates when points rates were established intrastate and interstate on relatively the same level. On May 16, 1923, the so-called compromised distance scale of rates interstate was established. The Alabama Commission declined to allow the establishment of these rates intrastate. All of the defendants agree with complainants contention that the lower level of rates on livestock within Alabama results in unjust discrimination against Moultrie. HELD, interstate rates not unreasonable, but intrastate unduly prejudicial which should be removed by increasing them to the inter state basis. Swift & Company v. G. N. Ry., 109 I. C. C. 733.

(7b) Complainant attacked commodity rates on soft coal, carloads, from Birmingham, Ala., district to Tennessee, Alabama, Mississippi, Louisiana, Texas, Missouri and Arkansas as unduly prejudicial in favor of shipper from southern Illinois and western Kentucky. What is sought is a differential relationship, Birmingham under the competing fields of western Kentucky and southern Illinois, which will give complainant the advantages to which it believes itself entitled by reason of its geographical location. This is purely a section 3 case. Whatever the equities of the situation at Memphis may or may not be, the Commission can not under the law make a finding of undue or unreasonable prejudice or disadvantage. No one line serves Memphis at the base rate from the Alabama field on the one hand, and the western Kentucky and Illinois fields on the other. Independent carriers serve this common market. As to Memphis no undue or unreasonable preference or advantage exists upon which a differential adjustment in favor of the Birmingham district can be justified. HELD, the relationship between the rates on coal, in carloads, from the Birmingham district in Alabama on the one hand and the western Kentucky and southern Illinois on the other hand, to destinations in the territory embraced in the complaint, except Missouri, is, and for future, will be, unduly prejudicial to complainant and unduly preferential of western Kentucky and southern Illinois to extent it varies from an adjustment outlined as follows: For each 25 miles or major fraction thereof, beginning with a difference in distance of 25 miles, in which the average distance from the I. C., mines in the southern Illinois-western Kentucky district exceeds the average distance from the Frisco group 2, and Southern groups 4, 11 and 12 miles in Alabama, a differential of 5c per net ton over the base rate from the Birmingham district is prescribed in favor of the Alabama mines. To destination points east of the Mississippi river, distance shall be computed from the distance tables set forth in DeCamps Exhibit 24 the distance by the shortest routes listed therein governing the amount of the differential. To destinations points west of the Mississippi river, the distance scales of the carriers shall prevail, based upon the same origin mining groups and computed in the same manner as prescribed to points east of the river. In the few instances where the rates from the Birmingham mining groups are not on a parity the lowest rate shall be considered the base rate. DIVISIONS. This question is not one which arises between carriers who are parties to the joint rates nor has there been a protest on the part of any locality. The public evidently is not concerned as to the divisions agreed upon by the joint carriers so long as the through rates are not involved, unless one or more of the divisions are so low as to throw a burden upon other traffic and the Commission has no such evidence upon this record. There is no question as to the efficient operation of the I. C. That carrier explains that it can afford to be generous in its divisions to the short lines in Mississippi on southbound coal in return for the more remunerative northbound traffic which it receives from them. It appears that it reserves the same or about the same amount of the through rate at common junction points as it reserves by the carriers which serve the Alabama mines. As long as this basis of equality is maintained, as long as the divisions of the I. C., are not so low as to throw a burden upon other traffic, and the weak-

er short lines are beneficiaries of its policy the Commission can not see that complainant is subjected to any undue or unreasonable prejudice or discrimination. Alabama Mining Institute v. I. C. R. R., 109 I. C. C. 740.

(7c) Complainant attacked commodity rate charged on 27 cars of paper and paper articles shipped between June 20 and Dec. 13, 1922 from Urbana, O., and St. Louis, Mo., to Dallas, El Paso and San Antonio, Tex., as unreasonable. Shipments originated on Rock Island, M. P., St. L. S. W., and Pennsylvania. HELD, rates attacked unreasonable to extent they exceeded rates published effective Dec. 15, 1922, reparation awarded. Graham Paper Co. v. C. R. I. & P. Ry., 112 I. C. C. 51.

(7d) Complainant attacked commodity rate on sand, carloads, from Sand Springs, Okla., to Kansas and Missouri as unreasonable and unduly prejudicial. Sand Springs is on the Sand Springs Ry. Effective April 4, 1923 Sand Springs was accorded a rate of 6.5c to points between Coffeyville, Kas., and Parsons, Kas., The rate on Sand from Sand Springs is 0.5c higher than the rate from Osage to numerous points and Osage has rates of 6.5c and 7c to other points to which in the absence of commodity rates from Sand Springs higher class or combination rates apply. The present rates from Osage seem to have been made with relation to the rates from Kansas City to the same points. By placing Sand upon the same basis as Osage the alleged undue prejudice with respect to the rates from Kansas City will be removed. HELD, rates attacked from Sand Springs on the same basis as from Osage not unreasonable but for future will be unduly prejudicial to Sand Springs to extent they exceed same rates from Osage. Arkansas River Sand Co. v. M. K. & T. Ry., 112 I. C. C. 92.

(7e) Complainant attacked commodity rates charged on paper boxes, carloads, knocked down flat, in bundles not corrugated, from Chicago to Oklahoma City, Denver, Topeka, and Lincoln between April 4, 1922 and June 9, 1922 as unreasonable. Following 66 I. C. C. 571 rates attacked unreasonable to extent they exceeded rates found reasonable therein and published July 10, 1922, reparation awarded. Beatrice Creamery Co. v. A. T. & S. F. Ry., 112 I. C. C. 113.

(7f) Complainant attacked commodity rate of 39.5c charged on 87 cars of rough oak and gum staves and headings shipped between April 1 and Oct. 31, 1921 from Bonita, La., to Louisville, Ky., as unreasonable. Previous report in 93 I. C. C. 593 complaint dismissed. Bonita is local on the M. P., shipments moving over that line to Memphis, Tenn. L. & N., beyond. Subsequently the rate of 34.5c, applicable from stations in Arkansas and Louisiana on the lines of carriers other than the M. P., was established from Bonita. HELD, rate attacked unreasonable to extent it exceeded 34.5c reparation awarded. Louisville Cooperage Co. v. L. & N. R. R., 112 I. C. C. 228.

(7g) The inferior quality of a commodity can not be made the basis for prescribing rates that are lower than rates on the same commodity for comparable hauls in the same general territory. Dixie Portland Cement Co. v. N. C. & St. L. Ry., 88 I. C. C. 147, 149.

(7h) Question of an improper relationship between the rates on two commodities is not determined by a finding of the commission that rates on one of the commodities is not unreasonably high and on the other not unreasonably low. Undue prejudice may result from the relationship of two rates, each of which lies within the zone of reasonableness. Lackawanna Steel Co. v. P. R. R. Co., 88 I. C. C. 759, 762.

(7i) Proposed cancellation of commodity rates on tanning extract from Norfolk and Newport News to Memphis, Chicago, and other destinations in c. f. a. territory, leaving in effect higher class rates, found not justified. Suspended schedules would create departures from long-and-short-haul provision of fourth section of the act. Tanning Extract from Norfolk and Newport News, 102 I. C. C. 196.

(7j) Class and commodity rates from Jackson, Miss., to destinations in Louisiana west of Mississippi River and southern Arkansas, found unjust, unreasonable, and unduly prejudicial to Jackson and its shippers and unduly preferential of shippers at New Orleans, Memphis and Natchez, to extent they exceed rates for like distances between points west of Mississippi River herein prescribed, plus charges for Mississippi River crossings prescribed in 93 I. C. C. 463. Reasonable and nonprejudicial rates prescribed. Jack-

son Traffic Bureau v. A. & V., 102 I. C. C. 129.

ALL OTHER CITATIONS

Tripoli from Kansas and Missouri, 85 I. C. C. 35; Acid from Moundsville, 85 I. C. C. 149; Seaboard By-Product Coke Co. v. Director General, as Agent, 88 I. C. C. 261; Utah-Idaho Sugar Co. v. Director General, as Agent, 88 I. C. C. 283; Owens Bottle Co. v. Director General, as Agent, 88 I. C. C. 285; Milwaukee Grain Elevator Co. v. Director General, as Agent, 88 I. C. C. 287; Radiant Glass Co. v. Director General, as Agent, 88 I. C. C. 295; Cantaloupes and Melons from California, 88 I. C. C. 340; Interstate Sugar Co. v. D. & R. G. R. R. Co., 88 I. C. C. 432; Boher & Hosfeld v. B. & M. R. R., 88 I. C. C. 449; Barrett Co. v. Director General, as Agent, 88 I. C. C. 459; Armour & Co. v. Director General, as Agent, 88 I. C. C. 569; Headington & Hedenbergh v. Director General, as Agent, 88 I. C. C. 745.

COMMON CARRIER

I. TEST OF STATUS.

§½. In general.
§1. Incorporation.
§2. Lease of line.
§3. Public offer to carry.
§4. Refusal to publish tariffs.
§5. Stock ownership.
§6. Transportation of private cars.

II. DETERMINATION OF STATUS.

§6½. In general.
§7. Question of fact.
§7½. Who are common carriers.

III. OBLIGATIONS.

§8. In general.

IV. ALLOWANCES.

§9. In general.

CROSS REFERENCES

See Branch Lines §3; Electric Lines; Express Companies; Gas and Electric Companies; Pipe Lines II, §4; Tap Lines §6; Telephone and Telegraph Companies; Stock Yard Companies; Water Carriers.

I. TEST OF STATUS.

§½. In General.

See Hours of Service Act.

(a) A company not being in fact a common carrier, order of state Public Service Commission, declaring it such and regulating use of its property, is void. McCoy v. Pacific Spruce Corporation 1 Fed. (2d) 853.

(b) That right of way for a railroad, acquired by the United States during the war to aid in spruce production, was taken by it under the war power or right of eminent domain, does not charge it and the road built thereon by such government with a public use, giving the public a right to demand a common carrier service. McCoy v. Pacific Spruce Corporation 1 Fed. (2d) 853.

(c) Conveyance by the United States of a right of way, acquired by it for war purpose, and a road built thereon by it, to a corporation organized, owned, and used by it for the same war purpose, did not charge the property with a public use. McCoy v. Pacific Spruce Corporation 1 Fed. (2d) 853.

(d) Railroad built by United States for war purpose of aiding spruce production was not charged with a public use by temporary gratuitous permit to operate it while corporation organized by the government was winding up its affairs after close of war. McCoy v. Pacific Spruce Corporation 1 Fed. (2d) 853.

(e) That purchaser, on close of war, of railroad built by United States for war purpose of aiding spruce production, consented to continuance for two months, till it was ready to begin logging operations, of operation of road by an individual, begun under temporary permit from government instrumentality, did not charge the road with a public use. McCoy v. Pacific Spruce Corporation. 1 Fed. (2d) 853.

(f) A "common carrier" is one who, by virtue of his calling and as a regular business, undertakes to transport persons or commodities, offering his services to such as may choose to employ him and pay his charges. McCoy v. Pacific Spruce Corporation 1 Fed. (2d) 853.

(g) The word "organized," in Interstate Commerce Act, §20a, subsec. 1, as added by Transportation Act Feb. 28, 1920, § 439 (U. S. Comp. St. Ann Supp. 1923, § 8592a), defining "carrier" as "* * * any corporation organized for pur-

pose of engaging in transportation by railroad subject to this act," is used to describe present and existing status of corporation, and not its status or condition at some past time. Whitman v. Northern Cent. Ry. Co., (Md., 1924) 127 Atl. 112.

ALL OTHER CITATIONS

Depreciation Charges of W. Ry. & E. Co., 85 I. C. C. 126.

§1. Incorporation.

(a) The courts recognize the general principle that ownership alone in one corporation by another does not create an identity of corporate interest between the two companies, or render the stock holding company the owner of the property of the other, or create the relationship of principal and agent or representative between the two; although they hold that a mere fiction of corporate entity could not justify what otherwise would be unlawful discrimination. Peoria & Pekin Union Ry. Co., 93 I. C. C. 3, 13.

§3. Public Offer to Carry.

(a) It is the right of the public to use the roads facilities and to demand service of it rather than the extent of its business which is the real criterion determinative of its character. Piper v. Blair 96 I. C. C. 102, 105.

(b) It is duty of "public or common carrier of passengers," as distinguished from "special or private carrier," to receive all who apply for passage as long as there is room and no legal excuse for refusing. North American Acct. Ins. Co. v. Pitts, (Ala., 1925) 104 So. 21.

(c) Test of whether one is "common carrier" by land, water, or air, is whether he held out that he would carry for hire, so long as he has room, all persons applying, or goods of every one bringing goods to him, for carriage. North American Acct. Ins. Co. v. Pitts, (Ala., 1925) 104 So. 21.

(d) Holding that a particular industrial railroad is a common carrier means simply that it serves the public as well as the proprietary industry. It does not change the character of service performed for the proprietary industry. Pressed Steel Car Co. v. Director General, 93 I. C. C. 224, 232.

§5. Stock Ownership.

(a) Ownership alone in one corporation by another does not create an identity of corporate interest between the two companies, or render stock-holding company the owner of property of the other, or create the relationship of principal and agent or representative between the two. See Southern Pacific Terminal case, 219 U. S. 498. Peoria & Pekin Union, 93 I. C. C. 3, 13.

II. DETERMINATION OF STATUS.

§6½. In general.

(a) The same person or corporation may be engaged in one line of business as a common carrier, and in another line of business as a private carrier. Chenery v. Employer's Liability Assur. Corp., 4 Fed. (2d) 826.

§7½. Who are Common Carriers.

(a) Motor truck or wagon transfer companies are not common carriers subject to the act. Tariffs embracing motor truck or wagon transfer service, 91 I. C. C. 539, 546.

(b) Newburgh & South Shore Ry. Co., Monongahela Connecting R. R. Co., Union R. R. Co., and South Buffalo Ry. Co., found to be common carriers subject to the act, and lawfully entitled to receive from trunk-line connections divisions of joint rates or absorptions of switching charges under appropriate tariffs, such divisions or absorptions to be reasonable. Jones & Laughlin Steel Co. v. P. & L. E. R. R. Co., 91 I. C. C. 300.

(c) Puget Sound & Cascade Ry. Co. found to be a common carrier subject to the act, which may lawfully participate in joint rates with trunk lines and in divisions thereof. Puget Sound & Cascade Ry. Co. v. Director General, 91 I. C. C. 467.

(d) Commission has consistently found that motor-truck or wagon transfer companies are not common carriers subject to the act. Parmalee case, 12 I. C. C. 39. Motor-Truck or Wagon Transfer Service, 91 I. C. C. 539, 540, 546.

(e) Hannibal Connecting R. R. Co. found to be a common carrier engaged in interstate commerce and subject to recapture provisions of section 15a of the act. Contention that such carrier was not subject to recapture provisions, upon theory that its excess earnings came

from intraplant service, not sustained following Dayton-Goose Creek case, 263 U. S. 456. Intrastate and interstate operations are so inextricably commingled as to make segregation impracticable, and to segregate would also defeat plan of Congress to control excess profits due to level of whole body of rates. Status of H. C. R. R. Co., 91 I. C. C. 744.

(f) Where railroad which was organized and did business for many years as a common carrier leased its system to another, whereby lessee performed actual work of transportation of leased system, but lessor was required to discharge many duties as a carrier, is still organized to act as carrier, and in event of default by lessee must again operate railroad system as a carrier, HELD, that it still remained a "common carrier," within meaning of Interstate Commerce Act, §20a, as added by Transportation Act Feb. 28, 1920, §439 (U. S. Comp. St. Ann. Supp. 1923, § 8592a). Whitman v. Northern Cent. Ry. Co., (Md., 1924) 127 Atl. 112.

(g) The Lorain & Southern R. R. Co., found to have been and to be a common carrier subject to the act, which may lawfully participate in joint rates with other common carriers or have its switching charges on interstate shipments absorbed under appropriate tariff provisions by roads having the line haul. Ohio Quarries Co. v. N. Y. C., 92 I. C. C. 703.

(h) Where defendant, under contract with creamery, hauls perishable produce, such as cream, butter, eggs, etc., from creamery to a shipping point, it being necessary to ship same several times a week, and has never transported for other persons, such carriage will not be enjoined as interfering with plaintiff's operation of a stage and passenger line. Davis & Banker v. Metcalf (Wash. 1924) 229 Pac. 2.

(i) Peoria & Pekin Union Ry. Co., found to be an independent common carrier subject to the act, and as such entitled to assess reasonable and otherwise lawful charges for transportation services which it renders, such charges to be filed and published in accordance with the provisions of section 6 of the act. Peoria & Pekin Union Ry., 93 I. C. C. 3, 22.

(j) Overruling Conf. Ruling 341. FOUND, that where a common carrier subject to the act performs an intermediate service in connection with traffic moving at joint rates, it should concur in such joint rates and receive divisions thereof, the divisional arrangements to be so adjusted as to, in effect, result in absorption thereof by line that delivers traffic to carrier performing the intermediate service. Peoria & Pekin Union Ry., 93 I. C. C. 3, 32.

(k) Blair R. R. extending from Kregar to Jones Mill, Pa., found not to have been or to be a common carrier subject to the act. Evidence fails to disclose a bona fide holding out to the public of the right to use the line as a common carrier as contemplated by decision of the Supreme Court in The Tap Line Cases, 234 U. S. 1. Piper v. Blair, 96 I. C. C. 102.

(l) Strouds Creek & Muddlety R. R. found to be a common carrier subject to the act. It holds itself out to transport interstate traffic, has a contract with the United States Government for carrying mail, and many persons avail themselves of its service, a daily schedule being maintained to and from Allingdale, W. Va., the junction point. Tioga Coal Co. v. B. & O., 101 I. C. C. 611.

(m) Upon further hearing, finding in original report, 80 I. C. C. 269 that the Pittsburgh & Ohio Valley Ry. was and is a common carrier subject to the act, affirmed. Interstate shipments have been and are transported by the Valley and its facilities are open to the public. Carnegie Steel Co. v. Director General, 101 I. C. C. 638.

ALL OTHER CITATIONS

Depreciation Charges of W. Ry. & E. Co., 85 I. C. C. 126; Hampton & Branchville R. R. & Lumber Co. v. A. C. L. R. R. Co., 88 I. C. C. 77.

III. OBLIGATIONS.

See Facilities and Privileges II; Loss and Damage §5½; Pipe Lines §4, II; Tap Lines II; Transportation II.

§8. In General.

(a) A carrier's right of way which is merely a right of user in common with use made of the same property by others, may be compared with trackage rights given by one railroad to another, the tracks being used jointly, or with right of a railroad in a street used in common with the public. In either case the right is not valued the same as though the right of way were owned or used exclusively by the carrier being valued. See

Texas Midland R. R., 75 I. C. C. 1, 123. New York Dock Ry. v. B. & O. R. R. Co., 89 I. C. C. 695, 705.

(b) Application of provisions of the act is limited to certain classes of common carriers expressly named and specified in section 1, none of which include motor trucks. Motor Truck or Wagon Transfer Service, 91 I. C. C. 539, 546.

(c) Although language employed in section 1 of the act in connection with the term transportation would be broad enough, if standing alone, to include every form of motor-truck or drayage service, its meaning must be determined by referring to definition of common carrier by "railroad," which names among other things "terminal facilities of every kind used or necessary in the transportation of the persons or property designated herein." Construed in this manner provisions of the act, and consequently commission's jurisdiction, are applicable to service by motor-truck or drayage transfer only when they can be regarded as terminal facilities. Motor-Truck or Wagon Transfer Service, 91 I. C. C. 539, 546.

(d) Charges to public for motor-truck service under commission's jurisdiction must be published in tariffs same as charges for any other service granted by carriers as part of their transportation service, and if such drayage or transfer charges are absorbed tariff must show conditions and the amount of charges absorbed. Contracts under which carriers employ truck or drayage companies to perform transportation services for them should also be filed with commission to prevent any suggestion of unjust discrimination. Motor Truck or Wagon Transfer Service, 91 I. C. C. 539, 547.

(e) Commission has no jurisdiction over line-haul rates of motor-truck companies operated as extensions of lines of rail or water carriers. Motor-Truck or Wagon Transfer Service, 91 I. C. C. 539, 547.

(f) While motor-truck or wagon transfer companies are not common carriers subject to the act, truck or wagon transfer services performed in connection with terminal services of a common carrier subject to the act, or with transfer of freight in transit at an intermediate point by such common carriers, are subject to commission's jurisdiction. Such service is a part of a transportation service by a carrier over which commission has jurisdiction. Motor-Truck or Wagon Transfer Service, 91 I. C. C. 539, 547.

(g) One bound to furnish transportation to public as common carrier must serve all up to capacity of his facilities, without discrimination and for reasonable pay. Michigan Public Utilities Commission v. Duke, 45 Sup. Ct. 191.

(h) Railroads, being servants of the people, must render adequate service, without discrimination, to public as a whole, and at the lowest rate possible consistent with a fair return on their property. Louisville & N. R. Co. v. Johnson's Adm'x (Ky., 1925) 270 S. W. 58.

(i) Overruling Conf. Ruling 341. FOUND, that where a common carrier subject to the act performs an intermediate service in connection with traffic moving at joint rates, it should concur in such joint rates and receive divisions thereof, the divisional arrangements to be so adjusted as to, in effect, result in absorption thereof by line that delivers the traffic to carrier performing the intermediate service. Peoria & Pekin Union Ry., 93 I. C. C. 3, 22.

(j) Defendant is a common carrier engaged in interstate commerce and is bound under the express provisions of the act to accede to every proper application for service, subject only to such reasonable regulations as it may prescribe. It must accept less desirable traffic as well as that which is more desirable, and, although its best interest might be promoted by refusing to perform the service here in controversy, it has no right to refuse to transport iron pipe or any other article not dangerous to handle and which is ordinarily accepted for transportation. Alcoholic liquors via. L. & N. 102 I. C. C. 202, 204.

ALL OTHER CITATIONS

Hampton & Branchville R. R. & Lumber Co. v. A. C. L. R. R. Co., 88 I. C. C. 77; Section 28 of Merchant Marine Act, 88 I. C. C. 651.

IV. ALLOWANCES.

§9. In General.

See Allowances.

(a) There are some items of operating expenses which properly would be chargeable in a cost study of a common carrier but not in the cost of operating a plant facility. The difference ordinarily would be slight, as the general

character of the service performed for the proprietary industry is the same whether it be performed by a plant facility or a common carrier. Carnegie Steel Co. v. Director General, 101 I. C. C. 638, 643.

COMPARATIVE RATES

See Advanced Rates §5½, §8½, §18 (7); Blanket Rates §18; Branch Lines §2, §18, §22; Classification §3½, §18, IV; Discrimination §4; Divisions §7; Equalization of Rates §3; Evidence §11, §12, §13 (1) (1½) (3) (5) (6), §30, §47, §58, §59, §66; Express Companies §11, §20, §23; Long and Short Haul's §6¼; Penalty Rates; Reasonableness of Rates, §7½, §12½, §27½, §27¾, §28; Routing and Misrouting §5; Through Routes and Joint Rates §15.

COMPARISON OF RATES

See Rail and Water Rates (d) (e) (g).

COMPETITION

See Advanced Rates §5 (7); §7 (4), §7 (5); Allowances §13 (1); Blanket Rates §19; Branch Lines §4; Classification §6, §17, §20; Concentrating Rates and Privileges; Differentials; Discrimination §3 (1), §8, §8 (2), §8 (4), §11 (a); Equalization of Rates §4; Evidence §10, §14 (1) (1½) (2½); Express Companies §21; Long and Short Hauls §4, II, §4¼, §4½, §14 (1½), IV; Motor Truck Competition; Panama Canal Act; Reasonableness of Rates §8.

COMPLAINT

See Discrimination §18; Long and Short Hauls §11; Procedure Before Commission II; Reparation §21.

COMPRESS COMPANIES AND CHARGES

I. CONTROL AND REGULATION.

II. REASONABLENESS OF CHARGES.

III. RULES AND REGULATIONS.

CROSS REFERENCES

See Advanced Rates §5 (2) (fa); Allowances §8 (1); Concentrating Rates and Privileges; Facilities and Privileges §3.

II. REASONABLENESS OF CHARGES.

See Reasonableness of Rates.

(a) By compressed cotton is meant cotton originally baled in flat or uncompressed bales and then compressed to a density of about 22.5 pounds per cubic foot, thereby lessening dimensions of the bale and enabling many more to be loaded into a car. Mississippi Railroad Commission v. A. & V. Ry. Co., 89 I. C. C. 47, 49.

(b) Respondent, St. L. & S. F. R. R., proposed certain rules and regulations with respect to the concentration, compression and storage of uncompressed cotton at compress points in southeastern Missouri and northeastern Arkansas, and transit arrangements on compressed cotton at East St. Louis, Ill., and Jonesboro and West Memphis, Ark. Complainant attacked as unreasonable and unduly prejudicial present rules and regulations of the Frisco which permit transportation from one compress point to another compress point of uncompressed cotton for concentration and compression. **Floating uncompressed cotton from one compress point to another.** Blytheville, Steele and Hayti are on the main line of the Frisco extending from Memphis to St. Louis, and from 70 to 90 miles north of Memphis. Caruthersville is on a branch of the Frisco about 8 miles east of Hayti. West Memphis is on the Marion cut off, 4.2 miles south of Marion, Ark., a point on the main line of the Frisco about 15 miles from Memphis. Jonesboro is on the Frisco 64.4 miles northwest of Memphis and 24 miles south of Walnut Ridge, Ark. Malden, Mo., the most distant of the protesting compress points, is on a branch of a branch line of the Frisco some 137 miles from Memphis. It has long been the practice of cotton carrying roads to afford to cotton growers and buyers certain transit services and facilities in connection with the movement of uncompressed cotton to points at which compresses are located, where the cotton is usually sampled, graded, sold and, after compression to standard density, forwarded to the va-

rious textile markets for consumption. Compression also conserves equipment, the evidence indicating that two carloads of flat cotton can be loaded into one car after compression. Upon this record, HELD, the commission can not do more than require removal of the undue prejudice under both the present and proposed rule to certain compress points. Obviously that prejudice could be removed either by the establishment of a rule which would permit the indiscriminate floating of uncompressed cotton from one compress point to or through another compress point without regard to distance, or by a flat requirement that, except in case of disability, the cotton must be compressed at point of origin if a compress is located there. In lieu thereof, the commission offers the tentative suggestion that the floating of uncompressed cotton from one compress point to another might well be permitted at least to the same extent that cotton from noncompress points is permitted to pass by one compress point to another in transit. HELD, present rules unduly prejudicial. **Storage in transit of compressed cotton at East St. Louis, West Memphis and Jonesboro.** Under the present rules cotton and cotton linters may be stored in transit at East St. Louis, Ill., when originating at Blytheville, Fort Smith, Jonesboro, Van Buren, Walnut Ridge, and Caruthersville and reshipped to trunk line territory, the movement out of East St. Louis to be covered by the balance of the through rate with an additional charge of 6.5c for the storage in transit service. The only essential change in the proposed revision relating to East St. Louis is the addition of Hayti, Malden and Steele to the list of points of origin. Respondent proposed to establish storage in transit at Jonesboro and West Memphis similar to the present service at Memphis. As is well known, storage in transit at primary and intermediate markets is quite generally practiced. Memphis and East St. Louis are large markets with adequate storage facilities. The storage in transit of compressed cotton at these points is to the interest of cotton growers and shippers alike, and there is nothing objectionable in respondent's practice which permits storage in transit of compressed cotton at such points. HELD, suspended schedules in so far as they relate to storage at East St. Louis, West Memphis and Jonesboro justified. Compression, Concentration and Storage of Cotton, 91 I. C. C. 472.

(c) Respondent, M. & O., proposed to establish certain rates for the transportation of cotton, compressed at the shipper's risk and expense, from Meridian, Miss., to Carolina territory. The schedules suspended merely proposed to restore the normal relationship between uncompressed and compressed cotton from Meridian to Carolina territory; that relationship having been disrupted Nov. 5, 1921, by a tariff publication, effective that date, which increased the differential from 12.5c normal at that time, to 26.5c, and to 28c from Meridian only to certain destinations in Carolina territory only. This disruption was published only by the M. & O., and applied only on shipments delivered to it at Meridian. From all other points in the territory surrounding Meridian the normal differential was maintained by all carriers and the result was the creation of unauthorized departures from the requirements of the fourth section. The record shows no good reason why Meridian should longer benefit by unduly low rates on compressed cotton to Carolina points. HELD, suspended schedules justified. Cotton to Carolina Territory, 92 I. C. C. 125.

(d) Respondents proposed to increase the rates on cotton and cotton regins, uncompressed, any quantity, with privilege of carriers of compressing and on cotton linters, uncompressed, less carloads, with privilege to carriers of compressing, from Cairo, Brookport, Gale and Thebes, Ill., to eastern points. In 1910 rates were increased from Memphis and St. Louis but no change was made from Cairo. Respondents concede that the commodity rates bear no fixed relation to the class rates, but they urge that the difference in distance, together with the fact that class rates from Cairo are uniformly higher than from St. Louis, justify a similar difference as to the rates here considered. HELD, suspended schedules not justified. Cotton, cotton linters, and regins to eastern cities, 93 I. C. C. 453.

(e) If cotton is transported flat (uncompressed) in order to meet trade requirements and convenience, the resulting use of additional car space should be paid for by the shipper. Savannah Traffic Bureau v. A. & R. R. R., 96 I. C. C. 749, 753.

(f) The real purpose of compression of cotton in transit at the expense of carriers are conservation of equipment and economy of transportation. Cotton con-

centrated at the request of the shipper usually moves out of the concentration point in round lots of 50 bales or more, and, as compressed cotton requires less space than cotton uncompressed, the carriers by paying the cost of compression are required to furnish fewer cars for its transportation. The evidence indicates that the factors which determine whether compression in transit will be performed at the expense of the carrier are the length of the haul from the compress point to the billed destination of the cotton and the prevailing car supply. Savannah Traffic Bureau v. A. & R. R. R., 96 I. C. C. 749, 755.

(g) Complainant alleged defendants failure and refusal to absorb out of the applicable local rates the entire compress charges of 15c on various shipments of flat or uncompressed cotton originating at and forwarded from Jonesboro, Pine Prairie, and Marmou, La., on the Rock Island in Louisiana, between August 31 and Dec. 13, 1918 compressed at Alexandria and reshipped over the T. & P., between Dec. 14, 1918 and Jan. 29, 1919, resulted in unreasonable rates. The applicable local intrastate rates were assessed into and out of Alexandria. The waybills and freight bills carried the notation compress charges paid by shipper, and freight charges were assessed at the applicable rate on compressed cotton of 50c. The inbound bills of lading were not made a part of the record, and there is nothing to show whether they contain notations to indicate that the cotton was intended for destinations beyond Alexandria. The shipments of uncompressed cotton which originated at points other than Alexandria, were billed care of the compress at Alexandria, compression having been arranged for and paid by complainant to the compress company. The shipment which originated at Alexandria proper were delivered by the shippers to the compress company and were not offered to the T. & P., until after compression, and the compress charges was paid to the compress company by complainant. Under the applicable tariff provision the outbound shipment must necessarily be redelivered to the line bringing the cotton into the transit point. This was not done. The through published rates of the Rock Island were 60c from Pine Prairie, Marmou and Alexandria, and 64.5c from Jonesboro to New Orleans. It is clear from the record that the compression was not at the expense of the carrier and as the shipments were not redelivered to the Rock Island at Alexandria, but to the T. & P., for delivery, they were separate and independent transactions properly subject to the local rates to and from that point, and so far as the movement from Alexandria to New Orleans was concerned, the freight charges have been correctly assessed on basis of the rate applicable on compressed cotton tendered to that carrier compressed, on which the shipper has paid the cost of compression of 15c. The T. & P., tariffs publish a 50c rate from Alexandria to New Orleans containing practically the same rules as to the application of rates therein on uncompressed and compressed cotton as the Rock Island, viz., 50c on cotton delivered to the carrier compressed with compress charges paid by the shipper, whereas the rate on cotton uncompressed with privilege to the carrier of compression is 60c. HELD, local rates properly applicable, complaint dismissed. Haas & Co. v. Director General, 98 I. C. C. 619.

(h) Proposed establishment by M. & O. R. R. of new rates and charges on uncompressed cotton from Meridian, Miss., to Carolina territory, for purpose of restoring normal differential relationship between rates on uncompressed cotton with carrier's privilege of compressing, and cotton compressed at shipper's expense, found justified. Disrupted relationship was published in error only by M. & O. and applied only on shipments delivered to it at Meridian, whereas from surrounding points normal differential was maintained. Moreover, commission's tariff rules require changes in rates to be specified in tariffs containing them, either as advances or reductions, but tariff here referred to published increases as though they had been mere continuations of rates previously in effect. Cotton to Carolina Territory, 92 I. C. C. 125.

(i) Applications for authority to continue rates for transportation of cotton, compressed or uncompressed, from Phoenix and other Arizona points to Columbus, Eatonton, Macon, Thomaston, and other points in Georgia which are higher than rates on like traffic to more distant points, denied. Southwest Cotton Co. v. A. E. R. R., 92 I. C. C. 563, 568.

(j) Rate on uncompressed cotton, damaged by fire and water, from Pine Bluff, Ark., to Galveston, Texas, found not unreasonable as compared with rate

on cotton to be compressed in transit. There never has been a rate on uncompressed cotton between these points, and in 69 I. C. C. 318 the commission cancelled rate on the same commodity from the Mississippi Valley and Arkansas to New Orleans. The evidence is general to the effect that if uncompressed cotton were given the same rates to Galveston as those now in effect on cotton to be compressed in transit there would be a substantial movement of uncompressed cotton. Complainants, however, do not state that they have any need for a rate from any point on uncompressed cotton, unless they desire to ship cotton which could not be compressed in transit because of damage by fire and water. McFadden & Bro.'s Agency v. St. L. S. W., 96 I. C. C. 267.

(k) Failure of defendant carriers to absorb out of the applicable rates the entire compress charges on various shipments of cotton originating at and forwarded from Jonesboro, Pine Prairie, and Marmou, La., compressed at Alexandria, La., and reshipped to New Orleans, La., found not unreasonable. Carriers' privilege of compression was not recognized in the transaction, as compression charges were arranged for and paid direct by shipper of consignee, and as the outbound shipments were not redelivered to the carrier bringing into the transit point. in accordance with the applicable tariff provision cited, but were reshipped via another route, the movements were separate and distinct transactions on which the local rates were properly applicable. Haas & Co. v. Director General, 98 I. C. C. 619.

(l) Present adjustment of rates on cotton from Oklahoma, Arkansas, Texas and Louisiana to Texas Gulf ports found unduly prejudicial to the uptown and interior warehouses and compresses and unduly preferential of the water-front warehouses and compresses; the rates should be so adjusted that one rate will apply for all deliveries within the usual switching limits of the ports, except that the export rates should be made higher than the domestic rates by amount equal to the wharfage charge. This finding is not to be construed as condemning the practice of the carriers of absorbing drayage charges in lieu of switching. Reasonableness of the rates was not an issue and the findings herein are not to be construed as authorizing the carriers to increase their present revenues, rather, the rates should be so readjusted as to preserve existing revenues. Application of Rates on Cotton to Gulf Ports, 100 I. C. C. 159.

III. RULES AND REGULATIONS.

(a) Complainant alleged defendants refusal to absorb out of the applicable rates the entire compress charges of compress companies on any quantity shipments of cotton forwarded from points in Texas, Louisiana, Arkansas and Oklahoma to interstate destinations between August and December, 1920, resulted in unreasonable charges. Prior to Nov. 1, 1918, the charge for compressing in transit was 10c increased on that date to 15c. On August 20, 1920, this charge was advanced to 20c but defendant's tariffs did not provide for the absorption of the additional 5c. Prior to August 26, 1920, the compress charge on cotton moving intrastate between points in Texas was the same as that applicable on interstate traffic. On that date the compress charge on cotton moving intrastate was increased to 20c and the carriers under appropriate tariff authority absorbed the full amount thereof except when the rates were less than 81.5c, in which cases the absorption was limited to the amount that the rates exceeded 61.5c. HELD, failure of defendants to provide for the absorption out of the applicable rates of the entire 20c compress charge except where the rates were less than 81.5c in which cases the absorption out should be the amount which the rates exceeded 61.5c on shipments that moved during the period in question was unreasonable, reparation awarded. Houston Cotton Exchange v. A. & R. R. R., 92 I. C. C. 220.

CONCENTRATING RATES AND PRIVILEGES.

See Compress Companies and Charges; Facilities and Privileges §4; Penalty Charges; Through Routes and Joint Rates; Transit.

(a) Shipments moved into concentration point over M., K. & T., and while held there the outbound service over that line was discontinued under an arrangement whereby Ft. Smith & Western handled outbound traffic for both roads.

Upon advice from M., K. & T., complainant tendered shipments to Ft. S. & W. for movement outbound without apprising that carrier that they had moved inbound over M., K. & T., or that they be routed in connection with that line. Shipments were forwarded outbound in connection with lines other than M., K. & T. and claims for refund of inbound charges were rejected. FOUND: Since tariffs of both these carriers permitted concentration and reshipment under joint rates from origin of shipments to final destination, conditioned upon both inbound and outbound movements being over same line, it can not be held that shipments were overcharged. Anderson, Clayton & Co. v. Director General, 91 I. C. C. 233.

(b) Failure of carriers to publish either concentration rates or stopping in transit to complete loading arrangements in connection with wool and mohair shipments found unjust and unreasonable. Such arrangements are desirable, as they are conducive to heavier loading and result in more economical transportation. Moreover, small growers will be able to secure benefit of c. l. rates by being permitted to consolidate their l. c. l. shipments into carloads. Reasonable charge per car for each stop prescribed. Wool Rates Investigation, 1923, 91 I. C. C. 235, 281.

(c) Rules and regulations of St. L. S. F. Ry. Co., governing concentration and compression of cotton at Jonesboro, Ark., and at Hayti, Steele. Caruthersville, and Malden, Mo., whereby such points are denied right to draw or "float" uncompressed cotton from points at which compresses are located while granting such privilege to Blytheville and West Memphis, Ark., and Memphis, Tenn., found unduly prejudicial to former points and preferential of latter. Compression, Concentration,and Storage of Cotton, 91 I. C. C. 472.

(d) Proposal to restrict territory of origin in rules governing stop-off in transit of lumber westbound at Black Rock, Buffalo, and North Tonawanda, N. Y., while no similar restriction is proposed at Falconer and Jamestown, N. Y., and Corry, Pa., competing points, found not justified. Proposal is induced by fear of unsatisfactory divisional arrangements with connecting carriers, but this is not recognized as sufficient justification for increased rates. Moreover, there is no warrant for extending to Buffalo, Black Rock, and North Tonawanda different treatment from that accorded Falconer, Jamestown, and Cory. Transit Privileges on Lumber at Buffalo, 92 I. C. C. 181.

CONCURRENCES

See Tap Lines §10; Tariffs §10; Through Routes and Joint Rates §2, §20½.

CONFISCATION OF FUEL

See Cars and Car Supply §29½; Transportation §3½.

CONFLICT IN RATES

See Bills of Lading §9 (1), §9 (3); Routing and Misrouting §3, §3½; Tariffs §11; Through Routes and Joint Rates §18, §21.

CONSIGNOR AND CONSIGNEE

See Demurrage §4; Discrimination §6; Transportation §6; §7½.

(a) The consignee in contracts for transportation of goods by common carrier is presumptively owner of the goods. American Ry. Express Co. v. Mohawk Dairy Co. (Mass., 1924) 144 N. E. 721.

ALL OTHER CITATIONS

Republic Coal Co. v C. St. P. M. & O. Ry. Co., 85 I. C. C. 331; Smokeless Fuel Co. v. N. & W. Ry. Co., 85 I. C. C. 395; Person v. I. C. R. R. Co., 88 I. C. C. 21; Missouri Portland Cement Co. v. Director General, as Agent, 88 I. C. C. 492.

CONSOLIDATION OF CARRIERS

See Finance Dockets III.

CONSTITUTIONAL LAW

See Act to Regulate Commerce I; Commodities Clause I; Crimes §1; Interstate Commerce §4, §5; Long and Short Hauls §1, §3; Loss and Damage §1; Pipe

Lines §2; Special Contracts §1; State Rates and Regulations.

(a) Statute of limitations, requiring existing actions to be brought within prescribed time from date when cause of action arose, is constitutional and within legislative powers, if reasonable time thereafter be given for commencement of suits, cause of which had accrued when law became effective. Philadelphia B. & W. R. Co. v. Quaker City Flour Mills Co., (Pa., 1925) 127 Atl. 845.

CONTRACTS

See Cars and Car Supply IV; Exclusive Contracts; Special Contracts; Tariffs IV.

(a) No implied contract binding defendant carrier could be inferred from dealings between the shipper and the federal Railroad Administration. Pennsylvania R. Co. v. S. M. Hamilton Coal Co. (Md. 1923) 125 A. 405.

(b) Shipper's claim against carrier for breach of contract to collect freight from consignee and to refund it to shipper, even if such contract is an illegal discrimination, HELD not to arise out of a "civil wrong," under Interstate Commerce Act, § 8 (Comp. St. § 8572), on which suit must be brought within two years, under sections 2, 9 (Comp. St. §§ 8564, 8573). Pennslyvania R. Co. v. Chesapeake & Ohio Coal & Coke Co., 297 Fed. 249.

CONTROL AND REGULATION

See Absorption of Charges III; Accounting I; Adjacent Foreign Country; Advanced Rates I; Allowances I; Bills of Lading I; Blanket Rates I; Branch Lines III; Bridges and Tolls III; Cars and Car Supply I; Compress Companies and Charges; Demurrage I; Differentials I; Discrimination I; Divisions I; Electric Lines I; Equalization of Rates I; Export Rates and Facilities I; Express Companies I; Finance Dockets I; Foreign Commerce I; Import Traffic III; Interstate Commerce II; Lighterage I; Long and Short Hauls I; Overcharges; Passenger Fares and Facilities I, §½; Pipe Lines I; Proportional Rates V; Reasonableness of Rates I; Reduced Rates I; Refrigeration I; Released Rates I; Routing and Misrouting I; Sleeping Car Companies; Special Contracts; Storage I; Substitution of Tonnage; Switch Tracks and Switching I; Tap Lines I; Tariffs I; Telephone and Telegraph Companies III; Terminal Facilities I; Through Routes and Joint Rates I; Transportation III; Undercharges I; Water Carriers I; Weights and Weighing I.

COST OF SERVICE

See Finance Dockets §7; Rail and Water Rates (d) (e).

COURTS

I. ACTIONS.
- §1. In general.
- §2. Defenses.
- §3. Mandamus.
- §4. New trial.
- §5. Suits against Commission.

II. APPEAL.
- §6. In general.

III. UNITED STATES COURTS.
- §6½. Jurisdiction in general.
- §7. Concurrent jurisdiction.
- §8. Exclusive jurisdiction.
- §9. Original jurisdiction.

IV. UNITED STATES SUPREME COURT.
- §10. In general.

V. STATE COURTS.
- §11. In general.

VI. PRACTICE AND EVIDENCE.
- §12. In general.
- §12½ Parties.
- §13. Pleading.
- §14. Injunctions.
- §15. Limitation of actions.
- §16. War legislation and venue.
- §16a. Enforcement of Commission's orders.
- §17. Election of remedies.

CROSS REFERENCES

See Actions at Law; Allowances §14½; Cars and Car Supply §33; Discrimination §16; Ex-

press Companies §1½; Finance Dockets VIII; Freight Charges; Interstate Commerce Commission II; §2 §3, VII, §17; Loss and Damage; Reparation §23; Special Contracts IV; Tariffs §20; Undercharges §1½; War Legislation.

I. ACTIONS.

§1. In General.

See Actions at Law; Discrimination §16; Reparation §23.

(a) Whatever may be the rights or equities of the consignor and the consignees arising out of their contract as to variations in their agreed price for the commodity, dependent upon changes in the transportation rates, they present no question that is cognizable by this Commission, dealing, as it does, with the legal public obligations of the carrier, which is a stranger to the private contract between consignor and consignee. Crawford County Commissioners v. St. L. S. F. Ry., 93 I. C. C. 502, 505.

(b) It is not within commission's province to pass upon question of whether a court erred in its determination. American Hominy Co. v. Director General, 93 I. C. C. 256, 259.

(c) Upon contentions that (1) the building of mine lead track was beyond scope of powers granted to complainant by its Illinois charter and that (2) an order requiring defendant to install switch connection would require extension of defendant's line without its consent and be without due process. HELD, these contentions are primarily matters for judicial interpretation and need not be further considered here. Dering Coal Co. v. C., C., C. & St. L., 96 I. C. C. 143, 151.

(d) Whether complainant was a lessee during the period of the stays in court proceedings is a question for the courts. If, under the laws of the State of New York, he was a tenant, he was entitled to the completion of the transportation service by delivery of the cars consigned to him. Gallup v. N. Y., N. H. & H. R. R. Co., 98 I. C. C. 453, 455.

(e) U. S. District Court of Indiana restrained the Public Service Commission of Indiana from interfering with intrastate rates prescribed in 60 I. C. C. 337. Upon vacation by commission of its order, the court vacated its injunction with proviso that State commission might not pass on the reasonableness of intrastate rates during effective period of order, without prior consideration of the specific rates by this commission. Upon such consideration, certain exceptions to order made. Indiana Rates, Fares and Charges, 100 I. C. C. 169, 170.

(f) Defendant recovered judgment in Indiana courts for demurrage charges and appeal is pending. If the average-agreement plan was in operation during period in question, the charges assessed were straight overcharges and that issue now before the Indiana courts is not before the commission. Acme Coal Co. v. C. C. C. & St. L., 101 I. C. C. 79, 80.

II. APPEAL.

§6. In General.

(a) Appellee may not attack a decree, with a view either to enlarging his own rights thereunder or of lessening appellant's rights. United States v. American Ry. Express Co., 44 Sup. Ct. 560. Southeastern Express Co. v. Same, 44 Sup. Ct. 560. Southern Traffic League v. Same, 44 Sup. Ct. 560.

(b) Appellee may, without taking a cross-appeal, urge in support of a decree any matter appearing in the record, though his argument involves an attack on reasoning of lower court or an insistence on matters overlooked or ignored by it. United States v. American Ry. Express Co., 44 Sup. Ct. 560. Southeastern Express Co. v. Same, 44 Sup. Ct. 560. Southern Traffic League v. Same Sup. Ct. 560.

(c) On appeal from decree holding appellants in contempt for violation of decree, the Supreme Court, in absence of cross-appeal, will not consider question of appellees' right to amendment of original decree, so as to impose additional condition. Terminal R. Ass'n of St. Louis v. United States, 45 Sup. Ct. 5.

III. UNITED STATES COURTS.

§6½. Jurisdiction in general.

See Through Routes and Joint Rates §1 (f).

(a) An order of the Railroad and Warehouse Commission fixing street railway fares ends the legislative function of rate making, and the hearing

provided by Laws Minn. 1921, c. 278, § 10, is not a continuation of the legislative rate-making process, nor does the remedy provided by such statute preclude resort to the federal courts. Duluth St. Ry. Co. v. Railroad and Warehouse Commission, 4 Fed. (2d) 543.

(b) Under Commerce Court Act June 18, 1910, c. 309, § 1, and Act. Oct. 22, 1913 (Comp. St. §§ 992, 994), abolishing that court and transferring its jurisdiction to the District Courts a District Court has jurisdiction of a suit to set aside the final valuation of the property of a railroad company by the Interstate Commerce Commission pursuant to Interstate Commerce Act, §19a, as amended (Comp. St. Ann. Supp. 1923, §8591). Los Angeles & S. L. R. Co. v. United States 4 Fed. (2d) 736.

(c) Court had jurisdiction of railroad's action for certain fixed storage charges claimed to be due under uniform interstate tariff filed with Interstate Commerce Commission involving no question of fact, either in aid of construction or in other respect, or question of administrative discretion, notwithstanding absence of previous resort to Interstate Commerce Commission. Payne v. Rodgers, 4 Fed. (2d) 827; Rodgers v. Payne, 4 Fed. (2d) 827.

IV. UNITED STATES SUPREME COURT.

§10. In general.

(a) Under Expedition Act Feb. 11, 1903 (Comp. St. §§ 8824, 8825), a justice of the United States Supreme Court could allow appeal from decree of District Court in contempt proceedings, and on appropriate security grant supersedeas, notwithstanding Rules of Supreme Court, No. 36, authorizing allowance of appeal and granting supersedeas in cases provided for in Judicial Code, §§ 238, 252 (Comp. St. §§ 1215, 1229), in view of Rev. St. §§ 999, 1012 (Comp. St. §§ 1659, 1673), and appeal is not limited to question of jurisdiction. Terminal R. Ass'n of St. Louis v. United States, 45 Sup. Ct. 5.

(b) Jurisdiction of Supreme Court to review judgment of District Court depends on presence of some substantial constitutional question, and a conviction for violation of priority order of Interstate Commerce Commission under Transportation Act 1920, tit. 4, §402 (15), being Comp. St. Ann, Supp. 1923, §8563 (15), cannot be taken to the Supreme Court on writ of error, all constitutional questions having been resolved in favor of the validity of the statute by previous decisions. Avent v. United States, 45 Sup. Ct. 34.

(c) Determination of the state Supreme Court that respondents in mandamus to compel railroads to eliminate grade crossings are not entitled to jury trial will be accepted by the federal Supreme Court as a correct determination of the local law. Southern Ry. Co. v. City of Durham N. C. 45 Sup. Ct. 51.

(d) The United States Supreme Court, in affirming decree enjoining enforcement of state statute, because violative of federal Constitution, will not pass on question whether statute violates state Constitution, in absence of decision of state Supreme Court thereon. Michigan Public Utilities Commission v. Duke, 45 Sup. Ct. 191.

(e) United States Supreme Court having jurisdiction to review judgment of conviction in District Court on writ of error under Judicial Code, §238 (Comp. St. §1215), because constitutional question is involved, must decide other questions arising on the record. Brooks v. United States, 45 Sup. Ct. 345.

(f) The United States Supreme Court has jurisdiction to review on certiorari, at instance of the United States, judgment of Circuit Court of Appeals reversing judgment of conviction in a criminal case under Judicial Code, §240 (Comp. St. §1217), providing that any "civil or criminal" case may be certified to Supreme Court "by certiorari or otherwise upon the petition of any party thereto." U. S. v. Gulf Refining Co. 45 Sup. Ct. 597.

V. STATE COURTS.

See Actions at Law; Discrimination §16; Interstate Commerce Commission §2; Loss and Damage §5; Overcharges; State Rates and Regulations; Undercharges §7½; War Legislation.

§11. In General.

(a) Under Federal Control Act 1918, §10 (U. S. Comp. St. 1918, U. S. Comp. St. Ann. Supp. 1919, §3115¾j) and Transportation Act Feb. 28, 1920, §§206

(a), 206 (f), being Comp. St. Ann. Supp. 1923, ..10071¼cc, and presidential proclamation of April 11, 1918 (Comp. St. §1974a), state courts have jurisdiction of action against Director General to recover overcharges on intrastate shipments. Gorham Bros. Co. v. Ann Arbor R. Co. (Mich., 1924) 200 N. W. 287.

VI. PRACTICE AND EVIDENCE.

See Evidence; Procedure Before Commission; Reparation §23.

§12. In General.

(a) American courts cannot give judgment in sterling currency. Pennsylvania R. Co. v. Cameron (Pa., 1924) 124 Atl. 638.

(b) Meaning and application of general language in decree rendered in contempt proceeding is to be limited by specification of details in same section of decree. Terminal R. Ass'n of St. Louis v. United States, 45 Sup. Ct. 5.

(c) Where decree rendered in suit by the United States against the Terminal Railroad Association, its subsidiary and proprietary railroads, for violation of Sherman Anti-Trust Act (Comp. St. §§ 8820-8823, 8827-8830), did not purport to regulate rates, or prescribe divisions of joint rates, or fix liability for transfer charges, and expressly provided that decree should not affect Interstate Commerce Commission's power to determine rates, the refusal of certain railroads entering from the east to bear transfer charges on west-bound through freight held not to constitute contempt. Terminal R. Assn. of St. Louis v. United States, 45 Sup. Ct. 5.

(d) Defendants will not be held in contempt for violating decree, in absence of showing that injury has resulted to petitioners, or that they are entitled to relief. Terminal R. Ass'n of St. Louis v. United States, 45 Sup. Ct. 5.

(e) In contempt proceedings for its enforcement, a decree will not be expanded by implication or intendment beyond the meaning of its terms, when read in the light of the issues and the purpose for which the suit was brought, and the facts found must constitute a plain violation of the decree so read. Terminal R. Ass'n. of St. Louis v. United States, 45 Sup. Ct. 5.

(f) Contempt proceeding, based on violation of decree and instituted to enforce rights claimed by parties thereunder, and not to vindicate court's authority is a civil and remedial, and not a criminal, proceeding. Terminal R. Ass'n of St. Louis v. United States, 45 Sup. Ct. 5.

(g) In carrier's action to recover demurrage, reasonableness of time allowed for loading and unloading cars, and charge made for detaining them beyond that time, was not required to be passed on by Appellate Court, where no claim was made in brief that either time or charge was unreasonable. Davis, Director General of Railroads v. Steele (Ind., 1925) 146 N. E. 425.

(h) In action against Director General of Railroads to recover demurrage, war tax, and reconsignment charges which plaintiff was required to pay because of transportation of car to point other than that stated in the bill of lading, testimony that the demurrage, reconsignment charges, and war tax were paid to the joint agent of railroads at a certain point held admissible, since payment to the joint agent was in effect payment to the Director General. Davis, Director General of Railroads, v. Stamford Mill & Elevator Co., (Tex. 1924) 260 S. W. 1081.

§14. Injunctions.

See Injunctions.

(a) District Court had jurisdiction of railroad's suit to enjoin enforcement of order made by division of Interstate Commerce Commission relating to divisions of interstate joint rates, under Interstate Commerce Act, § 15 (6), as amended by Transportation Act 1920, § 418 (Comp. St. Ann. Supp. 1923, § 8583), despite railroad's failure to apply to the full Commission for a rehearing; the question of whether relief should be denied until all possible administrative remedies have been exhausted being a matter of judicial discretion. United States v. Abilene & S. Ry. Co., 44 Sup. Ct. 565.

(b) A suit for injunction under Transportation Act, §402 (Comp. St. Ann. Supp. 1923, §8563), to restrain the unlawful construction of an extension, is not one of a local nature, which must be brought in the district where the proposed track is situated. Lancaster v. Gulf C. & S. F. Ry. Co. (Tex. 1924) 298 Fed. 488.

(c) Where the state statutes do not provide for a judicial review of orders of the state Railroad Commission, an order made without any substantial evidence on which to base it is arbitrary, and is not due process of law, and its enforcement may be enjoined by any court of equity of competent jurisdiction. Illinois Cent. R. Co. v. Railroad Commission of Kentucky. 1 Fed. (2d) 805.

(d) Where an order of a state Railroad Commission was temporarily enjoined to enable the commission to reconsider it, the commission HELD to have jurisdiction to hold a further hearing. Illinois Cent. R. Co. v. Railroad Commission of Kentucky 1 Fed. (2d) 805.

(e) After a hearing before three judges under section 266, Judicial Code (Comp. St. §1243), they may delegate to the local judge the issue of injunction after conditions are performed, but they will not decide a motion to dismiss the bill. Illinois Cent. R. Co. v. Railroad Commission of Kentucky. 1 Fed. (2d) 805.

(f) A federal court is not without jurisdiction of a suit to enjoin enforcement of an order of a state Railroad Commission reducing rates on complaint of a shipper, because the difference between the two rates as to that one shipper may not amount to $3,000, where the aggregate difference on all shipments affected would equal that amount within a short time. Illinois Cent. R. Co. v. Railroad Commission of Kentucky 1 Fed. (2d) 805.

(g) A suit to enjoin an order fixing street railroad fares is not premature because no test period had intervened since the order fixing the fares. Duluth St. Ry. Co. v. Railroad and Warehouse Commission, 4 Fed. (2d) 543.

(h) Neither the court nor the special master in suit to enjoin order of Railroad and Warehouse Commission fixing street car fares can fix rates, their function being to determine whether the rates fixed by the legislative authorities are confiscatory or take private property without due process. Duluth St. Ry. Co. v. Railroad and Warehouse Commission, 4 Fed. (2d) 543.

(i) Generally equity will not interfere to prevent the enforcement of a criminal statute even though unconstitutional, but will interfere to prevent prosecution under unconstitutional statute, when necessary to effectually protect property rights. Hygrade Provision Co. v. Sherman 45 Sup. Ct. 141; Lewis & Fox Co. v. Same, 45 Sup. Ct. 141; Satz v. Same, 45 Sup. Ct. 141.

§15. Limitation of Actions.

(a) If steps to make injunctive order of federal court against interference with establishment of new telephone rates effective are not taken, old rates are effective, and federal court will not restrain prosecution in state court of action by telephone user to recover excessive payment made under protest. Pacific Telephone & Telegraph Co. v. Agnew, 2 Fed. (2d) 155.

(b) Order of federal court, enjoining interference with telephone company in putting into effect certain rates, did not have the effect of increasing rates, until Rem. Comp. Stat. Wash. 1922, §10376, had been complied with by filing schedule, in view of section 10372. Pacific Telephone & Telegraph Co. v. Agnew 2 Fed. (2d) 155.

§16a. Enforcement of Commission's Orders.

(a) While rulings of Interstate Commerce Commission are not binding on Supreme Court, they are particularly persuasive, where the matter of a connection between coal company and railroad is bound up with whole subject of interstate traffic, of which such commission has jurisdiction. Cleveland C. C. & St. L. Ry. Co. v. Commerce Commission ex rel. J. K. Dering Coal Co., (Ill., 1925) 146 N. E. 606.

CRATE ICE

See Refrigeration; Weights and Weighing §5 (f) (h).

CREDIT ACCOUNT

See Crimes §3; Discrimination §5; Evidence §19.

ALL CITATIONS

Utah-Gillsonite Co. v. A. T. & S. F. Ry. Co., 85 I. C. C. 557.

CRIMES

I. THE ELKINS ACT.
§1. Constitutionality.
§2. Construction.

II. DISCRIMINATION.
§2½. In general.
§3. Credit account.

III. FREE TRANSPORTATION.
§4. In general.

IV. MISBILLING.
§5. In general.

V. OVERCHARGES.
§5½. False claims.
§6. In general.

VI. REBATING.
A. Elements of offense.
§7. In general.
§8. Intent and knowledge.
§9. Payment.
§10. Posting of tariff.
§11. Route and "common arrangement."
§12. Transportation.
B. Number of offenses.
§13. Payment.
§14. Shipments.
C. Liability.
§15. Act of agent.
§16. Connecting carrier.
§16½. Giver of rebate.

VII. INDICTMENT.
A. Charging Elements of Offense.
§17. In general.
§18. Concession or rebate.
§19. Description of device.
§20. Language of statute.
§21. Payment.
§22. Posting or filing of tariff.
§23. Route.
§23½. Misrepresentation.
B. Joinder of Defendants.
§24. Principal and agents.
C. Proof and Variance.
§25. In general.
D. Venue.
§26. In general.

VIII. DEFENSES.
§26½. In general.
§27. Former jeopardy.
§28. Statute of limitations.
§28½. Mistake.

IX. PROCEDURE.
§28¾. In general.
§29. Province of court.
§30. Province of jury.
§31. Extent of verdict.

X. PENALTIES.
§32. Excessive fine.

XI. STATE REGULATION.
§33. In general.

XII. ALLIED OFFENSES.
§34. In general.
§35. False accounts.
§36. Theft.

XIII. APPEAL FROM CONVICTION.
§37. In general.

CROSS REFERENCES

See Allowances IV, VII, VIII, §8 (7); Credit Account; Divisions IV; Express Companies IX; Loss and Damage IV; Overcharges; Special Contracts §3; Tay Lines §7.

I. THE ELKINS ACT.

See Elkins Act.

§1. Constitutionality.

See Constitutional Law.

(a) Congress, in the exercise of police power, can regulate interstate commerce to the extent of forbidding and punishing use of such commerce as agency to promote immorality, dishonesty, or the spread of any evil or harm from one state to another. Brooks v. United States, 45 Sup. Ct. 345.

IV. MISBILLING.

See Classification §8.

§5. In General.

(a) Any willful misstatement by the shipper of the value of his goods forwarded under actual-value rates is a misbilling which may subject the shipper to prosecution under the criminal provisions of the statutes. Crown Overall Mfg. Co. v. Director General, 100 I. C. C. 471, 475.

VI. REBATING.

A. Elements of offense.

§7. In general.

See Allowances VII; Crimes §18; Discrimination §5; Evidence §48; Water Carriers II.

(a) In prosecution of refining company under Elkins Act Feb. 19, 1903, §1, as amended by Act June 29, 1906, §2 (Comp. St. §8597), for receiving concessions and discrimination in rates on gasoline, in which was shown that the rate charged was that on unrefined naphtha, evidence, including evidence as to reduction of specific gravity and vapor tension under regulations of Interstate Commerce Commission, authorized by Transportation of Explosives Act March 4, 1909, §233 (Comp. St. §10403) amending Act May 30, 1908, §2 held insufficient to prove that the product shipped was gasoline and not unrefined naphtha. United States v. Gulf Refining Co., 45 Sup. Ct. 597.

§8. Intent and Knowledge.

(a) Railroad does not "knowingly and willfully" violate Twenty-Eight Hour Law (Comp. St. §§8651-8654), unless, with knowledge that statute is about to be violated, it purposely and intentionally disregards statute. United States v. Southern Ry. Co. 1 Fed. (2d) 607.

C. Liability.

§15. Act of Agent.

See Agency.

(a) Comp. St. §§8564, 8574, 8597, prohibiting preferences and making it an offense for any carrier, or any of its officers or employees, to willfully grant such performances which have for their object the prevention of discrimination by a common carrier between its patrons, and the offenses denounced can be committed only by the carrier, and in so far as the statute expressly includes other persons it is only as aiders, abettors, accomplices, or accessories of the carrier, while acting within the scope of their employment. United States v. Peterson 1 Fed. (2d) 1018.

VII. INDICTMENT.

A. Charging Elements of Offense.

§17. In general.

(a) In prosecution for violation of National Motor Vehicle Theft Act Oct. 29, 1919, §3 (Comp. St. Ann. Supp. 1923, §10418d), indictment charging that defendant transported in interstate commerce described automobile which "had been stolen from" named person, "and that the defendant did not have the consent of the owner to transport it * * * all of which he, the said R. (defendant), then and there well knew," HELD sufficent to charge that defendant knew that automobile had been stolen. Brooks v. United States, 45 Sup. Ct. 345.

(b) Where defendant was tried under two indictments, each of which contained two counts, and was convicted on both counts of each indictment, and was given concurrent sentences on each count for same period, and where convictions on the first counts in each indictment could be sustained, error in charging as to second counts was not ground for dismissal. Brooks v. United States, 45 Sup. Ct. 345.

§18. Concession or rebate.

(a) "Concession" means a voluntary grant or yielding to a claim or demand, and cannot be applied to something obtained through deception or trickery. United States v. P. Koening Coal Co. 1 Fed. (2d) 738.

(b) Obtaining the furnishing of a car for, and the transportation by a carrier of, a carload of coal, in violation of Service Order No. 23 of the Interstate Commerce Commission of July 25, 1922, by means of an order for the coal ostensibly for hospital purposes, which was entitled to preference, but which coal was diverted to other uses, not preferential, HELD not the acceptance or receiving of a "concession," made an offense by Elkins Act, §1, as amended by Hepburn Act, §2 (Comp. St. §8597 (1)) United States v. P. Koening Coal Co. 1 Fed. (2d) 738.

D. Venue.

§26. In general.

(a) The venue in a prosecution under Laws 1923, c. 120 (G. S. 1923, §3907), forbidding one engaged in the business of buying milk, cream, or butterfat for manufacture or for sale from discriminating between different localities by purchasing at a higher price in one locality than he pays in another, due allowance being made for the cost of transportation to the place of manufacture or of sale, may be laid in the county where the lower price is paid. State v. Fairmont Creamery Co. (Minn., 1925) 202 N. W. 714.

VIII. DEFENSES

See Courts §2.

§26½. In General.

(a) Before a man can be punished for a crime, his case must be plainly and unmistakably within the statute. United States v. Peterson 1 Fed. (2d) 1018.

IX. PROCEDURE.

See Procedure Before Commission.

§28¾. In general.

(a) In prosecution of refining company under Elkins Act Feb. 19, 1903, §1, as amended by Act June 29, 1906, §2 (Comp. St. §8597), for receiving concessions and discrimination in rates, based on payment of rate on unrefined naphtha instead of gasoline, the government had the burden of proving beyond a reasonable doubt that the property shipped was gasoline and not unrefined naphtha. U. S. v. Gulf Refining Co., 45 Sup. Ct. 597.

XI. STATE REGULATION.

See State Rates and Regulations.

§33. In general.

(a) Laws N. Y. 1922, cc. 580, 581, making it a crime to sell or expose for sale, with intent to defraud, meat or meat preparation falsely represented to be "kosher," or product "sanctioned by orthodox Hebrew religion requirements," HELD not violative of due process or equal protection clause of Fourteenth Amendment, even though word "kosher" and phrase "orthodox Hebrew religious requirements" are indefinite and uncertain, in view of the intent to defraud required. Hygrade Provision Co. v. Sherman 45 Sup. Ct. 141; Lewis & Fox Co. v. Same, 45 Sup. Ct. 141. Satz v. Same, 45 Sup. Ct. 141.

XII. ALLIED OFFENSES.

§34. In General.

See Anti Trust Laws.

(a) Transportation of an automobile, knowing the same to have been stolen, from a point in one state to a point in the same state, but moving in its course through another state, is a transportation in "interstate commerce," and constitutes an offense, under National Motor Vehicle Theft Act Oct. 29, 1919, §3 (Comp. St. Ann. Supp. 1923, §10418d). United States v. Winkler, 299 Fed. 832.

(b) An employee of an interstate railroad company, who embezzled passenger tickets from the company and sold them at reduced rates, held not to have committed an offense under the Interstate Commerce Act (Comp. St. §8574), since that statute applies only to acts done within the scope of his employment and for which the company would be responsible. United States v. Peterson 1 Fed. (2d) 1018.

(c) In prosecution for conspiracy to use deadly weapons against employees of Bureau of Animal Industry of United States Department of Agriculture, with intent to prevent them from discharging their duties of supervising the dipping of cattle, in order to prevent spread of diseases and to eradicate cattle fever tick, in violation of Criminal Code, § 62 (Comp. St. § 10230), admission of contract between state veterinarian and Chief of Bureau of Animal Industry, if error, was harmless. Thornton v. United States, 2 Fed. (2d) 561.

(d) In prosecution for conspiracy to use deadly weapons against employees of Bureau of Animal Industry of United States Department of Agriculture, with intent to prevent them from discharging their duties of supervising the dipping of cattle, in order to prevent spread of diseases and to eradicate cattle fever tick, in violation of Criminal Code, §62 (Comp. St. § 10230), contract between state veterinarian and Chief of Bureau of Animal Industry HELD admissible to show that federal employees were present by authority of the state, and were not merely intruders. Thornton v. United States, 2 Fed. (2d) 561.

(e) Act Cong. June 29, 1906 §1 U. S. Comp. St. §8651), prohibiting confinement of live stock by carrier for more than 28 consecutive hours, without unloading, rest, water, and feed, except on owner's request, when period of confinement may be extended to 36 hours, prescribes pecuniary penalty for violation recoverable only by the United States. Hogg v. Louisville & N. R. Co. (Ga. 1925) 127 S. E. 830.

(f) National Motor Vehicle Theft Act Oct. 29, 1919 (Comp. St. Ann Supp. 1923, §§ 10418b-10418f), prohibiting in section 3 (Comp. St. Ann. Supp. 1923, § 10418d) the transportation in interstate or foreign commerce of motor vehicle with knowledge that it has been stolen, and in section 4 (Comp. St. Ann. Supp. 1923, § 10418e), the receipt, concealment,

or sale of motor vehicle moving in interstate commerce with knowledge that it has been stolen, HELD valid, being within the police power. Brooks v. United States, 45 Sup. Ct. 345.

(g) Congress may prohibit importation of opium in any form and as a measure reasonably calculated to aid in enforcement of the prohibition may make its concealment with knowledge of its unlawful importation of crime. Yee Hem v. U. S., 45 Sup. Ct. 470.

(h) Act Feb. 9, 1909, as amended by Act Jan. 17, 1914, §§2, 3 (Comp. St. §§8801, 8801a), declaring that smoking opium found within the country more than four years after passage of the act should be presumed to have been unlawfully imported, and that possession of such opium should create a presumption of guilt, in absence of satisfactory explanation, HELD not so illogical or unreasonable as to be violative of due process or compulsory self-incrimination clause of Const. Amend. 5. Yee Hem v. U. S., 45 Sup. Ct. 470.

§35. False Accounts.

(a) An indictment under Interstate Commerce Act, §20, subsec. 7 (Comp. St. §8592), for falsifying the records of an interstate carrier, need not allege that such records were prescribed by the Interstate Commerce Commission. United States v. Tippitt, 298 Fed. 495.

(b) Interstate Commerce Act §20, subsec. 7 (Comp. St. §8592), making it a criminal offense to falsify the records of an interstate carrier, applies to express companies. United States v. Tippitt, 298 Fed. 495.

(c) Counts in an indictment charging that defendant, as an employee of an interstate express company, failed to forward to another employee, as was his duty, certain on hand cards, covering deliveries of C. O. D. shipments, which were to become part of the permanent records of the company, HELD not to charge the making of a false "entry," nor to allege a "means or device for falsifying a record," within the meaning of Interstate Commerce Act, §20, subsec. 7 (Comp. St. §8592). United States v. Tippitt, 298 Fed. 495.

XIII. APPEAL FROM CONVICTION.

§37. In general.

(a) On writ of error from Supreme Court to review conviction for violation of Interstate Commerce Commission's order prescribing preferences for shipments of coal under Transportation Act 1920, tit. 4, § 402 (15), being Comp. St. Ann. Supp. 1923, § 8563 (15), the Supreme Court must assume that an emergency contemplated by the statute existed as found by the Commission and alleged in the indictment. Avent v. United States, 45 Sup. Ct. 34.

(b) One convicted of violation of Interstate Commerce Commission's order under Transportation Act (Comp. St. Ann. Supp. 1923, §10071¼ et seq.) for preference in movement of traffic cannot urge that order was invalid as granting preference to ports of one state over those of another, such matter being of no concern to him. Avent v. United States, 45 Sup. Ct. 34.

CUMMINS AMENDMENT

See Loss and Damage I, §2½; Released Rates.

CUSTOMS

See Adjacent Foreign Country (a); Blanket Rates §5.

(a) Proposed charge of 25 cents per shipment for opening, recoopering, and rewrapping packages for customs examination at the border ports on import shipments by express from Canada to points in the United States found not justified. This charge would not apply on shipments where the American Express Co. acts as the broker and attends clearance details, nor on shipments of milk or cream. The suspended schedules ordered canceled without prejudice to the filing of new schedules which will provide that a charge of 12 cents per shipment be assessed on shipments when one or more packages are actually opened by order of the customs and will not apply on any shipments where the American Express Co. or other concern or individual acts as broker for the importer and in that capacity attends to the physical work above described. Charge for Opening, Recoopering, and Rewrapping Packages for Customs Examination, 98 I. C. C. 284.

(b) Complainant attacked storage charges assessed at El Paso, Tex., on a

car of whiskey shipped May 21, 1920 from Louisville Ky., to El Paso, Tex. Shipment was consigned to shippers order notify Botica de Guadalupe, Juarez, Mex., care of collector of customs El Paso. The consignee was notified on May 31. The whiskey was intended for persons in Juarez who failed to apprise the proprietors of the drug store Botica de Guadalupe that it was coming consigned to them. On June 9 the shipment was unloaded in order to release needed equipment and the whiskey was placed in a bonded warehouse at El Paso. On August 19, 1920 the United States attorney for the western district of Texas filed a libel against the shipment, alleging that the whiskey was intended for beverages purposes contrary to law. The property was attacked by the U. S. marshall and by command of the U. S. Court the collector of customs was notified to detain the shipment in his custody. On Feb. 16, 1922 the agent of defendants at El Paso served notice of lien on the goods for freight, war tax and storage. On June 14, 1923 the court proceedings were dismissed. The shipment was returned to Louisville after storage charges of $4,568 had been paid by complainant on the basis prescribed in Fairbanks I. C. C. 4. This tariff provided that where carload shipments were stored by carriers to release needed equipement, storage charges would be at the same rate as demurrage charges. Rule 8 of the tariff provided that no demurrage charges should be collected under the rules for detention of cars due to "delay by U. S. Customs. Such additional free time shall be allowed as has been lost through such delay." It appears that detention by the collector of customs for purposes other than those incident to customs inspection and clearance for export occasioned delay in the further movement of this shipment during the period for which these storage charges were assessed. The terms of rule 8 of the tariff are sufficiently broad to preclude assessment of charges under the circumstances. HELD, storage charges inapplicable, overcharged, to extent of $4,568 with interest. complaint dismissed. Sunny Brook Distillery Co. v. A. T. & S. F. Ry. 107 I. C. C. 77.

DEMURRAGE

I. CONTROL AND REGULATION.

§1. Jurisdiction of Commission.

II. RIGHT TO ASSESS.

§2. In general.
§2¼. Commandeering of vessels, or customs delay.
§2½. Dangerous commodity.
§3. Discrimination.
§3½. Embargo as reason.
§3½a. Empty cars.
§4. Failure of consignee to accept.
§5. Fault of shipper.
§5½. Heater cars.
§5¾. Diversion orders.
§6. One shipment in two cars.
§7. Order-notify shipments.
§7½. Penalty charges.
§8. Pending dispute or demanding charges.
§8½. Pooled shipments.
§9. Prior to actual delivery.
§9½. Refused shipments.
§10. Private and trap cars.
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III. PUBLICATION AND TARIFFS.

§10¾. In general.
§11. Obligation to file.

IV. DEMURRAGE RULES.

§12. Construction in general.
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§16. Placement or arrival notices.
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§17. Railroad errors or omissions.
§18. Reciprocal demurrage.
§18¼. Switching reclaims.
§18½. Uniform demurrage code.
§19. Weather interference.
§20. Advance in demurrage during transit.

V. REPARATION.

§21. In general.
§22. Actions at law.

VI. LIABILITY TO PAY.

§23. In general.
§24. Actions to recover.

CROSS REFERENCES

See Arbitration (a); Detention

Charges; Embargoes; Export Rates and Facilities VI; Lighterage VI; Storage.

I. CONTROL AND REGULATION.

See Control and Regulation.

§1. Jurisdiction of Commission.

See Interstate Commerce Commission; Jurisdiction of Commission.

(a) Interstate Commerce Commission has statutory authority to make, interpret, and enforce rules in reference to demurrage charges on interstate freight shipment, and to determine disputed questions arising thereunder. Davis v. Rochester Can Co. (Dec. 1924) 207 N. Y. S. 33.

II. RIGHT TO ASSESS.

§2. In General.

(a) Coke ovens which recover products other than coke in the carbonization of coal are generally referred to as by-product ovens. Other coke ovens, commonly known as beehive ovens, produce coke only, and are generally located in coal-mining districts. Demurrage Rules on Coal and Coke, 89 I. C. C. 230.

(b) Demurrage charges are no part of the rate or through charges in effect at the time the shipment is forwarded from point of origin. Although they may follow the shipment and be collected together with the transportation charges, they are for a distinct and separate service. Krauss Brothers Lumber Co. v. Director General, 92 I. C. C. 450, 452.

(c) It is well settled that storage and demurrage charges are not assessed primarily for revenue purposes and, also, that they are not based upon a fair rental value of the equipment, but are rather in the nature of penalties to prevent wasteful and extravagant use of equipment. Coastwise Lumber & Supply Co. v. P. R. R., 93 I. C. C. 288, 289.

(d) A shipper may offer for shipment all he sees fit, but if he makes more shipments than he can handle it is not the carriers concern. If demurrage then accrues the shipper alone is to blame. Coastwise Lumber & Supply Co. v. P. R. R., 93 I. C. C. 288, 293.

(e) Adverse business conditions do not justify the cancellation of accrued demurrage. Tidewater Coal Exchange v. B. & O. R. R., 96 I. C. C. 612, 622.

(f) The assessment of demurrage charges has a tendency to deter the shipper or consignee from accumulating and detaining in cars quantities of coal generally in excess of what would be transshipped within a reasonable time. Tidewater Coal Exchange v. B. & O. R. R., 96 I. C. C. 612, 622.

(g) While a classification of traffic for the purpose of demurrage charges must be reasonable, and not arbitrary, the interests of shippers of a particular kind of commodity are not alone to be regarded, but those of the carrier and the general shipping public as well. Turner, Dennis & Lowry Lumber Co. v. Chicago, M. & St. P. Ry. Co., 2 Fed. 291.

(h) Demurrage charges are not part of the rate or through charges in effect at time of shipment if forwarded from point of origin, Getz Bros. & Co., 85 I. C. C. 673. Although they may follow the shipment and be collected together with transportation charges, they are for a distinct and separate service. Krauss Bros. Lbr. Co. v. Director General, 92 I. C. C. 450, 452.

(i) Heavy machinery unloaded from cars on railroad's premises about 30 feet from premises of railroad leased by consignee, where it was to be permanently installed, and left at such place by consignee, who, had given railroad receipt therefor and paid freight charges thereon, of its own volition, and without agreement with railroad, HELD not "freight received for delivery or held to complete shipment, or for forwarding directions" on which railroad could recover demurrage, under rules constituting part of railroad's tariff charges with Interstate Commerce Commission. Davis v. Williams Creamery Co. (Wis., 1925) 202 N. W. 663.

(jk) Following act of registration of vessel, carriers not at liberty to dump coal into vessel until disposition orders received from exchange. In such instances cars held for dumping orders and demurrage not assessable until such orders placed. Similar situation exists when a shipper loads a car and tenders it to carrier without billing. Demurrage tariffs are uniformly interpreted to mean that when a car is held for forwarding directions, demurrage accrues until the necessary data are supplied. Tidewater Coal Exchange v. B. & O., 95 I. C. C. 612, 623.

(l) Demurrage tariffs are uniformly

interpreted to mean that when a car is held for forwarding directions demurrage accrues until the necessary data are supplied. Tidewater Coal Exchange v. B. & O. R. R. Co., 96 I. C. C. 612, 623.

(m) Carriers interpretation of the rules of the tariff to mean that settlement for demurrage may not be made on a car until it is released, held to be correct. Tidewater Coal Exchange v. B. & O. R. R. Co., 96 I. C. C. 612, 624.

(n) Complainant found not entitled to the basis of settlement for the use and detention of foreign freight cars prescribed in 61 I. C. C. 551, in view of the fact that it performs a line-haul service, and not a switching service, and performs no service at all on the majority of its own shipments moving over defendant carrier's line. Were it given the demurrage basis sought it would secure practically the free use of trunk-line equipment, and its connections would have to pay per diem for the extra free time asked. Such a basis would be more favorable to complainant than straight per diem. Western Pine Lumber Co. v. Director General, 96 I. C. C. 625.

(o) Proposal of Missouri Pacific to exempt coke ovens on its line from the operations of the demurrage rules found not justified, in view of the fact that experience has demonstrated that the application of such rules at the only by-product coke oven on the line of this carrier has not worked any hardship. Proposed schedules making car-distribution rules applicable would afford its oven an undue advantage in the use of its equipment over other users of said equipment, with the exception of coal mines and coke ovens adjacent to mines and operating under car-distribution rules. Demurrage Rules on Coke, 96 I. C. C. 731.

(p) The commission has frequently pointed out the desirability of uniformity in dealing with car detention, and has on a number of occasions declined to approve exceptions to the uniform demurrage rules, in favor of particular traffic. Demurrage Rules on Coke, 96 I. C. C. 731, 734.

(q) Respondent, Tennessee Railroad, proposed to amend its rule providing for the exemption from demurrage rules of empty cars placed for coal loading, and cars under load with coal, at coal mines on its line, by making such exemption inapplicable to the mines on its line and providing in lieu thereof for the assessments of a charge of $1 per car per day on all cars held after 48 hours from the next 7 a. m. after placement until released. Although respondent states that the proposed schedule was published for the sole purpose of recovering its car hire cost on cars under load, it would be applicable to all cars. In other words, it would have the effect of largely offsetting respondents cost of car hire by assessing shippers an amount equal thereto beyond a certain time. The general practice throughout the country as exemplified by the tariffs to which the proposed exception is to be added is that the demurrage rules will not apply on empty cars for coal loading or cars under load at the mines where car distribution rules are applied in lieu of demurrage. Respondent has car distribution rules in effect, but indicates by its action in publishing the suspended schedules that they are not in lieu of demurrage. It is generally understood that car distribution rules better conserve the car supply at mines than do demurrage rules, and that the matter can be supervised more efficiently and economically in that way. Uniformity in dealing with car detention is desirable, and this proposed exception has no apparent purpose except to transfer respondents car hire costs to the coal operators. HELD, proposed schedules not justified. Demurrage on coal and coke 102 I. C. C. 554.

(r) The failure of defendants to furnish cars for the movement of other grain stored in the elevator can not be regarded, under the circumstances of this case, as a reason why demurrage charge should not be assessed on the inbound shipments. To allow the assessing of demurrage on inbound shipments to depend upon the furnishing of cars for outbound movement, a separate transaction would open the way to abuses not necessary in order to protect a shipper from unlawful acts of the carrier. Lexington Elevator & Mill Co. v. B. & O. R. R., 109 I. C. C. 542, 544.

ALL OTHER CITATIONS

McGarry & Co. v. W. Ry. Co., 88 I. C. C. 301; National Lumber Co. v. N. & W. Ry. Co., 88 I. C. C. 357.

§2¼. Commandeering of Vessels or Customs Delay.

(a) Complainant attacked demurrage charges on 146 cars of beans and peas held between the docks and warehouse

at Seattle, Wash., during February, March and April 1919 as illegal. Shipments originated in Japan and Manchuria, were consigned to complainant at Seattle, and arrived at that port in ships. Being foreign, the shipments were subject to customs regulations and were in bond to the U. S. Government. The shipments were sold to the United States Food Administration by complainant at a price f. o. b., cars and under contract that the goods were of a certain grade supported by a weight certificate when imported and placed in a bonded warehouse. The goods remained in bond and were eventually transported through New York to Europe. The shipments were unloaded on the docks under custody of the customs representative. It was his duty to protect the Government revenues, the import duty of 25c per bushel on these commodities not having been paid by the consignee. The docks are transient sheds and must be utilized for different cargoes. War time conditions prevailed at this time, greatly congesting docks and other terminal facilities at Seattle. When the shipments reached the docks the food administration had not supplied complainant with final destination and, therefore, it was not feasible to immediately forward them east. It is the practise to clear cargoes from the docks either by a general order of the customs official in charge or by warehouse entry made by the importer, and it appears that these shipments were removed under one or the other of these methods. Empty cars were then ordered by the pier or dock agent and when loaded this agent ordered them transferred to the Importers & Exporters Warehouse. This was a switch movement over the Nor. Pac. Loaded cars began to move early in Feb. 1919 and accumulated on the tracks later in that month because of the inability of the warehouse to unload them. The director general held the undelivered cars on the Nor. Pac. tracks until orders were received to set them at warehause. HELD, demurrage charges applicable, complaint dismissed. Western Import Co. v Director General 104 I. C. C. 396.

§3½. Embargo as Reason.

See Embargoes.

(a) Complainant attacked demurrage and penalty charges collected on a car of lumber shipped on March 1, 1920 from Elba, Ala., to Cincinnati, O., held at Latonia, Ky., and reconsigned to Detroit, Mich., as illegal and unreasonable. The car arrived at Latonia on the L. & N., on March 5, 1920 and complainant was promptly notified of its arrival. On March 12, complainant surrendered the bill of lading to the agent of the L. & N., at Birmingham and requested that the car be reconsigned to Detroit, P. M., delivery, at the same time advising that a permit issued by the terminal manager of the Detroit operating committee was being mailed to agent of L. & N., at Cincinnati. This permit was never received by the Cincinnati or Latonia agents of the L. & N. Prior and subsequent to a short interval embracing the period of movement the P. M., accepted shipments at Detroit on permits issued by the Detroit operating committee, but at the time of movement its embargo notice provided that cars for delivery at Detroit would be accepted only when covered by permits issued by its superintendent of car service. As the first reconsigning instructions indicated that a permit had not been secured from the proper party the L. & N., refused to honor them. On Mar. 18 permit having been obtained from the party specified in the embargo notice, the consignee so notified the L. & N., at Cincinnati, and the car was immediately released and forwarded to destination. HELD, reconsignment tariffs of the L. & N., provided that shipments would not be reconsigned to embargoed points except under authorized permits. The detention of the car at Latonia was due to the failure of complainant to furnish a proper permit and does not appear to have been due in any way to negligence of the carriers, charges not unreasonable, complaint dismissed. Laumer Lumber Co. v. A. C. L. R. R., 96 I. C. C. 93.

(b) Due to strike of defendant's employees, certain destinations were embargoed, resulting in complainant being unable to make outbound, or unloaded inbound, shipments. Necessity for embargo was unquestioned and record failed to establish that defendant refused to furnish cars for shipments to unembargoed points. Complainant might have stopped cars from arriving at its plant before storage capacity became exhausted by diverting cars to other points. HELD: Under above circumstances demurrage charges assessed were not unreasonable or otherwise unlawful. Big

Diamond Mills Co. v. C. G. W. R. R., 92 I. C. C. 709.

(c) Demurrage and penalty charges on a shipment of lumber from Paden, Miss., to Cairo, Ill., and reconsigned to Cleveland, Ohio, which were assessed from the time of notification of the existence of an embargo over the route specified in the reconsignment order until the date on which the embargo was lifted, found to have been applicable and not unreasonable, following decision of the court that such charges had been legally assessed. Complaint dismissed. Krauss Bros. Lumber Co. v. I. C. R. R. Co., 95 I. C. C. 760.

(d) Embargo notice of delivering line specified in routing instructions provided that delivery at embargoed point would be accepted only on permits issued by its superintendent of car service. Shipper obtained permit from an operating committee from which delivering line had withdrawn, resulting in shipments being held at reconsignment point until proper permit obtained. FOUND, demurrage and penalty charges accruing during interim found not illegal or unreasonable since applicable reconsignment tariff provided that shipments would not be reconsigned to embargoed points except under authorized permits, and the detention here was due to failure of shipper to furnish proper permit. Laumer Lbr. Co. v. A. C. L., 96 I. C. C. 93.

(e) Demurrage and penalty charges on a shipment of lumber from Paden, Miss., to Cairo, Ill., and reconsigned to Cleveland, Ohio, which were assessed from the time of notification of the existence of an embargo over the route specified in the reconsignment order until the date on which the embargo was lifted, found to have been applicable and not unreasonable, following decision of the court that such charges had been legally assessed. Complaint dismissed. Krauss Bros. Lumber Co. v. I. C. R. R. Co., 96 I. C. C. 760.

ALL OTHER CITATIONS

Gerhard & Hey (Inc.) v. Director General, as Agent, 88 I. C. C. 293; Empire Lumber Co. v. Director General, as Agent, 88 I. C. C. 424.

§3½a. Empty Cars.

(a) Proposal of Tennessee R. R., a short-line carrier, to amend its rule providing for exemption from demurrage rules of empty cars placed for coal loading, and cars under load with coal, by making such exemption inapplicable to mines on its lines and providing in lieu thereof for assessment of the current per diem rate on all cars held after free-time allowance after placement until released, designed apparently for no purpose except to transfer carrier's car-hire costs to coal operators, found not justified. Demurrage on Coal and Coke, 102 I. C. C. 554.

(b) General practice throughout the country is that demurrage rules will not apply on empty cars for coal loading or cars under load at mines where car-distribution rules are applied in lieu of demurrage. Car-distribution rules better conserve car supply at mines than do demurrage rules, and matter can be supervised more efficiently and economically in that way. Demurrage on Coal and Coke, 102 I. C. C. 554, 558.

§4. Failure of Consignee to Accept.

See Infra §9½; Consignor and Consignee.

(a) It is the "act or neglect of consignee" or "inability of consignee to receive" cars which warrants their constructive placement, and this is not confined to a disability of tracks or lack of trackage space, but may include other causes as well. Mere track capacity to receive more cars is not sufficient. However, where a shipper has established that additional trackage space was available for placement of cars, the burden is on carrier to show that its failure to deliver more cars was due to conditions of the private tracks, or because of other conditions attributable to consignee. Union Bag & Paper Corp. v. Director General, 95 I. C. C. 222, 226.

(b) Complainant attacked demurrage charges on one car of hollow building tile detained at State College, Pa., from August 29 to Sept. 30, 1921 as unjust and unreasonable, unauthorized and contrary to tariff. Shipment was from Haydensville, O., consigned to J. M. Hoy, State College. The car was placed for unloading on defendants track at destination on August 26, and consignee was immediately notified. Consignee informed defendant that he would be unable to pay the freight charges for several days. Defendant continued to hold the car and from time to time called the attention of consignee to the increasing demurrage charges. On Sept. 26 upon being notified by defendant that

something would have to be done to release the car, consignee stated that defendant could do as it pleased with it. On the same date defendant advised complainant, the consignor, of these facts and asked what action he desired taken, adding that otherwise we will sell the shipment for the charges in accordance with law. This notice was sent by mail, instead of by wire as provided in defendants tariff, and was received by complainant on Sept. 27. On Sept. 28 complainant requested defendant by telegraph to release the car to consignee, promising to guarantee all charges. The term "unclaimed" implies, in the absence of an actual refusal, the failure of consignee to claim or accept the shipment. The advice given defendant by consignee, which may be construed to mean that the shipment would be accepted within a few days, is not the equivalent of claiming the shipment, which contemplates a demand for delivery and a readiness to pay the charges. It therefore was defendants duty, at the expiration of five days from the first 7 a. m. after the day on which notice of arrival was given consignee, to notify complainant in accordance with its tariff that the shipment was unclaimed. Having failed in this duty, it could not lawfully demand demurrage for the detention thereafter. Notice had to be by wire, as no alternative method was authorized. HELD, demurrage charges exacted for the period subsequent to the expiration of five days from the first 7 a. m. after the day on which notice of arrival of the car was sent to consignee were illegally collected, and should be refunded, complaint dismissed. National Fireproofing Co. v. B. C. R. R. 102 I. C. C. 345.

(c) Shipments of sugar-making machinery moved from Corcoran, Calif., at which point charges were not prepaid as required by the tariff, to Whitney, Idaho and Lewiston, Utah, where demurrage accrued owing to inability and failure of complainant and his predecessors and successor in interest to pay outstanding charges on the shipments prior to respective dates on which cars were released. FOUND: Such failure and inability could not have been reasonably anticipated by carriers, and in any event can not be ascribed to them, and demurrage charges assessed were applicable and not unreasonable. Complaint dismissed. Johnson v. O. S. L. R. R., 101 I. C. C. 39.

(d) Shipment was placed for unloading and notice of arrival immediately forwarded to consignee. Owing to consignee's inability to pay freight charges demurrage accrued. Consignor was notified of facts by mail and disposition orders requested, whereupon it paid accrued charges and shipment was released. FOUND: Demurrage charges were illegally assessed, since the tariff specifically provided for furnishing of notice to consignor that the shipment was unclaimed at expiration of 5 days from the first 7 a. m. after the date on which notice of arrival was given consignee. Having failed in this duty carrier could not lawfully demand demurrage for detention thereafter. See 85 I. C. C. 331. In addition notice had to be by wire, no alternative method being authorized. Davis v. Henderson 266 U. S. 92. Nat'l Fire Proofing Co. v. B. C. R. R., 102 I. C. C. 345.

(e) The term "unclaimed" implies, in absence of actual refusal, the failure of consignee to claim or accept shipment. Advice given carrier by consignee to effect that he would be unable to pay freight charges for several days, which may be construed to mean that shipment would be accepted within a few days, is not equivalent of claiming shipment which contemplates a demand for delivery and a readiness to pay charges. National Fire Proofing Co. v. B. C. R. R., 102 I. C. C. 345, 346.

(f) Term "unclaimed" implies, in absence of an actual refusal, the failure of consignee of shipment to claim or accept it; and mere advice to carrier that it expects to accept some time is not the equivalent of claiming the shipment, which would contemplate a demand for delivery and a readiness to pay the charges. Person v. I. C. R. R. Co., 88 I. C. C. 21, 23; Marfield Grain Co. v. A. & W. Ry. Co., 88 I. C. C. 126, 128.

ALL OTHER CITATIONS

Republic Coal Co. v. C. St. P. M. & O. Ry. Co., 85 I. C. C. 331; American Box Co. v. Director General, as Agent, 85 I. C. C. 750.

§5. Fault of Shipper.

(a) Complainant attacked demurrage charges assessed for detention at Whitney, Ida., and Lewiston, Utah, of 42 cars containing secondhand sugar making machinery, as illegal and unreasonable. Both destinations were nonagen-

cy stations. The refusal of defendant to permit the cars to be unloaded without the surrender of the original bills of lading and the payment of the proper charges can not be constructed as improper tender of delivery. The fundamental theory of complainants case is that, if on the first or succeeding shipments prepayment had been demanded as required by the tariff, the remaining shipments would not have been tendered to the carrier and demurrage would not have accrued thereon. As to this the record is not convincing. On the other hand, the record clearly shows that the demurrage would not have accrued but for the inability and failure of complainant and his predecessors and successor in interest to pay the outstanding charges on the shipments prior to the respective dates on which the cars were released. Such failure and inability could not have been reasonably anticipated by the carriers, and in any event it can not be ascribed to them. HELD, demurrage charges applicable and not unreasonable, complaint dismissed. Johnson v. O. S. L. R. R. 101 I. C. C. 39.

§7. Order-notify Shipments.

See Bills of Lading V; Demurrage §16 (q); Order-Notify Shipments.

(a) Complainant attacked demurrage charges improperly assessed on cars of hay and grain held for constructive placement at Mount Vernon, N. Y., between November, 1922, and January, 1923. Prior to Nov. 15, 1922, there was no necessity for holding shipments of complainants at Mount Vernon yards. They were few enough to permit of their being brought to the Claremont Park team tracks, or to complainants' siding direct. On that date, 16 of complainant's car load shipments were received at the Mount Vernon yards. Defendant notified complainants, on its usual form, that the cars were on tracks at the Mount Vernon yards, but could not be delivered because complainants' siding could not receive them, and that they were subject to demurrage charges applicable to shipments constructively placed. Most of the shipments were order notify shipments. Unquestionably all the cars held at Mont Vernon yards could not have been handled on the siding, if promptly sent to Claremont Park. The question arises whether defendant should have sent some of the cars. It did send cars as needed by complainants, upon their specific designation by car number of the particular cars they desired to have released and placed. The record does not show that the cars designated were not promptly placed on the siding, or that complainants stood prepared, or desired, to receive additional cars. If additional cars had been placed on the team tracks at Claremont Park they would have been subject to demurrage until actually placed on the siding for unloading. They would also have been subject to demurrage if placed on the siding but not in position for unloading. The record does not show wherein complainants would have been in any better position by holding the cars at Claremont Park instead of at Mount Vernon yards. Defendant was not authorized by law to deliver the shipments without surrender of the bills of lading. HELD, demurrage charges properly assessed, complaint dismissed. Murphy & Murphy v. N. Y. C. R. R., 92 I. C. C. 259.

(b) Due notice of arrival was mailed to "order notify" party who refused to take possession of shipments. Consignor was so notified and disposition orders requested. Contention that demurrage accruing was not applicable because consignor was not promptly notified by delivering line that cars were held awaiting disposition not sustained. Delivering line's tariff carried no provision for such notification within any specified period, when consignor was actually advised that shipments were unclaimed it did not act promptly in effecting disposition, and failure to receive such advice sooner was not the proximate cause of detention. Delivering carrier fully discharged its duty under applicable tariff when it mailed notices to order notify party. Southwestern Milling Co. v. W. & O. D. Ry., 95 I. C. C. 719, 722.

(c) Disposition instructions repeatedly asked on a refused "order notify" shipment. Complainant tendered initial carrier certified check in lieu of original bill of lading with instructions to deliver to storage company at destination. This company refused to pay accrued charges and shipment not unloaded. Contention that in view of complainant's credit account with initial carrier it was delivering line's duty to waive payment of charges, and that demurrage was not applicable subsequent to first tender of delivery, not sustained. Delivering carrier did not know of credit arrangement, on the contrary, initial carrier advised that

it had no authority to direct release of shipment and that check was in lieu of bill of lading only. HELD, delivering line is not chargeable with responsibility for detention resulting from failure of initial carrier to act promptly and effectively on complainant's instructions. Southwestern Milling Co. v. W. & O. D. Ry., 95 I. C. C. 719, 720, 722.

(d) Demurrage assessed at Fort Worth, Tex., on shipment of milo maize shipped from Brawley, Calif., to Fort Worth and then reconsigned to St. Louis, Mo., found applicable. Shipment was tendered to Southern Pacific unrouted and complainant requested notice of arrival at Fort Worth from the Houston & Texas Central, a part of the Southern Pacific system, on the assumption that since same system served both origin and destination it would transport over its own lines. Rates via Southern Pacific system were same as those via route of the Southern Pacific and Texas & Pacific and shipment moved via latter route, the Texas & Pacific sending notice of arrival to "notify party" from whom complainant had purchased shipment. Demurrage accruing before complainant located shipment found to result from failure to specify desired delivery. Ralston Purina Co. v. Director General, 98 I. C. C. 456.

§7½. Penalty Charges.

See Penalty Charges.

(a) Car-distribution rules, as ordinarily in force, are expected to and do provide a penalty for detention of equipment which, while not of the same character, accomplishes the same purpose as the penalty provided by the demurrage rules. A shipper who does not pay a penalty of either character is at a manifest advantage over other shippers who operate either under car-distribution rules as properly applied or under demurrage. Demurrage Rules on Coal and Coke, 89 I. C. C. 230, 232.

(b) Complainant attacked penalty charges assessed for detention of three cars of lumber shipped from Stockbridge, Mass., two on June 10 and 14, 1921, to Pawtuckett, R. I., and one on June 16, 1921, to Providence, R. I., and all subsequently reforwarded to South Providence, R. I., as unjust, unreasonable and without tariff authority. Cars were consigned to complainants and were placed in public delivery yard ready for delivery. Subsequently complainants notified defendant to reship the cars to South Providence. Defendant advised complainants on July 5, 1921, that he could not issue a new bill of lading, and, on the same day, forwarded the car. Its agent at Pawtuckett signed and returned the new bills of lading, and on July 13, 1921, forwarded the cars held there. Charged sixth class Stockbridge to original destinations and from those points to South Providence. The definition of reconsignment clearly indicates that the shipment must still be in the custody of the carrier. These carloads never left the custody of the carrier until they were delivered at South Providence. If reshipment is to have any meaning differentiating it from reconsignment, and thus serve any useful purpose in the tariff, the line of demarcation must be drawn there. HELD, these were reconsignments and the application of the penalty charge was not illegal, complaint dismissed. Stetson Cutler & Company v. N. Y., N. H. & H. R. R., 91 I. C. C. 3.

(c) In 73 I. C. C. 640, the Commission found that certain penalty charges collected in addition to demurrage charges for detention at Solvay, N. Y., in December, 1920, and January, 1921, of two cars of cooperage stock shipped from Pelham, Ala., to Solvay, and reshipped thence to Syracuse, N. Y., were illegal and awarded reparation, and that shipments were subject to rule 12 of the reconsignment tariff, which provided for a charge of $7 per car. Shipments were placed on a siding of defendant which connects with an interchange track of the Solvay Process Co., consignee, whence the latter removed them to its plant. On January 10, 1921, both cars were returned by the consignee, without having been unloaded, to the tracks of defendant, with the information that the shipments were refused, and on instructions of complainant, the cars were moved by defendant to a warehouse for storage. Rule 12 provided that when car has been placed for unloading at the original billed destination and is reforwarded therefrom without being unloaded to a point outside the switching limits, it will be subject to the published rates to and from the point of reconsignment, plus $7 per car reconsignment charge. HELD, reconsignment charge unreasonable. Hollingshead Co. v. N. Y. C. R. R., 91 I. C. C.. 657.

(ca) Complainant attacked transportation, demurrage and penalty charges assessed on a car of lumber shipped Feb.

25, 1920 from Demopolis, Ala., to Louisville, Ky., reconsigned to Bluefield, W. Va., as unreasonable, unjustly discriminatory and illegal. Shipment was originally consigned to complainant at Louisville, where it arrived over the Southern, March 2, 1920. That carrier thereupon deposited in the mails a postcard containing notice of arrival addressed to the consignee at Louisville, but the complainant had no place of business at this point and the notice was not received. On March 8 the Southern wrote the consignor asking for disposition orders. Its letter, received by the consignor on March 11, was thereupon forwarded by that party to the complainant, who received it March 12. Sale of the lumber was not effected until March 18, and on that date complainant wired the Southern reconsigning directions and the shipment was reconsigned to Bluefield. The 27 cent rate applied to Roanoke over the route of movement through Louisville in connection with the C. & O., and N. & W., beyond, and under the authority of rule 5 b of tariff circular 18 A the 37.5c rate was available at Bluefield over that route. The shipment was thus misrouted by the Southern in that it was not turned over to the C. & O., at Louisville. The present transaction falls within that class of cases where the arrival notice should have been sent in stamped envelope bearing return address, and preserved on file if returned. Had defendants notice to the consignor of March 8 been a telegraphic notice as required by the tariff, it should have been received on the same day. As it was not received until March 11 it may not be regarded as a notice prior to that date. Allowing for 24 hours free time, and an intervening Sunday, the shipment was subject to five demurrage, amounting to $13. The provision of the tariff as to penalty charges has no application during the period demurrage does not accrue and the aggregate penalty charges was $50.00. HELD, shipment overcharged to extent demurrage and penalty charges exceeded $13 and $50, shipment misrouted, reparation awarded. Standard Lumber Co. v. Director General, 93 I. C. C. 58.

(cb) Complainant attacked demurrage and penalty charges on one car of pine lumber shipped April 20, 1920 from Paden, Miss., to Cairo, Ill., and reconsigned from that point to Cleveland, O., as illegal and unreasonable. Shipment was consigned from Paden to Cairo over the I. C. It was transported by that line to Mounds, Ill., which is the reconsigning point for cars destined to Cairo and it arrived at Mounds on April 28, 1920. Complainant was notified of the arrival of the car at Mounds and on April 29, 1920 after being informed by defendants agent that there was nothing to prevent reconsignment to Cleveland, ordered the car reconsigned to that point specifying Big Four delivery at that point. At the time of reconsignment all carload freight to Cleveland over the Big Four was embargoed. Complainant did not know of the existence of the embargo at the time the car was reconsigned, and was not advised that such an embargo existed until May 9. After learning of the embargo no disposition of the car was ordered by complainant and the lumber was not transported to Cleveland until May 20 when the embargo was lifted. Demurrage charges were assessed. If by reason of commercial contracts, entered into under prior misrepresentation on the part of the carrier, complaint found itself in such a position that it could not abate the demurrage, the question of damage arising from such a situation is for the courts to consider. HELD, demurrage and penalty charges applicable and not unreasonable, complaint dismissed. Krauss Bros. Lumber Co. v. I. C. R. R., 96 I. C. C. 760.

(d) An additional demurrage or storage charge for detention of cars beyond a stated time held not invalid as discriminatory because limited to cars loaded with lumber held for reconsignment, where it appeared that it was a common practice to hold such cars for an unreasonable time awaiting reconsignment, thus keeping the cars out of normal use, to the detriment of the carrier and the public. Turner, Dennis & Lowry Lumber Co. v. Chicago, M. & St. P. Ry. Co., 2 Fed. (2d) 291.

(e) A regulation made by the Director General of Railroads during federal control and continued by a carrier as part of its tariff schedule after such control ceased, imposing an additional demurrage or storage charge in the nature of a penalty for detention of cars beyond a stated time, is not a penal law for punishment of an offense which comes within the purview of constitutional guaranties, but is within the powers of the carrier under Interstate Commerce Act, subject to revision or abro-

gation by the Interstate Commerce Commission. Turner, Dennis & Lowry Lumber Co. v. Chicago, M. & St. P. Ry. Co., 2 Fed. (2d) 291.

(f) The penalty of $10.00 per car for detaining lumber cars at destination after 48 hours, in effect from 1919 to 1922 held reasonable. Turner, Dennis & Lowry Lumber Co. v. Chicago, M. & St. P. Ry. Co. 2 Fed. (2d) 291.

§8. Pending Dispute or Demanding Advanced Charges.

See Infra §9.

(a) Complainant attacked demurrage charges for detention of a car of yellow pine lumber at Cleveland, O., from July 1, 1922 to August 7, 1922, as illegal. Car was shipped from River Falls, Ala., May 24, 1922 to complainants at Cincinnati, O., and arrived June 7, 1922. On June 17, it was reconsigned to complainant at Cleveland, O., arriving at that point July 1 released from demurrage August 7, 1922. Instructions for the reconsignment of the car at Cincinnati were mailed by complainant on June 17. The car was held under demurrage until June 19 and the amount of $33, advance charges of the L. & N., erroneously included a charge of $5 for the latter date. The charges for this detention were subsequently corrected to $28 and refund of the overcharge was made to complainant on March 8, 1923. The record shows that the charges against the shipment on arrival at Cleveland actually included an overcharge of $5, representing the erroneous assessment of excess demurrage for the detention at Cincinnati, and that complainant, upon being advised of the amount of the charges, called this fact to the attention of the agent at Cleveland, and requested correction to the proper basis. While defendant was not in possession of information as to what disposition to make of the car during the period of detention, nevertheless the furnishing of such instructions by complainant would not have settled the dispute as to the correctness of the outstanding charges; and had such instructions been given and delivery made, complainant would thereupon have been liable for the charges assessed. The fact that complainant failed to give instructions for disposition of the car during the pendency of the controversy did not prevent the application of the demurrage rule. The computation and billing of charges against the shipment must be regarded as a demand for payment. There is nothing in the rule which suggests that the agent must make a demand in addition to the usual bill or forms of advice as to the amount claimed to be due. HELD, demurrage charges illegal, reparation awarded. Milne Lumber Co. v. C. C. C. & St. L. Ry., 93 I. C. C. 661.

(b) Applicable tariff provided that demurrage would not be assessed for detention where carrier's agent demanded payment of transportation charges in excess of tariff authority. Charges billed against car after its arrival at reconsigned destination included an admitted overcharge which shipper promptly questioned. HELD, billed charges must be regarded as a demand for charges in excess of tariff authority and demurrage was not assessable against the car during period of detention pending controversy over the legal charges. See Conf. Ruling 32. Milne Lbr. Co. v. C., C., C. & St. L., 93 I. C. C. 661.

(c) Disposition instructions repeatedly asked on a refused "order notify" shipment. Complainant tendered initial carrier certified check in lieu of original bill of lading with instructions to deliver to storage company at destination. Storage company refused to pay accrued charges and shipment not unloaded. Contention that in view of complainant's credit account with initial carrier it was delivering line's duty to waive payment of charges, and that demurrage was not applicable subsequent to first tender of delivery, not sustained. Delivering carrier did not know of credit arrangement, on contrary, initial carrier advised that it had no authority to direct release of shipment and that check was in lieu of bill of lading only. HELD, delivering line is not chargeable with responsibility for detention resulting from failure of initial carrier to act promptly and effectively on complainant's instructions. Southwestern Milling Co. v. W. & O. D. Ry., 95 I. C. C. 719, 720, 722.

(d) Complainant attacked demurrage charges collected on two cars of yellow pine lumber, one of which was shipped on Nov. 20, 1922 from Haslam, Tex., and the other on May 21, 1923 from Standard, La., consigned to Herrick and Marine, Ill., and reconsigned to Detroit, Mich., and Chicago, Ill., respectively, as illegal. Shipment from Standard was consigned to complainant at

Marine, Ill., and reconsigned to complainant at Chicago routed, C. & N. W., road haul. The car arrived at Northwestern State St. station, Chicago, June 15, 1923 and was promptly placed on a public delivery track at that station. Notice of placement was mailed the same day to complainant at Chicago. Complainant being unknown to defendants agent at that station, the latter at the same time notified defendants freight claim agent, who promptly telegraphed complainant at St. Louis that the car was undelivered and to furnish disposition. By letter dated June 19, complainant directed that the car be reconsigned on basis of joint through rate to Thornton Claney Lumber Co. at defendants North Avenue station, but that if reconsignment could not be made at the joint through rate it be promptly advised so that other disposition could be given. Defendant received these instructions on June 20, 1923 and on June 21 telegraphed complainant that the car could not be reconsigned at the through rate and to advise if other disposition was desired. Upon receipt of that telegram, complainant wrote defendant that a through rate of 39.5c could and must be protected and to arrange immediately to deliver the car. On June 25, defendant replied that the through rate could not be protected but that the applicable additional rate would be 2.5c, and inquired whether, in the circumstances, the car should be forwarded. By letter dated June 26, 1923 complainant reiterated the view that reconsignment could be made at the through rate of 39.5c, and requested defendant to explain why that rate could not be protected, and directed that in the meantime the shipment be not held. This letter was received by defendant but the date of receipt cannot be definitely established. The post mark on the envelope in which it was enclosed shows that it was received at the St. Louis postoffice at 7 p. m. June 26. In the ordinary course of business this letter should have reached defendant the following day, June 27. Following this latter defendant made two further requests for instructions as to disposition of the car, and on July 3 complainant directed that delivery be made and proper charges be collected. The car was thereupon moved by defendant to its North Avenue station and was delivered to and apparently unloaded by the Thornton Claney Lumber Co. Charged 39.5c including $6.30 reconsignment at East St. Louis and Chicago, demurrage of $28 at East St. Louis and $53 at Chicago, and track storage of $22 at Chicago. Applicable rate was 39.5c to State St. and local commodity rate of 2.5c beyond, undercharge $8.60. HELD, demurrage and track storage charges on and after June 27, 1923 illegal, reparation awarded. The shipment from Haslam was originally consigned to Herrick, Ill., and reconsigned in transit to complainant at Detroit mail address St. Louis. It moved from Haslam in MKT car 83044 and was transferred enroute to C. M. & St. P. 92600. On Jan. 8, defendant M. C., mailed to complainant at Detroit notice of arrival at that point of S. P., 92600. This notice was forwarded by the Detroit postoffice to complainant at St. Louis and was received by it Jan. 13. The shipment did not actually arrive at Detroit until Jan. 23, 1923. Notice of arrival was mailed to complainant at St. Louis on Jan. 30. Charges assessed prior to the expiration of free time following the date of mailing on Jan. 30, 1923 of notice of arrival the shipment admittedly were inapplicable. Although defendants telegram of Feb. 6 showed the incorrect initials of the cars it apparently sufficed to enable complainant to dispose of the shipment. HELD, shipment subject to demurrage subsequent to Feb. 6, but demurrage on and prior to that date illegal, reparation awarded. Milne Lumber Co. v. C. & N. W. Ry. 107 I. C. C. 653.

§8½. Pooled Shipments.

ALL CITATIONS

Smokeless Fuel Co. v. N. & W. Ry. Co., 85 I. C. C. 395.

§9. Prior to Actual Delivery.

See Supra §8; Infra §12.

(a) Complainant attacked commodity rate charged on one car of yellow pine lumber from Millry, Ala., to Oneonta, N. Y., and reconsigned to Carman, N. Y., as unjust, unreasonable and unlawful, demurrage only being involved. Car routed Sou-Erie-Binghamton & D. & H. If the car had been forwarded as routed, it would have moved A. T. & N., to York, Ala. A. G. S., to Chattanooga, Tenn., C. N. O. & T. P., to Cincinnati, Erie to Binghamton and D. & H., beyond. The agent of the A. G. S., at York routed the shipment via Potomac Yard, Va. Under this routing the Erie did not

handle the car at all. Shipment arrived at Oneonta on June 10. Defendants acknowledge it was misrouted but contended it reached Oneonta over the D. & H., as specified. On June 14 complainant instructed agents of the Southern and Erie at Birmingham to divert the shipment to Carman. The car had arrived in Oneonta four days before orders to reconsign were given. Apparently these instructions were not forwarded by the Southern and by successive carriers that handled the car and it was not until June 23 that the D. & H., at Oneonta received instructions direct from complainant to reconsign the car to Carman. HELD, demurrage charges from June 16 to 26 unlawful, reparation awarded. American Lumber & Export Co. v. A. T. & N. R. R., 96 I. C. C. 576.

(b) Demurrage charges on cars constructively placed short of billed destination, due to inability of complainant to receive and unload because of congestion on its private siding, found legally assessed. Notice of constructive placement was furnished in accordance with applicable tariffs, and cars were actually placed for unloading in accordance with complainant's specific designations. It was not shown that complainant desired, or stood prepared to receive, additional cars or that cars designated were not promptly placed on the siding for unloading. Moreover, defendant was not authorized by law to deliver shipments without surrender of bills of lading and record does not establish that complainant stood ready to surrender the bills on certain shipments while they were being held under constructive placement. Murphy & Murphy v. N. Y. C. 92 I. C. C. 259.

(c) Demurrage charges collected on cars constructively placed short of destination, found applicable and not unreasonable. Complainant's employees from day to day selected cars on hand which they wished placed and record indicates no lack of switching power or delay on part of defendant in making desired deliveries. There was a strike on or anticipated at time cars accumulated. Detentions accrued either on complainant's trestle or on its lead track and were such as to obstruct exchange of loads and empties. It would have been futile for defendant to have brought additional cars to yards at billed destination as it would have rendered congestion there greater than it was. Constructive placement short of billed destination was carrier's duty under the tariff. Burns Bros. v. P. R. R., 92 I. C. C. 615.

(d) Instructions of complainant, on June 2, 1920, for specific delivery of cars were equivalent to renewal of agreement between complainant and defendant with respect to holding cars short of destination for orders. Demurrage charges applicable on cars constructively placed prior to, or on June 2 were those accruing from dates of actual placement to dates of release, and on cars constructively placed after that date those accruing from dates of constructive placement. Charges found not unreasonable. Standard Underground Cable Co. v. L. V. R. R. Co., 96 I. C. C. 503, 507.

(e) The term "unclaimed" a demand for delivery and a readiness to pay the charges are equivalent to claiming the shipment. Northwestern Fruit Exchange v. Erie R. R., 112 I. C. C. 29, 32.

§9½. Refused Shipments.

See Demurrage §4.

(a) Upon arrival of cars they were rejected by consignee. Consignor notified and disposition orders requested but not furnished. As to certain shipments defendant again wrote consignor "that unless disposition orders were received on or before a certain date such shipments would be sold." As to others a telegram was forwarded stating "that shipments would be sold on a specified date." Demurrage charges collected up to time shipments were sold by defendant found illegal to extent they exceeded those which would have accrued up to and including date of telegram as to shipments covered by it, and up to and including date specified in defendant's letter as to shipments specified therein. Reparation awarded. Wallingford Coal Co. v. Director General, as Agent, 89 I. C. C. 353.

(b) Complainant's name did not appear in billing. Shipment was transferred en route and new car number and change noted on waybill. In accordance with customary practice, notice of arrival was given consignee by service of expense bills. Shipment was rejected by consignee who failed to so notify complainant until after receipt of second notice requesting disposition orders, similar notice having been sent by carrier to complainant. HELD, since notice given consignee contained all information available from bill of lading, and no obligation rested upon carrier under governing tar-

iff to notify shipper of refusal of shipment, the consignee, rather than defendant, was responsible for any negligence which may have occurred in failing to notify complainant of the rejection. Demurrage found legally assessed. Toberman, Mackey & Co. v. Director General, as Agent, 89 I. C. C. 365.

(c) Complainant attacked as illegal assessment of demurrage charge on hay, carloads, shipped May 7, 1918, from Avoca, Mich., to Camp Jackson, S. C. Shipment delivered to P. M. at Avoca, May 7, 1918, consigned to Camp Jackson, routed Big Four and Southern. At Cincinnati the hay was transferred to another car. The change was noted on the through waybill by crossing out the original car number and noting the transfer and new car number. The shipment arrived at Columbia, S. C., on May 19, and on May 24 the quartermaster at Camp Jackson was notified that the car had been placed on the siding. According to the practice in effect at the camp at that time, notice of delivery was given in the form of an expense bill made out by the local agent. The original car number was shown thereon as well as the number of the car placed. The shipment was rejected, because of poor quality on the day that it was delivered. Upon refusal of complainant to guarantee the accrued demurrage charges defendant finally sold it to satisfy demurrage charges of $330.00. It appears that the consignee, rather than defendant, was responsible for any negligence which may have occurred in failing to notify complainant of the rejection of the shipment. HELD, demurrage charges attacked legally assessed, complaint dismissed. Toberman Mackey & Company v. Director General, 89 I. C. C. 365.

ALL OTHER CITATIONS

Republic Coal Co. v. C. St. P. M. O. & O. Ry. Co., 85 I. C. C. 331.

§10. Private and Trap Cars.

See Private Cars; Trap Cars.

(a) Under the existing practice of carriers, private cars are made the subject of demurrage when standing on the private tracks of owners. It is agreed by both carriers and owners that tariffs should be so worded as to exempt a private car from demurrage under such circumstances. It was stated that provision would have been made some time ago for such exemption except for the difficulty of determining who was the owner of the car. It was agreed that a shipper who leases a car for a term is to be considered the owner during such term, and that a stencil mark on the car as defined in the tariffs should be conclusive as to ownership for purposes of exemption from demurrage. International Agricultural Corp. v. A. & W. P. R. R., 93 I. C. C. 189, 190.

(b) Tariffs of carriers are to be so changed that private cars standing on the private tracks of owners shall not be subject to demurrage charges. International Corp. v. A. & W. P. Ry., 93 I. C. C. 189, 190.

(c) Tariff rule governing demurrage on private cars on private tracks, published following the Private Car case, 50 I. C. C. 652, defining a private car and requiring full name of owner or lessee to be painted, stenciled, or boarded thereon, in which event car is exempt from demurrage for lessee only, and if name of lessee is not painted, stenciled or boarded on the car, it will be exempt from demurrage for owner only, found not unreasonable. Rule was adopted after mature deliberation, has worked out in practice in a generally satisfactory manner, and no better substitute has as yet been brought to commission's attention. International Agricultural Corp. v. A. & W., 93 I. C. C. 189.

(d) Assessment of demurrage charges on private cars under lease on tracks of lessee found not unreasonable. Tariff rule provided that private cars are exempt from demurrage while on tracks of owner or lessee if owner's or lessee's name is marked on car. Cars here involved were not so marked, and only evidence that cars were under lease to complainant was a letter, which admittedly did not comply with the rule. Complainant had ample notice and actual knowledge of existence of the rule and could have complied therewith by making proper notations on cars. International Agricultural Corp. v. A. & W. P. R. R., 93 I. C. C. 189.

(e) Fact that commission's finding in Private Car case, 50 I. C. C. 652, with regard to demurrage on private cars while standing on private tracks of owners, was of a broad and unlimited nature affords no basis for contention that in publishing the rule in accordance therewith, carriers might not include such reasonable and proper conditions as would tend to facilitate its practical application and prevent abuses. It was not only their

right, but their duty to do so. International Agricultural Corp v. A. & W., 93 I. C. C. 189, 191.

(f) Complainant attacked demurrage charges for detention of 10 empty private tankcars at Watsonville, Calif., in Nov. and Dec. 1919 and Jan. 1920 as unreasonable and illegal. The cars were leased to complainant from the California Dispatch Line and were forwarded by that line to complainant at Watsonville. When the cars arrived at Watsonville the sidetrack used by complainant for loading and unloading was occupied, and they were held on the tracks of the S. P. Notice of arrival was given complainant by the carrier, and as space became available on complainants sidetrack, which had a capacity of only two cars, the cars were placed thereon for loading. The demurrage charges were collected for the detention of the cars on the carriers tracks prior to loading. The demurrage tariffs specifically provided that empty private cars stored on carriers tracks would not be subject to demurrage charges provided the cars were not placed or tendered for loading on orders of a shipper. There is no evidence that complainant, the shipper contemplated by the rules, gave any order of placement for loading of the cars, and in the opinion of the Commission the cars were exempt from demurrage until such orders had been given. HELD, demurrages charges attacked illegal, reparation awarded. Jones Bros. & Co. v. Director General 104 I. C. C. 413.

§10½. Reasonableness and Discrimination.

See Discrimination; Reasonableness of Rates.

(a) Complainant attacked demurrage charges of $1.635 charged on 27 cars of ties, shipped from points on the Northwestern Pacific by itself to itself at Albion, Calif., during December, 1919, as illegal and unreasonable. Cars moved to complainant's wharf at Albion, but at time of delivery a part of the wharf where the shipments were to be unloaded was destroyed by a steamer which was driven through the wharf by a storm. The ties remained on the wharf in cars until damages were repaired. The cars could have been unloaded on the wharf at Albion or elsewhere, and the complainant could have thus avoided the assessment of demurrage. HELD, demurrage charges attacked not unreasonable, complaint dismissed. Albion Lumber Co. v. Director General, 92 I. C. C. 297.

(b) A railway company has the right, under supervision of the Corporation Commission, to charge demurrage for the unreasonable detention of its cars, in unloading freight, where such unreasonable detention is attributable to the fault of the consignee. Atchison, T. & S. F. Ry. Co. v. Johnson (Okla. 1924), 225 Pac. 939. (State Shipment.)

(c) Complainant alleged that the charges for the use and detention of foreign cars on its line under the per diem code and car service rules of the American Railway Association as unjust and unreasonable. Complainant has accounted to defendant for car hire, making weekly settlements on an estimated basis, and final settlements monthly, under the rules of the association which require subscriber roads to collect from their nonsubscriber connections an amount equal to the per diem rate. As a common carrier participating in joint rates, complainant is under an obligation to furnish its share of the equipment. This it may do either by purchase or rental. The per diem that complainant pays for car hire is merely equivalent to interest, depreciation, insurance, taxes and other car ownership costs which it would have to bear if it owned the cars used in interline traffic. HELD, defendants practice not unjust or unreasonable, complaint dismissed. Virginia Blue Ridge Ry. v. S. Ry., 96 I. C. C. 591.

(d) Complainant, alleged application since Sept. 1, 1919 of full demurrage charges on cars handled by its line has resulted in the exaction from it of charges which were and are unjust and unreasonable. From 75 to 80% of the traffic of complainants line consists of its own logs moving to the mill at Klickitat. At various times there have been from three to eight independent shippers on the line, and the balance of the traffic consists of shipments, mainly of lumber, made by them. Complainants sawmill is on its line a short distance north of Klickitat, as are its coal bunkers. Complainant and defendant are not parties to joint tariffs. Inbound interline shipments are handled on a combination of locals. Defendant collects the through rate to destination on this basis, and remits to complainant an amount equal to its local charge. On out bound interline shipments complainant collects

its local rate to point of interchange and defendant collects its local rate beyond. The complainant herein performs a line haul service, and not a switching service, and performs no service at all on the majority of its own shipments moving over defendants carriers line. Were it given the demurrage basis asked it would secure practically the free use of trunk line equipment, and its connections would have to pay per diem for the extra free time asked. Such a basis would be more favorable to complainant than straight per diem. The complainant is under duty to perform its common carrier obligation and furnish its share of the equipment. HELD, complainant not entitled to basis of settlement asked for use and detention of cars in its possession, complaint dismissed. Western Pine Lumber Co. v. Director General, 96 I. C. C. 625.

(e) Demurrage charges of $3 per car per day for first four days after expiration of free time, $6 for next three days, and $10 per day thereafter, found unreasonable to extent they exceeded $2 for first four days and $5 thereafter, the uniform scale contemporaneously observed by carriers throughout the country at time of movement. Reparation awarded. Southwestern Milling Co. v. W. & O. D. Ry., 95 I. C. C. 719.

ALL OTHER CITATIONS

Republic Coal Co. v. C. St. P. M. & O. Ry. Co., 85 I. C. C. 331.

§10⅝. Strikes.

(a) Complainant attacked demurrage charges assessed on cars held for unloading at its plant at Morristown, Minn., during March, April and May, 1920, as unreasonable and unjustly discriminatory. Complainant admitted that they were collected in accordance with the lawfully published tariffs. During the period in which the demurrage charges accrued a switchmen's strike prevailed on defendant and other lines. Because of this strike defendant laid an embargo against all shipments moving from complainant's plant at Morristown destined to Chicago, Ill., and points east thereof. The necessity for this embargo is not questioned. Complainant contended that the strike and the embargo prevented it from making outbound shipments and thereby prevented the unloading of inbound shipments. The record does not show that defendant refused to furnish cars for shipments to other points than those under embargo, and defendant contended that complainant might well have stopped cars from arriving at its mill before the storage capacity became exhausted or diverted cars to other points. The applicable demurrage tariff provided that a party who entered into an average agreement should not be entitled to a refund of demurrage charges under the so-called bunching rule. There was no evidence in this case to show that the cars arrived in accumulated numbers in excess of daily shipments. HELD, demurrage charges attacked not unreasonable or otherwise unlawful, complaint dismissed. Big Diamond Mills Co. v. C. G. W. R. R., 92 I. C. C. 709.

(b) Complainant attacked demurrage charges of $96 exacted between June 15 and June 30, 1920 on various commodities consigned to Maurer, N. J.,as unreasonable, unjustly discriminatory unduly prejudicial and inapplicable. Complainant takes delivery of inbound loaded cars on interchange tracks within its plant and performs the movement there from. The capacity of these interchange tracks is about 40 cars, and the working capacity of complainants yard for cars from defendant is about 40. From April 10 to 27, 1920, there was a strike of defendants yard employees. During the period from June 15 to June 21 there was a strike of laborers in complainants plant. The demurrage asked to be refunded accrued after June 15. On the morning of June 15 there were 11 cars of all commodities in complainants yard, and 72 cars for complainant were being held in defendants yard at Perth Amboy N. J., about 1 mile from Maurer. It is not reasonable to assume that on the date of the strike at complainants plant and for several days thereafter defendant should have issued placement notices arbitrarily, or that complainant, after receiving such notices, should not take action to have cars delivered if it was in position to receive them. Until June 22 complainant acquiesced in the constructive placement of the cars, as it concedes that it received due notice of constructive placement. HELD, complainant requested defendant to stop delivery of cars to it from June 15 until further notice of June 18 as to coal and June 22 as to all commodities. HELD, demurrage charges attacked not inapplicable or otherwise unlawful, except charges resulting from defendants failure to place 6 cars each on June 18, 19,

and 21 and 14 cars of June 30 were inapplicable and should be refunded, complaint dismissed. Barber Asphalt Paving Co. v. L. V. R. R., 112 I. C. C. 41.

II. PUBLICATION AND TARIFFS.

See Storage §3; Tariffs.

§10¾. In General.

(a) Proposed amendment to tariff rule providing for exemption from demurrage rules of empty cars placed for loading coal at coal mines, coal-mine sidings, and coal washers, or coke at coke ovens, so as to make that exemption inapplicable at by-product coke ovens which are not adjacent to coal mines or operated in conjunction therewith, found not justified. Proposed amendment makes a distinction between by-product coke ovens and other coke ovens which are not operated in immediate vicinity of the coal mines, and no reason appears why a by-product oven should be treated differently from a beehive oven if both are similarly situated and are subject to car-distribution rules in lieu of demurrage. Moreover, provisions of this amendment are not so clearly stated that misinterpretation and confusion in applying them could be avoided. Demurrage Rules on Coal and Coke, 89 I. C. C. 230.

(b) Railroad yard leased by Hay and Grain Exchange for benefit of its members, even though not strictly private, was "other than a public delivery track," within demurrage tariff. Granger v. Davis, 2 Fed. (2d) 695.

(c) Yard in which congestion causing delay occurred HELD private yard of Hay and Grain Exchange, of which consignees were members, and not general railroad facility, within rules published in demurrage tariff, relating to demurrage where car has been consigned to "other than a public delivery track." Granger v. Davis, 2 Fed (2d) 695.

(d) Where demurrage rates charged by carrier against coal exchange, as general consignee, were based solely on its tariffs, recourse to rules and regulations of exchange to determine amount of demurrage was not necessary, and it was not necessary for the rules and regulations of the exchange relating to demurrage charges to be filed with the Interstate Commerce Commission. Smokeless Fuel Co. v. Chesapeake & O. Ry. Co. (Va., 1925), 128 S. E. 624.

(e) Right of carrier to make demurrage charges is not mere matter of contract between it and a coal exchange as general consignee, but is to be determined by published tariff, and carrier has no choice in matter, nor could it waive such right. Smokeless Fuel Co. v Chesapeake & O. Ry. Co., (Va., 1925), 128 S. E. 624.

(f) Complainant attacked demurrage, loading and unloading charges amounting to $62 which were advanced by defendants as illegal and unreasonable. On Aug. 23, 1922 complainant shipped a carload of lumber from Wausau, Wis., to Stillwater, Minn. On Sept. 8, 1922 it was accepted by the consignee and freight and demurrage charges paid. The consignee becoming dissatisfied with the lumber, it was reloaded by it and shipped to Bay City, Mich., on Nov. 18, 1922. The defendant thereupon advanced to the consignee at Stillwater $62, which amount represented demurrage charges of $38 and the consignees unloading and reloading charges of $24. Upon arrival of the shipment at Bay City, these charges, in addition to the freight charges, were paid to the P. M., by the consignee at that point and deducted from complainants invoice for the lumber. The real issue is whether under the tariffs defendants were authorized to advance the charges of $62 collected at destination. The evidence shows that the movement from Stillwater to Bay City was a separate and distinct shipment by complainant under a new bill of lading, and obviously no legitimate charges of a connecting rail line attached to such shipment, nor does the tariff authorize the advancement of the charges attacked. HELD, shipment overcharged $62, refund ordered. Heineman Lumber Co. v. C. St. P. M. & O. Ry. 107 I. C. C. 62.

§11. Obligation to file.

(a) Charge for demurrage is on same footing as any other charge in connection with transportation, and was properly included in schedule required to be filed with Interstate Commerce Commission and published under Hepburn Act June 29, 1906, §2, pars. 1, 7 (U. S. Comp. St. §8569, pars. 1, 7), amending Interstate Commerce Act, §6, pars. 1, 7, and Federal Control Act March 21, 1918, §10 (U. S. Comp. St. Ann. Supp. 1919, §3115¾j). Davis Agent v. Keystone Steel & Wire Co., (Ill., 1925) 148 N. E. 47.

(b) Complainant attacked charges

on one car of pine lumber from Brooklet, Ga., April 8, 1918 to South Camden, N. J., as illegal, in that an authorized stake weight allowance was not made and that a demurrage charge of $70 was improperly assessed for detention in transit. Applicable joint rate was collected and is not attacked. Shipment originated on the Midland, which was not under federal control. That line hauled it to Savannah, Ga., for movement beyond over lines under federal control, billing demurrage charges of $70 as advances. Complainants sworn statement, not rebutted, is that any detention which may have occurred on the Midland was for the purpose of readjusting the lading and was a detention for which neither the consignor nor the consignee was responsible; and that the demurrage charges were collected without tariff authority. HELD, defendant illegally collected the demurrage charges, reparation awarded. Yellow Pine Co. of Phila. v. Director General 104 I. C. C. 371.

IV. DEMURRAGE RULES.

See Freight Charges.

§12. Construction in General.

(a) Complainant attacked demurrage charges at Purcellville, Va., on four cars of bran shipped from Kansas City in August and Sept., 1920 as unjust and unreasonable. First two shipments delivered to M. P., and others to Rock Island at Kansas City consigned to order complainant, notify Jonas E. Eby & Son, Purcellville. Complainant had a credit account with both of these carriers by virtue of which the shipments were forwarded prepaid. Shipments arrived at Purcellville one each on October 4 and 19 and two on Oct. 24, 1920. Notice of arrival were mailed to Eby & Son, one to Lancaster, Pa., and three in care of Wilsh Brown Co. Purcellville. Each of the cars upon arrival were placed on defendants public delivery tracks at Purcellville. Eby & Son maintained an office at Lancaster but not at Purcellville in so far as appears. The record fails to show that conditions at Purcellville were such as to warrant departure by defendant from the uniform scale of demurrage charges observed by other carriers. HELD, charges assessed unreasonable to extent they exceeded the uniform charges of $2 per car per day, reparation awarded. Southwestern Milling Co. v. Washington & Old Dominion Ry., 95 I. C. C. 719.

(b) The primary duty of a carrier is to afford carriage or transportation. As a part of such transportation, it is its duty to grant the shipper, after the actual movement has ceased, sufficient time to remove the lading from the car. But in respect of tidewater coal, the rate includes dumping the coal into the hold of the vessel, and the shipper does not perform the unloading. It is not the duty of a carrier to furnish storage beyond the reasonable time necessary to unload, and it is not within the power conferred upon the Commission by the act where the carrier has not held itself out as granting storage to order it furnished, but if it is furnished and charged for, storage becomes an incident in connection with transportation, and the legality of the rule becomes a proper matter for consideration by the Commission. Tidewater Coal Exchange v. B. & O. R. R., 96 I. C. C. 612, 622.

(c) The demurrage tariffs are uniformly interpreted to mean that when a car is held for forwarding directions demurrage accrues until the necessary data is supplied. Tidewater Coal Exchange v. B. & O. R. R., 96 I. C. C. 612, 623.

(d) Respondent M. P. R. R., proposed to exempt coke ovens on its line from the operation of its demurrage rules. The only coke ovens on the M. P., are the by product ovens of the Laclede Gas Light Co. By appropriate tariff provisions these ovens were exempt from the operation of demurrage rules until Sept. 30, 1924. On that date, a tariff, filed by an agent for the principal carriers of the country, became effective and canceled the M. P., tariff which exempted the Laclede ovens. The agency tariff exempts only coke ovens at or adjacent to coal mines where car distribution rules are in force. As the Laclede ovens are not adjacent to coal mines, they are subject to the demurrage rules that apply on traffic in general. By-product coke ovens in the southeast uniformly operate under demurrage rules, taking advantage of the average agreement plan, and it rarely occurs that any demurrage charges are collective. The evidence does establish that the proposed schedules would afford the Laclede Company an undue advantage in the use of M. P., equipment over other users of said equip-

ment with the exception of coal mines and coke ovens adjacent to mines and operating under car distribution rules. HELD, suspended schedules not justified. Demurrage rules on coke, 96 I. C. C. 731.

(e) Rule published in demurrage tariff HELD applicable merely to cars actually placed in plugging yard and bulletined there, not those held out because of congestion at plugging yard. Granger v. Davis, 2 Fed. (2d) 695.

(f) That rule of coal exchange pool member was credited with coal shipped as soon as it passed particular point enroute, and could then order withdrawal from exchange of equal amount, though his own coal would not be actually delivered to exchange for several days, enabled railroads to charge demurrage on cars not actually detained while cars of shipper were in transit, HELD not to render the tariff rule affecting demurrage unreasonable and invalid. Emmons Coal Mining Co. v. Norfolk & W. Ry. Co., 3 Fed. (2d) 525.

(g) Demurrage charges against shipper of coal held in cars in yard of coal exchange until ordered out by the shipper HELD not invalid, as based on an illegal interpolation of tariff rules and rules of the exchange, though, as permitted by rules of exchange, coal was unloaded on order of another shipper of coal of same quality, and the cars released before ordered out by first shipper. Emmons Coal Mining Co. v. Norfolk & W. Ry. Co., 3 Fed. (2d) 525.

(h) Unloading of coal of one shipper on order of another, as permitted by rules of coal exchange or pool, HELD not release of first shipper from liability for demurrage thereafter, under tariff rule that car should be considered as released on date shipment was transferred by "written order and acceptance" to another party, and that subsequent detention should be charged to such transferee. Emmons Coal Mining Co. v. Norfolk & W. Ry. Co., 3 Fed. (2d) 525.

(i) Tariff rule, affecting demurrage, that coal car should be deemed released when vessel registered for cargo or fuel supply, "except that, when cars are unloaded before vessel registers, such cars shall be released when unloaded," HELD not to relieve shipper of car dumped on order of another shipper of same grade of coal, as permitted by rules of coal exchange, from liability for demurrage, when substituted car was held subject to his order. Emmons Coal Mining Co. v. Norfolk & W. Ry. Co., 3 Fed. (2d) 525.

(j) Shipment moved to point at which consignee maintained no office. Carrier mailed notice of arrival on postcard which was not delivered, and later wrote letter to consignor requesting disposition orders. Had defendant complied with tariff requirement which provided that notice of unclaimed freight should be by telegram instead of by letter it would have been received by consignor the same day as sent. Defendant's letter, therefore, may not be regarded as a notice prior to date of its receipt. Shipment found overcharged to extent demurrage and penalty charges exceeded those which would have accrued had tariff provision been strictly complied with. Reparation awarded. Standard Lbr. Co. v. Director General, 93 I. C. C. 58.

(k) Storage and demurrage charges on lumber held in excess of free time on lighterage equipment at complainant's yard in New York Harbor found not unreasonable or otherwise unlawful. Complainant was unable to furnish berths for boats upon which demurrage accrued, could not receive all shipments consigned to it, did not stop those which were being made, and admittedly was unable to accept delivery. If demurrage was computed on car-demurrage basis it would greatly exceed that actually assessed on lighterage basis, and it is not shown that complainant or its traffic is treated any differently from any other dealer in lumber receiving lighterage-free delivery at private piers in New York Harbor. Coastwise Lumber & Supply Co. v. P. R. R., 93 I. C. C. 288.

(l) Demurrage charges are not assessed primarily for revenue purposes and are not based upon a fair rental value of equipment, but are rather in nature of penalties to prevent wasteful and extravagant use of equipment. Coastwise Lumber & Supply Co. v. P. R. R., 93 I. C. C. 288, 289.

(m) Applicable tariff provided that demurrage would not be assessed for detention where carrier's agent demanded payment of transportation charges in excess of tariff authority. Charges billed against car after its arrival at reconsigned destination included an admitted overcharge which shipper promptly questioned. HELD, billed charges must be

regarded as a demand for charges in excess of tariff authority and demurrage was not assessable against the car during period of detention pending controversy over legal charges. See Birmingham Commission Co., 74 I. C. C. 693, and Conf. Ruling 32. Milne Lbr. Co. v. C., C., C. & St. L., 93 I. C. C. 661.

(n) Consignees named in bills of lading were also consignors. Shipments were purchased by complainant f. o. b. its plant subject to inspection and rejection after placement thereat. Upon contention that complainant had no interest in shipments before their arrival at destination, and it was justified in ignoring notices of constructive placement because not a party to the transportation contracts. FOUND, to sustain such contention would necessitate giving no legal effect to fact that bills of lading were forwarded by consignors to complainant and that orders to carrier's station agent were given by shippers directing delivery to complainant's plant. These actions, coupled with past custom as to similar shipments, had effect of substituting complainant as consignee. Destination was its plant, cars were clearly and plainly intended for it, and carrier was justified in considering complainant as real consignee. Union Bag & Paper Corp. v. Director General, 95 I. C. C. 222, 224.

(o) It is the "act or neglect of consignee" or "inability of consignee to receive" cars which warrants their constructive placement, and this is not confined to a disability of tracks or lack of trackage space, but may include other causes as well. Mere track capacity to receive more cars is not sufficient. However, where a shipper has established that additional trackage space was available for placement of cars, burden is on carrier to show that its failure to deliver more cars was because of condition of the private tracks, or because of other conditions attributable to consignee. Union Bag & Paper Corp. v. Director General, 95 I. C. C. 222, 226.

(p) Adverse business conditions do not justify the cancellation of accrued demurrage. Tidewater Coal Exchange v. B. & O., 95 I. C. C. 612, 622.

(q) Notice of arrival covering shipment transferred en route failed to show initials and number of original car or that shipment was transferred in transit, as required by demurrage rules of applicable tariff. Demurrage charges assessed thereon found inapplicable prior to date on which free time following notice of transfer expired. Reparation awarded. Southwestern Milling Co. v. W. & O. D. Ry., 95 I. C. C. 719, 720.

(r) Application of the modified demurrage plan prescribed in 61 I. C. C. 551 was restricted to industrial common carriers, and its purpose was to prevent undue favoritism to the proprietary industries through the payment of switching reclaims. Virginia Blue Ridge Ry. v. S. Ry. Co., 96 I. C. C. 591, 593.

(s) Applicable demurrage rules must be considered in their entirety, and due weight should be given to the provisions of one rule, which qualify the provisions of another. Tidewater Coal Exchange v. B. & O. R. R. Co., 96 I. C. C. 612, 623.

(t) To prescribe the special demurrage rules laid down in the co-called Birmingham Southern case, 61 I. C. C. 551, to short-line road-haul carriers would enable them to participate in a through movement without incurring any responsibilty for car hire, and it is a fundamental principle that a car owner is entitled to adequate compensation for the use of his car by another carrier. Morehead & North Fork Railroad Co. v. C. & O. Ry. Co., 100 I. C. C. 45, 48.

(u) Upon reconsideration, finding in original report, 91 I C. C. 3, that application of penalty charges for detention at originally billed destinations of shipments of lumber which were subsequently reforwarded to new destination were not illegal, affirmed. Cars were placed for delivery on defendants' team tracks, but they had not been unloaded or accepted by consignee or owner, and, under the terms of governing tariff rule, must be considered reconsignments, and not reshipments as contended by complainants. Stetson, Cutler & Co. v. N. Y., N. H. & H., 102 I. C. C. 471.

(v) Uniformity in dealing with car detention is desirable and on a number of occasions commission has declined to approve exceptions to the uniform demurrage rules in favor of particular traffic. Demurrage Coal and Coke, 102 I. C. C. 554, 558.

(w) General practice throughout the country is that demurrage rules will not apply on empty cars for coal loading or cars under load at mines where car-distribution rules are applied in lieu of demurrage. Car-distribution rules better conserve car supply at mines than do

demurrage rules, and matter can be supervised more efficiently and economically in that way. Demurrage on Coal and Coke, 102 I. C. C. 554, 558.

ALL OTHER CITATIONS

Marfield Grain Co. v. A. & W. Ry. Co., 88 I. C. C. 126.

§12½. Act of God.

(a) Due to a storm which drove a steamer through the wharf at Albion, Calif., destroying part of it, shipments could not be unloaded and remained in cars until the damages were repaired. Demurrage accruing under applicable tariffs found legally assessed and not unreasonable. Cars could have been unloaded on the wharf or elsewhere and demurrage obviated. Moreover, following Mount Hood R. R. Co., 60 I. C. C. 116, cars delivered for loading or unloading do not cease to be held for those purposes because of fact that time of holding is extended by an act of God. Albion Lbr. Co. v. Director General, 92 I. C. C. 297.

§13. Average Demurrage Plan.

See Infra §16 (s).

(a) Complainant attacked demurrage charges on coal, carloads, received between May 1, 1920 and Oct. 31, 1921 at tidewater coal piers of defendants at New York, Philadelphia and Baltimore as unjust and unreasonable and illegal. Shippers of coal consigned their cars to the exchange as a common consignee, the exchange executed the average demurrage agreement with most of the carriers interested, and demurrage on the average plan was assessed. All operating expenses of the Tidewater Coal Exchange were borne by the railroads. In this case no average agreements were signed, although demurrage was assessed under the tariff which provided for computation thereof on the average plan. While the average agreement was not actually executed, the interested parties gave effect to it by otherwise voluntarily complying with its provisions. When the rules and regulations were revised Aug. 1, 1921, the provisions which required the exchange to execute average agreements covering the assessment of demurrage were omitted. The Commission does not think that the failure of the exchange to sign the average agreement or the failure of defendants to give the exchanges members the option of having demurrage assessed on the straight plan constitutes any reason for finding the demurrage as actually assessed unreasonable or unlawful. The exchange received from its members thousands of carloads of soft coal which were later transshipped. It accepted the benefits and advantages of the pooling method of accumulating tonnage. Demurrage on such cars accrued on the average plan throughout the 18 months that it was in operation. During all of that period the exchange knew that demurrage was being assessed under this plan, and made no objection thereto, nor did it request the establishment of the straight or any other plan of assessing demurrage. One of the purposes of the exchanges existence was to extend into the future the advantages which it and the defendant carriers, at the time of its organizaion, believed would result to the shippers as well as to the carriers under a plan which had worked well, and, indeed, been made compulsory, in the past during a similar emergency. Having acquiesced in the plan and acted upon it, the exchange may not now demand that these charges be reassessed under the straight plan with 10 days free time, because it has discovered that it is so computed that total amount of demurrage for the 18 months covered by its complaint would have been less than the amount assessed. HELD, demurrage charges attacked not unreasonable or otherwise unlawful, complaint dismissed. Tidewater Coal Exchange v. B. & O. R. R., 96 I. C. C. 612.

(b) Substitution of detention has been amply provided for in every instance where the average agreement is in effect; indeed the very object of the average rule is to permit the handling of cars without regard to the exact order of arrival; and the rules provide for the application of the maximum free time to each car released. Tidewater Coal Exchange v. B. & O. R. R., 96 I. C. C. 612, 621.

(c) Complainant attacked failure of defendants demurrage tariff to provide a reasonable time for acceptance or nonacceptance of shippers applications for the assessment of demurrage charges on the average agreement plan in lieu of straight demurrage, unreasonable demurrage charges, during Dec. 1922 and Jan. and Feb. 1923 were assessed at Indianapolis, Ind., on six cars of coal. On Oct.

6, 1922 complainants addressed a letter to defendants requesting that they be placed on the average agreement plan as to demurrage charges on coal loaded or unloaded at Indianapolis. Written application as contemplated by the demurrage tariff was not made until some time in November 1922. Defendant testified that as the facts then in its possession did not justify its officials in approving the agreement, complainants were called upon to execute an indemnity bond with approved security with which request they have not complied. Apparently they are now operating on that plan. The tariff provisions attacked are the same as those of the uniform code. That code has been in effect for many years and apparently this is the first complain before the Commission in which these provisions have been attacked. There is no claim that in refusing to approve the average agreement plan with complaints, defendant acted arbitrarily or abused a discretion accorded it under the tariff. Record affords no basis for a finding that complainants were subjected to damage by reason of the tariff provisions. HELD, complaint dismissed. Acme Coal Co. v. C. C. C. & St. L. Ry., 101 I. C. C. 79.

(d) Whether demurrage covering "order notify" shipments was covered by average agreement between carrier and consignee HELD immaterial, carrier's duty to collect demurrage being imposed by law, and hence cannot be waived or limited either by contract or custom. Davis v. C. B. Gill & Co. (N. C. 1925) 127 S. E. 532.

(e) Exchange at tidewater piers to which coal was consigned as a common consignee, for transshipment to vessels at the ports, failed to sign average agreement although demurrage accruing was assessed under average agreement tariff, and interested parties gave effect to it by voluntarily complying with such provisions. This plan does not contemplate unloading of cars in the order of their arrival, and the coal was unloaded from the cars into the vessels regardless of identification of cargo or charter of vessel. Carriers construed tariff provisions to mean that settlement may not be made until a car is released, and the excess credits accumulated during a calendar month were not applied to cancel the debits accruing during that month on cars remaining under load at the end thereof. HELD, demurrage charges assessed on coal on storage tracks at tidewater piers under such circumstances were not unreasonable or otherwise unlawful. Tidewater Coal Exchange v. B. & O., 96 I. C. C. 612.

(f) Tariff provisions under which demurrage charges were assessed on shipments of coal at Indianapolis, found not unreasonable and complainants found not to be damaged by reason thereof. Provisions assailed are identical with those of uniform demurrage code and provide that a party entering into an average agreement may be required to give sufficient security to carrier for payment of balance against him at end of month. Complainant was called upon to execute an indemnity bond with approved security, with which request he failed to comply. Contention that failure of demurrage rule to provide for definite acceptance or nonacceptance, in writing within thirty days, of shipper's application for average agreement resulted in unreasonable demurrage charges on shipments, not sustained. It is clear that if such rule had been in effect it would merely have expedited rejection of the application and denied complainants further opportunity of establishing their rights to be placed on the average plan. Complaint dismissed. Acme Coal Co. v. C., C., C. & St. L., 101 I. C. C. 79.

ALL OTHER CITATIONS

Smokeless Fuel Co. v. N. & W. Ry Co., 85 I. C. C. 395.

§14. Bunching.

(a) Complainant attacked charges for the detention of lumber at New York harbor points, or at complainants yard, as unlawful, unreasonable, unjustly discriminatory and unduly prejudicial. Complainant contended that lumber must be delivered from the lighterage equipment of the defendant inside the stringpiece in a straight and orderly manner, while defendant contended that complete delivery of lumber from such equipment to private piers consists only in passing the lumber across the stringpiece to an assigned space on the dock and that no duty to perform any yard service, such as stacking piling or tiering, rests upon it. The consignee must provide a berth when the car float, lighter or barge reports at destination. If a berth is not provided or the property is not unloaded

within the free time, the property is removable to a warehouse at the cost of the owner, subject to a lien for lawful charges. Complainant admits it was not at all times able to furnish berths for the boats upon which demurrage accrued. Under a rule of the demurrage tariff unloading includes payment of lawful freight charges. The property is deliverable only upon payment of satisfactory guaranty of demurrage charges. Complainant was not upon defendants credit list until Nov. 8, 1921. The bulk of the demurrage accrued prior thereto. On account of failure promptly to pay freight charges, complainant was subsequently suspended from the credit list and has not since been restored. The defendant has always been willing to separate from other lumber a particular shipment immediately desired by the complainant if request therefor was received prior to loading on the Jersey shore. After the boat is loaded several carloads may be superimposed upon the one desired, and it is generally impracticable to deliver a particular carload without notice prior to loading unless perchance its position on the boat will permit. Complainants facilities were such that it could not receive all of the shipment consigned to it. It clearly appears that, no matter what course had been followed in respect of transference across the harbor, complainant could not have escaped storage or demurrage. It did not stop the numerous shipments which were being made to it and admittedly it was unable to accept delivery. It is manifest that if the defendant had put a single carload upon one canal boat and that carload had been the first which arrived on the Jersey shore and a similar course had been followed in regard to all of the other 92 carloads consigned to the complainant in January, it would have been absolutely impossible for the canal boats to have been berthed at complainants dock, and the same might be said if the 92 carloads had been loaded on 10 canal boats. There is nothing of record to indicate that complainant or its lumber traffic is treated any differently from any other dealer in lumber receiving lighterage free delivery at private piers in New York harbor or from any other traffic unless that difference of treatment arises from stringpiece delivery, which will now be considered. The present record is limited to consideration of the application of the rules to delivery of lumber from lighterage equipment. It is clear that the present rule of defendant limiting delivery of lumber "to" the stringpiece is not in accord with established custom and practice in connection with such delivery in New York harbor, and it should be amended to provide for such delivery "across" the stringpiece. HELD, storage and demurrage charges attacked not unlawful, unreasonable, unjustly discriminatory or unduly prejudicial. HELD, further, clause in defendants tariff providing for the delivery of lumber "to" the stringpiece should be amended to provide for such delivery "across" the stringpiece. Coastwise Lumber & Supply Co. v. Pennsylvania R. R., 93 I. C. C. 286.

§14¼. Constructive Placement.

(a) Complainant attacked demurrage charges on cars consigned to Thirty-seventh Street station, New York, at Greenville, N. J., under constructive placement and as unreasonable and inapplicable. The record is clear that complainant ordered no cars from the Jersey side and that there was an ample supply of cars at all times in the Thirty-seventh street yards. Complainant does not question the clerical accuracy of defendant's detention records, but bases its claim for reparation upon a standing order placed by it with defendant not to hold cars short of billed destination and upon an attempt to prove lack of sufficient switching power at the yards. The tariff rule was not subject to modification by a standing order from complainant not to hold its cars short of billed destination. Defendant shows that in April one car stood on complainant's trestle for 12 days. Where other cars were when detained by complainant after actual placement does not appear, but obviously they were either upon the trestle or were standing on complainant's lead track, thereby constructing the exchange of loads and empties. In view of the situation thus disclosed it would have been futile for defendant to bring additional cars for complainant. Such additional cars would have rendered the congestion there greater than it was and constructive placement at Jersey City or Harsimus Cove, short of the billed destinations, was defendant's duty under the tariff. HELD, detention attacked applicable and not unreasonable, complaint dismissed. Burns Bros. v. Pennsylvania R. R., 92 I. C. C. 615.

(b) In 61 I. C. C. 424, the Commission considered the lawfulness of certain demurrage charges collected on numerous cars of pulpwood, wood pulp and coal constructively placed by it in July, August, and September, 1918, at various points more or less adjacent to complainants plant at Fennimore, N. Y., across the Hudson river from Hudson Falls, N. Y. They were further considered in 69 I. C. C. 711. First: Shall the Commission adhere to the previous holding that mere physical capacity of tracts to receive cars is not sufficient, but that inability of the consignee to receive depends on physical capacity of tracks as modified by other facts? If track capacity alone governs, the inquiry need proceed no further, and a finding that demurrage charges subsequent to August 9 were unlawfully assessed would be proper. If the Commission adheres to the former decision, where any facts presented on further hearing to warrant it in changing its finding that defendant was justified in assuming that complainants unloading capacity was no greater than that demonstrated by its daily performance during the period in question? It will be noted that it is the act or neglect of the consignee or inability of the consignee to receive cars which warrant their constructive placement, and this is not confined to a disability if tracks or lack of trackage space, but may include other causes as well. HELD, mere track capacity to receive more cars is not sufficient. Original report affirmed. Union Bag & Paper Corp. v. Director General, 95 I. C. C. 222.

(c) Complainant attacked demurrage charges exacted on cars of copper and coal, delivered to its plant at Perth Amboy, N. J., and released during June and July, 1920 as inapplicable and unreasonable. On April 10, 1920 a yardmens strike commenced and continued at least until April 27. For slightly more than a year prior thereto an understanding had existed between complainant and defendant that all cars for complainant would be given constructive placement upon arrival and that no cars should be delivered except upon request for cars containing specific commodities. On May 5, 1920 complainant sent the following written order to defendant: "Kindly place all cars that arrive or are at present constructively placed in your yard, until further orders and conditions become normal." This order was disregarded by defendant. The agent of defendant at Perth Amboy continued to issue written notice of constructive placement and to deliver to complainant such cars as from his knowledge of its track layout he thought complainant could accept. On June 2, 1920 complainant again commenced to give orders for a specific number of cars containing certain commodities. The conductor of the crew then serving the locality embracing complainants plant determined from the number of the cars at the plant when a switching movement was made what cars could be accepted and should be delivered on the next movement. The effect of complainants notice of April 15 to defendant was to abrogate the prior understanding between them with respect to the holding, under constructive placement, of cars for complainant short of destination for orders, and to order actual placement of all cars then held for complainant. The notice of May 5 was a specific abrogation of the understanding. Demurrage on cars under constructive placement which accrued prior to receipt by defendant of the notice of April 15 was legal. Thereafter constructive placement could be made by defendant only if, because of some act, neglect or inability of complainant to receive, actual delivery could not be effected. HELD, demurrage accruing prior to April 16, 1920 applicable; those accruing on and after that date inapplicable; demurrage applicable between April 16, 1920 and June 1, 1920 were those accruing from dates of actual placement during that period to dates of release; demurrage on and after June 2 applicable, reparation awarded. Standard Underground Cable Co. v. L. V. Ry., 96 I. C. C. 503.

(d) Constructive placement HELD permissible only after physical tender of car or circumstances which excuse it, as inability to accept for causes attributed to consignee. Granger v. Davis, 2 Fed. (2d) 695.

(e) Where cars were not loaded or unloaded, but enough contents were removed to reveal character, and carload was then sold on sample, its contents replaced, and car reshipped to purchaser, the free time for which consignee was not liable for demurrage HELD governed by rule published in demurrage tariff providing for free time where cars "are held" for consignment or reshipment in

same car; the words "are held" meaning held either by consignor or consignees. Granger v. Davis, 2 Fed. (2d) 695.

(f) Upon further hearing demurrage charges on shipments held short of destination under constructive placement on account of a fire at complainant's plant found not unlawful and findings of former reports 61 I. C. C. 424 and 69 I. C. C. 711, affirmed. Actual unloading performance, notices of constructive placements which included a tender of cars, and daily demurrage statements, sustain burden of proof cast upon carrier to show that delivery was not made because of complainant's inability to receive and unload more cars. Complainant, having acquiesced in carrier's manner of making deliveries, can not claim that its unloading capacity was any greater than actual performance. Moreover, acts and statements of complainant's representatives who failed to inform carrier of their claimed ability to unload more cars constituted "act or neglect" of consignee within meaning of the demurrage rule. Union Bag & Paper Corp. v. Director General, 95 I. C. C. 222.

(g) Consignees named in bills of lading were also consignors. Shipments were purchased by complainant f. o. b. its plant subject to inspection and rejection after placement thereat. Upon contention that complainant had no interest in shipments before their arrival at destination, and that it was justified in ignoring notices of constructive placement because not a party to the transportation contract. FOUND, to sustain such contention would necessitate giving no legal effect to fact that bills of lading were forwarded by consignors to complainant and that orders to carrier's station agent were given by shippers directing delivery to complainant's plant. These actions, coupled with past customs as to similar shipments, had effect of substituting complainant as consignee. Destination was its plant, cars were clearly and plainly intended for it, and carrier was justified in considering complainant as real consignee. Union Bag & Paper Corp. v. Director General, 95 I. C. C. 222, 224.

(h) Cars arrived at destination and were constructively placed because inbound shipments exceeded capacity of complainant's siding. A custom and understanding existed between carrier and complainant whereby oral in lieu of written notice of arrival was given and accepted. Tariff, however, provided that notice of arrival be sent or given consignee in writing or, in lieu thereof, as otherwise agreed to in writing. FOUND, even though complainant had actual notice and absence of written notice was not the proximate cause of delay in unloading, rule requiring written notice was part of the tariff and could not be waived. See Davis v. Henderson, 266 U. S. 92. Demurrage charges assessed found inapplicable, former decisions of the commission reversed, and reparation awarded. Campbell Construction Co. v. L. C. & S. E. Ry., 95 I. C. C. 603.

(i) Demurrage charges on cars constructively placed in conformity with an understanding between complainant and defendant that no cars should be actually placed except upon request, found applicable and not unreasonable. Standard Underground Cable Co. v. L. V. R. R. Co., 96 I. C. C. 503.

(j) Instructions of complainant, on June 2, 1920, for specific delivery of cars were equivalent to renewal of agreement between complainant and defendant with respect to holding cars short of destination for orders. Demurrage charges applicable on cars constructively placed prior to, or on June 2, were those accruing from dates of actual placement to dates of release, and on cars constructively placed after that date those accruing from dates of constructive placement. Charges found not unreasonable. Standard Underground Cable Co. v. L. V. R. R. Co., 96 I. C. C. 503, 507.

(k) After abrogation of understanding between complainant and defendant with respect to holding cars short of destination for orders, constructive placement could be made, under the tariffs, only if actual delivery could not be effected due to complainant's inability to receive. Such not being the fact, demurrage charges held not applicable prior to date of actual placement. Standard Underground Cable Co. v. L. V. R. R. Co., 96 I. C. C. 503, 508.

(l) Complainant contends defendants failed to serve written notices, as required, of constructive placement, of certain cars held by defendants at points beyond interchange track, while defendants assert such notices were duly mailed in each instance, but record thereof could not be located. In absence of an admission of receipt of written notice, proof that such notice was mailed or otherwise served on consignee must be established, which was not done in this

case. HELD: Demurrage charges collected prior to actual placement of such cars were without tariff authority. General Motors Corp. v. Director General, 100 I. C. C. 341, 344.

§14½. Congestion.

See Demurrage §16.

(a) Cars consigned to members of Hay and Grain Exchange, whose yards could not hold them, necessitating storage by railroad elsewhere, though not intended to be unloaded in plugging yard of consignee, HELD subject to demurrage, under demurrage tariff, as "cars held for or by consignors or consignees for loading, unloading, forwarding directions, or for any other purposes." Granger v. Davis, 2 Fed. (2d) 695.

(b) Complainant attacked icing and demurrage charges on one car of apples shipped Oct. 9, 1923 from Omak, Wash., to New York, N. Y. as unreasonable and illegal. Shipment consigned to Northwestern Fruit Exchange, advise Berkowitz and Schwartz, and was routed for delivery by the Erie, without any particular point in New York being specified. On Oct. 23, 1923 the car arrived to Croxton, N. J., the point at which defendant holds shipments destined to New York, without particular delivery being designated. On Oct. 24 consignees were notified of arrival and on the following day ordered the car to defendants Duane Street station in New York for sale at auction on Oct. 26. Because of congestion then existing at the station referred to, defendants agent, acting under proper tariff authority requested the consignees to eliminate this car from their order, which was done on Oct. 25. The car remained on hand awaiting further orders and on Nov. 1, 1923 defendants agent notified complainants New York office to that effect. On Nov. 8 an acceptable order for delivery at Duane St. was received by defendant and the car was then moved from Croxton by car float to the station designated, ice and demurrage accruing. HELD, charges applicable and not unreasonable, complaint dismissed. Northwestern Fruit Exchange v. Erie R. R., 112 I. C. C. 29.

§15. Free Time.

(a) Complainant attacked defendant's rule governing the free time allowed at Mobile, Ala., for the unloading of freight from cars for trans-shipment by coastwise vessels as unreasonable and unjustly discriminatory between December, 1919, and March, 1921. Between June, 1920, and April, 1921, certain carload shipments of cast iron pipe and pig iron were consigned from Tennessee and Alabama to complainant at Mobile for transshipment by coastwise vessels via the Panama canal to Pacific coast ports. At that time defendant's rule governing free time on export shipments allowed seven days for unloading, whereas on coastwise shipments allowed only two days. Effective March 5, 1921, the rule was amended to allow seven days free time on cars containing shipments destined for coastwise as well as for export movement. If, at ports of trans-shipment, there be any difference in the handling of heavy commodities for export and for coastwise movement it is not shown here. HELD, rule attacked unreasonable to extent it did not allow seven days free time, undercharges waived, complaint dismissed. Page & Jones v. Southern Ry., 91 I. C. C. 684.

(b) Rule governing free time for unloading freight consigned locally to Mobile, Ala., for transshipment by vessels for coastwise movement, found unreasonable in that it allows less free time than that allowed on similar freight for transshipment in export movement. Rule subsequently amended to allow same free time on shipments destined for coastwise as for export movement. Both export and coastwise shipments must be placed at dock in advance of arrival of steamers and therefore both need more free time for unloading than is allowed ordinary domestic shipments. Page & Jones v. S. Ry. Co., 91 I. C. C. 684.

§15½. Legal Rate.

See Legal Rates.

(a) Complainant attacked as unjust, unreasonable and illegal demurrage charges at Fort Worth, Tex., on a car of milo maize shipped to that point from Brawley, Calif., on June 27, 1919 and later reconsigned to St. Louis, Mo. Shipment delivered to the S. P., consigned to order of shipper, Globe Grain & Milling Co., notify Moffatt Grain Co., at Fort Worth and moved over that line to El Paso, Tex., and T. & P., beyond. It arrived at Fort Worth on July 8, 1919 and on the following day notice of its arrival was mailed to the Moffatt Grain Co at that point. That firm had no office at

Fort Worth. On July 16, 1919 the T. & P., wired the S. P., at Brawley for disposition orders, but the latter was unable to furnish them. Complainant purchased the shipment from the Moffatt Grain Co. of Kansas City, Mo., and on July 12, 1919 advised the H. & T. C., a part of the S. P., at Fort Worth that it held the S. P., bill of lading, requested that it be given notice of the arrival and that the shipment be held for inspection. On August 14, 1919 complainant found the shipment in the T. & P., yards at Fort Worth and on the same day ordered it reconsigned to St. Louis. The same rate applied via the T. & P., as via records of the commission developed the H. & T. C., and examination of the that the H. & T. C., acts as a corporate entity in filing its own annual reports and tariffs. HELD, demurrage charges applicable, complaint dismissed. Ralston Purina Co. of Texas v. Director General, 98 I. C. C. 456.

§16. Placement or Arrival Notices.

See Notice.

(a) Upon arrival at Nashville, Tenn., cars were placed for unloading. Some were reforwarded after being partly unloaded and reloaded with identical materials and ladings of others were changed by substitution of commodities from complainant's stock. Separate bills covering inbound and outbound movements were rendered and paid. HELD, penalty charges assessed on theory that shipments were reconsignments found illegally assessed since they plainly fell within definition of reshipments as defined in governing tariffs. Chestnut Lumber Co. v. Director General, as Agent, 89 I. C. C. 236.

(b) Upon arrival of cars they were rejected by consignee. Consignor notified and disposition orders requested but not furnished. As to certain shipments defendant again wrote consignor "that unless disposition orders were received on or before a certain date such shipments would be sold." As to others a telegram was forwarded stating "that shipments would be sold on a specified date." Demurrage charges collected up to time shipments were sold by defendant found illegal to extent they exceeded those which would have accrued up to and including date of telegram as to shipments covered by it, and up to and including date specified in defendant's letter as to shipments specified therein. Reparation awarded. Wallingford Coal Co. v. Director General, as Agent, 89 I. C. C. 353.

(c) Complainant's name did not appear in billing. Shipment was transferred en route and new car number and change noted on waybill. In accordance with customary practice, notice of arrival was given consignee by service of expense bills. Shipment was rejected by consignee who failed to so notify complainant until after receipt of second notice requesting disposition orders, similar notice having been sent by carrier to complainant. HELD, since notice given consignee contained all information available from bill of lading, and no obligation rested upon carrier under governing tariff to notify shipper of refusal of shipment, the consignee, rather than defendant, was responsible for any negligence which may have occurred in failing to notify complainant of the rejection. Demurrage found legally assessed. Toberman, Mackey & Co. v. Director General, as Agent, 89 I. C. C. 365.

(d) Complainant attacked demurrage charge at Chattanooga on a car of lumber shipped April 6, 1923, from Oconee, Ga., to itself at Chattanooga, Tenn., and reconsigned to Princeton, W. Va., as unreasonable and inapplicable. Car arrived at Chattanooga April 10, and notice of arrival was mailed by the C. of Ga., defendant, to consignee at that point on April 11. On April 12 complainant was notified over the telephone at Birmingham of the car's arrival and of it being held for disposition. On April 13, complainant instructed the general agent at Birmingham to reconsign the car to Princeton, which was done. On March 8, 1923, complainant wrote the defendant that in the past it had been billing shipments of lumber to Chattanooga on routing over the defendant for reconsignment; that the practice would be continued; that it purposed as far as possible to supply reconsigning instructions in advance of arrival of cars at Chattanooga. If the absence of a definite agreement, which embodied a mutual understanding, the written notice would be proper under the demurrage rules. HELD, one day's demurrage should have been assessed, overcharge $2.00, which should be refunded, complaint dismissed. American Lumber & Export Co. v. C. of Ga. Ry., 91 I. C. C. 65.

(e) Complainant attacked demurrage charges on 165 cars of sand, gravel, crushed stone and other commodities re-

ceived at Viroqua, Wis., in Sept., and Oct. 1922, as unlawful. Because of the failure of the highway commission to supply the necessary quantity of cement complainants operations were delayed, and the resulting accumulation of inbound cars of sand, gravel and crushed rock exceeded the capacity of complainants siding. Surplus cars were placed on defendants storage tracks and demurrage charges were assessed under the average agreement. Complainant relies upon the contention that defendant gave no written notice of arrival of the cars or of the fact that they were held ad could not be delivered by defendant, and that, therefore there was no constructive placement. The evidence shows that complainants representatives were notified orally by defendants agent of the daily arrival and accumulation of cars at Viroqua, that upon arrival of the cars expense bills covering freight charges thereon were taken to complainants office and verified by complainants representatives, and that written notice was given for cars placed on defendants storage tracks at Westby, Wis., a point about 7.5 miles north of Viroqua. The record clearly establishes that complainant had actual notice of arrival of the cars, and no objection was offered to the method of giving such notice prior to the filing of this complaint. HELD, demurrage charges inapplicable, reparation awarded. Campbell Construction Co. v. L. C. & S. E. Ry., 95 I. C. C. 603.

(f) Complainant attacked demurrage charges collected on a car of lumber May 17, 1923 from Falco, Ala., to Detroit, Mich., as unreasonable and illegal. Shipment was originally consigned to complainant at Nashville, Tenn., and arrived on May 21, 1923. On May 22, 1923 postcard notices of arrival were mailed at Nashville, and also at Falco, the point of origin, and a wire was sent to defendants agent at Birmingham requesting that complainant be notified that the car was in Nashville awaiting disposition. On June 1 the car was reconsigned to Detroit, Mich., and subsequently moved to that point. Demurrage charges were collected for detention at Nashville. None of the notices were received by complainant and the agent at Birmingham has no record of the receipt of the telegram referred to. The post card addressed to complainant at Nashville was returned for better address. An examination of the correspondence shows it was the intention of both parties to agree to notice by wire in lieu of the usual notice of arrival. In the face of this understanding it is not material that the tariff provision authorizing such an agreement was not mentioned. Clearly the correspondence of record constitutes an agreement in writing in conformity with the tariff provision. In neglecting to comply with this agreement as to notice by wire, defendant failed to meet the requirements provided by the demurrage rules, and consequently no demurrage accrued. HELD, demurrage charges inapplicable and should be refunded, complaint dismissed. Standard Lumber Co. v. L. & N. R. R., 96 I. C. C. 277.

(g) Where demurrage tariff provides that notice of arrival be "sent or given consignee or party entitled to receive same in writing or, in lieu thereof, as otherwise agreed to," and there is no definite agreement, embodying a mutual understanding, for furnishing of such notice to a party located at a point other than at billed destination, furnishing of written notice to consignee at billed destination is proper under demurrage rule. American Lbr. & Export Co. v. C. of G. Ry. Co., 91 I. C. C. 65.

(h) Where, under agreement between railroad and coal exchange, cars for purpose of demurrage charges were treated as having arrived upon exchange's receipt of notices of arrival sent by railroad, and exchange was not required to release cars in order received and was entitled to credit early release against tardy release of others, and where through mistake of railroad's employees no notices of arrival were sent out for some 880 cars, HELD, railroad seeking to recover from shipper, member of coal exchange, its share of demurrage charges, being unable to show what sum, if any, plaintiff owed, could not recover; nor was it entitled in adjustment of difficulty to assume that there had been neither free time nor demurrage on the cars no notice of arrival of which had been given. Virginian Ry. Co. v. Lake & Export Coal Corporation, 5 Fed. (2d) 496.

(i) In action involving liability of consignee for demurrage charges, question of whether railroad had knowledge of consignee's address, making mail notice to consignee of arrival of shipment

insufficient, under demurrage rule in tariff filed with Interstate Commerce Commission, HELD for jury. Boney v. Atlantic Coast Line R. Co., (S. C. 1925) 126 S. E. 46.

(j) Under demurrage rules in tariff filed with Interstate Commerce Commission, providing for notice to consignee within 24 hours after arrival of shipment as condition precedent to imposition of demurrage charges, and for deposit of notice in United States mail, "when address of consignee does not appear on billing and is not known," notice by mail is not sufficient, unless both conditions exist. Boney v. Atlantic Coast Line R. Co. (S. C. 1925) 126 S. E. 46.

(k) The evidence in the case at bar shows that the demurrage sued for was on shipments of coal from the defendant's mine and was based upon tariffs issued by the railroad company under the provisions of the Interstate Commerce Act (Comp. St. U. S. § 8563 et seq.). A clause in the tariff filed, providing for an exemption of coal cars subject to car distribution rules from demurrage charges is notice to a coal company, and the duty is cast upon said coal company to comply with the terms prescribed by the railroad company, if it desires to avail itself of the benefit of such exemption. A failure on the part of the coal company to take the action necessary on its part to bring itself within such exemption renders it liable to the railroad company for demurrage charges under said tariff. Baltimore & O. R. Co. v. Dellslow Coal Co., (W. Va. 1925) 127 S. E. 43.

(lm) Shipment moved to a point at which consignee maintained no office. Carrier mailed notice of arrival on postcard which was not delivered, and later wrote letter to consignor requesting disposition orders. Had defendant complied with tariff requirement which provided that notice of unclaimed freight should be by telegram instead of by letter it would have been received by consignor same day as sent. Defendant's letter, therefore, may not be regarded as a notice prior to date of its receipt. Shipment found overcharged to extent demurrage and penalty charges exceeded those which would have accrued had tariff provision been strictly complied with. Reparation awarded. Standard Lbr. Co. v. Director General, 93 I. C. C. 58.

(n) Consignees named in bills of lading were also consignors. Shipments were purchased by complainant f. o. b. its plant subject to inspection and rejection after placement thereat. Upon contention that complainant had no interest in shipments before their arrival at destination, and that it was justified in ignoring notices of constructive placement because not a party to the transportation contract. FOUND, to sustain such contention would necessitate giving no legal effect to fact that bills of lading were forwarded by consignors to complainant and that orders to carrier's station agent were given by shippers directing delivery to complainant's plant. These actions, coupled with past custom as to similar shipments, had effect of substituting complainant as consignee. Destination was its plant, cars were clearly and plainly intended for it, and carrier was justified in considering complainant as real consignee. Union Bag & Paper Corp. v. Director General, 95 I. C. C. 222, 224.

(o) Cars arrived at destination and were constructively placed because inbound shipments exceeded capacity of complainant's siding. A custom and understanding existed between carrier and complainant whereby oral in lieu of written notice of arrival was given and accepted. Tariff, however, provided that notice of arrival be sent or given consignee in writing or in lieu thereof, as otherwise agreed to in writing. FOUND, even though complainant had actual notice and absence of written notice was not the proximate cause of delay in unloading, rule requiring written notice was part of the tariff and could not be waived. See Davis v. Henderson, 266 U. S. 92. Demurrage charges assessed found inapplicable, former decisions of the commission reserved, and reparation awarded. Campbell Construction Co. v. L. C. & S. E. Ry., 95 I. C. C. 603.

(p) Notice of arrival covering shipment transferred en route failed to show initials and number of original car or that shipment was transferred in transit, as required by demurrage rules of applicable tariff. Demurrage charges assessed thereon found inapplicable prior to date on which free time following notice of transfer expired. Reparation awarded. Southwestern Milling Co. v. W. & O. D. Ry., 95 I. C. C. 719, 720.

(q) Due notice of arrival was mailed to "order notify" party who refused to take possession of shipments. Consignor

was so notified and disposition orders requested. Contention that demurrage accruing was not applicable because consignor was not promptly notified by delivering line that cars were held awaiting disposition not sustained. Delivering line's tariff carried no provision for such notification within any specified period, when consignor was actually advised that shipments were unclaimed it did not act promptly in effecting disposition, and failure to receive such advice sooner was not the proximate cause of detention. Delivering carrier fully discharged its duty under applicable tariff when it mailed notices to "order notify" party. Southwestern Milling Co. v. W. & O. D. Ry., 95 I. C. C. 719, 722.

(r) Demurrage charges collected for detention of shipment of lumber at Nashville, Tenn., moving from Falco, Ala., to Detroit, Mich., found inapplicable. The correspondence of record constitutes an agreement in writing in conformity with the tariff provisions quoted and in neglecting to comply with this agreement as to notice by wire, defendant failed to meet the requirements provided by the demurrage rules, and consequently no demurrage accrued. Refund directed. Standard Lumber Co. v. L. & N. R. R. Co., 96 I. C. C. 277.

(s) Exchange at tidewater piers to which coal was consigned as a common consignee, for transshipment to vessels at the ports, failed to sign average agreement, although demurrage accruing was assessed under average agreement tariff, and interested parties gave effect to it by voluntarily complying with such provisions. This plan does not contemplate unloading of cars in the order of their arrival, and the coal was unloaded from the cars into the vessels regardless of identification of cargo or charter of vessel. Carriers construed tariff provisions to mean that settlement may not be made until a car is released, and the excess credits accumulated during a calendar month were not applied to cancel the debits accruing during that month on cars remaining under load at the end thereof. HELD, Demurrage charges assessed on coal on storage tracks at tidewater piers under such circumstances were not unreasonable or otherwise unlawful. Tidewater Coal Exchange v. B. & O., 96 I. C. C. 612.

(t) Complainant attacked demurrage and penalty charges for detention of four cars at Alliance, Neb., during June 1921 from Enumclaw, Wash., as unreasonable and unjustly discriminatory. On arrival at Alliance the usual postal card notices were mailed to complainant. Complainant had no office at Alliance, and the cards returned undelivered. Contemporaneously with the mailing of the cards telegrams were sent to the general agent of the Burlington at Seattle, Wash., advising him that the cars were on hand awaiting disposition orders. An employee in that agent office testified that, according to notations there made, he notified by telephone the employe of complainant to whom such information was customarily communicated that the cars were at Alliance awaiting disposition orders. Complainants employee has no recollection of having received such notice as to these particular cars. The tariffs laid upon defendants the duty of sending notice by wire either to the consignor or to the agent at point of shipment, failing in which no demurrage accrued after the lapse of five days from the first 7:00 a. m. after the date on which notice of arrival was sent or given to the consignee. The tariff provisions as to notice were not complied with. HELD, charges attacked were inapplicable, reparation awarded. Central West Coal & Lumber Co. v. C. B. & Q. R. R. 104 I. C. C. 452.

(u) Shipment of lumber from Picayune, Miss., to the Thirty-seventh Street station of the Pennsylvania, New York City, was diverted under authority of the commission's service order No. 1, to the Twenty-seventh Street station of the Lehigh Valley. Delivering carrier endeavored unsuccessfully to notify shipper, and finally shipment was sold to pay accrued charges. Under all the circumstances, the Twenty-seventh Street station was the practical point of delivery, and changes were made in routing rather than destination, the real difficulty arising from failure of shipper to receive notice, due primarily to the fact that he was shown as both consignor and consignee and could not be reached by mail at origin or destination. National Lumber Co. v. N. O. & N. E. R. R. Co., 100 I. C. C. 334, 336.

(v) Complainant contends defendants failed to serve written notices, as required of constructive placement of certain cars held by defendants at points beyond interchange track, while defendants assert such notices were duly mailed in each instance, but record thereof could not be located In absence of an admission of receipt of written notice,

proof that such notice was mailed or otherwise served on consignee must be established, which was not done in this case HELD: Demurrage charges collected prior to actual placement of such cars were without tariff authority. General Motors Corp. v. Director General, 100 I. C. C., 341, 344.

(w) Shipment was placed for unloading and notice of arrival immediately forwarded to consignee. Owing to consignee's inability to pay freight charges demurrage accrued. Consignor was notified of facts by mail and disposition orders requested, whereupon it paid accrued charges and shipment was released. FOUND: Demurrage charges were illegally assessed since tariff specifically provided for furnishing of notice to consignor that shipment was unclaimed at expiration of 5 days from the first 7 a. m. after the day on which notice of arrival was given consignee. Having failed in this duty carrier could not lawfully demand demurrage for detention thereafter. See 85 I. C. C. 331. In addition notice had to be by wire, no alternative method being authorized. Davis v. Henderson, 266 U. S. 92. Nat'l Fire Proofing Co. v. B. C. R. R., 102 I. C. C. 345.

§17. Railroad Errors or Omissions.

(a) Acts and statements of shipper's representatives and their failure to inform carriers of their claimed ability to unload more cars than they actually did found to constitute "act or neglect" of consignee within meaning of a demurrage rule governing constructive placement. Union Bag & Paper Corp. v. Director General, 95 I. C. C. 222, 233.

(b) Demurrage charges assessed on a reconsigned shipment at its first-billed destination, incurred as a result of negligence of carrier in transmitting reconsignment instructions, found illegal. Reparation awarded. American Lumber & Export Co. v. A., T. & N. R. R. Corp., 96 I. C. C. 576.

(c) Complainant alleged it shipped a car of Pocahontas egg coal in June 1923 from Springton, W. Va., to Tekonsha, Mich., that this coal was transferred in transit from the car in which it had been first loaded into another car, that as a result of such transfer the consignee at Tekonsha refused to accept the same, that when complainant had been advised of said refusal it notified defendant that it would be responsible in damages, and that, notwithstanding such notice, defendant assessed and complainant paid $48 demurrage charges alleged to have accrued on this shipment after notice to complainant. This car of coal was shipped to the consignee for domestic uses. While in transit the car in which the shipment was first loaded was damaged to such an extent that transfer to another car was necessary. Degradation of a commodity in transit due to its transfer from one car to another is not a railroad error. The demurrage charges were applicable. HELD, demurrage charges were applicable, and not unreasonable, complaint dismissed. Atwater & Co. v. M. C. R. R. 107 I. C. C. 491.

(d) Complainant attacked demurrage charges for detention of 10 cars containing grain or feed at Lexington, O., during Nov. and Dec. 1922 as unjust and unreasonable. The greater portion of complainants inbound traffic originates at points west of the Mississippi river and at the time of the receipt of the advice from defendants agent that no western lines cars could be used or would be reconsigned, he had ordered 61 cars of grain and feed. Some of these he sold at point of origin and shipped them direct to the purchaser. The only question is whether the assessment of this demurrage because of defendants failure to furnish cars for outbound loading and its refusal to permit the reconsignment of western line owned cars when under load consigned to complainant, was unjust and unreasonable. That defendants agents misconstrued the order of the association by basing their refusal to permit reconsignment or diversion of cars thereon is beyond question. A carrier may not arbitrarily set aside its tariff provisions without due notice in the proper form. It is pointed out that the practice of reconsignment and diversion was granted and authorized at Lexington under the tariffs of defendant, but complainant is unable to point out at this time any particular car or cars on which reconsignment was requested and refused by defendant and on which demurrage accrued. He simply states that he took the word of the agent and made no effort to have them reconsigned HELD, demurrage charges not unreasonable, complaint dismissed. Lexington Elevator & Mill Co. v. B. & O. R. R., 109 I. C. C. 542.

ALL OTHER CITATIONS

Gadsden Lumber Co. v. A. N. R. R. Co., 85 I. C. C. 626.

§18¼. Switching Reclaims.

See Per Diem Charges; Switch Tracks and Switching §9½.

(a) Payment of switching reclaims to industrial lines may result in preferences and advantages to the proprietary industries. The per diem plan with reclaims applies to carriers which perform a switching service as distinguished from a line haul. No reclaim is allowed where a short line, whether industrially owned or otherwise, performs a line haul service as distinguished from a switching service. Virginia Blue Ridge Ry. v. S. Ry., 96 I. C. C. 591, 593.

(b) The Commission condemned per diem with reclaims where payment of switching reclaims to industrial lines may result in preferences and advantages to the proprietary industries, and prescribed a modified demurrage plan in lieu thereof. Western Pine Lumber Co. v. Director General, 96 I. C. C. 625, 627.

(c) The per diem plan with reclaims applies to carriers which perform a switching service as distinguished from a line haul. No reclaim is allowed where a short line, whether industrially owned or otherwise, performs a line haul service as distinguished from a switching service. Western Pine Lumber Co. v. Director General, 96 I. C. C. 625, 628.

§18½. Uniform Demurrage Code.

(a) The Commission has frequently pointed out the desirability of uniformity in dealing with car detention, and have on a number of occasions declined to approve exceptions to the uniform demurrage rules, in favor of particular traffic. Demurrage rules on coke, 96 I. C. C. 731, 734.

§19. Weather Interference.

(a) Complainant attacked demurrage charges for the detention at Detroit, Mich., during Nov. and Dec. 1919 and Jan. 1920 of 175 cars of mixed sand and gravel tendered for delivery in a frozen condition as unreasonable. The demurrage rule provided for additional free time for unloading frozen shipments. Complainants did not serve upon the carriers agent a written statement of the frozen condition of each car within the prescribed free time, but it appears that their condition in general was promptly brought to the attention of the carriers. Quite as important as the requirement of written notice and a condition precedent to relief from the payment of demurrage was the provision of the rule that diligent effort should be made to unload. Complainant was well equipped to handle this commodity in large quantities under normal conditions. Complainant did not use the effort contemplated by the rule to release these cars, and that had due diligence been used the cars might have been unloaded within the free time allowed. Written notice to the consignee is required by the demurrage rule covering constructive placement. In the absence of an admission of receipt of written notice proof that such notice was mailed or otherwise served on the consignee must be established by the carrier. No competent evidence was submitted herein which showed that written notices of constructive placement of cars so claimed to have been placed was served upon or despatched through the mails properly addressed to the consignee of the shipments. Demurrage charges collected prior to actual placement of such cars were without tariff authority. HELD, charges collected not unreasonable, complaint dismissed. General Motors Corp. v. Director General, 100 I. C. C. 341.

(b) Carrier's demurrage rules, providing that when condition of weather made it impossible to unload cars without serious injury to freight free time should be extended, was inapplicable to delay in unloading car of oil for use on streets, because consignee, who had no storage facilities, could not, under his contract, place oil on streets while it was raining or while streets were not in fit condition due to rain. Davis, Director General of Railroads v. Steele (Ind., 1925) 146 N. E. 425.

(c) Demurrage rule providing additional time for unloading frozen shipments provided that consignee must make diligent effort to unload and give written notice to carrier of frozen condition. Consignee at Detroit, Mich., did not make the "diligent effort" contemplated by the rule and the commission therefore need not determine to what extent written notice was given or whether its decision in 61 I. C. C. 200, as to written notice, was overruled by the

Supreme Court in Davis v. Henderson, 266 U. S. 92. Charges collected found applicable and not unreasonable except on certain cars for which no notice of constructive placement was received. General Motors Corp. v. Director General, 100 I. C. C. 341.

ALL OTHER CITATIONS

Republic Coal Co. v. C. St. P. M. & O. Ry. Co., 85 I. C. C. 331; McGarry & Co. v. W. Ry. Co., 88 I. C. C. 301.

§20. Advance in Demurrage During Transit.

ALL CITATIONS

Getz Brothers & Co. v. Director General, as Agent, 85 I. C. C. 673.

V. REPARATION.

See Reparation.

§21. In General.

(a) The provisions in section 206 of the transportation act, 1920, respecting liability of director general in actions arising out of federal control were intended to cover charges collected for services performed, at least in part, by the director general during federal control, and that complaints regarding charges collected by the director general, as agent for the carriers, on account of services performed wholly prior to federal control, should be filed against the carriers themselves. Krauss Brothers Lumber Co. v. Director General, 92 I. C. C. 450, 451.

(b) In 66 I. C. C. 637, the Commission found that demurrage and reconsignment charges assessed on cars of lumber reconsigned at Meridian, Miss., and Jackson and Chattanooga, Tenn., as illegal. The real question for determination is: Should the Director General be required to refund charges illegally collected by the Director General after Jan. 1, 1918, for detention prior to federal control of cars containing shipments subsequently transported in part and delivered by him? The Director General performed no part of the service on the 29 cars for which the demurrage was collected and in the collection thereof he was acting solely as agent for the corporate carrier. HELD, director general not liable for the collection of illegal demurrage charges on the 29 shipments as to which the periods of detention were entirely prior to federal control, but that he is liable for the collection of illegal demurrage charges on the one remaining shipment. Krauss Brothers Lumber Co. v. Director General, 92 I. C. C. 450.

(c) Where shipments moved prior to Federal control and illegal demurrage charges were collected, and director general performed no part of the service for which the demurrage was collected but merely delivered shipments and collected such charges as agent for corporate carriers, he can not be held liable for such illegal charges. In such cases complaint should be directed against corporate carriers. See Terre Haute, Indianapolis & Eastern Traction Co. case, 77 I. C. C. 658. Krauss Bros. Lbr. Co. v. Director General, 92 I. C. C. 450.

(d) Consignees named in bills of lading were also consignors. Shipments were purchased by complainant f. o. b. its plant subject to inspection and rejection after placement thereat. Upon contention that complainant had no interest in shipments before their arrival at destination, and that it was justified in ignoring notices of constructive placement because not a party to the transportation contract. FOUND, to sustain such contention would necessitate giving no legal effect to fact that bills of lading were forwarded by consignors to complainant and that orders to carrier's station agent were given by shippers directing delivery to complainant's plant. These actions, coupled with past custom as to similar shipments, had effect of substituting complainant as consignee. Destination was its plant, cars were clearly and plainly intended for it, carrier was justified in considering complainant as real consignee. Union Bag & Paper Corp. v. Director General, 95 I. C. C. 222, 224.

ALL OTHER CITATIONS

Murray v. Director General, as Agent, 85 I. C. C. 422.

§22. Actions at Law.

See Actions at Law.

(a) In carrier's action to recover demurrage rules authorizing carriers to charge for storage in absence of evidence to contrary would be presumed to have been filed with Interstate Commerce Commission and to have been published as required by law. Davis, Director General of Railroads v. Steele (Ind., 1925) 146 N. E. 425.

(b) In action involving liability of

consignee for demurrage charges, question of whether railroad had knowledge of consignee's address, making mail notice to consignee of arrival of shipment insufficient, under demurrage rule in tariff filed with Interstate Commerce Commission, HELD for jury. Boney v. Atlantic Coast Line R. Co. (S. C. 1925) 126 S. E. 46.

(c) Party relying on exception to make out cause of action or defense, such as fact that freight car was on private track and hence not subject to demurrage charges under carriers' rules, has burden of alleging and proving facts necessary to bring him within exception. Davis, Director General v. Steele (Ind. 1925) 147 N. E. 632.

(d) If by reason of commercial contracts, entered into under prior misrepresentation on the part of the carrier, complainant found itself in such a position that it could not abate the demurrage assessed, question of damage arising from such a situation is for the courts to consider. Krauss Bros. Lumber Co. v. I. C. R. R. Co., 96 I. C. C. 760, 761.

VI. LIABILITY TO PAY.

§23. In general.

(a) Claim for "demurrage," which is not a penalty, but earnings improperly lost in detention of carrier's cars longer than necessary to load or unload, is for carriers' "charges or any part thereof," within Transportation Act, Feb. 28, 1920, § 424 (Comp. St. Ann. Supp. U. S. 1923, §8585), requiring that action therefor be begun within three years from time cause of action accrues. Philadelphia, B. & W. R. Co. v. Quaker City Flour Mills Co., (Pa., 1925) 127 Atl. 845.

(b) Switching railroad serving Hay and Grain Exchange yard HELD not entitled to demurrage by reason of delay which could have been avoided by placing cars of different consignees in strict order of arrival, in view of rule published in demurrage tariff, providing for recovery of demurrage on basis of amount that would have accrued but for railroad's errors. Granger v. Davis, 2 Fed. (2d) 695.

(c) Shipper of coal to himself in care of coal exchange pool, who retained title to coal, or other coal of like quality in hands of the exchange, until ordered out, HELD liable, rather than exchange, for demurrage charges on cars so held, particularly in view of his assumption of such liability as a member of exchange. Emmons Coal Mining Co. v. Norfolk & W. Ry. Co., 3 Fed. (2d) 525.

(d) In action by railroad for demurrage, defended on ground that shipment was through one, admitting evidence for defendant tending to show custom between parties to treat dealings with plaintiff, as thorough, and that defendant had nothing further to do with them after delivery to plaintiff, HELD proper. Norfolk & S. R. Co. v. Albermarle Fertilizer Co., (N. C. 1924), 124 S. E. 127.

(e) Under Hepburn Act June 29 1906, §2, par. 7 (U. S. Comp. St. §8569, par. 7), amending Interstate Commerce Act, §6, par. 7, Act Aug. 29, 1916, §1 (U. S. Comp. St. §1974a), and Federal Control Act March 21, 1918, §10 (U. S. Comp. St. Ann. Supp. 1919, §3115¾j), consignee is not exempt from liability for demurrage charges for detention of cars because detention was caused by strike, regardless of whether demurrage accrued on interstate or intrastate shipment. Davis v. Keystone Steel & Wire Co., (Ill., 1925) 148 N. E. 47.

(f) Action by carrier against member of coal exchange for demurrage charges HELD, not based on exchange form alone, but on such form together with stipulations in rules and regulations of exchange, which every member was required to sign, and privity between members and carrier is supplied by Code 1924, §5143 authorizing person for whose benefit agreement is made to sue thereon, though not a party thereto. Smokeless Fuel Co. v. Chesapeake & O. Ry. Co. (Va., 1925) 128 S. E. 624.

(g) Where carrier rendered to coal exchange the general consignee, an account of demurrage charges against it, and exchange made apportionment between members, and carrier rendered bills in accordance therewith, on failure of member to pay its proportion, a cause of action against it by carrier for demurrage charges arose, and could not be taken away by action of exchange in subsequently rescinding its apportionment. Smokeless Fuel Co. v. Chesapeake & O. Ry. Co. (Va., 1925) 128 S. E. 624.

(h) Where demurrage rates charged by carrier are same to shippers, whether or not members of coal exchange, and are in accordance with carrier's filed tariffs, fact that by reason of pooling agreement amount paid by member is different

than if he were nonmember, does not affect validity or correctness of carrier's demurrage charges, within Interstate Commerce Act, §6, cl. 7 (U. S. Comp. St. §8569). Smokeless Fuel Co. v. Chesapeake & O. Ry. Co. (Va., 1925) 128 S. E. 624.

§24. Actions to Recover.

(a) Where demurrage accrued during federal control under tariff established by Director General, the District Court had jurisdiction, under Judicial Code, § 24 (Comp. St. § 991), in Director General's action to recover demurrage, though on cars moved in intrastate traffic. Granger v. Davis, 2 Fed. (2d) 695.

DETENTION CHARGES

See Demurrage.

DIFFERENTIALS

I. ESTABLISHMENT AND CONTROL.
- §½. Jurisdiction of Commission.
- §1. In general.
- §2. Relation to classification.

II. APPLICATION.
- §2½. In general.
- §2½a. Between commodities.
- §3. C. L. and L. C. L. shipments.
- §4. Through shipments.

III. PURPOSE.
- §5. To equalize conditions.
- §6. To equalize consuming points.
- §7. To equalize producing points.

IV. REASONABLENESS AND DISCRIMINATION.
- §8. In general.

V. REPARATION.
- §9. In general.

VI. PROCEDURE.
- §10. In general.

CROSS REFERENCES

See Advanced Rates §5 (3), §10, §11½; Blanket Rates §8, §10; Classification §17; Competition; Discrimination; Distance Rates; Equalization of Rates; Long and Short Hauls; Market Competition; Motor Truck Competition; Railroad Competition; Reasonableness of Rates §28; Relative Rates; Through Routes and Joint Rates §13 (ii).

I. ESTABLISHMENT AND CONTROL.

See Control and Regulation.

§½. Jurisdiction of Commission.

See Interstate Commerce Commission I; Jurisdiction of Commission.

(a) The commission is not justified in denying the establishment of reasonable rates from a specific territory simply because to do so happens to increase the existing differences between the rates from that territory and the rates from another territory. Cancellation of Coal Rates to Minnesota, 89 I. C. C. 573, 586.

§1. In general.

(a) Differentials between competing coal mines to various markets of consumption can not be established upon distance alone; nor can one case be safely made the precedent for another. Much depends upon competitive conditions and each situation must be considered and disposed of by itself. In determining these differentials the Commission must consider the interest of the consumer as well as the producer. Rates should be so adjusted as to permit the widest possible competition. Coal rates are usually highly competitive. Lake cargo coal rates 1925, 101 I. C. C. 513, 546.

II. APPLICATION.

See Application of Rates; Classification §17.

§2½a. Between commodities.

(a) Rate on crude oil found unreasonable to extent it exceeded rate 5 cents less than on refined oil. Reparation awarded. Omaha Refining Co. v. Director General, 91 I. C. C. 575.

(b) Rates on crude, fuel, and gas oils from points in Kansas, Oklahoma, Texas, and Louisiana to Minneapolis, Minn., found unreasonable to extent they exceeded rates 5 cents less than on refined oils. Reparation awarded. Barber Co. v. A. & V. Ry. Co., 91 I. C. C. 621.

(c) Proposed readjustment of rates on grain and products from points in

southeastern Missouri, St. Louis, Mo., Cairo, Ill., and related points, to New Orleans, La. found not justified in so far as they exceed rates 10 per cent less than those on wheat. Grain and Products, 91 I. C. C. 666, 675.

(d) Crude and refined oils, viewed from standpoint of transportation, have certain characteristics that are different, and a differential of some amount is clearly justified. Risk in transporting gasoline is substantially greater than in the case of crude oil, and gasoline is much more valuable. There is no reason for believing, however, that, apart from special competitive conditions that affect one commodity and not the other, the rates on gasoline should exceed the corresponding rates on crude oil by more than 33 1-3 per cent. Utah State Automobile Asso. v. A., T. & S. F., 92 I. C. C. 376, 383.

(e) Any difference in rates resulting from differentiation in commodity-rate descriptions between rock salt and evaporated salt, between coarse salt and medium or fine salt, or between table salt and common salt, found unduly prejudicial and preferential and to result in an unreasonable practice. Salt Cases of 1923, 92 I. C. C. 388, 392.

(f) Differences in transportation conditions between salt in bulk and salt in containers found insufficient to justify differences in commodity rates, and such differences are unduly prejudicial and preferential. Salt Cases of 1923, 92 I. C. C. 388, 392.

(g) Rates on pipe, riveted steel, found not unreasonable, discriminatory, or unduly prejudicial, as compared with rates on iron conduits, iron and steel pier tubing, iron or steel radiators, iron stovepipe cut to shape, pipe fittings and connections, open-seam tubing, and iron or steel wire cable and rope. Duluth Boiler Works v. A. T. & S. F. 92 I. C. C. 692.

(h) Upon contention of complainant that rates on fuel oil from Pryse, Ky., to Newport News, Va., should be regarded as the refined-oil basis and that fuel oil should be less by the difference set in Midcontinent Oil Rates, 36 I. C. C. 109, and later cases, including Utah State Automobile Asso. 66 I. C. C. 8, and 92 I. C. C. 376. FOUND: The fuel-oil adjustment below refined oil is not in effect eastbound from point in this region, and the record is not sufficient for its initiation nor for a determination that under such an adjustment the present rates are on the corresponding refined oil basis. Newport News Shipbuilding & Dry Dock Co. v. L. & N. R. R. Co., 100 I. C. C. 1, 2.

(i) Rates on cottonseed oil, cake, meal, and hulls from Los Angeles, El Centro, and Calexico, Calif., and from Phoenix, Ariz., to El Paso, Texas, found unreasonable. Rates established upon the distance scales of rates on these commodities prescribed in Oklahoma Corporation Commission, 98 I. C. C. 183, plus differentials for hauls in this territory, would be reasonable. The differences between the levels of the rates under the prescribed standard scales for cottonseed oil on the one hand and cottonseed cake, meal, and hulls on the other indicate that the differentials on cottonseed oil for hauls in this territory should be higher than on the cake, meal and hulls. Reasonable rates prescribed for the future. Peyton Packing Co. v. A. E. R. R. Co., 100 I. C. C. 4, 23.

(j) Rates on gas and fuel oils found unreasonable and unduly prejudicial to extent they exceeded certain differentials lower than the rates contemporaneously maintained on refined oil. Reparation awarded. Marysville Elec. Light & Power Co. v. A., T. & S. F., 101 I. C. C. 229.

ALL OTHER CITATIONS

South Dakota R. R. Commrs. v. C. & N. W. Ry. Co., 85 I. C. C. 217; Citizens Gas & Electric Co. v. A. T. & S. F. Ry. Co., 85 I. C. C. 435; Greater Des Moines Committee v. Director General, as Agent, 85 I. C. C. 478; Parkersburg Rig & Reel Co. v. Director General, as Agent, 85 I. C. C. 665; Magnolia Petroleum Co. v. Director General, as Agent, 85 I. C. C. 712; Omaha Blaugas Co. v. A. T. & S. F. Ry. 85 I. C. C. 737.

33. C. L. and L. C. L. Shipments.

See Classification §5.

(a) Present rates on tin cans, c. l. and l. c. l., from Buchanan, Va., to destinations in southern classification territory found not unreasonable or otherwise unlawful, but prior to voluntary establishment by carriers of present differential basis, Buchanan over Virginia cities group, c. l. rates found unreasonable and unduly prejudicial in favor of Bedford, Va., a competing point located within the Virginia cities group. Reparation awarded. Virginia Can Co. v. A. & V. Ry. Co., 89 I. C. C. 558.

III. PURPOSE.

§5. To Equalize Conditions.

ALL CITATIONS

South Dakota R. R. Commrs. v. C. & N. W. Ry. Co., 85 I. C. C. 217; Wadhams Oil Co. v. C. & N. W. Ry Co., 85 I. C. C. 705.

§6. To Equalize Consuming Points.

See Equalization of Rates §3.

(a) Complainant attacked commodity rates charged on anthracite coal from Pennsylvania to points on Staten Island as unreasonable, unjustly discriminatory and unduly prejudicial to extent they exceeded rates to points in northern New Jersey. Staten Island lies east of that portion of New Jersey extending substantially from Elizabethport to Perth Amboy, and south of Newark Bay and that part of New Jersey lying between Newark Bay and New York Bay. It is separated from New Jersey by the comparatively narrow bodies of water comprising the Kill von Kull, Arthur Kill and Staten Island sound. The southern half of Brooklyn lies east of the island across the Narrows and Lower New York Bay. Staten Island bears a close physical relation to the adjacent northern New Jersey and New York territory, and it follows that it should have rates on anthracite that are properly related to the rates on this commodity to that territory. Direct all rail service is afforded Staten Island by the Staten Island Rapid Transit Ry., which extends easterly from Cranford Jct., N. J., where it connects with the Central across a bridge over Staten Island sound and long the north shore of the island to Clifton, 13.7 miles, and southern from Clifton to Tottenville, at the southern end of the island, a total distance of 26.5 miles. Connection is made with the L. V., at Staten Island Jct., N. J., 0.5 miles east of Cranford Jct., and with the Pennsylvania at Linden Jct., N. J., 3.1 miles east of Cranford Jct. The stations on the Transit are divided into two groups, the stations along the north shore of the island, including South Beach branch, being designated as group 1, and the stations south of Clifton, Grasmere and Tottenville, being designated as group 2. The average distance from Cranford Jct. to points in group 1 is given as 10 miles, and to points in group 2 as 21 miles. The stations in group 1 are within New York Lighterage limits. The distances to northern New Jersey points via the respective routes are about the same as to Staten Island points. In all the circumstances of this case, any additional cost arising by reason of the two line or three line haul to Staten Island is not shown upon this record to be of such controlling importance that it should be reflected in the rate adjustment by imposing higher rates than contemporaneously apply to adjacent northern New Jersey points. Notwithstanding the actual geographical situation, the shippers and receivers of freight at Bayonne and that vicinity, the shippers and receivers of freight in Staten Island group 1, are practically in the same relation as though they were in different parts of the same city. HELD, rates attacked unreasonable, except via Pennsylvania, and unduly prejudicial to Staten Island to extent they exceed to group 1 the rates in effect to northern New Jersey and to group 2 rates based 14.5c per long ton prior to July 1, 1922 and 13c thereafter over group 1, and except that via the Pennsylvania the rates to group 2 are unreasonable to extent they exceed rates found reasonable to group 1 by more than 11c per long ton prior to July 1, 1922 and 10c thereafter, reparation awarded. Richmond County Coal Merchants Assn. v. B. & O. R. R. 101 I. C. C. 154.

(b) Complainants attacked commodity rates on bituminous coal, carloads, from Appalachian coal fields to lower Lake Erie ports for transshipment by vessel to destinations beyond. As thus transported lake cargo coal is distinguished from socalled commercial coal destined to the lake cities proper and not for transshipment by vessel. Most of it moves to those ports only during the season of open navigation on the Great Lakes, ordinarily from the latter part of April to the latter part of November. When transshipped it moves to various lake ports in the United States and in Canada, east, north or northwest from the port of transshipment. That part of it which reaches the upper lakes docks is distributed by rail throughout the year. Complainants operating mines in the Pittsburgh district of Pennsylvania, the Panhandle of West Virginia, and in No. 8 and Cambridge districts of Ohio

allege that the rates on lake cargo coal from those districts to the ports named are unjust and unreasonable per se, relatively unreasonable, and unduly prejudicial as compared with the rates in effect on this traffic from all other districts in the Appalachian region, and that the rates from these other districts are unduly preferential. Complainants operating mines in the Fairmont district of northern West Virginia alleged that the rate on lake cargo coal therefrom to those ports is unreasonable and unduly prejudicial as compared with rates from the Pittsburgh, Ohio No. 8, and Cambridge districts, the Crooksville and Shawnee districts of southern Ohio and the Connellsville district of southwestern Pennsylvania. The rates apply from the mines to the raised or hump tracks beyond the classification yards at the Lake Erie ports. From these tracks the loaded cars are dropped by gravity to dumping machines at the docks. A separate tariff charge for transferring the coal from cars to vessel are not in issue. The rates on lake cargo coal are treated by the carriers as in the nature of proportional rates to the ports for part of a through movement to cross lake destinations. They include no delivery terminal to consignees at those ports. The rates on socalled commercial coal to the ports proper cover such delivery. From these reasons rates on lake cargo coal have always been lower than the local rates on commercial coal. During the last 15 years the territory originating lake cargo coal considered as a whole, has shown a tendency to expand, with a corresponding increase of tonnage. From a few of the districts the rates differ over the lines of different carriers to the same port or to different ports. But in most instances the rates from a district to all the ports served are the same. It is not unusual for the most distant mines in one group to be somewhat farther from a common destination than the nearest mine in an adjacent and higher rated group. A considerable difference in distance might give rise to undue prejudice or preference. But there is nothing of record to base a consideration of the propriety of partitioning the Pittsburgh district, and all the districts will be dealt with as now constituted. Prompt and constant attention is accorded to large cargo coal, in order efficiently to coordinate rail and vessel movement and reduce car detention at the ports to the minimum. At the ports lake cargo coal is set out and classified as to consignees and then held until arrival of the vessels. When vessels do not arrive in the order expected switching must be done in order to facilitate the loading of those ready for cargoes. Care must also be exercised to have the coal ready for loading, so that vessels may not be delayed. For these and other reasons the demurrage rules applicable to this traffic are much more favorable to shippers than those governing the movement of commercial coal. As bearing upon the issue of undue prejudice it should be noted that the lines principally interested in the rates from the southern West Virginia and Kentucky districts are in nowise responsible for the rates maintained from the complaining districts. It is apparent that the carriers controlling the rate adjustment from the southern West Virginia and Kentucky districts are not the same as those which control the adjustment from the complaining districts. The basis for a finding of undue prejudice is thus lacking, even if the facts adduced to support such a finding would in other respects support it, as they do not. The differentials here are not only the result of years of experience but in fact are those prescribed by the Commission. They have not been shown to result in undue prejudice to the complainants. The rate level on lake cargo coal from complainants districts is already considerably below the rate level on commercial coal moving in the same territory. HELD, present rates on lake cargo coal from the Pittsburgh, Ohio No. 8 Cambridge and Fairmont districts do not exceed the maximum of reasonableness and are just and reasonable rates, and rates attacked on lake cargo coal from these and other districts are not unduly prejudicial, unduly preferential or otherwise unlawful, complaints dismissed. Lake Cargo Coal rates 1925, 101 I. C. C. 513.

§7. To Equalize Producing Points.

ALL CITATIONS

South Dakota R. R. Commrs. v. C. & N. W. Ry. Co., 85 I. C. C. 217; Western Coal Rates, 88 I. C. C. 13.

IV. REASONABLENESS AND DISCRIMINATION.

§8. In General.

See Advanced Rates §5 (2½) (c); Class Rates §2 (tt) (3k) (5p) (7s); Classification §17; Discrimination; Reasonableness of Rates.

(a) It was contended that cotton rates to New Orleans, La., from points in Mississippi do not reflect proper differences under the rates from Memphis, Tenn., based upon fact that the Memphis rate is applied from Greenwood, Miss., although distance from Memphis to New Orleans is greater. This situation, however, results from fact that rates from northern half of Mississippi are grouped to New Orleans, and in prescribing the rate from Memphis in 69 I. C. C. 318, consideration was given to average distance of points within this group. The prescribed rate was made to fit that situation and the rate for the average distance compares favorably with cotton rates generally in the South. Moreover, there are many advantages to the grouping, the producer within the group being given the benefit of several markets. No warrant found on the record for condemning this grouping. Mississippi R. R. Commission v. A. & V. Ry. Co., 89 I. C. C. 47, 70.

(b) Rates on bituminous lump and slack coal from the Rich Hill and Appleton, Mo., Pittsburg, Kans., Arkansas-Oklahoma, and Sparda, Ark., groups to Leavenworth, Kans., found unreasonable for future to extent they exceed by more than 15 cents per ton the contemporaneous rates to Kansas City, Mo.-Kans. Southwestern Interstate Coal Operators' Asso. v. A. W. Ry. Co., 89 I. C. C. 73.

(c) Upon further consideration of the original report, 87 I. C. C. 740, adjustment of rates on naval stores from points in the Southeast and Mississippi Valley to various destination territories, modified to permit the application of rates to Milwaukee, Wis., which do not exceed rates found reasonable to Chicago, Ill., by more than 2 cents on rosin from both New Orleans and Jacksonville groups and 4 cents on turpentine from New Orleans group and 3 cents from Jacksonville group. Naval Stores from Southern Points 89 I. C. C. 634.

(d) In view of the fact that conditions of operation in the southern Wyoming district do not differ as greatly from those in Utah as the commission had been led to believe, and that difference between the average distances is somewhat less than was originally stated, differential of 50 cents, Castle Gate district in Utah over Rock Springs-Kemmerer district in Wyoming, to destinations in the Northwest heretofore prescribed found too high and to result in undue prejudice to the Castle Gate district. Former report, 80 I. C. C. 383, modified and differential of 40 cents for future prescribed, Western Coal Rates, 89 I. C. C. 666, 669, 675.

(e) It is well established that difference in transportation conditions in opposite directions may justify a difference in rates. Raritan Copper Work v. Director General, 92 I. C. C. 671, 672.

(f) Complainant attacked commodity rates charged on soft coal from the Fulton-Peoria, northern Illinois, Danville, Centralia, Du Quoin, southern Illinois, and Murphysboro districts in Illinois to Omaha and South Omaha, Neb., and to Council Bluffs, Iowa, as unreasonable, unjustly discriminatory and unduly prejudicial in comparison with rates from Belleville district. Springfield district is in central Illinois. South of the Springfield district and immediately east and southeast of East St. Louis is the Belleville district. East thereof is the small Centralia district. South of Centralia and southeast of the Belleville district is the Du Quoin district. East and southeast of the Du Quoin district lies the southern Illinois district. Southwest of the Du Quoin district are the mines in and around Murphysboro. There are 11 carriers serving mines in the Belleville district, 9 serve the southern Illinois district, 3 the Centralia district, 1 the Du Quoin district, and 4 the Danville district. From the Belleville, Centralia, Du Quoin, Murphysboro and southern Illinois districts the I. C. has its own line to Omaha. From the Centralia district to Omaha the Burlington has its own line. The carriers serving the southern Illinois district direct, in addition to the I. C., are the Burlington and the M. P. The Wabash has a line from the Danville district to Omaha. That carriers also have joint rates in connection with originating lines, including the I. C. Little coal from the southern Illinois district to Omaha moves through the southern gateways. This is because the initial lines which, to a large extent, dominate that district handle the traffic over their single line routes. Most of the traffic from the Belleville district moves via the

southern gateways. The commission is of the opinion that the rates to Omaha from the southern Illinois district should be made more with regard for the distance and other transportation conditions via the northern gateways than via the northern gateways. Although the greater from the Belleville district should be considered more with regard for the distance and other transportation conditions via the southern gateways than via the northern gateways. Although the greater distance from the southern Illinois district via the northern gateways than from the Belleville district via the southern gateways may to some extent be offset by the necessity of taking most of the traffic from the Belleville district through the East St. Louis and St. Louis terminals, the transportation conditions in general are in the view of the commission sufficiently more favorable from the Belleville district via the southern gateways than from the southern Illinois district via the northern gateways to warrant a higher differential than applies to destinations to which the volume of movement from both districts is primarily via the southern gateways. On the other hand, the differential over the Springfield district on traffic to Omaha should not be more than on traffic to points in Iowa. To Omaha the rates from the Belleville and the Springfield districts are the same. HELD, rates on large and fine coal attacked not unreasonable or unjustly discriminatory but that from the southern Illinois and Danville districts they are unduly prejudicial to extent they exceeded by more than 30c rates from Belleville district; that rates from Murphysboro unduly prejudicial to extent they exceed by more than 27.5c the rates from Belleville; that rates from Centralia and Du Quoin districts unduly prejudicial to extent they exceed by more than 15c rates from Belleville. Illinois Coal Traffic Bureau v. A. & S. R. R., 92 I. C. C. 759.

(g) Complainant attacked commodity rates charged on cotton seed, carloads, from northern Louisiana and southern Arkansas to Jackson, Miss., as unreasonable and unduly prejudicial as compared with competitors at Vicksburg, Miss., Pine Bluff, Ark., and Memphis, Tenn. Jackson is 45 miles east of Vicksburg on the A. & V., which, together with the V. S. & P., is referred to as Vicksburg. The points of origin are Delhi, Girard, Mound, and Delta Point, La., on the Vicksburg, Forest, Newellton, Gilbert, Foules, Winnsboro, Lake Providence, Epps, Darnell, Oak Ridge, Sicily Island, Wisner, Archibald and Mangham, La., and Eudora and Crosset Ark., on the M. P., and Tallulah and Rayville, La., on both lines. The distances from these points to Jackson range from about 50 to 170 miles. The usual route of movement from points on the M. P., is via Tallulah, Rayville, or Monroe, La., and thence over the Vicksburg, but from a few stations the short line route is in connection with the Y. & M. V., via Natchez, Miss. The record fails to show that the rates attacked which were in effect prior to Nov. 27, 1923 as unreasonable or prejudicial. HELD, rates attacked from points on the V. S. & P., to Jackson not unreasonable; that rates to Jackson from stations on the M. P., since Nov. 27, 1923 unjust and unreasonable and unduly prejudicial to extent they exceed rates to Vicksburg by more than 3.5c, reparation awarded. Southland Cotton Oil Co. v. A. & V. Ry., 96 I. C. C. 333.

(h) Complainant attacked commodity rates charged on newsprint paper, carloads, from New England and New York to Washington as unreasonable and unduly prejudicial to extent they exceeded rate to Baltimore by more than 1c. Traffic to Washington nearly all moves through Baltimore and the additional distance is 40 miles. There is no uniform relationship between the two destinations on traffic from the various points of origin. There are a number of origin territories, in most of which the points of origin either take a group rate or are differentially related. The sixth class rate of 26.5c applying on newsprint from Buffalo and Niagara Falls to New York, Philadelphia and Baltimore is the most influential single rate in the rate structure here considered. The distance from Buffalo to New York, Philadelphia and Baltimore are 406, 414 and 408 miles, respectively and this rate was established to the three destinations because of the like distances. The sixth class rate to Washington is 31.5c. The record contains much general criticism of the class rate structure in the trunk line territory, but there is no showing that the sixth class rates from these points of origin to Baltimore are too high as class rates. In general it may be said that against the sixth class rates within trunk line territory, and from New England and

Canada into trunk line territory, there is opposed an 80% basis from Central to trunk line territories and from New England and New York to Chicago and a 90% basis within a large part of New England. The rates to Washington are clearly indefensible, even on the basis of the rates to Baltimore. HELD, rates attacked in 15199 and sub. 1, not unreasonable, complaint dismissed. In 15199 and 15229 rates attacked unreasonable to extent they exceed rates to Baltimore by more than 3c from Philadelphia and by more than 2c from New York, Norwalk, Conn., and other points of origin. Washington Publishers Asso. v. B. & O. R. R., 98 I. C. C. 339.

(i) Rates on phosphate rock from Mount Pleasant, Columbia, and Siglo, Tenn., to New Albany, Ind., a north-bank Ohio River point found unreasonable and unduly prejudicial in favor of Louisville, Ky., a south-bank Ohio River point, to extent that they exceeded or exceed rates to Louisville by more than differential subsequently established by carriers, and which resulted in removal of undue prejudice herein found to exist. Reparation awarded. Calumet Fertilizer Co. v. L. & N. R. R. Co., 91 I. C. C. 31.

(j) Rate on watermelons from Atlanta, Ga., to Murphy, N. C., found unreasonable to extent it exceeded rate to Knoxville, Tenn., by more than 5 cents. While distance to Knoxville is farther than to Murphy, shipments to Knoxville move in through trains and under more favorable operating conditions, and rate to Murphy should be somewhat higher than to Knoxville. Reasonable maximum rate prescribed and reparation awarded. Fain Grocery Co. v. L. & N. R. R. Co., 91 I. C. C. 374.

(k) Complainant attacked commodity rates charged on coal, carloads, from mines in the southwestern producing districts in Kansas, Missouri, Arkansas, and Oklahoma to Lincoln and Havelock, Neb., as unjust, unreasonable and unduly prejudicial to extent they exceeded rates to Omaha by more than 20c per ton prior to July 1, 1922 and 18c per ton on and after that date. The origin groups are located generally south of Kansas City, Mo., and constitute what are commonly known as the southwestern coal fields. The Rich Hill group includes mines on both sides of the Kansas-Missouri state line. Further south are the Pittsburg, Kas., group, the Henryetta and McAlester groups in Oklahoma and the Greenwood and Spadra groups in Arkansas. The average distance over all routes from the Pittsburg group to Lincoln is computed by complainants as 358.5 miles and by the short line routes 332 miles. All routes named in the tariffs apply through Kansas City. From Kansas City the direct routes to Lincoln and Omaha are over the Burlington and M. P., the distance being about 200 miles by either road. Havelock is on the Rock Island and Burlington about 5 miles east of Lincoln. The mere departures from the terms of General Order No. 28 can not be regarded as proof that the resulting rates were unreasonable. The fact that the Commission approved a differential of 15c in 1908 is not conclusive that the same differential was proper during the changed conditions which brought about the subsequent general rate changes, nor can it be regarded as proof that any differential is warranted at the present time. Traffic and transportation conditions are not materially different to Omaha and to Lincoln. HELD, rates attacked not unreasonable but are unduly prejudicial to extent they exceed rates to Omaha, reparation denied. Lincoln Chamber of Commerce v. A. C. R. R, 101 I. C. C. 765.

(l) Rates on salt from Halite and Retsof, N. Y., to Chicago, found unduly prejudicial to extent they exceed by more than 8 cents the rates contemporaneously maintained from Detroit. Salt Cases of 1923, 92 I. C. C. 388, 405, 406.

(m) Considering character of the commodity, amount of the rates, and extra service performed, a differential of 20 cents per net ton for joint-line hauls on slag found reasonable. Duquesne Slag Products Co. v. P. R. R., 92 I. C. C. 554, 562.

(n) Rates on sulphuric, nitrating, and muriatic acids from Kansas City (Argentine), Kans., to Oklahoma found not unreasonable, but unduly prejudicial in favor of St. Louis, and Chicago, Peoria, East St. Louis, and related points in Illinois, and to extent they exceeded rates made lower than the contemporaneous rates on like traffic from St. Louis and said points in Illinois by differentials herein prescribed for future.

National Zinc Co. v. A., T. & S. F., 92 I. C. C. 587.

(o) Following Swift Lumber Co., 61 I. C. C. 485, rates on lumber, timber, and other forest products from Frost, Ala., a local point on the Garyville Northern R. R. Co., to destinations in official and western trunk-line territories, and in Oklahoma, Texas, Kentucky, and Tennessee, found unreasonable to extent they exceeded by more than certain differentials the corresponding blanket rates contemporaneously maintained from Livingston and Garyville, La. Reparation awarded. Fleming Bros. v. G. N. R. R., 92 I. C. C. 582.

(p) Rates on bituminous coal from mines in the southern Illinois, Danville, Murphysboro, Centralia, and DuQuoin districts in Illinois to Omaha and South Omaha, Nebr., found not unreasonable or discriminatory, but unduly prejudicial in comparison with rates from the Belleville district. Differentials for removal of undue prejudice prescribed. Illinois Coal Traffic Bureau v. A. & S. R. R., 92 I. C. C. 759.

(q) Rates on zinc ore from points in Oklahoma on Miami Mineral Belt and Northeast Oklahoma railroads, and from trunk-line and junction producing points in Missouri, Kansas, and Oklahoma, to South Fort Smith, Ark., found not unreasonable but unduly prejudicial in favor of competitors operating zinc-smelting plants at Collinsville, East St. Louis, La Salle, Peoria, and Chicago, Ill., and Grasselli, Ind., to extent that factors of above-named carriers exceeded by more than 0.5 cent, the contemporaneous factors on like traffic to the preferred plants. Nonprejudicial basis of rates prescribed. Athletic Mining & Smelting Co. v. K. C. S., 93 I. C. C. 119.

(r) Interstate rate on drugs and medicines from Norwich to New York City, found not unreasonable or discriminatory, but found unduly prejudicial to complainant in favor of competitors at Cleveland, Detroit, Kalamazoo, Holland, Indianapolis, and St. Louis, to extent it exceeds differentials under rates from such competing points herein prescribed. Norwich Pharmacal Co. v. B. & O., 93 I. C. C. 246.

(s) Rates on lumber from Group 12 points on Guyandotte branch of the C. & O. in West Virginia to destinations in c. f. a. territory and in Canada found not unreasonable or unduly prejudicial as compared with lower rates to same destinations from points in Groups 11 and 13 on the Coal River branch. While through distances from respective groups are substantially the same, differentials over junction point rates to Group 12 are higher than those to Groups 11 and 13, but it can not be found that rates assailed are unreasonable because of present variations. Peytona Lbr. Co. v. C. & O., 93 I. C. C. 363.

(t) Following Houston Cotton Exchange, 87 I. C. C. 392, the establishment of joint rail-and-water and rail-water-and-rail rates on cotton from Oklahoma points, via New Orleans, to points in New England found desirable in the public interest and existing combination rates found unreasonable to extent they exceed rates constructed by deducting 4 cents from the present all-rail rates. Similar rates to other points in the northeastern portion of the United States found not unreasonable. New Orleans Joint Traffic Bureau v. A. & A. R. R. Corp., 95 I. C. C. 77.

(u) Rates on roofing and building paper or felt and prepared roofing from Cincinnati, Lockland, and Carthage, Ohio, to Texas Gulf Ports and points taking same rates, found unreasonable to extent they exceed rates contemporaneously maintained from East St. Louis to same points by more than 11.5 cents. Carey Co. v. A., T. & S. F., 95 I. C. C. 296.

(v) Differential adjustment of rates applying through various Atlantic and Gulf ports found not to result in unreasonableness or undue prejudice to Boston and other New England ports. Ratemaking lines serving Canadian ports are beyond commission's jurisdiction, while those reaching other competing Atlantic and Gulf ports are served by lines which have no control over rates to the New England ports. While there is basis for finding undue prejudice to Boston in view of its advantage in distance and transportation conditions, in instances where carriers controlling rates to that point also reach the competing ports, complainants failed to show that Boston suffers injury from the present relationship or that a change therein would inure to its benefit. Maritime Asso. Boston Chamber of Commerce v. A. A. R. R., 95 I. C. C. 539.

(w) Upon contention that theory of port differentials violates the provision of clause 6, section 9, Article I of the Constitution of the United States which

reads, "No preference shall be given by any regulation of commerce or revenue to the ports of one State over those of another." HELD, complaints are brought before the commission under the interstate commerce act and invoke exercise of powers thereby delegated by Congress under the commerce clause of the Constitution. Clause 3, section 8, Article I. As an agency of Congress the commission must assume that in laying statutory duties upon it the Congress has not transcended its powers. Maritime Asso., Boston Chamber of Commerce v. A. A. R. R., 95 I. C. C. 539, 542.

(x) Rates from Middleton, Wis., to destinations in the Mississippi Valley found unreasonable to extent they exceed or may exceed by more than 2 cents the contemporaneous rates from Madison, Wis., rates from St. Paul and points basing thereon found unreasonable to extent they exceed or may exceed rates 5 cents lower than present rates; and throughout the balance of territory under consideration, rates found unreasonable only in instances where, and to extent, existing joint rates exceed those based upon the lowest combination, using St. Louis, Milwaukee, and Chicago, as basing points. Carnation Milk Products Co. v. A. & W. Ry. Co., 96 I. C. C. 208.

(y) Upon complaint attacking c. l. commodity rates on canned goods from Wisconsin points and from St. Paul, Minn., to destinations in the Mississippi Valley, and proposing adjustment by the rezoning of the State of Wisconsin and adoption of basis of rates prescribed on commodities, c. l., from Chicago to Mississippi Valley in 64 I. C. C. 306, 335, FOUND, that rates from Middleton, Wis., are and for the future will be unreasonable to extent they exceed or may exceed by more than 2 cents the contemporaneous rates from Madison, Wis.; that rates from St. Paul and points basing thereon are and for the future will be unreasonable to extent they exceed or may exceed rates 5 cents lower than present rates; and that throughout the balance of territory under consideration, rates are unreasonable only in instances where, and to extent, existing joint rates exceed those based upon the lowest combination, using St. Louis, Milwaukee, and Chicago, as basing points. Carnation Milk Products Co. v. A. & W. Ry. Co., 96 I. C. C. 208.

(z) Rates on cottonseed from certain points on Missouri Pacific in northern Louisiana and southern Arkansas to Jackson, Miss., found unreasonable and unduly prejudicial to manufacturers of cottonseed products at Jackson, and unduly preferential of their competitors at Vicksburg, Miss., to the extent they exceed rates contemporaneously maintained from same points to Vicksburg by more than 3.5 cents. Reparation awarded and reasonable rates prescribed for future. Southern Cotton Oil Co. v. A. & V. Ry. Co., 96 I. C. C. 333.

(aa) On further hearing, rates on naval stores from points on the Alabama, Tennessee & Northern to various destinations prescribed on basis of the junction-point rates, plus varying differentials on rosin and turpentine. Naval Stores from Southern Points, 96 I. C. C. 417.

(bb) Rates on fuel oil from points in Arkansas, Texas, and Oklahoma to Steelton (Duluth), Minn., found unreasonable due to failure of carriers to accord to low-grade oils the differential under high-grade oils, prescribed in Midcontinent Oil Rates, 36 I. C. C. 109. Reparation awarded on basis of rates in effect on June 24, 1918, minus the 5-cent differtial, as modified by subsequent general increases and reductions. Minnesota Steel Co. v. A. T. & S. F., 96 I. C. C. 483.

(cc) Coastwise rates on lumber from certain points in Texas and Louisiana on Kansas City Southern system lines and Gulf, Colorado & Santa Fe Ry. to Orange, Tex., found unduly prejudicial to Orange and unduly preferential of Beaumont, Tex., to extent they exceed, by more than a differential of 2 cents, contemporaneous rates on like traffic to Beaumont; and from all other points on lines of these carriers coastwise rates on lumber to Orange from points in Texas, and coastwise rates to Orange from points in Louisiana, found unduly prejudicial to Orange and unduly preferential of Beaumont to extent they exceed contemporaneous rates on like traffic to Beaumont. Undue prejudice ordered removed and reasonable and nonprejudicial rates prescribed for future. Orange Chamber of Commerce v. A. & W. Ry. Co 98 I. C. C. 101.

(dd) The commission has repeatedly held that joint-line arbitraries are inconsistent with group or blanket rates, and that even if a two-line haul were more expensive than a one-line haul, the additional expense, if slight, should not be

reflected in the rate in a general group adjustment. Orange Chamber of Commerce v. A. & W. Ry. 98 I. C. C. 101, 107.

(ee) Rates on newsprint paper, from points in New England, New York, and Canada, and from Philadelphia, Pa., to Washington, D. C., found unreasonable and unduly prejudicial to extent they exceeded, exceed, or may exceed corresponding rates to Baltimore, Md., by more than 3 cents per 100 pounds from Philadelphia and 2 cents from all the other points of origin. While the entire class-rate structure within and to trunkline territory is in issue in a pending general investigation, the rates to Washington are clearly indefensible and shippers should not suffer therefrom for the period necessary to complete the general investigation. Washington Publishers' Asso. v. B. & O. R. R. Co., 98 I. C. C. 339.

(ff) Rates on apples, cantaloupes, and vegetables from all points in the Yakima Valley, in Washington, to Portland, Ore., found unduly prejudicial to the extent that they exceed by more than 10 cents per 100 pounds the contemporaneous rates on the same traffic to Seattle, Wash. Nonprejudicial basis of rates prescribed. Portland Traffic & Transportation Asso. v. N. P. Ry. Co., 98 I. C. C. 345.

(gg) Following American Sand & Gravel Co., 88 I. C. C. 1, rates on sand, gravel, and crushed rock from certain points in Minnesota to certain destinations in North Dakota found unreasonable to extent they exceed rates based upon the scale set forth in the appendix to the report, which, except for a small increase for distances over 130 miles, is equal to the present Nebraska interstate and intrastate scale for the distances here considered, plus an arbitrary of 1 cent per 100 pounds for joint-line hauls. The transportation conditions in the territory under consideration in the cited case are not so materially different from those existing between the points here considered as to warrant any different level of rates for application to these low-grade commodities which are of such great necessity for the building and maintenance of roads and other public and private projects. Reasonable basis of rates prescribed and reparation awarded. Hopeman Material Co. v. N. P. Ry. Co. 98 I. C. C. 361.

(hh) Rates on lump coal from northern Colorado district to Missouri River territory found unreasonable to extent they exceed rates 75 cents less per net ton than the rates herein prescribed to Missouri River points, and to other points taking $5 rates from Walsenburg, Colo. Colo. & N. Mex. Coal Operators Asso. v. D. & R. G. W. R. R. Co., 98 I. C. C. 377, 390, 391.

(ii) Rates on lump coal from Trinidad, Raton-Dawson, Cameo-Palisade, Bowie-Somerset, Crested Butte, and Routt County (Oak Hills) districts, to various interstate destinations, found unreasonable to extent they exceed rates herein prescribed from Walsenburg, Colo., district by more than present differentials between existing rates. Colo. & N. Mex. Coal Operators Asso. v. D. & R. G. W. R. R. Co., 98 I. C. C. 377, 396.

(jj) Rates on cyanamid from Niagara Falls, Ontario, to Alexandria, Va., found unreasonable to extent they exceeded lower rate based on the commodity rate on like traffic to Baltimore, Md., plus the sixth-class differential to Alexandria. Reparation awarded. Bryant v. M. C. R. R. Co., 98 I. C. C. 526.

(kk) Rates on certain iron and steel articles from various points in Ohio, Kentucky, Indiana, Alabama, Illinois, Pennsylvania, New York, and Missouri to Dallas, Forth Worth, and Harrys, Tex., found unreasonable to extent that the factors from St. Louis, Mo., and points taking the same rates exceeded, prior to the effective dates of the general reductions in rates, a certain amount, and from and including that date to extent they exceeded rates for similar distances as prescribed in Memphis Southwestern Investigation, 77 I. C. C., 473. The rates from the other points of origin were and are unreasonable to extent they exceeded or may exceed the rates herein prescribed from St. Louis, plus the established differentials. Bases for award of reparation and reasonable rates for the future prescribed. Atlas Metal Works v. A., C. & Y. Ry. Co., 100 I. C. C. 173.

(ll) Rates on bituminous coal from Folks and Narva, Ohio, to Munhall, Pa., found to have been unreasonable to extent they exceeded lower rates subsequently established based on a differential over the rates to Pittsburgh, Pa. Carnegie Steel Co. v. P. R. R. Co., 100 I. C. C. 353.

(mm) Rates on coal from points on Indian Creek Valley Ry., to eastern and New England destinations, which are based on a differential over the Meyersdale group rates, found not unduly prejudicial as compared with the lower contemporaneous rates on like traffic from the Meyersdale region and rates from other mining regions to same and other destinations. Complaint dismissed. Indian Creek Coal & Coke Co. v. A. C. R. R. Co., 100 I. C. C. 375.

(nn) No sufficient reason has been shown for joint line differentials or arbitraries between points in southern territory, but the absence of such differentials is a factor which should be given some weight in determining the level of the distance scale. Southern Class Rate Investigation, 100 I. C. C. 513, 628.

(oo) Upon general investigation, on commission's own motion, of interstate class rates within southern territory, all rail and rail-water. FOUND: that reasonable maximum class rates on standard lines between points in Florida peninsula south of line of S. A. L. from Jacksonville to River Junction, on the one hand, and other points in southern territory, on the other, are and for future will be, rates determined by distance scale shown in Appendix K, plus certain specified differentials for that part of the distance lying south of aforesaid line. Southern Class rate Investigation, 100 I. C. C. 513, 646.

(pp) Commission is of opinion that, between official and southern territories on all rail traffic, the uniform and unmodified application of southern territory class-rate scale herein approved would result, in many instances, in rates neither reasonable nor free from preference or prejudice, particularly to and from border districts of southern territory. This situation should be corrected by means of a scale of differential rates. Southern Class Rate Investigation, 100 I. C. C. 653, 675.

(qq) To apply fixed differentials between the eastern ports to the large destination territory here involved would depart from the generally recognized principle that differentials should decrease with distance. Southern Class Rate Investigation, 100 I. C. C. 653, 701.

(rr) Interritorial all-rail class rates from or to points on other than standard lines, as defined herein, may be made by addition of arbitraries for that portion of the joint haul over a line not classed as standard. Southern Class Rate Investigation 100 I. C. C. 653, 704.

(ss) In constructing rates between points in southern territory and points in Michigan, Vermont, New Hampshire and Maine, arbitraries may be added equivalent to those contemporaneously applied in making class rates between points in States named and other points in central or New England territory as the case may be. Southern Class Rate Investigation, 100 I. C. C. 653, 704.

(tt) Rates on grain and grain products, hay and straw, and related articles taking same rates, or rates basing thereon, from Oklahoma to that portion of Texas not herein otherwise provided for, found unreasonable to extent they exceed rates made by adding to the distance scale of rates prescribed herein to common-point territory differentials set forth herein including a designated section of the Texas Panhandle, which differentials are prescribed as reasonable for future. Oklahoma Corp. Comm. v. A. & S. Ry., 101 I. C. C. 116.

(uu) Rates on grain and grain products from eastern New Mexico to Kansas City, Kans.-Mo., found unreasonable to extent they exceed rates constructed by adding to the distance scales herein found reasonable from the Panhandle of Texas to Kansas City, the scale of differentials set forth herein, to be applied only to the mileage within New Mexico. Reasonable maximum rates, with application of differentials, prescribed for future. Oklahoma Corp. Comm. v. A. & S. Ry., 101 I. C. C. 116, 130.

(vv) Rates on anthracite coal from Pennsylvania mine regions to Staten Island, N. Y., found unreasonable and, except via the Pennsylvania, unduly prejudicial to Staten Island, to the undue preference of northern New Jersey, to extent they exceeded and exceed, to Group 2, rates exceeding those herein, found reasonable to Group 1 by more than certain fixed differentials, including shipments via the Pennsylvania. Reasonable and nonprejudicial relationship of rates prescribed for future and reparation awarded. Richmond County Coal Merchants Asso. v. B. & O., 101 I. C. C. 154.

(ww) Rates on bananas and coconuts, in straight or mixed carloads, from Gulfport, Miss., to certain Kansas and

Oklahoma destinations, found unreasonable to extent they exceed lower rates here prescribed from New Orleans, La., to same destinations by more than a specified differential, which rates are prescribed as reasonable for future. Dawson Produce Co. v. A. & V., 101 I. C. C. 196.

(xx) Class rates from St. Paul, Minneapolis, and Chicago, and related points taking same rates, to Watertown, S. Dak., found not unreasonable, but unduly prejudicial to Watertown and unduly preferential of Sioux Falls, S. Dak., to extent they exceed the contemporaneous rates to Sioux Falls by specific differentials enumerated herein. Nonprejudicial bases of rates prescribed for future. Watertown Chamber of Commerce v. A. & W., 101 I. C. C. 427, 434.

(yy) Fact that the commission approved a differential on coal of 15 cents in 1908 is not conclusive that same differentials was proper during the period of changed conditions which brought about subsequent general rate changes, nor can it be regarded as proof that any differential is warranted at the present time. Lincoln Chamber of Commerce v. A. C. R. R., 101 I. C. C. 759, 762.

(zz) Rates on paving and roofing materials from New Orleans to points in Texas differential territory found unduly prejudicial and unreasonable to extent they exceeded lower contemporaneous class E rates applicable on roofing slate, paving slate, and hard asbestos shingles from New Orleans to Texas common-point group, and related points, plus class E differentials. Reasonable rates prescribed for future and reparation awarded. Cameron & Co. v. A. & S., 102 I. C. C. 31.

(3a) Upon further hearing, findings in original report, 73 I. C. C. 251, modified and rates on fuel and gas oils, in tank-car loads, found unreasonable, and unduly prejudicial for future to extent they exceeded rates 6 cents lower than rates contemporaneously maintained on refined oil. Davenport Commercial Club v. Director General, 102 I. C. C. 523.

(3b) Rates on iron and steel articles, c. l. and l. c. l., from Birmingham to Nashville found not unreasonable or unduly prejudicial, except that on c. l. lots, which is found unduly prejudicial to Nashville to the advantage of Chattanooga and Knoxville to extent it exceeds 3 cents more than Birmingham-Chattanooga rate and 4 cents less than Birmingham-Knoxville rate. Nonprejudicial basis of rates prescribed. Nashville Traffic Bureau v. L. & N., 102 I. C. C. 641.

(3c) Rates on wrought iron and steel pipe and fittings and on oil-well supplies from certain points in Texas to Haynesville, La., found unreasonable to extent they exceeded specific commodity rates fixed on basis of distance scale prescribed in Memphis-Southwestern Investigation, 77 I. C. C. 473, with addition of a differential to compensate for an extra line haul. Reasonable rates prescribed and reparation awarded. Humble Oil & Refining Co. v. L. & N. W. R. R., 102 I. C. C. 761.

ALL OTHER CITATIONS

Magnolia Petroleum Co. v. Director General, as Agent, 85 I. C. C. 712; Armour & Co. v. Director General, as Agent, 88 I. C. C. 569; Goodwin Preserving Co. v. L. B. & T. Ry. Co., 88 I. C. C. 725.

DISCRIMINATION

I. CONTROL AND REGULATION.
- §1. Construction of the Act.
- §2. Jurisdiction of commission.
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II. DETERMINATION OF DISCRIMINATION,
- §3. In general.
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- §5½. In general.
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  - (1) In general
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§8½. Difference in conditions.
§9. Disadvantage of location.
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IV. REMOVAL OF DISCRIMINATION.
§11½. In general.
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V. PROCEDURE AND EVIDENCE.
§13½. In general.
§14. Burden of proof.
§15. Showing of damage.
§16. Actions in courts.
§17. Reparation.
§18. Complaint.

CROSS REFERENCES

See Absorption of Charges II, §4 (d); Advanced Rates V; Allowances III, IV; Any Quantity Rates; Blanket Rates §8, §12, IV, V; Branch Lines I; Bridges and Tolls II, V; Cars and Car Supply III, §33; Class Rates II; Classification V, §17 §20, §22 (1); Commodity Rates III; Credit Account §2; Crimes I, II; Custom Brokers; Demurrage §3; Differentials II; Divisions V; Equalization of Rates; Evidence §13 (6); Export Rates and Facilities III; Express Companies III; Facilities and Privileges IV, §15; Import Traffic II; Local Rates and Combinations; Long and Short Hauls §6⅞; Minimums §7; Passenger Fares and Facilities II, 111, §10, §12; Percentage Rates; Proportional Rates II, IV; Rail and Water Rates; Reasonableness of Rates §28; Reconsignment II; Reduced Rates §4½; Reparation §3½ (a); Special Contracts §5; Storage §2; Switch Tracks and Switching III; Tap Lines §7; Telephone and Telegraph Companies I; Terminal Facilities §10; Through Routes and Joint Rates II, IV, §13; Track Storage; Water Carriers II; Weights and Weighing III.

I. CONTROL AND REGULATION.

See Control and Regulation.

§1. Construction of the Act.

See Act to Regulate Commerce II.

(a) The rights of every shipper to be protected against undue preference of others are preserved for him by section 3. Nowhere in the act, or in any decision construing the act, is any distinction made between old and new shippers, or between economical or efficient producers and the reverse. Rules governing ratings of coal mines, 95 I. C. C. 309, 331.

(b) Discrimination under the third section to be undue and unlawful must ordinarily be such that the prejudice arising out of it against one party is a source of advantage to the other alleged to be favored, and that generally a competitive relationship between the commodities must appear. York Mfrs. Asso. v. P. R. R. Co. 107 I. C. C. 219, 228.

(c) To bring the difference in rates within the prohibition of section 3, it must be shown that the discrimination practiced is unjust when measured by the transportation standard. In other words, the difference in rates cannot be held illegal, unless it is shown that it is not justified by the cost of the respective services, by their values, or by other transportation conditions. York Mfrs. Asso. v. P. R. R. Co. 107 I. C. C. 219, 229.

(d) The act requires that rules, as well as rates, shall not be unduly prejudicial or preferential. Wasmuth Endicott v. C. R. I. & P. Ry. 107 I. C. C. 588, 590.

(e) Undue prejudice to one locality connotes undue preference of another. Galveston Commercial Asso. v. A. & S. Ry., 109 I. C. C. 114, 122.

(f) The inhibition of section 3 of the act against undue prejudice applies to localities as well as shippers at those localities. Sioux Falls Livestock Exchange v. A. T. & S. F. Ry., 109 I. C. C. 501, 512.

(g) The right of carriers to meet competitive conditions and equalize lo-

calities is subject to the limitation that no undue prejudice will be caused thereby. Lincoln Gas Coal Co. v. B. & O. R. R. Co., 88 I. C. C. 379, 384.

§2. Jurisdiction of Commission.

See Canada (r); Interstate Commerce Commission I; Jurisdiction of Commission.

(a) It must be recognized that the commission can not require unduly low rates on some commodities for the benefit of one class of shippers any more than it can arbitrarily increase rates on other commodities because the shippers thereof may be enjoying excessive profits. Rates and Charges on Grain and Grain Products, 91 I. C. C. 105, 153.

(b) Discrimination may, of course, be practiced by a combination of connecting carriers as well as by an individual railroad; and the Commission has ample power under paragraph 3 to remove discrimination so practiced. Maritime Asso. Boston Chamber of Commerce v. A. A. R. R., 95 I. C. C. 539, 573.

(c) The commission has jurisdiction over discriminations by carriers against their connections as well as against shippers. See 236 U. S. 351 and 26 I. C. C. 226. Peoria & Pekin Union Ry., 93 I. C. C. 3, 19.

(d) Prior to the amendments made in transportation act, 1920, orders of the Commission requiring the removal of unjust discrimination or undue prejudice have usually afforded to carriers the choice of three alternative modes of compliance. They could reduce the higher rate to the level of the lower, increase the lower to the level of the higher, or place both upon some other common level. The act now in force empowers the Commission to prescribe either the exact rate or the maximum or minimum or maximum and minimum, to be charged in such case, and to make an order that the carriers shall not hereafter publish, demand, or collect any rate other than the rates prescribed, or in excess of the maximum or less than the minimum so prescribed, as the case may be. York Mfrs. Asso. v. P. R. R. Co. 107 I. C. C. 219, 231.

(e) While ordinarily the Commission in undue prejudice or discrimination cases enters an alternative order, leaving the carriers an option as to how such discrimination shall be removed, section 15 (1) of the act authorizes and empowers the Commission to prescribe the rate, charge, regulation or practice to be thereafter followed. York Mfrs. Asso. v. P. R. R. Co. 107 I. C. C. 219, 231.

§2½. State and Interstate Rates.

See Infra §4¾; State Rates and Regulations.

(a) Adjustment of rates on ordinary livestock from Nebraska points to Missouri River cities found unduly prejudicial to interstate shippers and localities unreasonably preferential of intrastate shippers and localities and unjustly discriminatory against interstate commerce; and in certain instances found unreasonably preferential of interstate shippers and localities, unduly prejudicial to intrastate shippers and localities, and unjustly discriminatory against intrastate commerce. Distance scales of rates suggested for correction of the situation. Nebraska Livestock Case, 89 I. C. C. 444.

(b) If intrastate rates are less than are necessary to bear a proper relation to interstate rates, a revenue burden is being cast upon interstate and foreign commerce, which amounts to an unjust discrimination against it. Nebraska Livestock, 89 I. C. C. 444, 453.

(c) Rates on fresh fruits and vegetables from Indiana points to Chicago, Ill., found unreasonable and unduly prejudicial as compared with rates on the same commodities from Illinois points to Chicago. No conditions affecting the transportation which would justify a different level of rates on this intrastate and interstate traffic was shown. Reasonable and non-prejudicial rates prescribed. Indiana Public Service Comm. v. B. & O. R. R. Co., 89 I. C. C. 651.

(d) Whether an intrastate rate established by a state commission creates an undue discrimination against interstate rates is a question of which the courts have not jurisdiction, but one which, under the Transportation Act, must be determined by the Interstate Commerce Commission. Illinois Cent. R. Co. v. Railroad Commission of Kentucky 1 Fed. (2d) 805.

(e) Interstate rates on sugar beets between points in Ohio and Michigan, higher than contemporaneous intrastate rates between points in same States, found unreasonable and unduly prejudic-

ial to interstate shippers, unduly preferential of intrastate shippers, and unjustly discriminatory against interstate commerce. Reasonable maximum distance scale of rates prescribed. Continental Sugar Co. v. N. Y. C. R. R. Co., 91 I. C. C. 677.

(f) The authority vested in the Interstate Commerce Commission by Transportation Act 1920 extends to the removal of undue, unreasonable, and unjust discrimination against interstate commerce by an order fixing intrastate rates for the purpose. Northern Pac. Ry. Co. v. St. Paul & Tacoma Lumber Co., 4 Fed. (2d) 359.

(g) The regulation of intrastate rates rests primarily with the States and the commission should interfere with such rates only upon a clear showing that they violate the provisions of the interstate commerce act pertaining to discrimination against interstate commerce. Certain-Teed Products Corp. v. A. & L. M. Ry., 95 I. C. C. 273, 279.

(h) Rates on clean rice from points in Arkansas, Louisiana, and Texas to points in Oklahoma found unreasonable. The rice adjustment presents many incongruities, rates from producing territories to Oklahoma points being higher than to more distant points in practically all directions, in violation of the fourth section. Jobbers located at points in Arkansas and Texas near the Oklahoma border are able to purchase rice in carloads and distribute in less than carloads to Oklahoma points at transportation charges substantially lower than rice can be similarly handled by Oklahoma jobbers. Reasonable scale of distance rates, which will give to each distributing point the benefit of its location, prescribed. Alton Mercantile Co. v. A. & W. Ry., 95 I. C. C. 645.

(i) Similar complaint having been filed with State public utilities commission, but attacking intrastate rates, joint hearing was held members of State commission sitting with this commission in oral argument and conferring on issues presented. Missouri Portland Cement Co. v. A., T. & S. F., 101 I. C. C. 454.

ALL OTHER CITATIONS

Ohio State Rates on Sand, Gravel, Stone, and Paving Brick, 85 I. C. C. 66.

II. DETERMINATION OF DISCRIMINATION.

§3. In General.

See Allowances §7.

(a) Class A rates on horses, mules, asses and burros, from Kansas City, Mo., to points in Texas and Louisiana, found unreasonable and unduly prejudicial as compared with rates within Texas or Louisiana or between those states, and to extent they exceed the distance rates based on the class C scale provided for in Memphis-Southwestern Investigation, 55 I. C. C. 515, herein prescribed for future. Kansas City Chamber of Commerce v. A. & W. Ry. Co., 89 I. C. C. 22.

(b) Relationship of rates on potatoes and lettuce from Divide, Canon City, Villa Grove and Antonito, Colo.; to destinations in Texas, Oklahoma, Kansas, and states east thereof, found unduly prejudicial to Divide and its traffic and unduly preferential of Canon City, Villa Grove, and Antonito, and their traffic. From standpoint of transportation conditions there is no reason why relationship of Divide to Colorado common-point group should be different from that of Canon City, Villa Grove and Antonito. Pikes Peak Co-operative Asso. v. M. T. Ry. Co., 89 I. C. C. 379.

(c) Rates on pipe from points in westbound transcontinental Group B to Taft, Calif., on the Sunset Ry., found not unreasonable or unduly prejudicial as compared with transcontinental rates from same origin points to other California destinations, including Bakersfield, Calif., which lower rates are applicable for considerable distances beyond that point, and also apply to points on other branch lines in California and Arizona. The usual basis for making rates from eastern origin points to California and Arizona points on branch or short lines is by combination over the junction points and instances cited of the extension of such lower rates to branch and short line points were shown to be invariably due to either carrier, water, or market competition. Standard Oil Co. v. A., T. & S. F. Ry. Co., 89 I. C. C. 425.

(d) Upon further hearing and reargument previous report, 69 I. C. C. 282, charges on traffic from points west of the Hudson River to the J. L. Kelso Co. warehouse on the Union Freight R. R. in Boston, Mass., found unreasonable and unduly prejudicial to extent they exceeded rates on like traffic to deliveries

on the Boston & Albany, Boston & Maine, and New York, New Haven & Hartford railroads in the Boston district. Line-haul carriers refused to absorb charges of the Union while making deliveries at all other points in and about Boston at the flat Boston rates. Reparation awarded. Boston Wool Trade Asso. v. Director General, as Agent, 89 I. C. C. 589, 593.

(e) Inclusion of Rock Springs and Kemmerer mines in Wyoming in one group found not unduly prejudicial of operators of coal mines in Utah. The commission has on former occasions declined to separate the district into two rate groups on traffic to southern Idaho on ground that the grouping both as to shipments westbound and eastbound had existed for many years and should not be interfered with unless a service more acceptable to the public, and at the same time just to the carriers, could be established. Moreover, separation of the group on westbound traffic would naturally result in like action as to eastbound traffic, and would seriously disturb the relationship that has existed without complaint over a long period of years. Western Coal Rates, 89 I. C. C. 666, 668, 669.

(f) It is well settled that discrimination under the third section to be undue and unlawful must ordinarily be such that the prejudice arising out of it against one party is a source of advantage to the other alleged to be favored and that generally a competitive relationship between the commodities must appear. Utah State Automobile Asso. v. A. T. & S. F. Ry., 92 I. C. C. 376, 386.

(g) Complainant attacked commodity rates charged on grain and grain products, carloads, from Utah, Idaho, Montana, Wyoming and Oregon on the O. S. L., to Petaluma Calif., as unjust, unreasonable and unduly prejudicial as compared with rates to San Francisco, Oakland, San Jose, South Vallejo, Stockton, Woodland and Marysville, Calif. Petaluma is on the Northwestern Pacific, 38 miles north of San Francisco. Points of origin are in what is known as intermountain territory. Rates from and to these points are made on a combination basis, composed of commodity rates to San Francisco plus the local commodity rates beyond. The local rates from San Francisco to Petaluma were 7.5c on wheat and 7c on coarse grains. The rates from the various points of origin to San Francisco vary from 46c to 73c on wheat and from 41.5 to 65.5c on coarse grains. HELD, rates attacked not unreasonable but failure and refusal to accord Petaluma San Francisco rates unduly prejudicial. Golden Eagle Milling Co. v. Bamberger Electric R. R., 100 I. C. C. 41.

(h) Rates on wire and wire articles from Anderson, Kokomo, and Muncie, Ind., to points in Kentucky and Tennessee, higher than from Pittsburgh, to same destinations, found not unreasonable or discriminatory, but unduly prejudicial to shippers at Anderson, Kokomo, and Muncie, and preferential of competitors at Pittsburgh. Indiana Public Service Commission v. A. & V. Ry., 92 I. C. C. 497.

(i) Rates on sulphuric, nitrating, and muriatic acids from Kansas City (Argentine), Kans., to Oklahoma found not unreasonable, but unduly prejudicial in favor of St. Louis, Mo., and Chicago, Peoria, East St. Louis, and related points in Illinois, to extent they exceed rates made lower than contemporaneous rates on like traffic from St. Louis and said points in Illinois by differentials herein prescribed for future. National Zinc Co. v. A., T. & S. F. 92 I. C. C. 587.

(j) Through rates on interstate shipments of stone and products from South Amherst, a local point on the Lorain & Southern R. R., a common-carrier short line, found not unreasonable or otherwise unlawful. Nonabsorption by New York Central of all of the Lorain & Southern's local charges does not, in and of itself, establish unreasonableness or undue prejudice, and fact that tariffs of New York Central named rates on stone from various points on its line within a radius of 25 miles from Amherst, the junction point of the two carriers, equal to junction-point rate, does not establish unreasonableness or prejudice in rates from South Amherst, in absence of a showing with respect to operating situation at such other points. Ohio Quarries Co. v. N. Y. C., 92 I. C. C. 703.

(k) Rates on dried fruit, coffee, canned goods, preserves, vegetables (fresh or green), deciduous and citrus fruits, cantaloupes, and melons, from California to Virginia, Minn., found unreasonable and unduly prejudicial to extent they exceed rates contemporaneously in effect to Duluth. Basis of rates prescribed for future. Virginia Chamber of Commerce v. A. T. & S. F. 92 I. C. C. 722.

(l) Unlawful preference and prejudice may arise from difference in service

as well as from difference in measure of rates. Interstate Cotton Oil Rfg. Co. v. A., T. & S. F., 95 I. C. C. 171, 176.

(m) Rates on clean rice and flour from points in Arkansas, interior Louisiana, and Texas to Salina, Kans., found unreasonable and unduly prejudicial, following 93 I. C. C. 517 and other cases cited. Reasonable and nonprejudicial rates prescribed for future and reparation awarded. Salina Chamber of Commerce v. A. & W. Ry. Co., 98 I. C. C. 290.

(n) Following 60 I. C. C. 579, rate on refined sulphur from Bryanmound and Freeport, Tex., to New Orleans, La., and points taking same rates found not unreasonable, unjustly discriminatory, or unduly prejudicial as compared with rates from Sulphur Mine and Mossville, La., via Texarkana, Ark.-Tex., to same destinations, with privileges of transit at Texarkana. Rate from same points of origin to certain points in Louisiana intermediate to New Orleans found unreasonable to extent it exceeded rate to that point. Reasonable basis prescribed for future. Stauffer Chemical Co. v. H. & B. V. Ry Co., 98 I. C. C. 326.

(o) Rates for interstate transportation of fresh meats and packing-house products from Duluth to St. Paul, Minn., found unduly prejudicial to extent they exceeded lower contemporaneous rates on like traffic from St. Paul to Duluth. Undue prejudice ordered removed. Duluth Chamber of Commerce v. C., St. P. M., & O. Ry. Co., 98 I. C. C. 352.

(p) Rates for interstate transportation of fresh meats and packing-house products from Duluth to St. Paul, Minn., found unreasonable and unduly prejudicial as compared with lower contemporaneous rates on like traffic from Mason City, Iowa, to St. Paul, and from St. Paul to Duluth. Reasonable rates prescribed for future. Duluth Chamber of Commerce v. C., St. P., M. & O. Ry. Co, 98 I. C. C. 352.

(q) Screening specifications governing rates on coal from northern Colorado district to destinations in northwestern Nebraska and Black Hills region of South Dakota on C. B. & Q. and North Western found unduly prejudicial to coal operators in that district, and unduly preferential of operators in the Sheridan and Kirby districts, to extent they permit the latter to ship coal of a size larger than may be shipped from northern Colorado district under corresponding rate. Reasonable and nonprejudicial specifications prescribed for future. Colo. & N. Mex. Coal Operators Asso. v. D. & R. G. W. R. R. Co., 98 I. C. C. 377, 394, 399.

(r) Rates on moss in machine-pressed bales from Plaquemine and other producing points in Louisiana west of Mississippi River to certain defined interstate destinations found not unreasonable, unjustly discriminatory, or unduly prejudicial as compared with lower contemporaneous rates on like traffic from competing points in Louisiana east of the river, such as New Orleans and Baton Rouge. National Asso. of Furniture Mfrs. v. A. A. R. R. Co., 98 I. C. C. 501.

(s) Disparity in rates does not necessarily result in undue prejudice. It must also appear that shipments are made under these rates or that shipments are hindered or prevented because of the rate relationship. The element of competition is usually potent. Pensacola Chamber of Commerce v. L. & N. R. R. Co., 98 I. C. C. 567, 570.

(t) Rate charged on shipments of mussel shells from Hobbs Island, Ala., to Oswego, Kans., found not unreasonable or unduly prejudicial. Ton-mile earnings yielded are less than earnings at rates applicable on like traffic from Louisiana points to destinations in Kansas, including Oswego, for comparable distances. Pioneer Pearl Button Co. v. N., C. & St. L. Ry., 98 I. C. C. 578.

(u) Class rates, and commodity rates bearing a direct relation thereto, between points in Lower Peninsula of Michigan north of main line of Michigan Central R. R. from Detroit, Mich., to Chicago, Ill., and points in central territory on and south of that line found unreasonable, unduly prejudicial to persons and localities in Lower Peninsula of Michigan north of said line, and unduly preferential of persons and localities in central territory on and south of said line. Reasonable and nonprejudicial bases of rates prescribed, and former report, 85 I. C. C. 47, modified accordingly. Michigan Traffic League v. A. A. R. R. Co., 98 I. C. C., 660.

(v) While the commission has said that a large volume of movement is not necessary in order to justify a finding

of undue prejudice, nevertheless in the case here involved there is practically no evidence of actual or potential competition on traffic between the points involved, and no undue prejudice is found. Fargo Commercial Club v. A. & W. Ry. Co., 98 I. C. C. 691, 730.

(w) Investigation by commission, on its own motion, of interstate class rates and l. c. l. commodity rates within southern territory and between southern and official territories, all-rail and rail-water, and of l. c. l. ratings in exceptions to southern classification was instituted to determine whether such rates and ratings are "unreasonable, or are unduly prejudicial to or unduly preferential of particular localities, persons, or descriptions of traffic." Southern Class Rate Investigation, 100 I. C. C. 513.

(wa) Prejudice is rarely undue unless parties prejudiced and those preferred are upon a competitive basis. Detroit & Cleveland Nav. Co. v. M. C. R. R., 102 I. C. C. 607, 609.

(wb) Rates on rough rice from producing points in Arkansas to New Orleans found not unreasonable, and on clean rice from Arkansas milling points to New Orleans, for export, found not unduly prejudicial. Present rates were established for purpose of enabling Arkansas millers to compete with Memphis and various Louisiana and Texas milling points in the export market and the rough-rice rates are a development from distance scales several times approved by commission as reasonable. A material increase in the clean-rice rates, as sought by complainant, would virtually restore a discriminatory situation which present rates were designed to remove. New Orleans Joint Traffic Bureau v. B., S. L. & W., 102 I. C. C. 686.

(x) A mere showing of difference in ratings is insufficient to establish discrimination nor does it, of itself, prove the rating to be unduly high. Union Metal Mfg. Co. v. A. C. & Y. Ry., 109 I. C. C. 490, 491.

(y) The mere showing of differences in inbound rates to competing jobbing points does not establish the existence of undue prejudice. Burlington Shippers Asso. v. A. T. & S. F. Ry., 109 I. C. C. 694, 699.

(z) Prejudice to be undue under section 3 of the act must ordinarily be such that prejudice suffered by one person shall be a source of positive advantage to another and that a competitive relation shall exist between persons or commodities affected. Consumers Co., 36 I. C. C. 259; Schlicher case, 62 I. C. C. 181. Garrett-Callahan Co., v. A. C. L. R. R. Co., 88 I. C. C. 103, 106.

ALL OTHER CITATIONS

Elk Brand Shirt & Overall Co. v. D. & S. Ry. Co., 85 I. C. C. 320; Lehigh Lime Co. v. A. C. & Y. Ry. Co., 85 I. C. C. 341; Indiana Public Service Commission v. A. A. R. R. Co., 85 I. C. C. 533; Mayer & Co. v. C. & N. W. Ry. Co., 85 I. C. C. 549; Parkersburg Rig & Reel Co. v. Director General, as Agent, 85 I. C. C. 665; Western Coal Rates, 88 I. C. C. 13; Burlington Shippers' Asso. v. A. T. & S. F. Ry. Co., 88 I. C. C. 46; Interstate Milling Co. v. B. & O. R. R. Co., 88 I. C. C. 229; Phoenix Chamber of Commerce v. A. E. R. R. Co., 88 I. C. C. 230; Ridenour-Baker Mercantile Co. v. A. T. & S. F. Ry. Co., 88 I. C. C. 273; Barber Asphalt Co. v. L. & N. R. R. Co., 88 I. C. C. 307; Lincoln Gas Coal Co. v. B. & O. R. R. Co., 88 I. C. C. 379; Universal Paper Bag Co. v. M. C. R. R. Co., 88 I. C. C. 593; Indiana Public Service Commission v. A. T. & S. F. Ry. Co., 88 I. C. C. 721.

§3½. Previous decision of commission.

See Previous Decisions of Commission.

(a) Complainant attacked class rates from Watertown, S. D., to points in Minnesota on and west of the Omaha from Bigelow to Mankato, Minn., west of and including Morton, Olivia and Wilmar, Minn., and south of Herman, Minn., as unreasonable, unduly preferential of Sioux Falls, S. D., and Sioux City, Iowa and unjustly discriminatory against interstate commerce to extent they exceed, for like distances, the class rates from Twin Cities, Winona, Albert Lea, Mankato, Pipestone, Rochester and St. Cloud, Minn., to the said Minnesota destinations. Watertown is 30 miles west of the South Dakota-Minnesota state line. It is served by Northwestern, Rock Island, G. N., and M. & St. L. Minnesota destinations are in the southwestern part of Minnesota and are within a radius of 200 miles of Watertown. A scale of rates, referred to as the interstate scale, applies between Watertown and the Minnesota destinations, with certain exceptions. The G. N., maintains a scale somewhat lower

than the interstate scale up to 50 miles and beyond 110 miles, and somewhat higher for distances between 50 and 110 miles. An intrastate scale of class rates prescribed by the Minnesota Commission applies from the Minnesota jobbing points to the Minnesota destinations over the lines of all defendants, except some higher scale via the M. & St. L. The rates from Sioux City to the Minnesota destinations are materially lower than the interstate scale but somewhat higher than the Minnesota intrastate scale. The rates from Sioux Falls to the same destinations were originally made 2c higher than from Sioux City for the first four classes, and that relationship, changed only by the subsequent horizontal increases and reductions, still exists. There are no circumstances and conditions of transportation which warrant the existing disparities in the class rates from Watertown and from the competitive points alleged to be preferred. HELD, rates attacked from Watertown to Minnesota not unreasonable but unduly prejudicial to extent they exceed the rates maintained from the said preferred points by more than the differences that would exist between the rates from said preferred points, on the one hand, and from Watertown on the other, under the scale of class rates prescribed in 98 I. C. C. 691, less 12 per cent for the distances on and east of the Omaha from Sioux City through Worthington and Mankato. Watertown Chamber of Commerce v. C. & N. W. Ry., 101 I. C. C. 441.

(b) Complainant attacked commodity rates on grain and grain products and cottonseed meal and hulls, less carloads, from Natchez, Miss., to destinations on the M. P., L. & A., and T. & P., as unjust and unreasonable, unjustly discriminatory against interstate commerce. Present less carload rates on grain and grain products and cottonseed meal and hulls between Natchez and points in Louisiana west of the Mississippi river are class rates, governed by the western classification, prescribed in 52 I. C. C. 105. Present less carload rates on these articles between points in Louisiana west of the river are specific commodity rates prescribed by the Louisiana Commission and are based upon 150 per cent of the carload commodity rates fixed for application interstate and intrastate in 58 I. C. C. 610 and 77 I. C. C. 473. Both from Natchez and between points in Louisiana the joint rates are varying amounts higher than the single line rates for corresponding distances. The differences in less carload rates on the commodities under consideration east and west of the Mississippi river are due in part to difference between two divergent class rate structures, differences between western and southern classification ratings and rules, differences between transportation and traffic conditions, differences between relative financial strength of the principal carriers serving the two territories, and differences between rates prescribed in the Natchez cases and 60 I. C. C. 5. The record in this case justifies the conclusion that under the circumstances the present class rates from Natchez to points in Louisiana west of the Mississippi river and between points in Louisiana constitute a basis too high for application to the transportation of less carloads. The Commission will prescribe a lower basis for application between these points. HELD, rates attacked unreasonable to extent they exceed from west bank of the Mississippi river rates ranging from 14.5c single line for 5 miles to 68.5c single line for 450 miles, joint rates over lines not under a common management or control should be 5c higher than single line rates. Natchez Freight & Traffic Bureau v. M. P. R. R., 101 I. C. C. 476.

(c) Rates on coal from mines in Ohio and Inner and Outer Crescent districts to certain points in Indiana, found not unreasonable, unjustly discriminatory, or unduly prejudicial. Rates assailed have been passed upon and fixed by the commission in 80 I. C. C. 663, and 83 I. C. C. 591; no evidence has been offered justifying changes in the bases of rates prescribed in those cases; and no damage has been shown to have resulted from undue prejudice found in those cases to have existed during the periods covered herein. Bash & Co. v. B. & O., 96 I. C. C. 178.

(d) Rates on vegetable oils from Oklahoma points to Sherman, Tex., for distances of 325 miles or less, found unreasonable and unduly prejudicial to the extent they exceeded or exceed rates for like distances under the scale prescribed in Procter & Gamble, 64 I. C. C. 213, graded downward in manner indicated, which scale applies from origin points to Dallas and Fort Worth, competing points,

and is in effect from Arkansas and Louisiana points to Sherman. Reparation awarded. Determination of future rates left pending decisions in Corporation Commission of Oklahoma v. A. & S. Ry. Co., and Texas Cottonseed Crushers Asso. v. Same, now before commission. Texas Chamber of Commerce v. A., T. & S. F., 96 I. C. C. 283.

(e) Rates on paper and paper articles from points in Wisconsin, Minnesota, Michigan, and Canada, to Jackson, Miss., and New Orleans, La., established in accordance with findings in 88 I. C. C. 345, found unduly prejudicial to shippers at Jackson and unduly preferential of shippers at New Orleans, in that they are higher to Jackson than to New Orleans. Fourth-section order entered as result of previous finding accordingly modified so as to except rates to Jackson from the authority therein granted. Paper and Paper Articles to New Orleans, 96 I. C. C. 600.

(f) Upon further hearing, rates on sand and gravel from Terre Haute to St. Mary's of the Woods, Ind., and from pits of the Neal Gravel Co. and Carmichael Gravel Co. to Attica, Ind., found not on a level so much lower than the interstate rates on the same commodities in this territory as to create a disparity which operates as a real discrimination against and an obstruction to interstate commerce. Original report, 60 I. C. C. 337, modified by excepting such rates from its provisions. Indiana Rates, Fares, and Charges, 96 I. C. C. 644.

(g) Upon further hearing, modification of original order entered in this proceeding, 60 I. C. C. 337, as to rates on coal from points in Indiana to Crawfordsville, Sheridan, Logansport, Monticello, Anderson, and Fort Wayne, Ind., denied. The rates established were not relatively excessive, and it is apparent, because of competitive conditions, that the relation between the intrastate rates and the interstate rates between the same points and from Illinois and other States to these destinations was so close that the failure to increase the intrastate rates pursuant to Increased Rates, 1920, 58 I. C. C. 220, would have had a direct effect upon interstate rates and traffic. Indiana Rates, Fares and Charges, 96 I. C. C. 644.

(h) Rates on cement from points in the Kansas gas belt, including Dewey, Okla., to St. Joseph and intermediate points in Scale II territory in Missouri, found unreasonable and unduly prejudicial to Kansas gas-belt points and Dewey over interstate routes and to shippers therefrom, and unduly preferential of Kansas City and Sugar Creek over intrastate routes to St. Joseph and of shippers therefrom and of intrastate traffic in Missouri between said points, to the extent that the rates from points in the Kansas gas belt, including Dewey, exceed or may exceed the rates contemporaneously maintained for like distances from Kansas City and Sugar Creek and upon intrastate traffic from Kansas City and Sugar Creek to St. Joseph and intermediate points in Missouri. Rates prescribed in Western Cement Rates, 48 I. C. C. 201 and 52 I. C. C. 225, as modified in 69 I. C. C. 644, found to be just and reasonable for application on both interstate and intrastate traffic between said points in the future. Cement from Kansas City to St. Joseph, 96 I. C. C. 718.

(i) Upon further hearing rates on coal from Boonville, Chandler, Francisco, Oakland City, and Winslow, Ind. (Boonville district); to Tell City and Cannelton, Ind., in effect at time of hearing in original report, 60 I. C. C. 337, found not to result in undue or unreasonable advantage, preference, or prejudice as between persons or localities in intrastate commerce on the one hand, and interstate or foreign commerce on the other hand, or any undue, unreasonable, or unjust discrimination against interstate or foreign commerce. Original report modified to except from its provisions rates on coal from Boonville district to Tell City and Cannelton, Ind. Indiana Rates, Fares, and Charges, 100 I. C. C. 169.

(j) Rates on condensed and evaporated milk from Lupton and Johnstown, Colo., to Oklahoma points found not unreasonable but unduly prejudicial to extent they exceed contemporaneous rates on canned goods from and to the same points. The existing disparity between rates to Oklahoma on canned milk and on canned goods was created by readjustments following the Oklahoma case, 62 I. C. C. 433, and upon the record there is no more justification for condemning the rates to Oklahoma on this commodity as unreasonable than there was in the Oklahoma case. Indicia of undue prejudice may be found in the decided increase in the spread between the rates on condensed

milk to Oklahoma, on the one hand, and to Kansas, on the other, from an amount which existed when the Oklahoma case was considered to the present amount. The record discloses no circumstances warranting such a marked difference in treatment of similar traffic to different but adjacent destination regions. There is no proof of damage such as is required to support an award of reparation under a finding of undue prejudice. Undue prejudice ordered removed and reparation denied. Carnation Milk Products Co. v. A., T. & S. F., 100 I. C. C. 254.

(k) Upon further hearing, finding in original report, 83 I. C. C. 267, that fourth-class rating and rates on galvanized corrugated riveted sheet-iron and sheet-steel culverts or culvert pipe, from Pueblo, Colo., to points in certain other States were applicable and not unreasonable, but unduly prejudicial, affirmed. Rate alleged applicable was restricted in its application to pipe, n. o. i. b. n., and, since culverts were specifically indexed by name, was obviously inapplicable. Colorado Culvert & Flume Co. v. A., T. & S. F., 100 I. C. C. 311.

(l) Upon further hearing, finding in original report, 85 I. C. C. 373, that rates on lumber to New Orleans and Mobile, from Lyman, Miss., on the near edge of the blanket of the Gulf & Ship Island origin points, were not unreasonable or unduly prejudicial, affirmed. Evidence amply supports original conclusions that blanket method of making rates on lumber has long been satisfactorily employed in this territory and that it should not be here disturbed. Obviously some shippers will be farther from a given point than others in the same blanket, but the record shows that whereas Lyman is the nearest shipping point to Mobile and New Orleans, it is among the farthest points to destinations in other directions. A blanket rate structure in existence since inception of the sawmill industry in this territory should not be lightly set aside for a rate adjustment in which distance would be the sole factor determining the measure of the rates. Ingram Day Lbr. Co. v. G. & S. I., 101 I. C. C. 287.

(m) Upon further hearing finding in original report, 80 I. C. C. 269, that that interstate rates on all traffic except ex-lake iron ore, and except on local movements in connection with defendants trunk lines at switching rates to and from complainant's plant located on and served by the Pittsburgh & Ohio Valley Ry. Co. were unreasonable and unduly prejudicial to extent they exceeded the rates contemporaneously in effect on like traffic to and from Neville Island, affirmed. Reasonable and nonprejudicial rates prescribed and reparation awarded. Carnegie Steel Co. v. Director General, 101 I. C. C. 638.

(n) Class and commodity rates from, Jackson, Miss., to destinations in Louisiana west of Mississippi River and southern Arkansas, found unjust, unreasonable and unduly prejudicial to Jackson and its shippers and unduly preferential of shippers at New Orleans, Memphis, and Natchez, to extent they exceed rates for like distances between points west of Mississippi River herein prescribed, plus charges for Mississippi River crossings prescribed in 93 I. C. C. 463. Reasonable and nonprejudicial rates prescribed. Jackson Traffic Bureau v. A. & V., 102 I. C. C. 129.

(o) Rates on rice from certain points in Louisiana to Baton Rouge, destined to interstate and foreign points after cleaning in transit, found unreasonable and unduly prejudicial to extent they exceeded, in addition to the transit charge, rates under a distance scale prescribed in 69 I. C. C. 508. The claims are identical in character and principle with those on which reparation was awarded in cited case and the transportation conditions over route of movement are practically same as those from and to points between which prescribed scale applies. Reasonable rates prescribed and reparation awarded. Baton Rouge Rice Mill v. N. O., T. & M., 102 I. C. C. 507.

(p) Rates on salt from Anse La Butte, Avery, Salt Mine, Weeks Island, and Jefferson Island, La., to points in Mississippi and from Baldwin, La., to Jackson, Miss., found unreasonable and unduly prejudicial as compared with rates from Memphis and New Orleans, competing points. Distance scales were prescribed in 77 I. C. C. 473 and other cases where rates between points in southern territory were considered and a similar basis is appropriate here, since it would be less likely to create difficulties in subsequent readjustments. Distance rates with a 45,000 pound minimum prescribed for fu-

ture and reparation awarded. Miss. R. R. Comm. v. A & V., 102 I. C. C. 540.

ALL OTHER CITATIONS

Decker & Sons v. Director General, as Agent, 85 I. C. C. 389; Western Coal Rates, 88 I. C. C. 13; Arizona Egyptian Cotton Co. v. Director General, as Agent, 88 I. C. C. 263; Co-operative Oil & Paint Co. v. Director General, as Agent, 88 I. C. C. 747.

§3½a. Relation of Rates.

See Relative Rates.

(a) Complainant attacked interstate class rates between Oakland, Calif., and California and Nevada as unreasonable and unduly prejudicial. As a practical matter the rates which would be affected by a finding herein of undue prejudice are those applying between Oakland and points taking rates in excess of those produced by the minimum class rate scale. The sole question is whether or not Oakland is entitled to lower rates than San Francisco. Oakland and San Francisco are situated respectively on the east and west sides of San Francisco Bay. Together with the municipalities of Alameda, Berkeley, Richmond and several smaller towns adjacent to them, they form a great social and industrial community which in this report will be called the metropolitan district of San Francisco and Oakland. While it is true these cities are separated by the bay waters, a distance of about 4 miles, the efficient and almost continuous ferry service maintained between them for both passengers and freight makes practically one city, separated only by lines of political subdivision. Both San Francisco and Oakland have extensive harbor facilities. The S. P., is the only steam line involved with rail terminals in both San Francisco and Oakland. The W. P., handles all freight into and out of San Francisco by car ferry from and to Oakland. The Santa Fe handles such freight by car ferry between San Francisco and Richmond. The S. P., also operates a car ferry between these cities, but a large percentage of its freight business out of and into San Francisco is handled over the all rail route via what is known as the Dumbarton cutoff. Since it is acknowledged that Oaklands rates are based upon San Francisco rates and that the rates really have been made from San Francisco and not from Oakland, it follows that the latter has shared the low level of rates applying from San Francisco. HELD, rates attacked, where there is actual water competition, are depressed by competition, although it is shown that this competition is not so keen as to result in anything in the nature of rate wars between the rail and water lines. HELD, further, rates attacked between the metropolitan district and points here considered which are not on navigable waters reflect the result of water competition to related points and are likewise lower than normal rates. The record establishes that the water competition from Oakland has been nowhere near as great as that from San Francisco. It is true that the cost of ferriage between these two points, if transmuted to rail miles at average costs of rail haulage, would place them some miles apart. The group here considered is not unduly large. San Francisco have both grown and prospered, although the present rate adjustment has been in effect for many years. HELD, rates attacked not unreasonable or unduly prejudicial, complaint dismissed. Oakland Chamber of Commerce v. S. P. Com., 100 I. C. C. 55.

(b) Rates on sugar from California, Colorado, Idaho, Kansas, Nebraska, and Utah, to points in Indiana, found not unreasonable or unduly prejudicial as compared with rates to Chicago. Rates from western territory to Chicago are depressed and were made by western carriers for purpose of enabling western producers to meet competition of eastern and southern sugar refiners at that point. While transportation conditions in Indiana and Illinois are similar in character, circumstances surrounding maintenance of the depressed rates to Chicago indicate that there is no warrant for extending that basis to the Indiana points. Indiana Public Service Comm. v. A., T. & S. F., 92 I. C. C. 279.

(c) Rates on ores and concentrates from Engels, Calif., and other stations on Indian Valley Railroad, to Wabuska, Nev., found for future to be unduly prejudicial and unduly preferential to extent rates from Indian Valley stations to Wabuska may exceed rates from Paxton, Calif., to Wabuska by an amount greater than corresponding rates from Indian Valley stations to Garfield and International, Utah, exceed contemporaneous rates on like traffic from Paxton

to Garfield and International. Moreover, failure of defendants to provide and maintain from Engels and other Indian Valley stations to Wabuska, rates similar in all respects as to conditions under which such rates are applicable, to those contemporaneously maintained by them on like traffic to Garfield and International, subject to above restrictions, found unduly prejudicial to Wabuska and unduly preferential of Garfield and International. Mason Valley Mines Co. v. W. P. R. R. Co., 100 I. C. C. 180, 204.

(d) Rates on lumber, other than pine, from Jonesboro, Ark., to Des Moines, Iowa, found unduly prejudicial to extent they exceed rates contemporaneously maintained on like traffic from Glencoe and Wilson, Ark., competing points, to Des Moines. Jonesboro Freight Bureau v. St. L. S. F. Ry. Co., 100 I. C. C. 324.

(e) Class rates as applied to plow irons, parts, and castings, l. c. l., from Macon, Ga., to points in Alabama, found not unreasonable, but unduly prejudicial and in violation of long-and-short-haul clause of fourth section of act to extent they exceed or may exceed lower contemporaneous rates on plow irons, l. c. l., in effect from Atlanta, Ga., to same destinations. Undue prejudice ordered removed. Massey Gin & Machine Works v. C. of G. Ry. Co., 101 I. C. C. 45.

(f) Present relationship between interstate rates on grain, grain products, hay and straw, and related articles taking same rates, or rates basing thereon, from Oklahoma points to Texas, and intrastate rates applying within Texas on same commodities, found unduly prejudicial to Oklahoma and shippers therefrom and unduly preferential of Texas and shippers therein. Reasonable and nonprejudicial rates prescribed from Oklahoma to Texas. Oklahoma Corp. Comm. v. A. & S. Ry. Co., 101 I. C. C. 116.

(g) Relationship between interstate rates on grain, grain products, hay and straw, and related articles taking same rates, or rates basing thereon, between Oklahoma and Missouri and Kansas and interstate rates between Kansas and Missouri not shown to be unduly prejudicial to Oklahoma shippers. Oklahoma Corp. Comm. v. A. & S. Ry. Co., 101 I. C. C. 116, 128.

(h) Relationship between Kansas and Missouri intrastate rates on grain, grain products, hay and straw, and related articles, and interstate rates on same commodities from Oklahoma to Kansas and Missouri not shown to be unduly prejudicial to Oklahoma shippers. Oklahoma Corp. Comm. v. A. & S. Ry., Co., 101 I. C. C. 116, 128.

(i) Rates on anthracite coal from Pennsylvania mine regions to Staten Island, N. Y., found unreasonable and, except via the Pennsylvania, unduly prejudicial to Staten Island, to the undue preference of northern New Jersey, to extent they exceeded and exceeded to Group 1, lower rates contemporaneously maintained to northern New Jersey, and, to Group 2, rates exceeding those found reasonable to Group 1 by more than certain fixed differentials, including shipments via the Pennsylvania. Reasonable and nonprejudicial relationship of rates prescribed for future, and reparation awarded. Richmond County Coal Merchants Asso. v. B. & O., 101 I. C. C. 154.

(j) Rates on rock, phosphate from Dunnellon, Prairie, Bartow, and other points in Florida taking same rates, to Knoxville, Tenn., found unreasonable and unduly prejudicial to Knoxville, as compared with rates to the Carolina Group, to extent they exceeded and exceed lower contemporaneous rates on like traffic from points of origin involved to Carolina destinations. Reasonable and nonprejudicial rates prescribed for future, and reparation awarded. Knoxville Traffic Bureau v. A. C. L., 101 I. C. C. 165.

(k) Rates on fresh meat and packing house products from Ogden, Utah, to Denver, Missouri River crossings, Ottumwa, Mississippi River crossings, Chicago, points in southeastern territory, Atlantic seaboard points, and Montreal, Canada, except rates on fresh frozen meats from Ogden to New York, Brooklyn, and Boston, found not unreasonable, discriminatory, or unduly prejudicial in their relation to and in comparison with contemporaneous rates on like traffic from other points of origin to same destinations and from and to other points for comparable distances. Ogden Packing & Provision Co. v. A., T. & S. F., 101 I. C. C. 236.

(l) Rates on cereal beverage from Milwaukee to Emporia, Kans., found not unreasonable or unduly prejudicial as compared with contemporaneous rates on like traffic from same point of or-

igin to other destinations and from and to other points for comparable distances, or with lower rates established subsequent to movement. Emporia Wholesale Coffee Co. v. A., T. & S. F., 101 I. C. C. 391.

(m) Class rates from Watertown, S. Dak., to points in southwestern Minnesota found not unreasonable, but unduly prejudicial to Watertown, unjustly discriminatory against interstate commerce, and unduly preferential of Sioux Falls, Sioux City, the Twin Cities, and other Minnesota points. Nonpreferential basis of rates prescribed. Watertown Chamber of Commerce v. C. & N. W., 101 I. C. C. 441.

(n) Sixth-class rate on peanuts from Suffolk, Va., and Plymouth, N. C., to Tupelo, Miss., found not unreasonable, but unduly prejudicial to extent it exceeded lower rate contemporaneously applicable to Memphis, a farther distant point in the rate group in which Tupelo is located. Northeast Miss. Traffic Bureau v. M. & O., 101 I. C. C. 451.

(o) Fifth-class rates on condensed milk from Northfield, Minn., to eastern destinations found not unreasonable or unduly prejudicial as compared with lower commodity rates contemporaneously in effect from points in Wisconsin to same destinations. Canned Goods to Eastern Points, 101 I. C. C. 502, 511.

(p) Rates on bituminous coal from mining districts in Pennsylvania, Ohio, Maryland, the Virginias, Kentucky, and Tennessee to Lake Erie ports, for transshipment by vessel to destinations beyond found not in excess of the maximum of reasonableness. Such rates found to be just and reasonable and not unduly prejudicial as compared with rates from other districts in the Appalachian region. Lake Cargo Coal Rates, 1925, 101 I. C. C. 513.

(q) Rates on newsprint paper from Shawinigan Falls, Quebec, and Canadian points taking same or related rates, to Knoxville, Tenn., via Detroit gateway, found not unreasonable, but unduly prejudicial to Knoxville and unduly preferential of Nashville, to extent they exceed rates on like traffic contemporaneously maintained from same points of origin to Nashville. Nonprejudicial relationship prescribed. Knoxville Traffic Bureau v. C. P. Ry., 101 I. C. C. 605.

(r) Rates on coal from mines on the Strouds Creek & Muddlety R. R., a short line carrier located in the Gauley district of West Virginia, to interstate destinations, found not unreasonable, but unduly prejudicial to extent they exceed the rate contemporaneously maintained by the B. & O. from Allingdale, the junction point. Non-prejudicial rates prescribed. Tioga Coal Co. v. B. & O., 101 I. C. C. 611.

(s) Rates on crude sulphur, from Baltimore to Detroit, found not unreasonable or unduly prejudicial as compared with contemporaneous rates on like traffic from same and other points of origin to same and other destinations for comparable distances and with rates on analogous commodities from and to same points. Detroit Chemical Works v. C. R. R. Co., 101 I. C. C. 671.

(t) Rates on coal from mines in Kansas, Missouri, Arkansas, and Oklahoma to Lincoln and Havelock, Nebr., found unduly prejudicial to extent they exceed contemporaneous rates on like traffic to Omaha. Lincoln Chamber of Commerce v. A. C. R. R., 101 I. C. C. 759.

ALL OTHER CITATIONS

South Dakota R. R. Commrs. v. C. & N. W. Ry. Co., 85 I. C. C. 217; Wichita Motors Co. v. A. & V. Ry. Co., 88 I. C. C. 152.

§4. Similar Conditions.

See Class Rates §2 (tt); Equalization of Rates §3; Evidence §56; Through Routes and Joint Rates §8.

(a) Rates on salt from Ludington and Manistee, Mich., via car ferry and rail, to upper Mississippi River crossings, Dubuque to Keokuk, inclusive, found unduly prejudicial to extent they exceed rates contemporaneously maintained on like traffic from eastern Michigan and Ohio producing points to St. Louis. Salt Cases of 1923, 92 I. C. C. 388, 417, 419.

(b) Rates on salt from Michigan City, Ind., and producing points in Ohio and eastern Michigan to upper Mississippi River crossings, Keokuk to Dubuque, Iowa, found unduly prejudicial to such upper crossings to extent they exceed rates contemporaneously maintained on like traffic from same producing points to lower crossings, St. Louis, Hannibal, and Quincy. Salt Cases of 1923, 92 I. C. C. 388, 416, 417.

(c) Rates on fertilizer and fertilizer

compound from Little Rock, Ark., to points in Oklahoma found not unduly discriminatory or prejudicial as compared with rates on like traffic from Shreveport, but found unreasonable for future to extent they exceed distance scales of single-line and joint-line commodity rates prescribed in Memphis-Southwestern Investigation, 77 I. C. C. 473. Arkansas Fertilizer Co. v. A. & S. Ry., 92 I. C. C. 504.

(d) Sixth-class rate on sporadic shipment of coke from Portsmouth, Ohio, to Wingate, Ind., found not unreasonable, unduly prejudicial, or otherwise unlawful as compared with lower rates to Linden and Veedersburg, Ind. A comparison of class and commodity rates is of little value when the movement is occasional; class rates to Linden and Veedersburg are on same basis as rates to Wingate; and there is no showing that complainant competes in the sale of coke with dealers at those points. Crabbs, Reynolds, Taylor Co. v. B. & O., 92 I. C. C. 621.

(e) Rates on wire-bound box material found unduly prejudicial to extent they exceed rates contemporaneously applicable on box shooks. Lange & Crist Box & Lbr. Co. v. B. & O., 93 I. C. C. 207.

(f) Rates on cabbage, in bulk, found not unreasonable or unduly prejudicial as compared with rates on potatoes or on mixed carloads of potatoes and other class C vegetables, including cabbage. Rates on cabbage and other class C vegetables in territory here involved are uniformly higher than on potatoes; no instance is cited where rates from point here involved are as low on cabbage as on potatoes; cabbage is more valuable, loads lighter, and is more difficult to protect from freezing; and rates assailed compare favorably, distance considered, with rates heretofore found not unreasonable or prescribed by commission. Anderson Commission Co. v. C., R. I. & P., 93 I. C. C. 241.

(g) Mere fact that lower rates prevail in the East than in the Northwest is not proof of undue prejudice when difference in transportation conditions is borne in mind. Dickerson v. Director General, 93 I. C. C. 304, 307.

(h) Rates on clean rice from milling points in Arkansas to certain destinations in c. f. a., southern, and western territories, to western termini of trunkline territory, and to points in Oklahoma, found unreasonable and unduly prejudicial in some instances as compared with corresponding rates from New Orleans, Memphis, and interior Louisiana points. Carriers in making rates have largely ignored distances in an effort to somewhat equalize conditions. Right of complainants to natural advantages of their location can not be taken away by rate adjustments and wide differences in distance between the various fields to common destinations must be recognized. Reasonable and nonprejudicial rates and bases prescribed. Stuttgart Rice Mill Co. v. A. & V., 93 I. C. C. 517.

(i) Rate on pop-corn from Arthur, Iowa, to Chicago, found not unreasonable but unduly prejudicial in favor of competitors at Odebolt, Iowa, to extent it exceeded rate from the latter point. No damage shown as a direct result of undue prejudice found, and undue prejudice having been removed by reducing rates from Arthur and Odebolt to a common level, no order for future is necessary. Shotwell Mfg. Co. v. C. & N. W., 93 I. C. C. 587.

(j) Rates on wooden agricultural-implement, sleigh, and vehicle material from Fort Smith to points in Idaho, Oregon, and Montana found unreasonable and unduly prejudicial to extent they exceeded rates from St. Louis, a competing point, to same destinations. Reparation awarded and reasonable and non-prejudicial rates prescribed. Ft. Smith Rim & Bow Co. v. K. C. S., 95 I. C. C. 1.

(k) Distance rates and rates related thereto between the Chicago, Ill., district, on the one hand, and Michigan City, Valparaiso, La Porte and Crown Point, Ind., and intermediate points, on the other, based on an arbitrary distance of 70 miles, found unreasonable and unduly prejudicial as compared with distance rates between Chicago and competing points in c. f. a. territory based on actual direct-line distances. Reasonable and nonprejudicial distance rates based on distances via direct routes prescribed. Indiana Chamber of Commerce v. A., T. & S. F., 95 I. C. C. 177.

(l) Rate on sugar from California points to Phoenix found not unjustly discriminatory or unduly prejudicial, but such rate found unreasonable as compared with rates from California to points in the Middle West and from Sugarland, Tex., New Orleans, La., and

Colorado points to El Paso and Phoenix. Reasonable rate prescribed for future and reparation awarded. Phoenix Chamber of Commerce v. A., T. & S. F., 95 I. C. C. 244.

(m) Rates on fresh meat and packing-house products from Sioux Falls, S. Dak., to Lincoln, Nebr., found unreasonable and unduly prejudicial as compared with rates from Kansas City, Minneapolis, Duluth, and Chicago, competing points. Such rates on fresh meat as voluntarily reduced by carriers found not unreasonable or unduly prejudicial and reasonable rates for future on packing-house products prescribed. Reparation awarded. Morrell & Co. v. C., B. & Q., 95 I. C. C. 255.

(n) The law has never undertaken to permit, much less require, a common carrier to discriminate between persons when they tender freight for carriage, because of the efficiency of shipper or his lack of it, because he is extravagant and needs reforming or does not, or because the product is superior or inferior. With these qualities of shipper and article carried, the railroad as a common carrier may not rightfully concern itself. Whether Congress might do so the commission need not inquire, although the prohibition of personal attainders, which may well be considered as including the right to resort to the services of a common carrier possessed alike by all men is contained in the Constitution itself. Rules Governing Ratings on Coal Mines, 95 I. C. C. 309, 332.

(o) The commission can not prohibit carriers from meeting competition so long as they are not guilty of undue preference and prejudice and so long as they do not charge rates which are so unreasonably low that they burden other traffic. On the other hand, the commission can not require carriers to meet competition. Maritime Asso. Boston Chamber of Commerce v. A. A. R. R., 95 I. C. C. 539, 565, 566.

(p) Rate on wine grapes from Madison located on the Rumsey branch of the Southern Pacific, to Portland and East Portland, Ore., found not unreasonable, but as compared with group rates contemporaneously maintained on like traffic to these destinations from South Vallejo, Napa, and points on the Southern Pacific company's San Ramon and Walnut Grove branches they are unduly prejudicial. New Italian Importing Co. v. S. P., 95 I. C. C. 611.

(q) Rates on cement from Cape Girardeau (Gulf Junction), Mo., to points in Illinois, found unreasonable and unduly prejudicial as compared with rates from competing Illinois mills to same destinations and to extent they exceed those which would result under the distance scale of rates prescribed in Atlas Portland Cement Co., 81 I. C. C. 1. Reasonable and nonprejudicial rates prescribed for the future. Cape Girardeau Portland Cement Co. v. B. & O., 95 I. C. C. 632.

(r) Rates on sugar from New Orleans to Omaha, Nebr., found unduly prejudicial in so far as they exceed rates contemporaneously in effect to Minneapolis and St. Paul, competing points. Omaha Chamber of Commerce v. A., T. & S. F., 95 I. C. C. 713.

(s) Upon further hearing, original report, 83 I. C. C. 737, rates on coal from mines in the New River district, W. Va., on the Greenbrier & Eastern R. R., a short line, to interstate destinations, found unreasonable and unduly prejudicial to extent they exceed group rates contemporaneously maintained from C. & O. branch-line points in same district to same destinations. Reparation awarded and measure of reasonable and nonprejudicial rates prescribed. Nelson Fuel Co. v. C. & O., 96 I. C. C. 121.

(t) Rate on coal from Ohio mines to Huntington, Ind., moving over the Erie, found not to have been unreasonable, unjustly discriminatory, or unduly prejudicial as compared with lower rate contemporaneously in effect over the Wabash. Complainant received coal from Ohio over either road but when it arrived over the Wabash and was delivered to team track of Erie, a switching charge was assessed, therefore complainant could not profitably take advantage of the lower rate. During the period of movement the Wabash rate was increased to equal the Erie rate. Bash & Co. v. B. & O., 96 I. C. C. 178, 182.

(u) Rate on coal from mines in Kentucky to Wabash, Ind., via route of movement, found not to have been unreasonable, unjustly discriminatory, or unduly prejudicial as compared with lower rate via another route which was longer. The rates over the two routes have always been the same, except that during the period for which reparation is sought a lower rate over the longer route was erroneously published. This error was sub-

sequently corrected, raising the rate over the longer route to the level of the rate over the route of movement. Bash & Co. v. B. & O., 96 I. C. C. 178, 184.

(v) Further contention that undue prejudice is shown because complainant was not appraised of contemplated reduction in rates from Minnesota origins to Yakima district, made subsequent to expiration of temporary-reduction period, until too late to file a protest not sustained. Undue prejudice is not alleged in complaint nor are rates established subsequent to temporary-reduction period attacked as unreasonable. Northwest Potato Exchange v. G. N., 96 I. C. C. 187.

(w) Rates on cotton seed from certain points on Missouri Pacific in northern Louisiana and southern Arkansas to Jackson, Miss., found unreasonable and unduly prejudicial to manufacturers of cottonseed products at Jackson and unduly preferential of their competitors at Vicksburg, Miss., to the extent they exceed rates contemporaneously maintained from same points to Vicksburg by more than 3.5 cents. Reparation awarded and reasonable rates prescribed for future. Southern Cotton Oil Co. v. A. & V. Ry. Co., 96 I. C. C. 333.

(x) Relative adjustment of rates on prepared sizes of anthracite coal, in carloads, from the Pennsylvania field found unduly prejudicial to Newport News, Va., and unduly preferential of Norfolk and Richmond, Va. Newport News v. B. & O. R. R. Co., 96 I. C. C. 425.

(y) The maintenance by defendants of a rate relationship between the Yakima Valley and southern Idaho, which subject some shippers in the former district to a rate disadvantage, as compared with shippers in the latter district, if not justified by transportation conditions, is undue prejudice within the meaning of the act and can not be justified by the fears as to the commercial effect upon the industry of its removal. Kloeber v. N. P. Ry. Co., 96 I. C. C. 437, 440.

(z) Rates on bananas from New Orleans, La., and points taking the same rates, to Hannibal, Mo. and points in Iowa, found not unduly prejudicial, as the points alleged to be prejudiced, with a few exceptions, have aggregate rates as low as or lower than the points alleged to be preferred. Complaint dismissed. Lagomarcino-Grupe Co. v. A., T. & S. F. Ry. Co., 96 I. C. C. 465.

(aa) Operating methods and practices of the Uintah Ry. not found to prejudice complainant unduly or discriminate against it unjustly to the preference of its competitors. Utah Gilsonite Co. v. A., T. & S. F. Ry. Co., 96 I. C. C. 653, 654.

(bb) It is found that any greater disparity in rates on cement from points in the Kansas gas belt, including Dewey, Okla. on the one hand, and Kansas City and Sugar Creek, Mo., over intrastate routes on the other hand, results and would result in unjust discrimination against interstate commerce from points in the Kansas gas belt, including Dewey. Cement from Kansas City to St. Joseph, 96 I. C. C. 718, 726.

(cc) Rates on crude oil from Mexia, Tex., and near-by loading stations to Shreveport, La., since Nov. 6, 1921, found not unreasonable or unduly prejudicial as compared with lower rates contemporaneously in effect from Mexia to Beaumont and Port Arthur, Tex. Latter rates are depressed by pipe-line competition, and absence of such competition to Shreveport presents a situation which distinguishes the transportation conditions under the rates to Beaumont and Port Arthur from those under rates assailed and removes it from the purview of section 3 of the act. Caddo Central Oil & Refg. Corp. v. K. C. S. Ry. Co., 98 I. C. C. 39.

(dd) Rate on stoves and ranges in l. c. l. from Nashville, Tenn., to Lynchburg, Richmond, and Norfolk, Va., and points taking same rates, found not unreasonable but for future unduly prejudicial to Nashville to extent it may exceed the rate contemporaneously maintained on like traffic from Birmingham, Ala., to same destinations. Undue prejudice ordered removed. Allen Mfg. Co. v. N., C. & St. L. Ry., 98 I. C. C. 405.

(ee) Rates on tanning extract from Newport, Tenn. to Olean, N. Y., found not unreasonable or unduly prejudicial. Complainant submitted no evidence of undue prejudice and relied solely on the showing of lower rates from Knoxville, Tenn., a more distant point, to support its allegation of unreasonable. Rates charged found to compare favorably with rates from a number of other southern points shipping this commodity to northern destinations. Complaint

dismissed. England Walton & Co. v. Sou. Ry. Co., 98 I. C. C. 449.

(ff) Rates on coal from complainants' mines on the Virginian Railway in the New River district of West Virginia to interstate destinations found unreasonable and unduly prejudicial to extent they exceed the district rates on like traffic maintained by defendants to same destinations from mines in the New River districts of the C. & O. and Virginian and the Pocahontas and Tug River districts of the N. & W., these districts forming part of what is generally referred to as the Outer Crescent. Reasonable and non-prejudicial rates prescribed for future. Wyoming Coal Co. v. V. Ry. Co. 98 I. C. C. 488.

(gg) Rates on cement plaster from Plasterco, Plasterco Junction, and Hamlin, Tex., to Jacksonville and other Florida points, found unduly prejudicial to extent they exceeded contemporaneous rates on like traffic from Acme and Agatite, Tex., competing points, to same destinations. Undue prejudice ordered removed. Texas Cement-Plaster Co. v. A. & M. R. R. Co., 88 I. C. C. 519.

(hh) Rates on scrap iron from Rensselaer, Ind., to St. Joseph, Benton Harbor, and Bridgman, Mich., found unreasonable and unduly prejudicial to extent they exceed the rate applicable from Monticello, Ind., and Chicago, Ill., to Benton Harbor, to which Bridgman and St. Joseph are intermediate. Reparation awarded and reasonable rate prescribed for future. Karnowsky v. G., I. & L. Ry. Co. 98 I. C. C. 533.

(ii) Prejudice is rarely undue unless the parties prejudiced and those preferred are upon a competitive basis. Detroit & Cleveland Nav. Co. v. M. C. R. R. 102 I. C. C. 607, 609.

(jj) Complainant attacked commodity rates charged on crushed oyster shells and oyster shell dust, carloads, from Apalachicola, Fla. to many destinations on and beyond the Mississippi and Ohio rivers as unjust and unreasonable, unjustly discriminatory and unduly prejudicial as compared with the rates from New Orleans, Lake Shore, Gulfport and Biloxi, Miss., and from Mobile. Apalachicola is a small town located near the mouth of the Apalachicola river, and is a Gulf port. It is served by rail by the Apalachicola Northern, a short line extending from Port St. Joe, Fla., about 22 miles west of Apalachicola through the latter point to River Junction, Fla., about 80 miles north thereof. At River Junction it connects with the A. C. L., L. & N., and S. A. L. It is obvious that with rates on this commodity made generally the same from Gulf points intermediate to New Orleans and Mobile, with the L. & N., adding thereto Pensacola, Fla., as a point of origin to all Ohio and Mississippi river crossings, rates to more distant northern and western points would follow. Complainants location, 240 miles east of the most eastern point to which the carriers have voluntarily extended the New Orleans-Mobile group, would seem to preclude it from attempting to enter that group, even by the addition of a differential of rates, to Mississippi river crossings south of Cairo. According to the record, oyster shells do not move from Pensacola, and there is no showing of any such rail competition from that point as would excuse the publication of a rate of 21.5c to Cairo. Assuming, therefore, that the proper excess in rates from Apalachicola over rates from the New Orleans-Mobile group is shown in the rates to Louisville, Evansville, and Cairo as 4.5c, nothing contained in this record is persuasive that any greater excess should be maintained to points beyond those crossings. Apparently there is some disagreement among the defendants with respect to divisions; otherwise rates to points in central territory, east of the Illinois-Indiana line as well as west thereof, which are now published from the New Orleans-Mobile-Pensacola group, would have been made applicable on traffic from Apalachicola by the addition thereto of 4.5c. That this adjustment of rates on this commodity would not be unjust to the lines mainly interested is indicated by the present differences in rates from Apalachicola and from River Junction and Pensacola on more valuable commodities. HELD, rates attacked from Apalachicola, Fla., to St. Louis, Mo., Cairo, Ill., Evansville, Ind., Louisville, Ky., Cincinnati, O., and points beyond not unjust or unreasonable but unduly prejudicial to extent it exceeds rates from Pensacola and Mobile by more than 4.5c. Gulf City Mfg. Co. v. A. N. Ry. 107 I. C. C. 29.

(kk) Complainant attacked commodity rates on articles in the uniform brick list, in carloads, from Danville, Ill., to

interstate points, chiefly in Wisconsin, Michigan, Minnesota and North Dakota as unreasonable and unduly prejudicial. In 68 I. C. C. 213 the Commission specified articles that should compose the so-called uniform brick list, and also prescribed rates on such articles of $1.75 from Danville and from Attica, Ind., to Chicago and points taking the same rate, and of $2.15 from the same origins to Milwaukee, Wis., and fixed specific differentials over or under those rates from numerous other Indiana and Illinois brick producing points. The group as at present constituted is about 71 miles long between Attica and Center Point, Ind., and 48 miles wide between Danville and Crawfordsville. The average distance from the entire group to Chicago is about 158 miles. All of the socalled Wabash Valley points may well continue to take the same rates on long haul traffic eastbound and westbound, but for northbound movements they should be divided into two subgroups, one embracing all points north of the C. I. & W., and the other including all points on and south of that line. The average distance from these subgroups to Chicago are about 132 miles and 172 miles, respectively. Trey will be designated as northern and southern Wabash Valley groups. The rates alleged by complainants to be unduly preferential of their Illinois competitors are maintained principally by the Burlington and I. C., from such Illinois points as Decatur, Springfield, Peoria, Galesburg and Gilchrist, Ill. Complainants made little effort to prove that the rates from Danville are unreasonable per se. HELD, the attacked carload rates on articles in the uniform brick list as described in 68 I. C. C. 213, from Danville, Ill., to the territory defined are not unreasonable, but are unduly prejudicial to extent they exceed rates which will reflect the following relationships of Danville to such other points: To the eastern half of Wisconsin 35c over Chicago; Ottawa, LaSalle and Streater 15c over; Northern Wabash Valley group Peoria, Galesburg and Gilchrist same rate; Southern Wabash Valley group, Decatur and Springfield, Ill., 15c under; To destination territory west of eastern Wisconsin, from Danville 35c over Chicago, Ottawa, LaSalle, Streater, Peoria, Galesburg, Gilchrist; Decatur and Springfield, Ill., 15c over; Southern Wabash Valley group 15c under northern Wabash valley group. Reparation denied. Western Brick Co. v. N. Y. C. R. R. 107 I. C. C. 245.

(11) Complainant attacked the rates on grain and grain products carloads, from Iowa to Chicago and other points in the Chicago district as unreasonable and unduly prejudicial as compared with the rates from the same points of origin to East St. Louis and Granite City, Ill., St. Louis, Mo., Council Bluffs, Des Moines and Sioux City, Iowa, and Omaha, Neb. Complainant confines its attack to the local rates on grain from Iowa producing points to Chicago. Defendants, with the exception of the Wabash and Burlington, admitted that the relative adjustment as between Chicago and St. Louis was improper, and they agreed to correct the rates to the basis recommended by the railroad committee. Iowa is peculiarly situated with respect to grain traffic. It is surrounded by terminal markets drawing a large portion of their grain supply from Iowa for distribution to all parts of the country. Iowa course grain moves to Chicago and other Lake Michigan ports for reshipment to the east, to Missouri river markets for reshipment to the west, southwest and southeast, and to St. Louis and Ohio river crossings for reshipment to the southeast, Mississippi Valley, and southwest. It is also shipped to the markets of Des Moines and Peoria, and to various milling centers one of the largest of which is Cedar Rapids, Iowa. The chief wheat producing territory of Iowa is that portion of the state on the south of the main line of the Burlington from Burlington, Iowa, to Council Bluffs and up to the Des Moines river as far north as Des Moines. Very little wheat is grown in northern Iowa, but coarse grains are grown there in greater quantities than in any other part of the United States. Chicago is directly east of the center of Iowa, 138 miles from Clinton, Iowa, on the Mississippi river. St. Louis is south of the eastern boundary of the state, 269 miles from Clinton. The nearest Iowa point to St. Louis is Keokuk, 171 miles distant. Rates to Chicago are extensively grouped, the groups extending north and south across the state, most of them a rough crescent in shape. Prior to June 25, 1918 the Missouri river differential to Chicago was 3c over St. Louis, and the present differential is 4c. The application of this differential adjustment to

the rates from southern Iowa has resulted in an increase since 1918 of 1c greater to Chicago than to St. Louis. Iowa grain moves to Des Moines, Council Bluffs and Sioux City under the Iowa intrastate scale of rates, which for distances of 5,200 and 500 miles carries rates on wheat of 6.5c, 16 and 27.5c respectively. Considering the groups as a whole the rates to Chicago compare favorably with those under the Iowa scale except from points in the eastern part of the state, where the distances to Chicago are less than 200 miles. and from these points it has not been definitely shown that the intrastate rates to Des Moines, which is the only alleged preferred point less than 200 miles distant, result in undue prejudice to Chicago. From southern Iowa to St. Louis the rates are uniformly 4c under the rates to Chicago. This difference is maintained regardless of distance and is a continuation of the 4c differential from the Missouri river. It is the result of the equalization of gateways on traffic from Missouri river markets, and had its origin in the competition of outbound carriers for grain at those markets. Under this equalization plan the rates to and from the gateways are so constructed that the total transportation cost from the Missouri river to the Atlantic seaboard is the same, whether the grain moves via Chicago or St. Louis. The application of the Missouri river differential to the local rates from Iowa is not justified. The principal consuming territory for the St. Louis market is not the Atlantic seaboard but the south. The consumers at Chicago should not be deprived of an equitable adjustment on grain from Iowa in comparison with the rates paid by local consumers of St. Louis from the same Iowa points of origin. The situation in northern Iowa, does not bring into issue the question of equalization or the maintenance of Missouri river differentials. From this section the rates to Chicago are either the same as or lower than to St. Louis. From northern Iowa the movements to Chicago are direct single line hauls, whereas to St. Louis they require handling by two or three lines except from points on the I. C., which has a circuitous line to St. Louis, requiring 193 miles greater haul than to Chicago. The Burlington, with direct lines to St. Louis and Chicago, maintains the 4c spread from southern Iowa, where the difference in distance to Chicago and St. Louis is slight. The Rock Island participates in joint rates which also show a difference in favor of St. Louis not justified by the difference in distance. No dissimilarity of transportation conditions has been shown which would justify such a difference in rates for such slight difference in mileage, nor is such an adjustment of local rates warranted by the theory of equalization or by the extension of the Missouri river differential. The grain traffic from Iowa to Chicago, whether the grain is consumed there or reshipped beyond, moves on the same rates, and consequently consideration of the local rates cannot be divorced from equal consideration of the inbound proportionals applicable on traffic to the consuming territories beyond the markets. Any change in the local rates will necessarily affect the present through rates to consuming territory. A thorough examination of the rates from southern Iowa is convincing that the fault lies with the level of the rates to St. Louis. They are relatively lower than the general basis in this territory and have been the source of complaint from Kansas City, as well as from Chicago.

HELD, rates attacked not unreasonable or otherwise unlawful, except that the relationship between the rates from Iowa points to Chicago, Ill., and those from the same points of origin to St. Louis, Mo., is unduly prejudicial to Chicago shippers thereat, to the extent that the rates to Chicago exceed those which would result from the application of the rule set forth in the next succeeding paragraph; and that the relationship between the rates to Chicago and those to Kansas City, Mo., from Iowa points south of the main line of the Rock Island from Davenport to Des Moines, Iowa, and east of the main line of that road from Des Moines to Allerton, Iowa, is unduly prejudicial to Chicago to the extent that the rates to Chicago exceed those which would result from the application of the following rule: Find the short line distances, from a given point of origin to Chicago and the other market, either St. Louis or Kansas City, and where such distance to Chicago is the same as to St. Louis or Kansas City the rate on wheat should be made the same; where such distance is less to Chicago the rate on wheat should be lower than that to St. Louis or Kansas City by the amount

set forth in the following table corresponding with the difference in distance, and where the distance to Chicago is greater than to St. Louis or Kansas City the rate on wheat to Chicago should exceed that to St. Louis or Kansas City by the amount set forth:

Distance to nearer point-miles	Difference in distance-miles
200 and under	10 or under
300 and over 200	12 or under
400 and over 300	15 or under
500 and over 400	20 or under
Over 500	25 or under
Difference in rates-cents	0
	30 to 70
	0.5c
	50 to 115
	1c
	70 to 165
	1.5c

The rates on coarse grain should not exceed 90% of the wheat rates except from Mississippi river points where it is necessary to grade into the basis in effect in Illinois where both wheat and coarse grains take the same rates. The rates to Milwaukee should be continued on the basis of the present relationships to the Chicago rates. The distances used shall be computed over the shortest single line routes to the respective markets, where such routes are reasonably direct. A route shall be deemed reasonably direct when it is not more than 115% of the shortest route embracing not more than three line haul carriers. Where the distance to one market is computed over a single line and to the other market over the shortest available route joint line, an arbitrary of 1c per 100 pounds shall be added to the rate for the joint line haul in applying the rate difference. Chicago Board of Trade v. A. T. & S. F. Ry. 107 I. C. C. 319.

(mm) Complainant attacked level and relationship of the rates on brick and other clay products from producing points in Texas, Arkansas, Oklahoma and Kansas to all destinations in those states and in Louisiana and from Texas, Arkansas and Oklahoma to Missouri B territory. The intrastate rates in Texas, Arkansas, Oklahoma, Kansas and Missouri are attacked as violative of sections 3 and 13 of the act. The evidence regarding Missouri intrastate rates relates principally to B territory and the findings will be limited accordingly. Rates from Kansas and Okahoma to Memphis, Tenn., and from Texas and Arkansas to Memphis and Mississippi river crossings south thereof are attacked as unreasonable and unduly prejudicial. Texas complainants also attack rates from Texas and Arkansas to Kansas City, Kas., Kansas City and St. Louis, Mo., and East St. Louis, Cairo and Thebes, Ill., are unduly prejudicial of them. The production of brick in Texas is largely confined to the eastern half of the state. The principal production in Arkansas is at Perla, Malvern and Little Rock in the central part of the state and Fort Smith in the west. In Oklahoma the manufacture of brick is confined to the eastern half. In Kansas almost all the production is in the socalled gas belt in the southeastern corner. Particular stress is laid on the competition encountered at Memphis and Mississippi river crossings south thereof from producers east of the river. Brick loads heavily, average weight 70,000 pounds. The average haul from the Texas plants is about 170 miles. In a considerable portion of the territory the present interstate brick rates are based on the distance scale originally prescribed in 77 I. C. C. 473, the southwestern scale. The record indicates that there are many specific rates in effect lower than the scale, but the extent to which this is true does not fully appear. All parties agree that the varying levels of rates are the cause of much dissatisfaction and result in many discriminatory situations. They are also practically unanimous in advocating as a remedy the adoption of a single distance scale throughout the entire territory for both interstate and intrastate traffic. COMMON BRICK. It is the conclusion that the socalled common brick moving in interstate commerce in the southwest is not, generally speaking, of the character intended to be covered by the definition of common brick and that on such traffic there should be no difference in rates on common brick on the other commodities in the uniform brick list. The record now indicates that a very large majority of the brick traffic now moving from and to Texas differential territory is intrastate, upon which no differentials are applied. The evidence is not persuasive that this long standing exemption from differential rates enjoyed by the Texas intrastate traffic should be removed. In the interest of uniformity the relatively small volume of interstate traffic to and from differential territroy should also be ex-

empt. RATES TO MEMPHIS. Rates from points of production east of the Mississippi river to Memphis are lower, mile for mile, than rates from Texas, Arkansas and Oklahoma. A similar situation is shown to exist at the Mississippi river crossings south of Memphis. Carriers serving the southwestern producing point do not, except to a very limited extent, serve the points east of the river which are alleged to be preferred and do not control the rates from those points to the river crossings. Transportation conditions east and west of the river have not been shown to be substantially similar. In so far as the charges of undue prejudice at the river crossings are based on the lower rates from destinations east thereof, they have not been sustained. Nothing appears of record which would justify the relative adjustment of the rates to Memphis as between the gas belt on the one hand and producing points in Oklahoma, Arkansas, and Texas on the other. MEMPHIS BRIDGE TOLL. Rates prescribed herein should be applied on shipments from the southwest to Memphis without the addition of any bridge arbitrary at that point. HELD, rates attacked unreasonable to extent they exceed for single line hauls rate of 4.5c for 10 miles to 28.5c for 1,000 miles, same scale plus 1c for joint hauls of 500 miles and less. RATES FROM MISSOURI. There seems to be no good reason why the scale herein prescribed should not be applied from Missouri to destinations in Oklahoma, Arkansas, Texas and Louisiana and the Commission so recommends. Reparation denied. COMPUTING DISTANCES. The shortest routes for the interchange of carload traffic shall be used, embracing as a maximum the lines or parts of lines of not more than three carriers for distances up to 200 miles, four carriers for distances from 200 to 500 miles, and five carriers for greater distances, except that where shorter routes are now in use which embrace the lines of more than the specified number of carriers such shorter routes shall be used. Connecting lines under common ownership or control shall be considered as a single line, but disconnected portions of the same railroad system shall for the purposes of this finding be counted as separate line. Southwestern brick cases 107 I. C. C. 681.

(nn) Complainant attacked rates on brick from Iowa to Iowa, Nebraska, South Dakota, North Dakota and Minnesota as unreasonable and unduly prejudicial. Previous decisions 77 I. C. C. 22 and 77 I. C. C. 4. The rates prescribed in the former reports were determined at a time when brick and other clay products were selling at much higher prices than now obtain. The decline in prices from the period of inflation following the way and the return of normal competitive conditions has resulted in decreased margins of manufacturing profit. Transportation expense now constitutes an increased proportion of the market value of the goods. Under such circumstances, maladjustments in the freight rate structure are more keenly felt by producers thereby disadvantaged than was formerly the case. With the exception of the Burlington and the roads serving the Kansas gas belt points, practically all of the parties agree and urge that a uniform distance scale be prescribed. The record is inadequate to support findings as to rates from the points of origin here concerned to points in Kansas, North Dakota, northern Minnesota. The northern boundary of the Minnesota territory considered in the original report was fixed as the line of the Milwaukee from Ortonville eastward through Granite Falls, Glencoe Shakopee and Farmington to and including Hastings. HELD, attacked interstate carload rates on brick and related articles from Mason City, Sioux City, Sargents Bluffs, Iowa, to points in Nebraska, South Dakota, and Minnesota on and south of the line of the Milwaukee extending from Ortonville, Minn., eastward through Granite Falls, Glencoe and Shakopee, Minn., and west of the lines of the Omaha and Northwestern extending thence south through Mankato, Lake Crystal Blue Earth and Bricelyn; (2) from Rockford, Sheffield and Hampton, Iowa to Iowa, Nebraska, South Dakota and in Minnesota as above described; and (3) from Des Moines, Acme, Adel, Ottumwa, Carlisle, Fort Dodge, Kalo, Van Meter, Boone and Redfield, Iowa to destinations in South Dakota east of the Missouri river are unreasonable to extent they exceed distance scale following for both joint line and single line hauls; provided, that the rates from Sargents Bluffs, Acme and Kalo shall not exceed the rates from Sioux City, Des Moines and Fort Dodge, respectively, to the same destinations: rates ranging from 5c for

10 miles to 24.5c for 800 miles. To points in South Dakota west of the Missouri river following amounts should be added to the scale: .5c for 10 miles up to 4c for over 250 miles. Attacked interstate rates on draintile, carloads, from Rockford, Sheffield, and Hampton, Iowa to Iowa, Nebraska, South Dakota and Minnesota as described unreasonable to extent they exceed brick rates by more than 1c. HELD, further, attacked rates from Iowa points hereinafter named unduly prejudicial to extent rates from Mason City, Sioux City and Sargents Bluffs to Nebraska, South Dakota and in Minnesota as described exceed rates for like distances from St. Paul and Minneapolis, Minn., Chicago, Streator, Abingdon, and Danville, Ill., Terre Haute, Ind., St. Louis, Mo., and Chanute, Kas., and points taking same rates, to the same destination territory, and (2) that the rates from Des Moines, Acme, Adel, Ottumwa, Carlisle, Fort Dodge, Kalo, Van Meter, Boone and Redfield to points in South Dakota on and east of the Missouri river, exceed rates on same commodities for like distances from St. Paul and Minneapolis, Minn., to the same destination territory. In applying the scale hereinabove prescribed defendants shall compute the distances over the shortest possible routes, via existing connections for the interchange of carload traffic, that embrace lines or parts of lines of not more than three carriers not under common ownership and control. Mason City Brick & Tile Co. v. Director General 107 I. C. C. 702.

(oo) Rates on ores and concentrates from Engels, Calif., and other stations on Indian Valley Railroad, to Wabuska, Nev., found for future to be unduly prejudicial and unduly preferential to extent rates from Indian Valley stations to Wabuska may exceed rates from Paxton, Calif., to Wabuska by an amount greater than corresponding rates from Indian Valley stations to Garfield and International, Utah, exceed contemporaneous rates on like traffic from Paxton to Garfield and International. Moreover, failure of defendants to provide and maintain from Engels and other India Valley stations to Wabuska, rates similar in all respects as to conditions under which such rates are applicable, to those contemporaneously maintained by them on like traffic to Garfield and International, subject to above restrictions, found unduly prejudicial to Wabuska and unduly preferential of Garfield and International. Mason Valley Mines Co. v. W. P. R. R. Co., 100 I. C. C. 180, 204.

(pp) The existing disparity between rates to Oklahoma on canned milk and on canned goods was created by readjustments following the Oklahoma case, 62 I. C. C. 433, and upon the record there is no more justification for condemning the rates to Oklahoma on this commodity as unreasonable than there was in the Oklahoma case. Indicia of undue prejudice may be found in the decided increase in the spread between the rates on condensed milk to Oklahoma on the one hand and to Kansas on the other from the amount which existed when the Oklahoma case was considered to the present amount. The record discloses no circumstances warranting such a marked difference in treatment of similar traffic to different but adjacent destination regions. Carnation Milk Products Co. v. A., T. & S. F., 100 I. C. C. 254.

(qq) Rates on rolled oats from Buffalo, N. Y., to various destinations in California, Nevada, Oregon, and Washington found not unreasonable or unjustly discriminatory, based upon the contention that, although reductions had been made in rates from certain transcontinental groups west of Buffalo, rates from transcontinental Group B, within which Buffalo is situated, were not correspondingly reduced until after the shipments involved moved, and complainant is not shown to have been damaged by any undue prejudice which may have existed. H-O Cereal Co. v. A., T. & S. F., 100 I. C. C. 297.

(rr) Rates and carload minima on unfinished open-model passenger automobile bodies, from Dayton, Ohio, to Detroit, Mich., and Windsor, Ontario, Canada, found not unreasonable or unduly prejudicial as compared with relatively lower basis of charges governing the movement of like traffic from Philadelphia, Pa., to Detroit, with which complainant comes into competition. Complaint dismissed. Maxwell Motor Corp. v. B. & O., 100 I. C. C. 363.

(ss) Rates on coal from Indian Creek Valley Ry. points to eastern and New England destinations, which are based on a differential over the Meyersdale group rates, found not unduly prejudicial as compared with the lower contemporaneous rates on like traffic from the Meyersdale region and rates from other

mining regions to same and other destinations. Complaint dismissed. Indian Creek Coal & Coke Co. v. A. C. R. R. Co., 100 I. C. C. 375.

(tt) Investigation by commission, on its own motion, of interstate class rates within southern territory and between southern and official territories covers all-rail and rail-water rates with certain exceptions, l. c. l. ratings provided in exceptions to southern classification, and l. c. l. commodity rates. Intrastate rates not included, but it is proposed to link together, or harmonize, interstate and intrastate rates. Maximum reasonable and nonprejudicial interstate class rates based on distance scale prescribed for future. Southern Class Rate Investigation, 100 I. C. C. 513.

(uu) Rates on anthracite coal from Pennsylvania mine regions to Staten Island, N. Y., found unreasonable and, except via the Pennsylvania, unduly prejudicial to Staten Island, to the undue preference of northern New Jersey, to extent they exceeded and exceed, to Group 1, lower rates contemporaneously maintained to northern New Jersey, and, to Group 2, rates exceeding those found reasonable to Group 1 by more than certain fixed differentials, including shipments via the Pennsylvania. Reasonable and nonprejudicial relationship of rates prescribed for future, and reparation awarded. Richmond County Coal Merchants Asso v. B. & O., 101 I. C. C. 154.

(vv) Rates on fresh meat, fresh frozen meat, and packing-house products from Ogden, Utah, to Denver, Missouri River crossings, Ottumwa, Iowa, Mississippi River crossings, Chicago, points in southeastern territory, Atlantic seaboard points, and Montreal, Canada, except rates on fresh frozen meat to New York, Brooklyn, and Boston, found not unreasonable, discriminatory, or unduly prejudicial in their relation to and in comparison with contemporaneous rates and earnings on like traffic from other points of origin to same destinations and from and to other points for comparable distances and contemporaneous rates and earnings on the live animals. Ogden Packing & Provision Co. v. A., T. & S. F., 101 I. C. C. 236.

(ww) Upon further consideration finding in original report, 96 I. C. C. 81, that rates on wrought-iron or steel pipe from and to numerous points in Louisiana, except Shreveport, to and from certain points in Arkansas were unreasonable as compared with intrastate rates in Louisiana and from various points to Arkansas destinations, and rates on like traffic from Shreveport to certain Arkansas points were not unreasonable, affirmed. As a basis for reparation reasonable rates were those measured by the general level of comparable commodity rates shown of record as having been in effect during period of movement of the shipments, and such were the rates approved in the original report. Texas Co. v. K. C. S., 101 I. C. C. 345.

(xx) Class rates from Watertown, S. Dak., to points in southwestern Minnesota found not unreasonable, but unduly prejudicial to Watertown, unjustly discriminatory against interstate commerce, and unduly preferential of Sioux Falls, Sioux City, the Twin Cities, and other Minnesota points. Nonpreferential basis of rates prescribed. Watertown Chamber of Commerce v. C. & N. W., 101 I. C. C. 441.

(yy) Rates on grain and products and cottonseed meal and hulls, l. c. l., from Natchez to points in Louisiana west of the Mississippi River found unreasonable and unduly prejudicial to Natchez and shippers therefrom and unduly preferential of points in Louisiana west of the Mississippi River and shippers therefrom. Reasonable rates prescribed. Natchez Frt. & Traffic Bureau v. M. P., 101 I. C. C. 476.

(zz) Rates on newsprint paper from Shawinigan Falls, Quebec, and Canadian points taking same or related rates, to Knoxville, Tenn., via Detroit gateway, found not unreasonable, but unduly prejudicial to Knoxville and unduly preferential of Nashville, to extent they exceed rates on like traffic contemporaneously maintained from same points of origin to Nashville. Knoxville Traffic Bureau v. C. P. Ry., 101 I. C. C. 605.

(zza) Rates on sand from Roff, Okla., to Fort Smith, Ark., found unreasonable and unduly prejudicial to extent it exceeded and exceeds lower contemporaneous rates on like traffic from and to points in same general territory for comparable distances. Reasonable and nonprejudicial rate prescribed for future and reparation awarded. Harding Glass Co. v. St. L.-S. F., 102 I. C. C. 126.

(zzb) Rates on automobiles and automobile parts from eastern defined territories to all points on Northwestern Pacific R. R. north of Willits, Calif., found unjust, unreasonable, and unduly prejudicial to extent they exceed lower contemporaneous rates on like traffic from same territories to California coast-group points. Reasonable and nonprejudicial rates prescribed and reparation awarded. Eriksen v. A. A. R. R., 102 I. C. C. 374.

(zzc) Rates on bituminous coal from Pittsburgh-Youghiogheny, West Virginia, Meyersdale, and Cumberland-Piedmont coal regions to Union Bridge, found unduly prejudicial to extent that over Baltimore & Ohio and Western Maryland via Cherry Run, W. Va., and over the W. M. direct, they exceed contemporaneous rates maintained over those lines from same points of origin to Security, Md. Reparation denied. Tidewater Portland Cement Co. v. C. & P. R. R., 102 I. C. C. 391.

(zzd) Rates on agricultural lime from Virginia kilns to destinations in the Carolinas found not unreasonable or unduly prejudicial as compared with lower contemporaneous rates on ground limestone from Mascot, Tenn., to same or similar destinations. Riverton Lime Co. v. A. & R. R. R., 102 I. C. C. 415.

(3a) Complainant attacked as unreasonable and unduly prejudicial carload rates on moulding sand from Utica and Ottawa, Ill., to Keokuk, Iowa. Keokuk is on the west bank of the Mississippi river, served by the Burlington, Rock Island, T. P. & W., and Wabash. Utica is served by the Rock Island, Ottawa by the Rock Island and Burlington. Ottawa is 9.6 miles east of Utica on the Rock Island. The principal and short line route from both points to Keokuk is over the Rock Island to Peoria and T. P. & W., beyond. The Rock Island and Burlington, direct or through connections, also reach other Mississippi river crossings, north and south of Keokuk, and publish or participate in rates on sand from Ottawa and Utica to those crossings. HELD, since April 1, 1922, Keokuk has been subjected to undue prejudice and disadvantage and Burlington and Quincy have been given an undue preference and advantage to the extent that the rate to Keokuk has exceeded that to Burlington by more than 13c and to the extent that it has not been at least 12c lower than the rate to Quincy; also that for the future Keokuk will be subjected to undue prejudice and disadvantage, and Burlington and Quincy will be given an undue preference and advantage, to the extent that that relationship is not maintained. Reparation denied. Keokuk Shippers Asso. v. B. & O. R. R., 109 I. C. C. 346.

ALL OTHER CITATIONS

Phoenix Chamber of Commerce v. A. E. R. R. Co., 88 I. C. C. 250; Ridenour-Baker Mercantile Co. v. A. T. & S. F. Ry. Co., 88 I. C. C. 273; Swift & Co. v. T. & P. Ry. Co., 88 I. C. C. 610.

§4½. Section 2 and Analogous Commodities.

See Classification §17; Evidence §12.

(a) Rates on rolled oats, oat groats, oatmeal, and oat flour, in straight or mixed carloads, or in mixed carloads with corn meal and hominy found not unreasonable or unduly prejudicial as compared with rates on wheat flour. Volume of movement of wheat flour is much greater than that of oat products; rates on wheat flour are affected by competitive and market conditions not related in any way to oat products; and there is no evidence on this record to find that there should be any fixed relationship between wheat flour rates and oat products rates. Atlas Cereal Co. v. A., T. & S. F. Ry. Co., 89 I. C. C. 212.

(b) The purpose of the second section of the act is to enforce equality between shippers over the same line, and to prohibit any rebate or other device by which two shippers, shipping over the same line, the same distance, under the same circumstances of carriage, are compelled to pay different prices therefor; and the commission held that the phrase under substantially similar circumstances and conditions as used in the second section, refers to the matter of carriage, and does not include competition between rival routes. Bancroft & Sons Co. v. P. & R. Ry., 91 I. C. C. 186, 192.

(c) Rates on solder, found not unreasonable, discriminatory, or unduly prejudicial as compared with rates on tin, copper, lead, and spelter, which are all virgin metals. Solder is one step removed by manufacture from tin and lead, and, with exception of tin, is much more valuable than metals compared. Earn-

ings on shipments here involved are not unduly high as compared with earnings on same commodity between other points in same general territory, for comparable distances. Union Smelting & Refining Co. v. C. R. R. Co. of N. J., 92 I. C. C. 319.

(d) Where there are two particular descriptions of traffic, viz, crude oil and gasoline, and carriers deal differently with each, rates on gasoline being relatively high and on crude oil relatively low, there is, undoubtedly, a preference, but test as to whether that preference results in undue or unreasonable prejudice is whether complainant suffers injury by reason therof. Generally a competitive relationship between commodities must appear, for without such a relationship injury seldom results. In instant case, complainant failing to show that proximate cause of injury to it was due to the preference, or that it would be better off if crude-oil rates were made higher or brought nearer the gasoline level, allegation of undue prejudice under section 3 not sustained. Utah State Automobile Asso. v. A., T. & S. F. 92 I. C. C. 376, 386.

(e) Differences in transportation conditions between salt in bulk and salt in containers found insufficient to justify differences in commodity rates, and such differences are unduly prejudicial and preferential. Salt Cases of 1923, 92 I. C. C. 388, 392.

(f) Any difference in rates resulting from differentiation in commodity-rate descriptions between rock salt and evaporated salt, between coarse salt and medium or fine salt, or between table salt and common salt, found unduly prejudicial and preferential and to result in an unreasonable practice. Salt Cases of 1923, 92 I. C. C. 388, 392.

(g) Maintenance of same rates on crude and ground feldspar found to result in unreasonable rates and in undue prejudice to former and undue preference of latter. Reasonable rates and minima prescribed and reparation awarded. Ceramic Traffic Asso. v. M. C. R. R., 92 I. C. C. 675.

(h) Rates on slag, found unreasonable and unduly prejudicial to extent they exceed rates on crushed stone. These commodities compete, are among lowest grade of commodities known to commerce, load heavily, are indestructible, and move in cheapest kind of equipment. Reasonable and nonprejudicial rates prescribed. Duquesne Slag Products Co. v. P. R. R., 92 I. C. C. 554.

(i) Rates on pipe, riveted steel, found not unreasonable, discriminatory, or unduly prejudicial, as compared with rates on iron conduits, iron and steel pier tubing, iron or steel radiators, iron stovepipe cut to shape-pipe fittings and connections, open-seam tubing, and iron or steel wire cable and rope. Duluth Boiler Works v. A., T. & S. F., 92 I. C. C. 692.

(j) Rates on ground iron ore found not unjustly discriminatory as compared with lower rates on crude iron ore. They are not like kinds of traffic within the meaning of section 2 of the act, since circumstances and conditions surrounding their transportation are substantially dissimilar. Winters Metallic Paint Co. v. C., M. & St. P., 93 I. C. C. 427.

(k) Crude iron ore and ground iron ore are not like kinds of traffic within meaning of section 2 of the act, since circumstances and conditions surrounding their transportation are dissimilar. Winters Metallic Paint Co. v. C., M. & St. P., 93 I. C. C. 427, 431.

(l) Interstate rates on cottonseed, cottonseed and related vegetable oils, cakes, and meals, foots, and sediments, cottonseed hulls, and inedible tallow, c. l., between defined Texas common-point territory and the Southwest; between points in the Southwest, on the one hand, and Mississippi River crossings, Memphis to New Orleans, inclusive, on the other; and from points in the Southwest to Cairo and Thebes, Ill., and Kansas City, Mo., found unduly prejudicial and preferential to extent irrelationships differ from this prescribed in this proceeding. Undue prejudice and preference ordered removed by establishment of a fairly uniform basis throughout the territory involved. Oklahoma Corp. Commission v. A. & S. Ry. Co., 98 I. C. C. 183, 194, 198.

(m) Ratings and rates on stearine, coconut in c. l. and l. c. l., from Bayonne, N. J., to points in official territory, found unreasonable and unduly prejudicial to extent they exceed ratings and rates contemporaneously applicable on peanut, cottonseed, palm-kernel and mixed stearines. Reasonable and nonprejudicial ratings and rates prescribed for future and reparation awarded. Best Foods v. C. R. R. Co. of N. J., 98 I. C. C. 331.

(n) Rates on paper, wall, oatmeal

or ingrain, from North Hoosick and Walloomsac, N. Y., and Appleton and Neenah, Wis., to Jersey City, N. J., and Philadelphia, Pa., higher than those contemporaneously in effect on unfinished wall papers from and to same points, found unduly preferential of other wall papers and unduly prejudicial to oatmeal and ingrain wall papers. Undue prejudice ordered removed. Becker, Smith & Page, Inc. v. B. & M. R. R., 98 I. C. C. 337.

(o) Proposed increased proportional commodity rate on chinaware or earthenware plumbers' goods to Oklahoma City, Okla., from upper Mississippi River crossings, on traffic originating at Trenton, N. J., found not justified. Proposed proportional rate would exceed local rate on plumbers' earthenware and corresponding rate on similar articles of plumbers' enameled ironware, competitive commodities, resulting in undue prejudice to plumbers' earthenware. Plumbers' Goods from Mississippi River Crossings to Oklahoma City 98 I. C. C. 403.

(p) Rates on clam and mussel shells, valuable for button manufacture, from points in Illinois to points on Mississippi River in Illinois and Iowa, found not unreasonable or unduly prejudicial as compared with rates on fertilizer, and on crushed, ground or waste shells, valuable for fertilizer, stucco dash, and chicken grit, between points in same general territory for similar distances. Mississippi Pearl Button Co. v. A. T. & S. F. Ry. Co., 98 I. C. C. 560.

(q) Where it might happen that two shipments identically alike, from and to same points, over same route, carried in same car, would be assessed different rates, dependent upon the business of the consignees, the rates or ratings leading to such a result plainly are unjustly discriminatory, in violation of section 2 of the act. Classification of Rags, 98 I. C. C. 591, 592.

(r) A violation of section 2 of the act is involved only when there is a collection of different charges for doing a like and contemporaneous service in the transportation of a like kind of traffic under substantially similar circumstances and conditions. Mississippi Valley Iron Co. v. C. & N. W. Ry. 104 I. C. C. 243, 245.

(s) Rates on gas and fuel oils, found unreasonable and unduly prejudicial to extent they exceeded certain differentials lower than the rates contemporaneously maintained on refined oil. Reparation awarded. Maryville Electric Light & Power Co. v. A., T. & S. F., 101 I. C. C. 229.

(t) Paving and roofing materials: Rates on, from New Orleans to Texas common-point group and all other points in that portion of Texas lying between these points and the port group and related points, found unduly prejudicial and unreasonable to extent they exceeded lower contemporaneous class E rates applicable on roofing slate, paving slate, and hard asbestos shingles from and to same points, and on similar articles from New Orleans to points in Texas differential territory to extent they exceeded above-mentioned rates. plus class E differentials. Reasonable rates prescribed for future and reparation awarded. Cameron & Co. v. A. & S., 102 I. C. C. 31.

(u) Bagging, cotton: Rates on, found not unreasonable, but unduly prejudicial and preferential to extent they exceeded lower contemporaneous rates on cotton bags. Reparation denied. Fulton Bag & Cotton Mills v. A. & V. Ry., 102 I. C. C. 335.

(v) Gypsum rock, crushed: Rates on, found unreasonable and unduly prejudicial as compared with lower contemporaneous rates on crushed stone. Transportation characteristics of gypsum in crushed form are identical with those of crushed stone, and, as an ingredient of a manufactured product, carriers enjoy both inbound and outbound hauls. Reasonable rates prescribed for future and reparation awarded. Nebraska Cement Co. v. M. P. R. R., 102 I. C. C. 411.

(w) Lime, agricultural: Rates on, from Virginia kilns to destinations in the Carolinas found not unreasonable or unduly prejudicial as compared with lower contemporaneous rates on ground limestone from Mascot, Tenn., to same or similar destinations. Riverton Lime Co. v. A. & R. R. R., 102 I. C. C. 415.

(x) Springs, helical: Class rates assessed on, found not unreasonable or unduly prejudicial as compared with rates on bed springs and various other commodities taking rates on iron and steel articles. Nor are present commodity rates, reflecting 78 per cent of class basis, unreasonable when applied to occasional shipments as here involved. Crescent Bed Co. v. A. & V. Ry., 102 I. C. C. 419.

(y) Rates on frozen pig or hog skins found not unreasonable or unduly prejudicial as compared with lower rates on green salted hides. Frozen hog skins require use of refrigerator equipment and must be given expedited service, whereas green salted hides may be transported in ordinary box cars, facts constituting a difference in transportation conditions which the commission can not overlook. Kiefer Tanning Co. v. E., J. & E., 102 I. C. C. 721.

(z) Rate on corn-syrup jelly and jelly and preserves in glass containers found unreasonable and unduly prejudicial to extent it exceeded lower contemporaneous rate on various kinds of canned goods in tin cans, including fruits, which lower rate was established on jelly and preserves, in both metal and glass containers, subsequent to movement here involved. Reparation awarded. Zaring & Co. v. C. S. Co., 102 I. C. C. 724.

(aa) Metal-cushion or seat-spring assemblies: Rate on, found not unreasonable, discriminatory, or unduly prejudicial in past but for future found unreasonable to extent it exceeds rate on davenport assemblies. Reasonable rate prescribed for future. Ft. Smith Couch & Bedding Co. v. B. & O., 102 I. C. C. 726.

(bb) A competitive relationship among shippers is not essential to a finding of unjust discrimination, and competition between carriers does not justify an otherwise unlawful discrimination under section 2 of the act. Barber Asphalt Co. v. L. & N. R. R. Co., 88 I. C. C. 307, 309.

(cc) Question of an improper relationship between rates on two commodities is not determined by a finding of the commission that rates on one of the commodities is not unreasonably high and on the other not unreasonably low. Undue prejudice may result from the relationship of two rates each of which lies within the zone of reasonableness. Lackawanna Steel Co. v. P. R. R. Co., 88 I. C. C. 759, 762.

ALL OTHER CITATIONS

O-So-Ezy Products Co. v. Director General, as Agent, 85 I. C. C. 187; Midwest Refining Co. v. Director General, as Agent, 85 I. C. C. 719; Hollingshead Co. v. A. & R. R. Co., 88 I. C. C. 191; National Poultry, Butter & Egg Asso. v. A. A. R. R. Co., 88 I. C. C. 673.

§4¾. State Rates.

See Supra §2½; State Rates and Regulations.

(a) Complainant attacked commodity rates on iron and steel articles and cast iron pipe carloads to Pensacola. Fla.. from Birmingham and points in the Birmingham district, Alabama City, Attalia, Gadsden, Anniston, Talladega, Montgomery and Selma, Ala., as unreasonable, unjustly discriminatory and unduly prejudicial. The rate situation complained of has existed only since July 1, 1923 and results from what was done by respondents pursuant to the fourth section order No. 7836 which denied them relief from the long and short haul clause of the act. In removing departures from this provision they increased the interstate rates so as to make them the same from those points of origin to both Pensacola and Mobile, except that on scrap iron and in some instances on cast iron pipe the rates to Pensacola were higher than those to Mobile, but did not similarly increase the intrastate rates to Mobile. These intrastate rates were the same as or less than, the interstate rates theretofore in effect. All parties agreed that Mobile and Pensacola should be on the same basis in respect to these rates. HELD, interstate rates to Pensacola not unreasonable, but unduly prejudicial in favor of Mobile but the Alabama Commission should be given an opportunity to revise the intrastate rates to Mobile before an undue prejudice order is entered. Pensacola Chamber of Commerce v. L. & N. R. R., 98 I. C. C. 567.

(b) Interstate rates on sugar beets between points in Ohio and Michigan, which are higher than contemporaneous intrastate rates between points in same States, found unreasonable and unduly prejudicial to interstate shippers, unduly preferential of intrastate shippers, and unjustly discriminatory against interstate commerce. Reasonable maximum distance scale of rates prescribed. Continental Sugar Co. v. N. Y. C. R. R. Co., 91 I. C. C. 677.

(c) Intrastate rates on salt from Jacksonville and other Florida basing points to interior points in Florida, lower than the corresponding interstate rates applicable on through shipments from Ohio and Michigan producing points, found to result in undue prejudice to shippers and localities in interstate com-

merce under preference on shippers and localities in intrastate commerce, and in unjust discrimination against interstate commerce. Salt Cases of 1923, 92 I. C. C. 388, 434, 438.

(d) In 77 I. C. C. 473, commodity rates from Memphis to western Louisiana points were found unduly prejudicial to Memphis and unduly preferential of New Orleans. Upon further hearing, former findings modified with respect to rates on sugar, which would not result in undue prejudice found. There is no present or probable movement of that commodity from Memphis to Louisiana points, and application of rates prescribed would materially increase present rates from New Orleans while other producing points would continue to enjoy lower intrastate rates, thus creating a discriminatory situation against New Orleans, and disrupting present origin groupings. Memphis Southwestern Investigation, 92 I. C. C. 447.

(e) Complainant formerly shipped intrastate shipments via joint-line interstate routes to obtain benefit of rates lower than those applying intrastate. Carriers subsequently limited application of interstate tariff to interstate traffic. Upon complaint assailing rates charged on shipments moving intrastate via intrastate routes, HELD: Limitation in interstate tariff precluded its application to complainant's shipments. Moreover, commission's jurisdiction over intrastate rates is prescribed by sections 3 and 13 of the act, and it has no authority under the law to pass upon the measure of such rates except as provided in those sections. Nebraska Cement Co. v C. & N. W., 92 I. C. C. 457.

(f) Upon further hearing, rates and charges on coal from mines in the Linton, Brazil, and Princeton districts in Indiana to Irvington, Ind., and from Linton district to Putnamville, Ind.; on coke from Indianapolis, Ind., to Irvington; and on straw from Veedersburg, Hillsboro, and Layton, Ind., to Marion, Ind., found not on a level so much lower than interstate rates on the same commodities in this territory as to create a disparity which operates as a real discrimination against and obstruction to interstate commerce. Original report, 60 I. C. C. 337, modified by excepting such rates from its provisions. Indiana Rates, Fares, and Charges, 92 I. C. C. 487.

(g) Rates on petroleum residuum, in tank-car loads, from Wichita, U. S. Yards, Kans., to Elbing and Peabody, Kans., during Federal control, found not unreasonable as compared with intrastate rates on like traffic in other neighboring states. Sterling Oil & Refining Co. v. Director General, 96 I. C. C. 586.

(h) Rates on cement from points in the Kansas gas belt, including Dewey, Okla., to St. Joseph and intermediate points in Scale II territory in Missouri, found unreasonable and unduly prejudicial to Kansas gas-belt points and Dewey over interstate routes and to shippers therefrom, and unduly preferential of Kansas City and Sugar Creek over intrastate routes to St. Joseph and of shippers therefrom and of intrastate traffic in Missouri between said points, to the extent that the rates from points in the Kansas gas belt, including Dewey, exceed or may exceed the rates contemporaneously maintained for like distances from Kansas City and Sugar Creek and upon intrastate traffic from Kansas City and Sugar Creek to St. Joseph and intermediate points in Missouri. Cement from Kansas City to St. Joseph, 96 I. C. C. 718, 725, 726.

(i) It is found that any greater disparity in rates on cement from points in the Kansas gas belt including Dewey, Okla., on the one hand, and Kansas City and Sugar Creek, Mo., over intrastate routes, on the other hand, results and would result in unjust discrimination against interstate commerce from points in the Kansas gas belt, including Dewey. Cement from Kansas City to St. Joseph, 96 I. C. C. 718, 726.

(j) Rates on crude oil from Mexia, Tex., and near-by loading stations, to Shreveport, La., since November 6, 1921, found not unreasonably or unduly prejudicial as compared with lower rates contemporaneously in effect from Mexia to Beaumont and Port Arthur, Tex. Latter rates are depressed by pipe-line competition, and absence of such competition to Shreveport presents a situation which distinguishes the transportation conditions under the rates to Beaumont and Port Arthur from those under rates assailed and removes it from the purview of section 3 of the act. Caddo Central Oil & Refg. Corp. v. K. C. S. Ry. Co., 98 I. C. C. 39.

(ja) Upon further hearing, rates in effect January 11, 1921, and those afterwards found reasonable as of that date by the Illinois Commerce Commission for

the intrastate transportation of lumber, railroad ties, mine props, mine collars, mine ties, and mine wedges from Ava to Sesser, Christopher, West Frankfort, Johnston City, and Buckner, Ill., did not and will not cause any undue or unreasonable advantage, preference, or prejudice as between persons or localities in intrastate commerce, on one hand, and interstate or foreign commerce, on other hand, or any undue, unreasonable, or unjust discrimination against interstate or foreign commerce. Prior order 60 I. C. C. 92 modified. Intrastate Rates within Illinois, 102 I. C. C. 232.

(k) Proposed rates exceed those intrastate in Iowa. Protestants contend they would result in undue prejudice and that for that reason they should be found not justified. However, to reject the proposal on that ground would be to hold that intrastate rates may control interstate rates. Combination rule on sand, gravel and stone 112 I. C. C. 231, 234.

ALL OTHER CITATIONS

Ohio State Rates on Sand, Gravel, Stone, and Paving Blocks, 85 I. C. C. 66; South Dakota R. R. Commrs. v. C. & N. W. Ry. Co., 85 I. C. C. 217.

§5. Test of Discrimination.

(a) Evidence of undue prejudice consisting merely of a general contention that markets of New Orleans, La., and Memphis, Tenn., are accorded a more favorable rate adjustment than many Mississippi points, found to be of too general a character to justify a finding of a violation of section 3 of the act. Mississippi R. R. Commission v. A. & V. Ry. Co., 89 I. C. C. 47, 60.

(b) Upon reargument, prior report, 73 I. C. C. 161, rates on coal from various producing regions to Chicago switching district higher to some deliveries than to Chicago itself, found unduly prejudicial and preferential in favor of points to which lower rates apply. Differentiation is not supported by sound transportation considerations, since it is clear that no greater service is necessary in making deliveries within excepted areas than is rendered in reaching many points to which Chicago rates apply. Chicago Coal Merchants Asso. v. Director General, as Agent, 89 I. C. C. 137.

(c) Mere reference to a rate situation disclosing lower charges at points other than point alleged to be unduly prejudiced is not sufficient to establish undue preference and prejudice. El Dorado Chamber of Commerce v. C., R. I. & P. Ry. Co., 89 I. C. C. 743, 744.

(d) While it may be conceded that burden of proof is on carriers to show propriety of proposed charges under section 3 as well as under section 1 of the act, it does not follow that undue prejudice is to be presumed from mere fact that compensatory charges at one point will differ from charges in effect at other points, particularly as to protestant shippers who have not contended or made any effort to show that they will be handicappd by establishment of such charges in meeting competition from other points. Nashville Switching, 40 I. C. C. 474. Increased Switching Charges at Detroit, 91 I. C. C. 82, 96, 97.

(e) Fact that a shipping point has continued to compete with other producing points despite its disadvantages in rates does not make the undue prejudice any the less unlawful. Allen Mfg. Co. v. N., C. & St. L. Ry., 98 I. C. C. 405, 407.

(f) In view of the policy and provisions of the statute the commission may properly have concluded that the carriers desire to originate traffic on its own lines, or to take traffic from a competitor, should not be given as much weight in determining the justness of a discrimination against a locality as theretofore. Boulder Chamber of Commerce v. A. T. & S. F. Ry. 107 I. C. C. 49, 53.

(g) A case of undue prejudice is not made out by a mere showing of lower rates on a competitive commodity. American Clay Products Co. v. P. R. R. 107 I. C. C. 153, 154.

III. JUSTIFICATION.

§5½. In general.

(a) Rates on sugar from California, Colorado, Idaho, Kansas, Nebraska, and Utah, to points in Indiana, found not unreasonable or unduly prejudicial as compared with rates to Chicago. Rates from western territory to Chicago are depressed and were made by western carriers for purpose of enabling western producers to meet competition of eastern and southern sugar refiners at that point. While transportation conditions in Indiana and Illinois are similar in charact-

er, circumstances surrounding maintenance of depressed rates to Chicago indicate that there is no warrant for extending that basis to the Indiana points. Indiana Public Service Comm. v. A., T. & S. F., 92 I. C. C. 279.

(b) Testimony offered by a carrier to the effect that operating conditions on certain portions of its line are particularly hazardous due to washouts and other causes, and that certain portions of its line which are unadapted to agriculture will afford little traffic when the traffic here invoved is exhausted, as well as testimony respecting the large expense which it has incurred in building up terminal and port facilities, are no answer to the allegation of undue prejudice. Orange Chamber of Commerce v. A. & W. Ry. Co., 98 I. C. C. 101, 107.

ALL OTHER CITATIONS

Cheese from Wisconsin Points, 85 I. C. C. 18.

§7. Carrier not Serving Prejudiced Point.

See Evidence §23.

(a) Allegation of unjust discrimination and undue prejudice dismissed where it was shown that defendants do not participate in, and are not responsible for the measure of the rates from, any of the points alleged to be preferred. United Verde Extension Mining Co. v. A., T. & S. F. Ry. Co., 89 I. C. C. 95, 98.

(b) The commission has frequently found and ordered the removal of undue prejudice and preference where originating carriers were different but delivering carriers were the same. Indiana Steel & Wire Co., 16 I. C. C. 145, and other cited cases. Lake Dock Coal Cases, 89 I. C. C. 170, 185.

(c) Rates on bituminous slack or steam coal from various Illinois groups to Yankton, Mitchell, Huron, Watertown and Aberdeen, S. Dak., found unduly prejudicial to such points and unduly preferential of Sioux City, Iowa., to extent that rates on slack or steam coal to Yankton, Mitchell, Huron, Watertown, and Aberdeen, exceed or may exceed the contemporaneous rates on slack or steam coal to Sioux City by a greater percentage than the rates on lump coal to Sioux City and to the South Dakota points named exceed the contemporaneous rates on lump coal to Sioux City from same origin groups. Lake Dock Coal Cases, 89 I. C. C. 209.

(d) Interstate rates on bituminous coal from mines on L. & N. R. R. in eastern Kentucky, Tennessee, and southwest Virginia to Cincinnati, Ohio, switching district and to Andrews, Covington, Latonia, and Newport, Ky., found not unreasonable or unduly prejudicial. Comparisons submitted by defendant show clearly that rates assailed are no higher, distance considered, than rates to important cities in c. f. a. territory. Moreover, the commission has recognized that greater traffic density and more favorable operating conditions north of Ohio River than south thereof warrant lower rates north of the river, and rates assailed present a situation where rates south of the river are at least on as low a basis as those north thereof. Cincinnati Asso. of Purchasing Agents v. L. & N. R. R. Co., 89 I. C. C. 285.

(e) Joint rates on crude sulphur from New York, N. Y., and Baltimore, Md., to Hamilton, Ontario, Canada, found unreasonable and unduly prejudicial to complainant and unduly preferential, of its ompetitors at Buffalo, N. Y., and Detroit, Mich. The great disparity, distance considered, between the rates to Hamilton and the rates to Buffalo and Detroit is not warranted by any transportation consideration. Grasselli Chemical Co. v. B. & O. R. R. Co., 89 I. C. C. 383.

(f) Rates on pipe from points in westbound transcontinental Group B to Taft, on the Sunset Ry, found not unreasonable or unduly prejudicial as compared with transcontinental rates from same origin points to other California destinations, including Bakersfield, Calif., which lower rates are applicable for considerable distances beyond that point, and also apply to points on other branch lines in California and Arizona. The usual basis for making rates from eastern origin points to California and Arizona points on branch or short lines is by combination over the junction points, and instances cited of the extension of such lower rates to branch and short line points were shown to be invariably due to either carrier, water, or market competition. Standard Oil Co. v. A., T. & S. F. Ry. Co., 89 I. C. C. 425.

(g) Respondents lines do not serve the millers of Kansas grain which moves all rail to Los Angeles and San Francisco and do not participate in such

transportation. Under the circumstances there could be no finding that respondents unduly prefer millers of Kansas grain. Transit rules on grain, 98 I. C. C. 679, 685.

(h) In original report, 88 I. C. C. 111, commission found that rates on coal from Slogo mine at Johnston City, Ill., to various interstate destinations were unduly prejudicial to extent they exceeded joint rates contemporaneously maintained by defendants on like traffic from mines "on the Southern Railway" in southern Illinois group to same destinations. Upon supplemental report, it appearing that Southern Ry. does not serve southern Illinois group, findings in original report corrected accordingly. Slogo Coal Corp. v. M. P. R. R. Co., 91 I. C. C. 217.

(i) No finding of undue prejudice made where lines serving points alleged to be prejudiced do not participate in the transportation from points alleged to be unduly preferred. Ashland Fire Brick Co., 22 I. C .C. 115, and other cited cases. Salt Cases of 1923, 92 I. C. C. 388, 409.

(ia) Rates, rules, and regulations for the transportation of grain, grain products, and feed from Jackson to certain destinations on lines of Gulf, Mobile & Northern south of Laurel, Miss., found not unreasonable, discriminatory, or unduly prejudicial. As the Gulf, Mobile & Northern does not serve Jackson it does not unduly prejudice shippers at that point by according transit at Laurel, and to establish joint rates via Laurel, with transit at Jackson, would short haul that carrier. Jackson Traffic Bureau v. G. & S. I., 102 I. C. C. 259.

(j) The maintenance of different rates by two different groups of carriers over their respective routes between the same points does not constitute unjust discrimination within the meaning of the act. Liquid Carbonic Co. v. C. & E. R. R. 104 I. C. C. 446, 447.

(k) It is a well established principle that undue prejudice or preference may not be said to exist as between shippers or communities unless the same carrier serves them or participate in their traffic and the transportation conditions are shown to be substantially similar. Southwestern brick cases 107 I. C. C. 681, 695.

(l) Testing undue prejudice by the ability of the lines, parties to the rates from both Philadelphia and Dayton, to put an end to the preference and prejudice, it is clear that withdrawal by such defendants would result in no benefit to complainant, as the rate would still be available over other lines. There is thus no adequate basis for a finding of undue prejudice. Ashland Fire Brick Co., 22 I. C. C. 115. Maxwell Motor Corp. v. B. & O., 100 I. C. C. 363, 368.

(m) The Commission has ordered removal of undue prejudice where the originating carriers are different but the delivering carriers are the same. Seneca Wire & Mfg. Co. v. B. & O. R. R., 112 I. C. C. 95, 97.

ALL OTHER CITATIONS

Wichita Motors Co. v. A. & V. Ry. Co., 88 I. C. C. 152; Valley Camp Coal Co. v. B. & O. R. R. Co., 88 I. C. C. 682.

§8. Competition.

(1) In General.

See Competition; Discrimination §4 (o).

(a) Complainant attacked commodity rates charged on bedroom furniture, carloads and less carloads, from Nashville, Tenn., to New Hampshire, Vermont, Massachusetts, New York, New Jersey, Pennsylvania, Delaware, Maryland and Virginia as unjust and unreasonable, unduly prejudicial and in violation of the fourth section. Complainant does not attack the reasonableness per se of the rates, but contended that they are relatively unreasonable and unduly prejudicial as compared with the rates from Chattanooga, Tenn., and points in North Carolina. From High Point, N. C., the rates apply only through the Virginia gateways. The rates from Nashville and Chattanooga apply both through Virginia gateways and Ohio River crossings. Less carload rates to New York are commodity rates of $1.24 on beds, $1.40 on dressers and chiffoniers, and $2.10 on dressing cases from Nashville, and 93c on these articles from Chattanooga and High Point, except that the rate on chiffoniers from Chattanooga is the second class rate of $1.47. Defendants admit present rates are unduly prejudicial to Nashville. HELD, rates attacked not unreasonable but unduly prejudicial to extent percentage of relationship of the rates on bedroom furniture, carloads, minimum 16,000 pounds, and less carloads, to the first class rates from Nashville exceeds the percentage relationship of contemporaneous rates on bedroom

furniture, minimum 16,000 pounds, and in less carloads, to the first class rates from Chattanooga. The N. C. & St. L., advised it proposed to restrict the rates from Chattanooga so as not to apply through Nashville. Standard Furniture Co. v. N. C. & St. L. Ry., 91 I. C. C. 27.

(b) Complainant attacked commodity rates charged on wire and wire articles carloads and less carloads from Anderson, Kokomo, and Muncie, Ind., to Kentucky and Tennessee, as unreasonable, unjustly discriminatory and unduly prejudicial. Kokomo is about 55 miles north and Muncie and Anderson are about 55 and 37 miles northeast of Indianapolis, Ind. Practically all rates on wire and wire articles are constructed on the basis of the lowest combination on the Ohio River. Louisville and Cincinnati are important Ohio river basing points. The components north of the Ohio river were class rates, fifth class. Subsequently commodity rates were established from producing points in central territory, including the three complaining cities, to Ohio river crossings on all of these articles in carloads, minimum 36,000 pounds, except on bale ties. These commodity rates are practically the equivalent of sixth class in central territory and are limited in their application to traffic destined beyond the Ohio river. No such commodity rates have been established on wire or wire articles in less carloads. Joint rates were in effect from the Buffalo-Pittsburgh territory based on southern classification special iron basis, somewhat lower than sixth class. Disregarding the element of distance, the rates from Indiana points are not on the whole as high as those from Pittsburgh, but giving due consideration to distance, an analysis of comparisons discloses that the level of rates on these wire articles from Pittsburgh to Kentucky and Tennessee points is lower than that from Indiana points to the same destinations. HELD, rates attacked not unreasonable or unjustly discriminatory but rates from Anderson, Kokomo and Muncie to Kentucky and Tennessee, distance considered, higher than from Pittsburgh to the same points results in undue preference of Pittsburgh. Indiana Public Service Commission v. A. & V. Ry., 92 I. C. C. 497.

(c) Disparity in rates does not necessarily result in undue prejudice. It must also appear that shipments are made under those rates or that shipments are made under those rates or that shipments are hindered or prevented because of the rate relationship. The element of competition is usually potent. Pensacola Chamber of Commerce v. L. & N. R. R., 98 I. C. C. 567, 570.

(d) Rates on crude oil from Mexia, Tex., and nearby loading stations, to Shreveport, La., since Nov. 6, 1921, found not unreasonable or unduly prejudicial as compared with lower rates contemporaneously in effect from Mexia to Beaumont and Port Arthur, Tex. Latter rates are depressed by pipe-line competition, and absence of such competition to Shreveport presents a situation which distinguishes the transportation conditions under the rates to Beaumont and Port Arthur from those under rates assailed and removes it from the purview of section 3 of the act. Caddo Central Oil & Rfg. Corp. v. K. C. S. Ry. Co., 98 I. C. C. 39.

ALL OTHER CITATIONS

Barber Asphalt Co. v. L. & N. R. R. Co., 88 I. C. C. 307.

§8. (5) Water Carriers.

See Water Carriers.

(a) In absence of undue prejudice carriers may decline to meet water competition. Cincinnati Asso. of Purchasing Agents v. L. & N. R. R. Co., 89 I. C. C. 285, 290.

ALL OTHER CITATIONS

North Carolina Pine Asso. v. A. C. L. R. R. Co., 85 I. C. C. 270.

§8 (7). Market Competition.

ALL CITATIONS

Lackawanna Steel Co. v. P. R. R. Co., 88 I. C. C. 759.

§10. Encouragement of own territory.

See Evidence §40½; Through Routes and Joint Rates §9.

(a) Failure and refusal of the Rock Island and Missouri Pacific to join in establishment and maintenance of proportional rates on petroleum and products from El Dorado, Ark., to Vicksburg, Miss., no higher than those maintained to Memphis, Natchez, Baton Rouge, and New Orleans, found not unjustly discriminatory or unduly prejudicial. To require establishment of rates on basis sought would result in those carriers short hauling themselves. Jackson Traffic Bureau v. A. & V. Ry., 92 I. C. C. 89.

ALL OTHER CITATIONS

Simms Oil Co. v. H. & T. C. R. R. Co., 85 I. C. C. 537.

§10½. Failure to Agree on Divisions.

See Cars and Car Supply §32½ (b).

§11. Low Rate to Favored Point.

See Equalization of Rates; State Rates and Regulation.

(a) Carriers may for competitive or other reasons establish rates which the commission could not initiate for them; and equality of distance from competing markets is not an absolute test of whether an equality of rates results in undue prejudice and preference. Reduced Commodity Rates to Pacific Coast, 89 I. C. C. 512, 524.

IV. REMOVAL OF DISCRIMINATION.

§11½. In General.

See Distance Rates §3 (4s); Reparation §7½ (m).

(a) In view of the fact that conditions of operation in the southern Wyoming district do not differ as greatly from those in Utah as the commission had been led to believe, and that difference between average distances is somewhat less than was originally stated differential of 50 cents, Castle Gate district in Utah over Rock Springs-Kemmerer district in Wyoming, to destinations in the Northwest heretofore prescribed found too high and to result in undue prejudice to the Castle Gate district. Former report, 80 I. C. C. 383, modified and differential of 40 cents for future prescribed. Western Coal Rates, 89 I. C C. 666, 669, 675.

(b) Commission can not accede to a proposition that it is necessary or proper for carriers, in attempting to remove a discrimination complained of, to make a far-reaching readjustment of rates involving material increases not only to competitive points but also to noncompetitive points to which there is a heavy and constant movement. Especially is this true where the present rate adjustment has been voluntarily maintained for a period of years. Boots and Shoes from New York Points, 91 I. C. C. 591, 596.

§12½. State Rates.

See State Rates and Regulation.

(a) Action with regard to the adjustment of intrastate rates in Texas on grain and grain products and the interstate rates from the Panhandle of Texas to Shreveport, La., in order to remove the existing undue prejudice against Oklahoma and Kansas City, Kans.-Mo., by reason of present intrastate rates in Texas, withheld pending action by Railroad Commission of Texas relative to such intrastate rates. Oklahoma Corp. Comm. v. A. & S. Ry. Co., 101 I. C. C. 116, 131.

ALL OTHER CITATIONS

Ohio State Rates on Sand, Gravel, Stone, and Paving Blocks, 85 I. C. C. 66.

§13. Disturbance of settled adjustment.

See Evidence §66; Relative Rates.

(a) Inclusion of Rock Springs and Kemmerer mines in Wyoming in one group found not unduly prejudicial of operators of coal mines in Utah. The commission has on former occasions declined to separate the district into two rate groups on traffic to southern Idaho on ground that grouping both as to shipments westbound and eastbound had existed for many years and should not be interfered with unless a service more acceptable to the public, and at the same time, just to carriers, could be established. Moreover, separation of the group on westbound traffic would naturally result in like action as to eastbound traffic, and would seriously disturb the relationship that has existed without complaint over a long period of years. Western Coal Rates, 89 I. C. C. 666, 668, 669.

(b) Commission can not accede to a proposition that it is necessary or proper for carriers in attempting to remove a discrimination complained of, to make a far-reaching readjustment of rates involving material increases not only to competitive points but also to noncompetitive points to which there is a heavy and constant movement. Especially is this true when present rate adjustment has been voluntarily maintained for a period of years. Boots and Shoes from New York Points, 91 I. C. C. 591, 596.

(c) Commission declines to sanction and does not look with favor upon a general increase in rates made under pretext of satisfying a complaint of discrimination against one point when such discrimination can be otherwise removed and general increase is of far-reaching

effect, unless justification therefor is clear and convincing. Boots and Shoes from New York Points, 91 I. C. C. 591, 596, 597.

V. PROCEDURE AND EVIDENCE.

§13½. In general.

See Evidence; Procedure Before Commission.

(a) Upon reargument, prior report, 73 I. C. C. 161, rates on coal from various producing regions to Chicago switching district, higher to some deliveries than to Chicago itself, found unduly prejudicial and preferential in favor of points to which lower rates apply. This differentiation is not supported by sound transportation considerations, since it is clear that no greater service is necessary in making deliveries within excepted areas than is rendered in reaching many points to which Chicago rates apply. Chicago Coal Merchants Asso. v. Director General, as Agent, 89 I. C. C. 137.

(b) Upon further hearing and reargument, previous report, 69 I. C. C. 282, charges on traffic from points west of Hudson River to J. L. Kelso Co. warehouse on the Union Freight R. R. in Boston, Mass., found unreasonable and unduly prejudicial to extent they exceeded rates on like traffic to deliveries on the Boston & Albany, Boston & Maine, and New York, New Haven & Hartford railroads in the Boston district. Line-haul carriers refused to absorb charges of the Union while making deliveries at all other points in and about Boston at the flat Boston rates. Reparation awarded. Boston Wool Trade Asso. v. Director General, as Agent, 89 I. C. C. 589, 593.

(c) Mere reference to a rate situation disclosing lower charges at points other than point alleged to be unduly prejudiced is not sufficient to establish undue preference and prejudice. El Dorado Chamber of Commerce v. C., R. I. & P. Ry. Co., 89 I. C. C. 743, 744.

(d) Undue prejudice which causes injury to a smaller volume of traffic is just as unlawful as one which causes injury to a large volume. See 58 I. C. C. 610, 618. Duluth Chamber of Commerce v. C., St. P., M. & O. Ry. Co., 98 I. C. C. 352, 356.

(e) An issue of undue prejudice raised in an I. & S. proceeding need not be decided where it is admitted that the rates under suspension are unreasonable per se. Rates on Brick and Related Articles, 101 I. C. C. 297, 298.

ALL OTHER CITATIONS

Cities of Marshall and Jefferson v. T. & P. Ry. Co., 85 I. C. C. 115.

§14. Burden of proof.

See Burden of Proof; Evidence I.

(a) The burden of proof to establish the fact of amount of damage due to unjust discrimination, or undue prejudice, as the proximate cause is upon the complainant. Donner Steel Co. v. D. L. W. Ry., 92 I. C. C. 583.

ALL OTHER CITATIONS

Universal Paper Bag Co. v. M. C. R. R. Co., 88 I. C. C. 593.

§15. Showing of damage.

(a) Emergency rates on hay from Keenesburg and Hudson, Colo., to St. Louis, Mo., were excepted from reductions required in 64 I. C. C. 85, but similar rates from competing Colorado common points were not so excepted. HELD: Since there is no showing that competitors were enabled to control the St. Louis market, thereby compelling complainant to meet their price, and complainant benefited as much as did anyone else by the inadvertent reduction of the emergency rate from Colorado common points, neither fact of damage, nor amount thereof, established by reason of undue prejudice which may have existed. National Hay & Milling Co. v. G., B. & Q. R. R. Co., 89 I. C. C. 1.

(b) Where undue prejudice and preference is found to exist, and a complainant does not establish a pecuniary damage attributable thereto, reparation will be denied by commission. Jackson Iron & Steel Co. v. Director General, 91 I. C. C. 201, 211.

(cd) Allegation of undue prejudice under section 3 of the act found not sustained where complainants were not shown to be in competition with party alleged to be unduly preferred. Utah State Automobile Asso. v. A., T. & S. F. 92 I. C. C. 376, 386.

(e) Under principles laid down in International Coal Co. case, 230 U. S. 184, measure of damages recoverable upon a finding of unjust discrimination or undue prejudice is pecuniary loss inflicted upon complainant as result of the

discrimination or prejudice alleged. Donner Steel Co. v. D., L. & W., 92 I. C. C. 595, 598.

(f) Damages denied for undue prejudice where complainant's evidence concerning competition was general in character, and where record indicated that competition in sale of major portion of complainant's output was not with plant at point alleged to be preferred but with plants located at other points which moved no shipments on the alleged preferential rates. Mason By-Products Co. v. Director General, 92 I. C. C. 646, 649, 650.

(g) Rate comparisons alone, which constitute all of complainant's evidence in this respect, are not sufficient to sustain the allegation that rates charged are unduly preferential or unduly prejudicial. St. Louis Fruit & Vegetable Asso. v. L. & N. R. R. Co., 98 I. C. C. 553, 559.

(h) As evidence of undue prejudice complainant merely showed that its products were sold in competition with products of manufacturers at near-by points which were accorded lower rates. No damage found to have resulted from any undue prejudice which may have existed. Glidden Co. v. E. R. R. Co., 100 I. C. C. 331.

(i) Damage because of unjust discrimination or undue prejudice is not proven merely by showing that a part of a rate was absorbed in the selling price. Memphis Freight Bureau v. C. & E. I., 101 I. C. C. 26, 28.

ALL OTHER CITATIONS

Chicago Bridge & Iron Works v. Director General, as Agent, 85 I. C. C. 99.

§17. Reparation.

See Supra §15; Refrigeration IV; Reparation.

(a) Where undue prejudice and preference are found to exist, and a complainant does not establish a pecuniary damage attributable thereto, reparation will be denied. Jackson Iron & Steel Co. v. Director General, 91 I. C. C. 201, 211.

§18. Complaint.

See Procedure Before Commission II.

ALL CITATIONS

Cities of Marshall & Jefferson v. T. & P. Ry. Co., 85 I. C. C. 115; Beaumont Chamber of Commerce v. Director General, as Agent, 85 I. C. C. 139; McGrew Coal Co. v. Director General, as Agent, 85 I. C. C. 735; Phoenix Chamber of Commerce v. A. T. & S. F. Ry. Co., 88 I. C. C. 178; National Poultry, Butter & Egg Association v. A. A. R. R. Co., 88 I. C. C. 673.

DISINFECTING CHARGES

See Facilities and Privileges §5½.

DISTANCE RATES

I. ESTABLISHMENT.
- §1. In general.
- §2. Effect.

II. REASONABLENESS OR DISCRIMINATION.
- §3. In general.

CROSS REFERENCES

See Advanced Rates §14¾ (m), §17 (y); Class Rates §2 (4g); Commodity Rates §1 (j) (k); Differentials; Discrimination; Evidence §20, §58; Express Companies §10 (x); Live Stock Shipments (c) (d); Long and Short Hauls §4¾; Percentage Rates; Reasonableness of Rates §10.

I. ESTABLISHMENT.

§1. In general.

See Bridges and Tolls I (b).

(a) Rates on nitrate of soda from New Orleans, La., and subports taking same rates to destinations in Arkansas, found not unduly prejudicial, but found unreasonable as compared with rates on fertilizer between same points. Distance scale of rates prescribed for future. New Orleans Joint Traffic Bureau v. A. & V. Ry Co., 89 I. C. C. 223.

(b) Adjustment of rates on ordinary livestock from Nebraska points to Missouri River cities found unduly prejudicial to interstate shippers and localities, unreasonably preferential of intrastate shippers and localities, and unjustly discriminatory against interstate commerce; and in certain instances found unreasonably preferential of interstate ship-

pers and localities, unduly prejudicial to intrastate shippers and localities, and unjustly discriminatory against intrastate commerce. Distance scales of rates suggested for correction of the situation. Nebraska Livestock Case, 89 I. C. C. 444.

(c) In applying distance rates herein prescribed carriers operating under a common control or management should be treated as a single line. Nebraska Livestock Case, 89 I. C. C. 444, 459.

(d) Tariff contained provision that rates to intermediate points to which no rates were named would be the same as those to next more distant point to which rates are named. No specific rates were published on sand and gravel from Carpentersville, Ill., to Edison Park and Park Ridge, Ill. Distance rates assessed on certain shipments moving during Federal control, found illegal and lower rate via a route over which Edison Park and Park Ridge are intermediate to Mayfair, the next more distant point to which specific rates were published, found applicable. Reparation awarded. Richardson Sand Co. v. Director General, as Agent, 89 I. C. C. 555.

(e) Proposed schedules limiting to certain direct routes the application of distance rates on stocker or feeder cattle moving from points on the Texas-Mexican Ry. to Arkansas City, Wichita, and Wichita Union Stock Yards, Kans., the effect of which will be to eliminate admittedly circuitous routes through Coffeyville, Kans., and remove fourth section departures resulting from higher rates in effect over those routes to intermediate Kansas points, found justified. Livestock between Texas and Kansas Points, 89 I. C. C. 720.

(f) Respondents proposed to cancel interstate commodity rates on hay and straw, carloads, from Indiana, Illinois and Ohio to destinations in Indiana and Illinois, certain Ohio river crossings, and Massillon, O., and seek to apply the fifth class rates on such traffic. The general effect is to eliminate the existing commodity rates and to apply the fifth class basis, the changes being for the most part increases. The classification basis is applied generally in c. f. a. territory with the exception of the commodity rates herein involved and other rates to the Ohio river crossings. The present commodity rates are of long standing. Many of them were originally the same as the fifth class rates but are not now on that basis because at the time the class rates were revised no corresponding modification was made in the commodity rates. Ohio and Michigan produce a large tonnage of hay which moves on the classification basis to points in c. f. a. territory and there is also a large movement from Indiana points from which no commodity rates are in effect and the class rates are applied. The application of fifth class rates to traffic moving to points south of the Ohio river would result in increases as high as 60% and averaging 41% for hauls not exceeding 100 miles. Present rates are 0.5 to 12.5c and proposed rates from 11c to 20c. HELD, respondents have not justified suspended schedules. Hay and straw to Mississippi river crossings, 92 I. C. C. 128.

(g) Respondents proposed to change the basis for computing distance for the application of mileage commodity rates on brick and articles taking same rates, in carloads, between points in Oklahoma and Texas and between points in Arkansas and Oklahoma. The schedules now in effect provide that in computing rates, distances to be used shall be based on distances over direct lines, embracing as a maximum lines or parts of lines of not more than three carriers via existing connections for the interchange of carload traffic, except that in cases where four or more lines are necessary, rates are to be figured on basis of the minimum number of lines. The proposed schedules restrict the basis for computing rates to the distances over routes embracing as a maximum lines or parts of lines of not more than three carriers, without exception. Respondents have not attempted to show that any discrimination would result if the proposed rule is not allowed to become effective. If the proposed schedules should become effective increases would result which have not been justified. HELD, rates not justified. Brick between Oklahoma and Texas points, 93 I. C. C. 210.

(h) Complainant attacked as unreasonable rates on animal manure, carloads, from Perth and Havelock, Nev., to eastbound trans-continental groups A to F inclusive, and K to M, inclusive. In 89 I. C. C. 508, the Commission found rates to above destinations not unreasonable, but were unreasonable to group G H and J. In 73 I. C. C. 496, the Commission prescribed a scale of distance

rates on animal manure from Perth and Lovelock to destinations in California and awarded reparation. No reason appears upon this record why a scale which is reasonable for westbound traffic from these points of origin would not also be reasonable to determine rates to eastbound transcontinental groups. HELD, rates attacked to Group B to J and M and to Groups F, G, H, J, and M., are unreasonable to extent they exceed rates to Group B $17.10, C $15.90, F, $13.20, G, $11.70, H, $12.00, J, $9.00, M, $16.50, reparation awarded. Pacific Manure & Fertilizer Co. v. A. & R. R. R. Co., 95 I. C. C. 430.

(i) Complainant attacked commodity rates charged on rice carloads, from Arkansas, Louisiana and Texas and Memphis, Tenn., to Oklahoma as unreasonable and as compared with rates to Kansas City, Joplin, Springfield and St. Louis, Mo., Omaha, Neb., and Arkansas and Texas as unduly prejudicial and preferential of intrastate traffic in Arkansas and Texas. For the purpose of naming rates to Oklahoma the Arkansas miling points, of which Stuttgart is representative, are grouped, and the interior Louisiana and Texas points, of which Lake Charles, La., and Houston and Victoria, Tex., are representative are also grouped. The rates from Texas and interior Louisiana, which does not include New Orleans, are the same to Oklahoma jobbing points, and are 7.5c lower than from New Orleans. The rates to many points in Oklahoma from Arkansas are the same as from interior Louisiana and Texas points, but to points in east central Oklahoma the rates from the Arkansas points are 7.5c lower, except to McAlester, Muskogee, Krebs and Wilburton, where they are 15c lower, than the rates from interior Louisiana and Texas. The rates from Memphis are the same as from the Arkansas points to many points in Oklahoma. To all other points, except Muskogee, the rates from Memphis are 7.5c higher, and to Muskogee, 7c higher from Memphis than from the Arkansas territory. There is not now and never has been water competition from rice producing points in Texas or interior Louisiana to the Missouri river, or any of the other large consuming territory beyond Oklahoma to which rates are lower than to the latter state. Defendants offered no justification for continuing rates from Arkansas points and from Memphis to Oklahoma higher than to more distant points in Texas. It is clear that a reasonable and uniform basis of rates should be established from the rice producing territory to Oklahoma and surrounding states. It is believed that the most satisfactory solution of the situation presented is the establishment of a mileage scale of rates on clean rice in carloads that will give to each distributing point the benefit of its location. HELD, rates on clean rice for future unreasonable to extent they exceed distance rates ranging from 11c single line and 13c joint line for 5 miles and under to 71c single and joint line over 800 miles. Alton Mercantile Co. v. A. & W. Ry., 95 I. C. C. 645.

(j) Complainant attacked class combination rates charged on butter, eggs, and dressed poultry, straight or mixed carloads from Texas to New York, New Jersey, Pennsylvania, the New England states Ohio, Michigan, Maryland and Virginia as unreasonable and in violation of section four. Complainant attacked rates charged on live poultry carloads, from Texas common points to New York as unjust and unreasonable. Respondents proposed a general readjustment of the rates on butter, eggs, live and dressed poultry, and dressed rabbits, in straight or mixed carloads, from Arkansas, Oklahoma and Texas to the socalled defined territories in the east. **Butter and Dressed Poultry and Eggs.** These commodities are rated third class in the three classifications, except that in the southern fourth class applies on dressed poultry, but for many years commodity rates on each of these products, lower than third class, have been quite generally in effect from Texas, Arkansas and Oklahoma, particularly to St. Louis and Chicago territories and to the Mississippi river crossings on traffic destined east thereof. At present there is little uniformity in the rates on these products from the same points of origin to a given destination. It is proposed to make the rates uniform on these commodities from this wide territory of origin to all of the destination territory involved. No commodity rates have been or are in effect from the river crossings to eastern destinations and third class rates apply. The rates from southwestern territory to the large cities in central territory are generally arrived at by using the sum of the lowest commodity factor to the Mississippi or Ohio river

crossings, plus the third class beyond. There is no uniformity in manner of publication. Also the general result of the proposed adjustment will be to remove certain fourth section departures to bring about a closer relationship between the rates from Arkansas and Oklahoma to eastern destinations, and a gradation of these rates more in conformity with the revised adjustment from Texas, but on the other hand will place all the rates from southwestern territory on the basis of the lowest combination of local factors, although all the rates to points east of the Buffalo-Pittsburgh line and many to points on and west of that line are now on a basis lower than the lowest combination of local factors. With the idea of a nearer approach to uniformity and simplicity in the making of rates from the Southwest, which is one of the advantages of the proposed readjustment urged upon the Commission by the respondents, it is in entire accord. Any steps which may be taken by them to simplify the present system of publishing rates from this territory to the east the Commission inclines to view with favor, with the important qualification, however, that the resulting rates must be reasonable. **Live Poultry.** The proposed increase are very largely from Arkansas points. From the southwest to eastern destinations rates on this commodity are generally the combination of the separately published factors to and from the gateways, generally St. Louis, though many of the rates from Texas have been and are based on other gateways. In some instances single factor through rates are published and in others not. Live poultry is rated second class in western and third class in the others. There should be a more uniform adjustment of the rates on this commodity in and from the southwest. The problem is to find a reasonable basis for the entire territory. HELD, rates proposed have been justified to extent they do not exceed rates shown below, otherwise not justified: Distance scales prescribed on butter, eggs and dressed poultry, single line 20c and joint line 25c for 5 miles and under, live poultry 24c and 29c up to and including from 2000 miles 217c single line and joint line on butter, eggs and dressed poultry and 254c on live poultry. Butter, eggs, dairy products and poultry, 96 I. C. C. 19.

(k) Complainant attacked commodity rates charged on haydite substitute for sand, gravel and crushed stone in concrete construction from Kansas City, Mo., to Memphis, Tenn., and Iowa, Kansas, Nebraska, Oklahoma, Arkansas, Louisiana and Texas as unreasonable and unduly prejudicial to extent they exceed mileage scale of rates on sand, gravel, crushed stone, and chatts prescribed between southwestern states in 48 I. C. C. 351. Rates on fire clay were assessed. Haydite can be shipped in any kind of a car in which sand and gravel can be shipped, can be loaded to and beyond the marked capacity of the car and is not susceptible to damage. Neither in character, value nor use is haydite to be classed with sand and gravel for rate making purposes. It is a manufactured article, of considerably higher value than sand and gravel, and with a decided advantage over sand and gravel in certain lines of construction. It should take a higher rate than sand and gravel. HELD, reasonable maximum rates for haydite from Kansas City to destinations in question should be established on a distance basis for single line ranging from 4c for 10 miles and under to 20c for 800 miles, joint line differential 1c for each block up to and including 400 miles, for 520 mile block 9.5c and no differential beyond that distance. Haydite Co. v. A. T. & S. F. Ry., 96 I. C. C. 312.

(l) Complainant attacked rates on clean rice, carloads, from Memphis, Tenn., and points in Arkansas, Louisiana and Texas to Oklahoma as unreasonable. In 95 I. C. C. 645 the Commission prescribed a mileage scale to apply in the future. HELD, the original findings do not necessitate a general readjustment as that term is used in cases where it has formed the basis for a denial of reparation and even though this case were considered as involving a general readjustment, reparation still would be proper. HELD, reparation awarded. Alton Mercantile Co. v. A. & W. Ry., 98 I. C. C. 581.

(m) In 77 I. C. C. 473, 548, 549 the Commission prescribed a reasonable maximum scale of rates designated therein as Table 14 of Appendix 8 on fruits and vegetables, other than potatoes, carloads, between Memphis, Tenn,. and Arkansas points, subject to class rates as maxima. To remove undue prejudice, the Commission found that the rates between Memphis and Arkansas should not exceed for similar

distances intrastate rates on like traffic between points within Arkansas by more than a bridge toll of 2c per 100 pounds, and that the rates from Memphis to Arkansas points should be no higher for like distances than those from St. Louis, Mo., and certain other Mississippi river crossings to Arkansas, southern Missouri and western Louisiana. The carriers are not seriously opposed to rates lower than scale 14 on low rated fruits and vegetables. There is merit to the shippers contention that scale 14 is entirely too high for application on most fruits, vegetables and melons in the territory under consideration. Since practically all commodity rates in the southwest on fruits and vegetables, especially such articles as onions, cabbage, parsnips, beets, etc, are the same as or lower than the class C rates, it is obvious that scale 14, which, is higher than the class C scale, would effect substantial increases in rates on all such vegetables rated higher than class C when shipped with tops. HELD, the table 14 appendix 8 of original report, 77 I. C. C. 473 unreasonable in so far as it applies on fresh or green fruits, melons and vegetables, other than berries, peaches, pears, plums, and grapes and should be modified that scale is proper for articles last mentioned and that the scale of rates shown under table 13 of original report will be reasonable on apples (except cull apples) watermelons, muskmelons, cabbage, onions, onion sets, carrots, beets and other vegetables, with or without tops, fruits and melons. Memphis Southwestern Investigation, 98 I. C. C. 654.

(n) In public regulation, because of the desire to avoid unlawful discrimination, the tendency has been toward closer adherence to the distance principle. It is also a fact that this principle usually furnishes a basis in testing the reasonableness of rates, for both carriers and shippers resort to comparisons with other rates charged on similar traffic for similar distances under similar transportation conditions. Even in the case of group rates such comparisons ordinarily provide the test, average distances being used. Southern class rate Investigation, 100 I. C. C. 513, 611.

(o) In fixing maximum reasonable rates, competition is not a factor which the Commission may take into consideration. The carriers may, within limits, make low rates for the purpose of meeting competition, but the Commission is without power to compel them to meet it. Value and cost of service are recognized as factors which the Commission may properly take into consideration. In the case of class rates, value of service is chiefly of importance in determining the classification ratings. Distance scales are frequently criticized on the ground that cost of service is not dependent upon distance alone. This is true when service is viewed in detail, for other factors affect cost, such as grades, curves, cost of construction, weather conditions and density of traffic. A longer haul may actually be cheaper, because of the type of train used, than a shorter haul over the same line. Broadly speaking, however, cost of service undoubtedly does increase as distance increases, and in any adjustment of rates detailed consideration of cost is impracticable. Otherwise rates would vary with the line, the train, the day, and the state of the thermometer. Moreover, as some of the shippers have pointed out, distance at least measures the quantity of service rendered, and distance scales have the great practical advantage that they are based on a theory that is readily understood. The distance adjustments of class rates which the Commission has prescribed in other territories have proved stable and have given general satisfaction. On the other hand, group rates are often defensible. They are particularly appropriate in the case of commodities produced only at certain points or in restricted localities, where commercial conditions by common consent are improved by the equalization of the points or areas of production. Group or differential relationships may also be created, and lawfully within limits, by carrying so situated that they are able to bring traffic into competitive markets at relatively low rates without undue preference. Southern class rate investigation, 100 I. C. C. 513, 611.

(p) Complainant attacked combination rates charged on mine props, caps, ties and bars shipped between June 6, 1922 and Feb. 21, 1924 from Missouri to Illinois as unreasonable. Shipments originated at numerous points in Missouri on the M. P. ,and moved as routed over the lines of that and other defendants to certain coal mining points in Illinois. Charged through commodity rates from and to certain of the points reached by the M. P., and from and to other points

by combination rates made up of local or proportional commodity rates. In 87 I. C. C. 622 the Commission found rates attacked unreasonable to extent they exceeded a distance basis there prescribed. HELD, rates attacked unreasonable to extent they exceeded rates found reasonable in 87 I. C. C. 622, reparation awarded. Burkland v. M. P. R. R. 102 I. C. C. 343.

(q) Complainant attacked commodity carload rates and minimum weights on metal beds, carloads, from New Orleans to southern territory and to Arkansas as unreasonable and unduly prejudicial, and unduly preferential of Atlanta, Ga., Chicago, Ill., and Kenosha, Wis. that rates and minimum weights on helical springs, carloads, from Chicago and Waukegan, Ill., to New Orleans are unreasonable and unduly prejudicial and unduly preferential of shippers of metal beds from Chicago, Waukegan and Kenosha to New Orleans. Complainants evidence is directed against the rates to the Mississippi valley and the southeast. It does not appear that the rates and minimum weights on metal beds from New Orleans to the territory under consideration are unduly prejudicial. Complainant admits that metal beds can be easily loaded to 30,000 pounds; and it has not shown that it is injured by the maintenance of rates from Atlanta subject to a minimum of 20,000 pounds. The record does show that the rates generally from New Orleans to the Mississippi Valley and the Southeast are unreasonable. HELICAL SPRINGS. Helical springs are said to be used solely in the manufacture of fabric bed springs. The latter constitute about one half of complainants production of bed springs. Their average weight is about 38 pounds to which helical springs contribute 4 pounds. The rates on helical springs to New Orleans from Waukegan and Chicago are 84 and 80c, minimum 30,000 pounds. The present rates are 78% of the class basis, the basis of the rates set forth in the complaint. It does not appear that the applicable commodity rates are unreasonable when applied to these occasional shipments of one every two and onehalf months. HELD, rates on metal beds, carloads, from New Orleans not unduly prejudicial but are unreasonable to extent they exceeded a distance scale of 25c for 30 miles up to 123c for 1000 miles. Rates on helical springs not unreasonable or otherwise unlawful. Crescent Bed Co. v. A. & V. Ry. 102 I. C. C. 419.

(r) In prescribing scales of distance rates for single and joint-line hauls, commission has almost invariably required lines under a common management and control to apply the single-line rates. These decisions were based on fact that such management and control result in certain benefits in operation, and on commission's opinion that single-line rates would be reasonable for application over such lines. No reason is apparent for departing from those precedents. Livestock to, from, and between points in Southeast, 101 I. C. C. 105, 107.

(s) Proposed revision of distance commodity rates on commodities other than those treated in Memphis-Southwestern Investigation, 77 I. C. C. 473, for application between points in southwestern territory, between points in such territory, on the one hand, and defined territories in c. f. a., western trunk line, and southern territories and related points, on the other, designed for the purpose of complying with the commission's orders in the above cited case, found justified with respect to certain commodities and not justified with respect to others. Reasonable rates in specific instances prescribed for the future and fourth section relief granted. Commodity Rates in Southwestern Territory, 101 I. C. C. 308.

(sa) Proposed increased interstate rates on horses and mules to, from, and between points in the Southwest, more particularly from and to points in Texas differential territory and New Mexico to and from the markets of Fort Worth, Kansas City, St. Joseph, St. Louis, Wichita, and Oklahoma City, published in purported compliance with commission's order in Horse and Mule Rates in the Southwest, 1924, 93 I. C. C. 479, found not justified based on comparisons of numerous bases of rates, including scales of distance rates, in effect on horses and mules to, from, or between points in Texas, New Mexico, and the territory west and north thereof. Maximum reasonable interstate rates, based differentially, prescribed for future. Rates on Horses and Mules in the Southwest, 102 I. C. C. 87.

(sb) Proposal to increase rates on potatoes from Michigan, Minnesota, and Wisconsin groups to Jellico, Knoxville, and Birmingham, by canceling joint through rates leaving in effect higher

Ohio River combinations, and designed to correct a maladjustment, escape widespread reductions, remove discriminations, and comply with the long-and-short-haul rule, found not justified. Joint commodity rates on heavy traffic moving long distances are usually less than combinations, and on potatoes joint rates are maintained from Texas and the northern groups here involved to other Mississippi Valley points. Joint rates have been carried in these tariffs and reissues thereof, for the past 15 years. Moreover, carriers were expected to revise commodity rates somewhat in line with distance class rates prescribed in 100 I. C. C. 513, 663, and neither the through rates nor combinations here in issue conform to any distance standard. Potatoes from Alabama and Tennessee, 102 I. C. C. 183.

(t) In 88 I. C. C. 543, the Commission found not justified a proposed revision of the interstate rates on brick and other clay products included in the uniform brick list, and on common brick from, to, and between points in southern territory, which purported to be in compliance with 68 I. C. C. 213, and prescribed reasonable single line and joint line scales for application. The proposed rates from Johnson City, Kingsport and Chattanooga were not made on the same basis as other rates considered in that case and are not regarded by the Norfolk & Western as a part of the general readjustment considered therein. The rates which the N. & W., now propose for application from these points are constructed in the same manner as those originally proposed from the two points first named, except that it is willing to reduce its factor on common brick to the extent of 1c per 100 pounds. As a temporary measure of relief to manufacturers at Piermont, Webster, and Richlands, on the N. & W., the rates on common brick have been made applicable on all kinds of brick. The N. & W., proposed to cancel this provision if and when the rates here proposed become effective. HELD, rates which respondents now propose have not been published and the record herein does not afford a sufficient basis upon which to express an opinion as to the reasonableness of those rates. Brick and clay products in the south, 109 I. C. C. 161.

§2. Effect.

See Differentials.

(a) Tariff contained provision that rates to intermediate points to which no rates were named would be the same as those to next more distant point to which rates are named. No specific rates were published on sand and gravel from Carpentersville, Ill., to Edison Park and Park Ridge, Ill. Distance rates assessed on certain shipments moving during Federal control, found illegal and lower rate via a route over which Edison Park and Park Ridge are intermediate to Mayfair, the next more distant point to which specific rates were published, found applicable. Reparation awarded. Richardson Sand Co. v. Director General, as Agent, 89 I. C. C. 555.

(b) In original report the commission prescribed distance rates on classes and commodities between Meridian, Miss., and points in Alabama equal to Alabama intrastate rates. Upon further hearing, rates on hay and gravel between Meridian and points in Alabama found not so related to intrastate rates on the same commodities within Alabama as to require continued operation of prior orders with respect to such rates. Prior reports, 60 I. C. C. 5 and 66 I. C. C. 179, modified. Meridian Traffic Bureau v. S. Ry., 92 I. C. C. 439, 442, 446.

(c) Complainant in 15906 attacked carload and less carload rates to Williamson, W. Va., on traffic from central territory and border territory, which includes points in western New York, western Pennsylvania and West Virginia as unreasonable and unduly prejudicial as compared with rates to Charleston, Gauley, Kenova, Huntington and other destinations in West Virginia. In 15943 complainant attacked rates on iron and steel articles, carloads, and less carloads, from Woodlawn and Pittsburgh, Pa., to Willliamson as unreasonable and unduly prejudicial as compared with rates on like traffic from more distant points of origin and as compared with rates to Ashland, Ky., Kenova, Huntington and Charleston, W. Va. Williamson is on the Norfolk & Western, 74 miles over the Big Sandy route and 98 miles over the so-called twelve pole route from Kenova, W. Va., a point on the south bank of the Ohio river served by the B. & O., C. & O., and N. & W. Class rates from central territory are generally the same to Williamson as to the Virginia cities, which include Norfolk, Newport News and Roanoke, Va. But in cases where the com-

binations of the local rates to Kenova with the local rates from Kenova to Williamson are lower than the Virginia cities the rates generally are applicable. From border territory the class rates to Williamson are generally the same as those applicable to Bluefield, W. Va. The local rates from Kenova to Williamson are distance rates and reflect the distance of 98 miles over the so-called twelve pole route of the N. & W., from Kenova to Williamson although a large percentage of the traffic to Williamson is transported over the Big Sandy route. Although it may be true that rates from central and border territories to some points on the N. & W., are lower than they might reasonably be, because of the low basis of rates to the Virginia cities, which are the result of carrier competition, the record does not show that the rates to Williamson are low. The transportation conditions to Williamson from points of origin in general in the affected territory are the same as those in central territory except for a distance of 74 miles from Kenova to Williamson. From most points of origin the largest portion of the haul to Williamson are in central territory. Williamson, 74 miles from Kenova and 8 miles more distant from Huntington can not successfully compete with those points in the jobbing of commodities in territory which, by reason of its location, it should be expected to serve. HELD, class rates, and commodity rates bearing a direct relation thereto, from central and border territories, to Williamson, W. Va., for future unreasonable to extent they exceed rates constructed upon the basis of distance scale of class rates applicable in c. f. a. territory for the short line distance to Williamson plus arbitraries of 10, 8, 6, 5, 4, and 3c for the six classes respectively. No. 15943. The shipments moved after June 5, 1922. Rates of 47.5c in carloads and 56.5c in less carloads on and after July 1, 1922 and 52.5c in carloads and 62.5c in less carloads prior to that date were applicable. The rates from Cleveland to Williamson are 40.5c in carloads and 48c in less carloads. Those rates applied over a route through Pittsburgh and caused at that point a fourth section departure which had been protected by application. There was another fourth section departure at Williamson, which is directly intermediate between Pittsburg and Roanoke, caused by the publication of a higher rate to Williamson than to Roanoke. Both departures have been removed by the publication effective Feb. 16, 1925 of 40.5c in carloads and 48c in less carload from Pittsburgh and Woodlawn to Williamson. HELD, rates on iron and steel articles unreasonable since June 5, 1922 to extent they exceeded 39c carloads and 55c less carloads, prior to July 1, 1922 and 35c in carloads and 49.5c less carloads after that date. HELD, present rate unreasonable to extent it exceeds 35c carloads, present rate on less carloads not unreasonable, reparation awarded. Williamson Chamber of Commerce v. A. C. & Y. Ry. 107 I. C. C. 639.

(d) It is believed that the new distance scale of class rates herein prescribed for application in southern territory, if applied both interstate and intrastate, will more than maintain present revenues, particularly if many of the l. c. l. exceptions and commodity rates are gradually eliminated. The possible increase in revenue, if the maximum rates are uniformly applied is believed to be justified by fact that class-rate traffic is in general of such a character that in revising the rates upon its revenue doubts may well be resolved in favor of carriers, or, in other words, in favor of commodity rates on traffic of a more basic character, the revision of which is pending. Southern Class Rate Investigation, 100 I. C. C. 513, 649.

II. REASONABLENESS OR DISCRIMINATION.

See Advanced Rates §5 (2) (r); Class Rates §2 (3k) (4l) (7a).

§3. In general.

(a) Class A rates on horses, mules, asses and burros, from Kansas City, Mo., to points in Texas and Louisiana, found unreasonable and unduly prejudicial as compared with rates within Texas or Louisiana or between those States, and to extent they exceed the distance rates based on the class C scale provided for in Memphis-Southwestern Investigation, 55 I. C. C. 515, herein prescribed for future. Kansas City Chamber of Commerce v. A. & W. Ry. Co., 89 I. C. C. 22.

(b) Rates on mixed carloads of cottonseed meal and hulls from Tallulah, La., to Vicksburg, Miss., found unreasonable as compared with rates on cottonseed meal in mixed carloads with cottonseed cake, meal flakes, hull ashes, cold-

pressed cottonseed, and cotton-burr ashes, and to extent they exceeded distance scale of rates prescribed in Memphis-Southwestern Investigation, 77 I. C. C. 473, on mixed shipments of cottonseed meal and hulls between other points in same general territory. Reparation awarded. Tallulah Cotton Oil Co. v. V., S. & P. Ry. Co., 89 I. C. C. 151.

(c) Equality of distance from competing markets is not an absolute test of whether an equality of rates results in undue prejudice and preference. Reduced Commodity Rates to Pacific Coast, 89 I. C. C. 512, 524.

(d) Tariff contained provision that rates to intermediate points to which no rates were named would be the same as those to next more distant point to which rates are named. No specific rates were published on sand and gravel from Carpentersville, Ill., to Edison Park and Park Ridge, Ill. Distance rates assessed on certain shipments moving during Federal control, found illegal and lower rate via a route over which Edison Park and Park Ridge are intermediate to Mayfair, the next more distant point to which specific rates were published, found applicable. Reparation awarded. Richardson Sand Co. v. Director General, as Agent, 89 I. C. C. 555.

(e) Complainant attacked commodity rates charged on mixed feeds straight carloads and mixed with articles taking grain rates or the same rates as mixed feeds from Beaumont and Orange, Tex., to points in Louisiana as unreasonable to extent they exceeded rates for similar distances between Natchez, Miss., and points in Louisiana. In 87 I. C. C. 207, the Commission found the rates attacked unreasonable to that extent and awarded reparation. The tariff supplement issued by defendant in purported compliance with the order published the scale applicable from Natchez but provided that rates thereunder are to be computed on actual distance shipment moves plus twenty miles, apparently because in computing rates from Natchez a like addition is made as compensation for the expensive service across the Mississippi river at Natchez. But there is no corresponding service required on shipments from Beaumont and Orange. HELD, rates attacked unreasonable to extent they exceeded rates for similar distances between Natchez, Miss., and points in Louisiana but without including the computation of constructive mileage or other arbitrary, reparation awarded. Josey Miller Co. v. B. R. & C. Co., 91 I. C. C. 213.

(f) Complainant attacked commodity rates on manure from Perth and Lovelock, Nev., to points in California on the S. P., Santa Fe, L. A. & S. L., Northwestern Pacific, Pacific Electric, Visalia Electric and Peninsular Ry. as unreasonable. In 73 I. C. C. 496 the Commission prescribed a scale of rates applicable on manure from Perth, Lovelock, and other Nevada points to California, and awarded reparation. HELD, rate attacked unreasonable, except those to points on the Santa Fe involving distances of hauls of 500 miles or under, to extent they exceeded $3.73 for 230 miles and $7.04 for 750 miles, reparation awarded. Rates to points on the Santa Fe for distances of 500 miles or under unreasonable to extent they exceeded 38c per ton prior to July 1, 1922 and 34c thereafter, reparation awarded. Pacific Guano & Fertilizer Company v. S. P. Co., 91 I. C. C. 228.

(g) Complainant attacked commodity rates charged on barrels from St. Joseph, Mo., to Oklahoma as unjust, unreasonable, unjustly discriminatory and unduly prejudicial to extent they exceeded rates from Dallas, Oak Cliff, Fort Worth and North Fort Worth, Tex., to the same destinations. On barrels to Oklahoma, St. Joseph is in a group which includes Kansas City and Springfield, Mo., and Atchison and Coffeyville, Kans. The commodity rate from this group to a large section of Oklahoma was 45.5c. This rate is applicable on barrels, kegs, and tierces, in straight or mixed carloads, minimum 20,000 pounds. Wooden slack barrels are rated third class in the western classification, minimum 10,000 pounds subject to rule 34 of the classification, and to a few of the less distant Oklahoma points the third class rates and a minimum of 10,000 pounds make lower charges than the commodity rates. The tariffs provide for application of whichever rate makes lower. With a few exceptions rates from Fort Worth and Dallas are based on the distance scale prescribed in 48 I. C. C. 312 and 53 I. C. C. 545 or the same as were applicable from Shreveport, La. HELD, there are no facts of record which would justify the extension of so low a scale as the Shreveport scale from St. Joseph and other points to Ok-

lahoma and the evidence is not convincing that the lower rates in effect from Fort Worth and Dallas result in any substantial damage to complainant. HELD, rates attacked not unreasonable, unduly prejudicial or otherwise unlawful, complaint dismissed. Hollingshead Co. v. M. K. & T. Ry., 91 I. C. C. 654.

(h) Complainant attacked as unreasonable rates on grain and grain products from South Dakota to various markets. Former decision in 85 I. C. C. 217 stated after prescribing the rates from South Dakota to Sioux City, Iowa, held that the rates on wheat and coarse grain to Omaha, Neb., were unreasonable to extent they exceeded the rates prescribed to Sioux City by more than 4c via the Northwestern and 6c via the Milwaukee the 2c greater differential via the Milwaukee being based on the fact that its route from Sioux City to Omaha was about 55 miles longer than that of the Northwestern. Some of the rates of the Milwaukee to Omaha were more and others less than 6c over those to Sioux City, and in connection with the reductions made in compliance with the order the Milwaukee increased many of its rates to Omaha, so as to reflect the 6c differential. HELD, that from South Dakota points on the lines of all defendants the present rates on wheat and corn to Omaha in connection with the Milwaukee as a delivering line are unreasonable where and to the extent that they exceed the rates that would obtain under the scale referred to subject to the rates in effect via the Northwestern as representing the lowest scale required. Rates may not be increased to the basis of this scale. In the original report, in prescribing rates to Minneapolis, Chicago and Milwaukee, the Commission named only certain points of origin, and defendants in publishing the rates quite generally applied them from intermediate points, except where the Commission had specifically fixed a lower rate. HELD, rates on wheat from South Dakota, to Minneapolis, Chicago and Milwaukee are unreasonable to extent they exceed rates ranging from 23c from Miller and 35c from Conata to Minneapolis, 30c from Plumb and 31c from Tabor to Chicago and Milwaukee. Rates on coarse grain and on grain products shall be made with respect to those on wheat. South Dakota Railroad Commission v. C. & N. W. Ry., 92 I. C. C. 174.

(i) Complainant attacked commodity rates charged on fertilizer and compounds in carloads and less carloads from Little Rock, Ark., to Texas and Oklahoma as unreasonable, unjustly discriminatory unduly prejudicial and to Texas in violation of the combination of locals. Fertilizer is rated fourth class in less carloads and class E in carloads. The rates attacked to Texas are grouped both as to points of origin and destination, and are a part of a general adjustment of rates from defined territories as described in 40 I. C. C. 619. Little Rock is in the so-called Little Rock-Fort Smith group. Texas is divided into Fort Smith group. Texas is divided into Texas common points and differential territories. Differential territory lies west and south of common point territory, and to all points within it rates are made by adding differentials to the common point rates. The group rate to Texas common points is 32.5c. Specific commodity rates apply from Little Rock to Oklahoma points. The destination points are grouped to some extent, but apparently with respect to individual carriers rather than territorial sections. A large part of the Frisco line in Oklahoma is grouped at 24.5c; rates on the Rock Island range from 18.5c at a group of points near the Oklahoma-Arkansas boundary to 29.5c at other groups in the western and northwestern, and to 35c in the southwestern, parts of the state; and rates on the K. O. & G., which traverses the eastern section, range from 27.5c to 35c. Thus there is a wide variation in the rates to points in the same vicinity but on different lines and to points of the same given distances from Little Rock, in many instances the rates being the same or less to the groups materially farther distant. Complainant sought the establishment of distance carload commodity scales of rates for single line and joint line hauls, the same from Little Rock to Texas as from Little Rock to Oklahoma points. It proposed no specific scales, but particularly emphasizes those prescribed on fertilizer, carloads, in the second decision in 77 I. C. C. 473, 9702 scales. Fourth class rate of $1.265 applies on less carload shipments of fertilizer from the Little Rock-Fort Smith group to Texas common points under the grouping previously explained in connection with carload traffic. By exceptions to the governing classification, specific rates apply from Little Rock to Oklahoma points based on 150% of the class E rates, which are the

single line and joint line distance scales prescribed in the first decision in 9702. The rates from Shreveport and Houston to Texas are 150% of the carload rates. HELD, rates attacked on fertilizer and fertilizer compounds, less carloads, from Little Rock to points in Oklahoma are not unreasonable or otherwise unlawful, but for future unreasonable to extent they exceed distance scales of single line and joint line commodity rates prescribed in 77 I. C. C. 473. HELD, further less carload rates from Little Rock to Texas points for future unreasonable to extent they exceeded for all distances to Texas common point territory the fourth class distance scales of single line and joint line rates prescribed in 55 I. C. C. 515 and to Texas differential territory to extent they exceed the same distance scales plus the present fourth class differentials on traffic from Little Rock to destinations in Texas differential territory and the undue prejudice should be removed by establishing from Shreveport to All Texas points a basis of rates no lower than the basis of rates from Little Rock to the same destinations. HELD, further, rates attacked on fertilizer carloads from Little Rock to Texas points are unreasonable to extent they exceed for all distances to Texas common points the distance scales prescribed in 77 I. C. C. 474 and to Texas differential territory to extent they exceed the same distance scales plus the present differentials from Little Rock to Texas differential territory, and are unduly prejudicial to extent that rates from Shreveport to all Texas points should be no lower than rates from Little Rock to the same destinations. Arkansas Fertilizer Co. v. A. & S. Ry., 92 I. C. C. 504.

(j) Complainant attacked commodity rates charged on crushed slag, in bulk in carloads from eastern Pennsylvania to New York, New Jersey, Delaware, Maryland, Virginia, Pennsylvania and the District of Columbia as unreasonable and unduly prejudicial. Slag, a product of iron furnaces, was formerly wasted. It is now crushed and used in competition with crushed stone and gravel not only in concrete work but also in roofing material and as railroad ballast. Subsequent to 1914 some commodity rates on slag were established by the Reading, Lehigh Valley and Jersey Central to point on their respective lines and to a few destinations on other lines. The Reading rates are in some instances lower, others higher, than the rates on crushed stone for similar distances, and the Jersey Central and L. V., rates are lower in practically all instances. In 49 I. C. C. 681 the Commission prescribed a distance scale of commodity rates on crushed stone from Birdsboro to destination on the Pennsylvania in New York, New Jersey, Delaware, Maryland, Virginia and District of Columbia. As a result of that decision the crushed stone rates became considerably lower than the slag rates from the same points. This scale has never been adopted by the other defendants here before the Commission. Crushed stone, sand, gravel and slag are among the commodities of lowest grade known to commerce; they load heavily, are indestructible and move in the cheapest kind of equipment; that crushed stone and slag compete. The movement of slag is short haul. The average haul being 89 miles. HELD, rates on slag in bulk, in carloads, from Swedeland, Pottstown and Birdsboro to destinations on the Pennsylvania and its subsidiaries in New Jersey, Maryland, Delaware, and Virginia unreasonable to extent they exceed rates on crushed stone. The application of sixth class rates on slag moving in competition with slag under commodity rates is indefensible. HELD, rates attacked on slag in bulk, carloads, from Lebanon, Emaus, Hokendauqua, and Bethlehem to destinations on the Pennsylvania and its subsidiaries in New Jersey, Maryland and Delaware and to New York, N. Y., and District of Columbia, for distances not in excess of 220 miles, unreasonable to extent they exceed rates of 80c single line and 100c joint line for 40 miles to and including 185c single line and 205 joint line for 220 miles. A differential of 20c per ton is reasonable for joint line hauls. Duquesne Slag Products Co. v. Pennsylvania R. R., 92 I. C. C. 554.

(k) Respondents proposed to increase the interstate rates on lignite coal from mines in North Dakota to destinations in North Dakota, South Dakota and Minnesota. Lignite is a low grade fuel. It may be considered as imperfectly developed coal which has a more or less woody structure. About 75.9% of North Dakota lignite moves in box cars, 12.9% in gondola cars, 0.3% in stock cars and 10.9% in other cars such as bunk, sand, and ballast cars. From the docks both box and open equip-

ment is used. In November 1918 the Director General prescribed a reduced scale of emergency rates on lignite coal which continued in effect until May 1921, advanced 35% under 61 I. C. C. 504, increased in August 26, 1920, and reduced 10% in July 1922, and are in effect today. The rates under suspension are those prescribed by the Commission in the Holmes & Hollowell scale, 60 I. C. C. 687 and 69 I. C. C. 11. While rates from the Lake Superior dockets to points in Minnesota, North Dakota and South Dakota east of the Missouri river are based on that scale, it is not strictly applied. Distances in connection with the application of that scale are computed from Duluth, a dock nearer to the destination territory than some of the other docks, by the shortest routes comprising not more than three lines, so that the rates over longer routes are lower than those shown in the scale for the actual distances traversed. The Holmes & Hollowell scale applies in a territory in which the population and traffic density decrease as the distances from points of origin increase, and this was taken into consideration in its construction. Here the opposite is true; as distances from the mines increase the population and the traffic density increase. HELD, proposed schedules not justified, but carriers will be left to confer and work out a reasonable scale. The Examiner recommended a scale for application ranging from 80c per ton for 30 miles and under to 279c per ton for 400 miles. Lignite coal from N. Dak. 89 I. C. C. 726.

(l) Complainant attacked distance rates charged on nine cars of fuelwood, shipped between August 26, 1920 and April 29, 1921 from Atlas, Ida., and from Garwood, Gibbons and Fox Spur, Ida., to Spokane, Wash., as unreasonable and unjust to extent they exceeded reasonable rates prescribed in 61 I. C. C. 159. Fuelwood is a low grade commodity and can be handled in equipment not suitable for other commodities. Claims for loss and damage are infrequent. Prior to April 20, 1921 three scales of rates were applicable to fuelwood and other kinds of wood. The Commission prescribed a distance scale of rates for interstate application on lines therein respondent, between Washington, Oregon and Idaho, effective April 20, 1921. HELD, rates attacked not unreasonable, complaint dismissed. Hawkeye Fuel Co. v. S. & E. Ry. & P. Co., 93 I. C. C. 157.

(m) Complainant attacked distance rates charged on wrought iron pipe, and other iron and steel articles and oil well supplies, carloads and less carloads, between Oklahoma points and Kansas points, as in violation of section 6. Covington, Okla., is not named in the tariff as a point from which the distance rates will apply, but it is directly intermediate between Enid and Virgil. The distance from Enid to Virgil is 223.1 miles, while from Covington the distance is 204.9 miles. The tariff in question allows the shipper to use a rate based on the actual traversed. HELD, shipments overcharged, refund ordered, complaint dismissed. Cosden Oil & Gas Co. v. A. T. & S. F. Ry., 95 I. C. C. 116.

(n) Complainant attacked class rates charged on two cars of charcoal shipped in May and June 1922 from Savannah, Ga., to Havanna, Fla., as unjust and unreasonable. Shipments moved over A. C. L., to Cairo, Ga., and P. & H., beyond, 238 miles, charged class O rate of $95 per car. It was stipulated that the rate charged was unreasonable to extent it exceeded a proposed Georgia scale of 28c. HELD, rate charged unreasonable to extent it exceeded 28c, reparation awarded. American Sumatra Tobacco Company v. A. C. L. Ry., 95 I. C. C. 463.

(o) Complainant attacked commodity rates charged on wrought iron and steel pipe, carloads, from Ranger, Tex., to Taylor, Louann and Smackover, Ark., as unreasonable. Ranger is on the T. & P., and W. F. R. & Ft. W., 95 miles west of Fort Worth, Tex., in common Texas territory. The three destinations are in Little Rock-Fort Smith territory. Shipments to Smackover and Louann moved over T. & P., to Texarkana, Ark., and M. P., beyond, 455 and 451 miles. Shipment to Taylor moved over T. & P., to Shreveport, La., L. & A., beyond, 387 miles, charged 67.5c prior to July 1, 1922 and 61c thereafter. Iron and steel pipe, old or new, carloads, is rated fifth class. Under the joint line scale prescribed on iron and steel pipe in 77 I. C. C. 473, the rate for 431 to 450 miles was 51c. HELD, rate attacked unreasonable to extent it exceeded 56.5c prior to July 1, 1922 and 51c thereafter, reparation awarded. Texas Pacific Coal & Oil Co. v. T. & P. Ry., 95 I. C. C. 625.

(p) Complainant attacked class rates charged on prepared roofing, carloads,

from Port Neches, Tex., to Couchwood, Cotton Valley and Haynesvile, La., and State Line and Emerson, Ark., between Feb. 3 and March 10, 1923 as unreasonable and in violation of fourth section. Port Neches is on the T. & F. S., 12 miles south of Beaumont, Tex. Couchwood and Cotton Valley are on the L. & A., 43 and 47 miles north of Shreveport, La. Haynesville, State Line and Emerson are on the L. & N. W., 77, 73, and 83 miles north of Shreveport. Distances are from Port Neches 265 miles to Couchwood, 270 miles to Cotton Valley, 295 miles to Haynesvile, 299 miles to State Line and 305 miles to Emerson. Charged class C rates of 79c, and complainant asked reparation to basis of rates prescribed in 77 I. C. C. 473, 562 for distances shown, they subsequently becoming effective. HELD, rates attacked unreasonable to extent they exceeded rates subsequently established, reparation awarded. Texas Pipe Line Co. v. L. & A. Ry., 95 I. C. C. 674.

(q) Complainant attacked commodity rates charged on wrought iron and steel pipe, carloads, from Texas common point territory to points in Little Rock-Fort Smith district as unreasonable. Shipments originated in vicinity of Cisco, a point on the T. & P., 115 miles west of Fort Worth and others at Beaumont, Houston and points in that vicinity. Most of them moved to Smackover and Eldorado, charged 67.5 and 61c prior and subsequent to July 1, 1922. Reparation is sought to basis of 50.5 and 45.5c. The scale applicable to pipe prescribed in 77 I. C. C. 473, 595 products a rate of 50c for a joint line haul of from 400 to 425 miles, and 51c for a similar haul of from 426 to 450 miles. HELD, rates attacked unreasonable to extent they exceeded 56.5 and 51c, reparation awarded. Humble Oil & Refining Co. v. M. P. R. R., 95 I. C. C. 709.

(r) Complainant attacked class and commodity rates charged on wrought iron or steel pipe and fittings, carloads, between Oct. 1, 1922 and Nov. 27, 1923 from and to numerous points in Louisiana to and from points in Arkansas as unreasonable. Rates charged commodity rates from Shreveport, Louann, Emerson, Smackover and Norphles and fifth class distance rates from other points. In 77 I. C. C. 743 the Commission prescribed maximum distance scales of single and joint line rates for application on iron pipe, in carloads between various points in southwestern territory, including traffic between points in Arkansas, on the one hand, and points in western Louisiana, on the other. The rates prescribed became effective Nov. 27, 1923 and are the basis to which reparation is asked. HELD, rates attacked unreasonable to extent they exceeded 11c from Emerson to Haynesville, 22.5c from Marion to Smackover, 26c from Smackover to Swartz, 27c from Louann to Haynesville, 38c from Ardis to Emerson, 29c from West Monroe to Griffin, 32.5c from Oil City to Camden, 33.5c from Oil City to Louann, from Lewis to Louann, and from Norphlet to Sarepta, 34c from Hosston to Louann, and from Vivian to Smackover, El Dorado and Norphlet, 35c from Morringsport to Louann, from Oil City to Griffin, Smackover and Norphlet, from Homer to Griffin and Smackover, from Lane to Smackover and from Gilliam to Smackover, 36c from Morringsport to Kenova and from Blanchard to Griffin, 39.5c from Mansfield to Louann, Griffin and Smackover, 40.5c from Harmon to Louann, Griffin and Smackover, from Crichton to Griffin and Smackover, and from Mansfield to Norphlet via the K. C. S. and M. P., 41.5c from Harmon to Norphlet and from Mansfield to Norphlet via M. Ry. & T. Co., T. & P., and M. P., and 42.5c from Pelican to Smackover, reparation awarded. Texas Company v. K. C. S. Ry., 96 I. C. C. 81.

(s) Complainant attacked class rates charged on wrought iron pipe and oil well supplies, carloads, between June 23 and Sept. 15, 1922, from Walden, Colo., to Casper, Wyo., as unreasonable. Walden is on the C. W. & E. Shipments moved over this line to Laramie, Wyo., thence U. P., to Cheyenne, Wyo., thence C. & S., to Wendover, Wyo., and C. B. & Q., beyond, distance 369 miles, charged 63.5c to Laramie, 35.5c to Cheyenne and 58.5c to Casper, on 11 cars of pipe, and on shipment subsequent to June 23, 1922, 70.5c to Laramie, 39.5c to Cheyenne and 65c to Casper. Oil well supplies charged class A of 63.5c to Laramie, 38.5c to Cheyenne and 63.5c to Casper. There was no movement of these commodities from Walden to Casper before or after these shipments, such movements to the different fields being largely from jobbing points. There is no doubt but that the transportation conditions over the route of movement are unfavorable and entirely different from

the traffic conditions in other sections of the country. Defendants admit the unreasonableness of the rates charged and suggest a basis of settlement the joint class rates prescribed in Wyoming by the Commission of that state which would make on the pipe $1.085 fifth class, and oil well supplies $1.165 class A. HELD, rates charged unreasonable to extent they exceeded $1.205 for pipe and $1.295 for oil well supplies, reparation awarded, and for future $1.085 on pipe and $1.165 on oil well supplies. Carter Oil Co. v. C. B. & Q. R. R., 96 I. C. C. 125.

(t) Complainant attacked commodity rates charged on vegetable oils, carloads from Oklahoma to Sherman, Tex., as unreasonable, unjustly discriminatory, unduly prejudicial and in violation of the fourth section. The rates for future are in issue in No. 14150 and 14970. Sherman is on five trunk lines close to the Oklahoma-Texas state line, 65 miles north of Dallas, Tex., at which point and also at Fort Worth, Tex., are located other refineries with which complainant at Sherman comes into competition. In 39 I. C. C. 497 the Commission prescribed a scale of reasonable maximum rates on cotton seed oil applying for distances of from 250 miles and less to 600 miles from Oklahoma to Kansas City, Mo. That scale, graded down for the shorter distances and as generally increased in 1918 and 1920 was prescribed in 64 I. C. C. 213 from Oklahoma, Arkansas and Louisiana to Dallas. HELD, rates attacked for 325 miles and less from Oklahoma to Sherman unreasonable and unduly prejudicial to extent they exceed rates prescribed in 64 I. C. C. 213, reparation awarded. Texas Chamber of Commerce v. A. T. & S. F. Ry., 96 I. C. C. 283.

(u) Complainant attacked third class rates charged on butter, carloads, from various points of origin to Fort Worth, Houston and San Antonio, Tex., as unreasonable prior to and subsequent to Feb. 16, 1923. Butter moves in refrigerator cars and requires expedited service. Loss and damage claims are few. Defendants have for many years maintained northbound commodity rates on butter upon a basis materially lower than third class. In 96 I. C. C. 19 the Commission prescribed distance rates from Texas to official classification territory. Under that distance scale the rates to Fort Worth would be 68c from Oklahoma City, $1.09 from Kansas City $1.26 from St. Louis and Omaha, $1.33 from Denver, $1.37 from Louisville, $1.44 from Chicago, $1.48 from Minneapolis and Cincinnati and $1.51 from Aberdeen, S. D. HELD, rates attacked since June 30, 1922 unreasonable to extent they exceeded rates shown above reparation awarded. Mistletoe Creameries v. A. T. & S. F. Ry., 96 I. C. C. 303.

(v) Complainant attacked commodity rates charged on crushed asphalt rock, carloads, from Dougherty, Okla., to Kansas City, Mo., since April 19, 1922 as unjust, unreasonable, unjustly discriminatory and unduly prejudicial. Prior to July 1, 1922 the rate on asphalt rock, crushed, containing about 7% asphalt or crude oil was 15.5c subject to marked capacity of the car as the minimum weight. On that date the rate was reduced to 14c. This rate is published under a distance scale which is applicable not only from Dougherty to Kansas City but also from other points in Oklahoma to certain described territory in Kansas, Missouri and Superior, Neb. HELD, rate attacked unreasonable to extent it exceeded 14.5c prior to July 1, 1922 and 13c thereafter, reparation awarded. Roudebush v. A. T. & S. F. Ry., 96 I. C. C. 319.

(w) Complainant attacked commodity rates charged on apples carloads, shipped from Charles Town, W. Va., on kale, carloads, and less carloads, from Norfolk, Va., and on potatoes and cabbage from Norfolk and Suffolk, Va., to Williamson W. Va., between June 20 1922 and June. 15, 1924 as unreasonable, unduly prejudicial and in violation of section four. Williamson is a local point on the N. & W., 470 miles west of Norfolk. Rates for the future have been satisfied with reductions made on July 15 and Sept. 25, 1924. Rates charged were based on a distance scale which, with certain exceptions, applies generally between all points on the N. & W., south of the Ohio river. HELD, rates attacked unreasonable to extent they exceeded on apples, 43.5c, on potatoes and cabbage 40.5c on kale carloads, 48c and less carloads 106.5c, reparation awarded. Amicon Fruit Co. v. N. & W. Ry., 96 I. C. C. 477.

(x) So far as total transportation costs are concerned, where rates are graded according to distance, the jobbing

center which is nearer to the source of supply can reach forward a greater distance than the more distant jobbing center can reach back. Paper and paper articles to New Orleans, 96 I. C. C. 600, 603.

(y) Complainant attacked fifth class rates charged on iron and steel from Pittsburgh, Pa., to St. Louis, Mo., and points in Indiana and Illinois as unjust and unreasonable and unduly prejudicial as compared with rates from Chicago, Ill., to the same destinations. In western classification the rating on the iron and steel articles in question is fifth class, but commodity rates are quite general except in western trunk line territory where the class rates are relatively low. Commodity rates also apply from the producing points in Illinois and Indiana to the destinations involved. In view of the fact that the fifth class rates from the Illinois and Indiana points are on the c. f. a. scale, while those from Pittsburgh equal or exceed the rates under that scale, it is clear that the Illinois and Indiana rates, which are perhaps 35% below fifth class are relatively much lower than those from Pittsburgh. Competition between complainant and Illinois and Indiana producers is general through the destination territory. The policy of the central territory lines is to hold their rates to the fifth class basis, but partly because of competition between them and the Illinois lines they have from time to time established within Illinois, and to a considerable extent within Indiana, and between Illinois and Indiana points, and between these points and St. Louis, rates on substantially the same general level as those of the Illinois carriers. As between Illinois and the territory east thereof, there are in general no differences in transportation conditions which would warrant material differences in rates. HELD, rates attacked from Pittsburgh unreasonable to extent they exceed 6c for 5 miles and under to 42c for 640 miles. Jones & Laughlin Steel Corp. v. B. & O. R. R., 96 I. C. C. 682.

(z) Complainant attacked the structure of rates to Casper, Wyo., from Missouri river cities, and from Chicago and St. Louis as unjust, unreasonably discriminatory and unduly prejudicial and unduly preferential of Cheyenne, Wyo., Denver, Colo., Billings, Mont., Crawford, Neb., and cities in the Missouri river. Respondent, Burlington, proposed to restrict the application of certain distance class rates now in effect between all points in Nebraska, except Omaha, Neb., and points in Wyoming so as to make them inapplicable from and to points on respondents lines lying generally east of Lincoln, Crete, Beatrice, and Wymore, Neb. Casper is on the Northwestern and Burlington, 632 and 652 miles from Omaha. Defendants publish local class rates from Omaha to Casper, and the rates from Sioux City, Iowa, are the same. From St. Paul, Minn., Chicago and St. Louis class rates are generally made the lowest combination on the Missouri river points, or the Nebraska differential territory. Kansas City, Mo., has class rates to Casper somewhat higher than from Omaha to that city. Complainants principal grievance lies in the fact that Colorado common points are accorded a lower level of rates by defendants. That group extends, so far as class and most commodity rates are concerned, from Cheyenne on the north to Trinidad, Colo., on the south. It is apparent that the class rates attacked are unreasonable and unduly prejudicial to Casper and unduly preferential of competing jobbing points. While much of the evidence pertaining to difficult operating and traffic conditions applies to territory west of Casper, it is yet advisable that the rates to points on defendants lines in Wyoming should be on the same general level. Conditions are similar and a sudden break in the rates at Casper is not justifiable. The greater cost of transportation to Casper than to intermediate Nebraska territory and to Colorado common points should properly be reflected in higher rates but, after making allowance for such a difference, the rates to Casper and other points in Wyoming should be consistent with a general structure of rates for the territory west of the Missouri river. Likewise the percentage relationship between the class rates should be uniform. HELD, respondent has not justified proposed schedules. Further HELD, rates to Casper unreasonable to extent they exceed from Omaha and Sioux City 214c first class, from Kansas City 237c first class, from St. Paul 256c first class, from Burlington 266c first class, from St. Louis 285c first class, from Chicago 293c first class and proportional rates from Mississippi river 226 first class, commodity rates to be revised according-

ly. Casper Chamber of Commerce v. C. & N. W. Ry., 96 I. C. C. 736.

(aa) Complainant attacked distance rates on logs, carloads, from points in South Carolina on the Seaboard and Coast Line to destinations in North Carolina as unreasonable. In 62 I. C. C. 669 the Commission prescribed a distance scale and awarded reparation. HELD, the present record does not afford a reliable basis for determining the amount of reparation to which complainants may be entitled under the findings in the original report. Complainants will be given 60 days after service of this report within which to apply for further hearing to supplement the present record, failing which the complaint will stand subject to dismissal for failure of proof. Southern Veneer Asso. v. A. C. L. R. R., 98 I. C. C. 112.

(bb) Complainant attacked commodity rates on sand gravel and crushed rock, carloads, which moved over the N. P., and G. N., from certain points in Minnesota to destinations in North Dakota as unreasonable. Increases proposed by the G. N., in the rates on sand and gravel from three of its stations in Minnesota to Fargo, N. D., are suspended. No. 14068. Muskoda and Detroit are on the main line of the N. P., 19 and 49 miles east of Fargo, N. D. Melvin is on a branch line of the N. P., about 42 miles southeast of Grand Forks and about 80 miles from Fargo via Manitoba Junction, Minn., Downer is on the G. N., about 32.5 miles southeast of Fargo. Duluth, St. Cloud and Sauk Rapids are east of Fargo about 252, 176.5 and 176 miles, respectively, via the N. P., and about 307, 167.5 and 171 miles, respectively via the G. N. The rates charged on all of the shipments which moved during the statutory period, except to Fargo and a few other points, where on the basis of the so-called interstate distance scale applicable on sand, gravel and crushed rock from Minnesota to North Dakota points. The rates to Fargo were made on arbitrary of 1c over the rates to Moorhead, Minn., which takes the Minnesota intrastate scale from Minnesota points. Under the various rate levels from June 13, 1920 the period here considered, the Minnesota intrastate scale has been lower than the interstate scale applicable to the shipments here considered. The record supports the conclusion that the those portions of Minnesota and North Dakota under consideration there is no justification for the maintenance of any higher level of rates in the one than in the other, and complainants contention would be correct if the Minnesota intrastate scale of rates for application on these commodities is on a reasonable maximum basis. The Minnesota-Dakota distance scale has been in effect for more than 20 years. HELD, rates attacked unreasonable to extent they exceed distance rates ranging from 3.5c for 50 miles and under to 12c for 375 miles plus an arbitrary of 1c for joint line hauls, reparation awarded. Hopeman Material Co. v. N. P. Ry., 98 I. C. C. 361.

(cc) G. N., respondent proposed to increase from 3.5c to 4c rate on sand and gravel, carloads, from Barnesville, Downer, and Downer Pit, Minn., to Fargo, N. D. Downer and Downer Pit are practically one and the same pit, the pits being a short distance out of the city, are 33 miles east of Fargo. Barnesville is an intermediate point 25 miles east of Fargo. Respondents purpose in desiring to increase the rate from the Downer pits from 3.5c to 4c is to again place that rate on a parity with the N. P., rate from Muskoda. It is stated by respondent that whatever rate is established from the Downer pits to Fargo will also be applied from Barnesville, and intermediate point. HELD, rate found reasonable under the scale prescribed is 3.5c, schedules not justified. No. 14162. Complaint attacked rates charged on 515 cars of gravel shipped from Melvin, Minn., to Grand Forks, N. D., 42.3 miles over the N. P., between August 26, 1920 and Dec. 11, 1920 as unreasonable to extent it exceeded 4c subsequently established. The rate for this distance under the scale found reasonable in 14068 would be 3.5c for present application and 4c during the period here considered. HELD, rate attacked unreasonable to extent it exceeded 4c, reparation awarded. Hopeman Material Co. v. N. P. Ry., 98 I. C. C. 361.

(dd) In complying with commission's order in 87 I. C. C. 207, wherein rates on mixed feeds from Beaumont and Orange, Tex., to destinations in Louisiana were found unreasonable to extent they exceeded or might exceed contemporaneous rates for similar distances between Natchez, Miss., and points in Louisiana, carriers published a distance scale under

which rates were to be computed on actual distance plus 20 miles for service of crossing Mississippi River. FOUND: Since no corresponding crossing service is required on shipments from Beaumont and Orange, addition of this constructive mileage is contrary to spirit of the order. Original finding affirmed and clarified by excluding any constructive mileage in computing rates from Beaumont and Orange. Josey-Miller Co. v. B. R. R. & C. Co., 91 I. C. C. 213.

(ee) Upon further investigation line distance rates authorized to be established on livestock to, from, and between points in Southeast in original report, 74 I. C. C. 419, should be applied over two or more lines under same management and control. Term "carriers under same management and control" should be understood to refer to carriers generally controlled through ownership, lease, or otherwise, to extent of controlling traffic policy, even though separate corporate entity may be maintained. Blackshear Mfg. Co., 87 I. C. C. 654, 664. Livestock to, from, and between Points in the Southeast, 91 I. C. C. 292.

(ff) Southern Ry. system lines, Atlanta & West Point R. R. and Western Ry. of Alabama, and Illinois Central and Yazoo & Mississippi Valley Railroads, respectively, found to be under same management and control, for purpose of applying single-line distance rates required to be established in original report, 74 I. C. C. 419, on livestock to, from, and between points in Southeast. Livestock to, from, and between points in the Southeast, 91 I. C. C. 292, 293.

(gg) Interstate rates on fertilizer and fertilizer materials from Wilmington, N. C., to points in North Carolina found unreasonable and unduly prejudicial to extent they exceeded rates, distance considered, from Norfolk, Va., and Charleston, S. C., to points in North Carolina. Reasonable and nonprejudicial distance rates prescribed and reparation awarded. Goldsboro Chamber of Commerce v. A. C. L. R. R. Co., 91 I. C. C. 315.

(hh) Interstate rates on sugar beets between points in Ohio and Michigan, which are higher than contemporaneous intrastate rates between points in same States, found unreasonable and unduly prejudicial to interstate shippers, unduly preferential of intrastate shippers, and unjustly discriminatory against interstate commerce. Reasonable maximum distance scale of rates prescribed. Continental Sugar Co. v. N. Y. C. R. R. Co., 91 I. C. C. 677.

(ii) Complainant attacked commodity rates on cottonseed, carloads, from 55 points in Oklahoma to Dallas and Forth Worth, Tex., since Sept. 5, 1920 as unreasonable and in violation of the aggregate of the intermediates. In 80 I. C. C. 18 the Commission found unreasonable rates on cottonseed from Oklahoma, Arkansas and Louisiana to Fort Worth to extent they exceeded for like distances the rates contemporaneously in effect on cottonseed between Shreveport, La., and points in Texas up to 360 miles, plus certain charges for each additional 50 miles, distances to be computed in the same manner as in the application of the rates between Shreveport and points in Texas. For the future the Commission prescribed a distance scale of rates for single line and joint line application up to 550 miles, the same as the scale of rates prescribed in 77 I. C. C. 473. The rates prescribed for the future became effective August 15, 1923. They apply from certain of the points named in the instant case. The rates proposed by complainants in the instant case are constructed in the same manner as those proposed in case mentioned. HELD, rates attacked unreasonable prior to August 15, 1923 to extent they exceeded for like distances rates applied from Shreveport to Texas, reparation awarded. International Vegetable Oil Co. v. A. T. & S. F. Ry., 100 I. C. C. 240.

(jj) Respondents proposed a general revision of all class rates, both interstate and intrastate, between points in southern Missouri, described as B territory, and between points in B territory and points in northern Missouri, Kansas, Nebraska, Oklahoma, Arkansas defined territories and other sections. The proposed rates are based on a maximum distance scale which would cause substantially increased rates to and from most of B territory and southeastern Kansas points, but would result in reduced rates between certain southeastern Missouri points and St. Louis, Mo., East St. Louis, Ill., and other points where the socalled Memphis-Southwestern scale is now in effect. Missouri B territory described in

the suspended schedules as being that part of the state south of the M. P., from St. Louis to Labaddie, Mo., thence south of the Rock Island to a point just west of Holden, Mo., where the Rock Island crosses the Katy and thence south of that line to West Line, Mo., on the Kansas border. Under the schedules now in effect B territory is south of the M. P., from St. Louis to Kansas City but owing to the construction by the Rock Island of a line between those cities, respondents decided to include the latter line in the northern Missouri or A territory. Since about 1904 the carriers have divided the state of Missouri into these two class rate groups. This record indicates that there is practically no movement between points in A territory north of the boundary line and points in B territory. Both protestants and respondents appear to agree that the present class rate structure in southern Missouri is badly in need of revision and that a uniform scale of rates should be established to eliminate the existing discriminations and preferences. The facts as disclosed in this record indicate that conditions in B territory do justify a higher level of rates than are in effect in the northern part of the state. The competitive conditions, which in the past have been responsible for the interior adjustment in western trunk line territory find no counterpart in B territory. The greater density of traffic through A territory is an argument against a uniform scale of rates for the whole state. HELD, respondents have not justified the suspended schedules but rates based on the single line scale and joint line differentials set out in Appendix C would be reasonable maximum rates for application on interstate traffic, to, from, and between points in Missouri B territory. Recognized bridge arbitraries at Mississippi river crossings may be added wherever and to the extent they now apply, and the rates to and from defined territories should be based on the present differentials over the river crossings. The rates to and from points in western Missouri should be observed as minima to and from points in southeastern Kansas where necessary to comply with the fourth section. The rates from St. Louis to Pittsburgh should not be less than the rates to Joplin, these being competitive jobbing points about the same distance from St. Louis. Appendix C ranges from 33c first class for 10 miles to 157c for 500 miles single line, with first class arbitrary of 8c for joint line. Class rates between Missouri and interstate points, 100 I. C. C. 274.

(kk) Complainant attacked commodity rate charged on 46 cars of salt, shipped between August 16, 1921 and May 12, 1923 from Salduro, Utah, to Montana as unreasonable. Salduro is a station on the W. P., 113 miles west of Salt Lake City. Other salt producing points are Crystal Junction, and Saltair Junction, 11 and 14 miles from Salt Lake City; Burmester, on W. P., 31 miles west of that city, Kosmos, on S. P., 70 miles west of Ogden. In 78 I. C. C. 659 the Commission prescribed a distance scale on salt from Saltair Jct. and Crystal Jct. to main line points in Montana, Idaho and Washington; and from the same points to branch line points in those states the Commission prescribed arbitraries, and following this order, rates in accordance therewith were established from Salduro. HELD, between August 16, 1921 and May 12, 1923 rates attacked unreasonable to extent they exceeded rates required in 78 I. C. C. 659, reparation awarded. Capell Salt Co. v. C. M. & St. P. Ry., 101 I. C. C. 34.

(ll) In 74 I. C. C. 419 the Commission authorized the establishment of rates on livestock, in carloads, to, from, and between points in the southeast based on distance scales which had been agreed upon by the shippers and carriers, in lieu of the rates under suspension. Upon informal complaints that certain lines under common management and control had applied the joint line rather than the single line rates under the agreed scales, the Commission reopened the case. In prescribing scales of distance rates for single and joint line hauls, the Commission has almost invariably required lines under a common management and control to apply the single line rates. HELD, respondents have not justified the joint lines rates via the following lines: Southern, C. N. O. & T. P., A. G. S., N. O. N. E., G. S. & F., and N. A. Ry.; A. & W. P. R. R., W. Ry. of Ala.; and I. C., and Y. & M. V. Livestock to, from, and between points in the southeast 101 I. C. C. 103.

(mm) In 69 I. C. C. 207 the Commission found that the carload rates on grain, grain products, hay and straw,

and related articles from Oklahoma to Texas were unreasonable, unduly prejudicial to Oklahoma and prescribed new rates Oklahoma to Texas without disturbing the Texas intrastate rates. Complainant attacked carload rates on grain and grain products from Pan Handle of Texas and from eastern New Mexico to Kansas City, Mo., as unreasonable and unduly prejudicial. Complainant attacked rates on flour and grain products from Oklahoma, Kansas, Nebraska, Missouri and Colorado to Texas and Louisiana as unduly prejudicial. Complainant attacked rates and minima on hay, carloads, from northeastern Oklahoma to northern Texas taking Group A rates as unreasonable and unduly prejudicial. Complainant attacked rates on grain, grain products and hay between Oklahoma and Arkansas, Missouri and Kansas as unreasonable, and unduly prejudicial. Under the Texas intrastate scale the rates are graded up to 200 miles, but are blanketed at 32.5c on flour, 28c on wheat, and 25c on coarse grains for all hauls in common point territory in excess of 200 miles. Graduated differentials are added to the common point rates to and from differential territory. The Commission found that transportation conditions from Oklahoma to Texas were not substantially different from transportation conditions within Texas common point territory. Under the basis upon which grain is sold in this territory, the level of the rates, especially the rates to the Gulf ports, directly affects the prices which the farmers receive. HELD, rates on grain, grain products, hay and straw, and articles taking the same rates or rates related thereto, in carloads, from points in Oklahoma to points in Texas common point territory on and east of the line of the Santa Fe system extending from Higgins through Amarillo, Tex., to Lubbock, Tex., and to points on the Spearman branch of the Santa Fe as unreasonable to extent they exceeded rates set forth in section A between the respective points of origin to Texas except that rates from points on the Rock Island, Texhoma to Tyrone, Okla., should be made by adding 3c to rates ultimately established from Amarillo to Texas points. That rates on the same commodities, carloads, from Oklahoma to points in that section of the Texas Panhandle west of the above mentioned line, unreasonable to extent they exceed rates prescribed to Amarillo by more than 1c to points on the Ft. W. & D. C., west of Amarillo, and including Dalhart, Tex., on the Rock Island west of Amarillo, and on the Santa Fe west of Canyon, and 2c to points on the Ft. W. & D. C., west of Galhart, and on the Rock Island, Stevens, Tex., to Bravo, Tex., excepting Dalhart. The rates from Oklahoma to that portion of Texas differential territory not hereinbefore provided unreasonable to extent they exceed rates made by adding to the scales prescribed the scale of differentials set forth in section B of the appendix such differentials to be applied only to the mileage within differential territory. That the present relationship between the interstate rates from Oklahoma to Texas and the intrastate rates applying within Texas will be unduly prejudicial to Oklahoma. Mo. 13406. Rates on wheat and flour from the central and southern parts of Oklahoma to Kansas City are generally somewhat higher than the scales prescribed from Oklahoma to Texas but rates from the northern part, owing to the fact that they are graded into the lower rates from Kansas to Kansas City, are somewhat under that scale. HELD, rates on grain, grain products and straw and hay between Oklahoma and Kansas and Missouri unreasonable to extent they exceed rates shown in section A of the Appendix. Nothing here said should be construed as authority to increase any existing rates from Oklahoma to Kansas or Missouri where lower than the maximum scale here prescribed. It is not shown that the relationship between the interstate rates between Oklahoma and Missouri and Kansas and the interstate rates between Kansas and Missouri is unduly prejudicial to Oklahoma. No. 13518. The record establishes that the rates on grain and grain products from the Panhandle of Texas, and in certain points from eastern New Mexico, to Kansas are relatively higher than rates from the same points of origin to Texas, that dealers at Kansas City purchase grain, especially wheat and the sorghums, in those sections in competition with dealers located in Texas, and that there are no transportation conditions surrounding the movement to Kansas City, as compared with the movement to Texas, that justifies the higher level of rates to the former. HELD, rates attacked from Pan

Handle of Texas to Kansas City will be unreasonable to extent they exceed section A of Appendix, and from eastern New Mexico to extent they exceed the addition of the scale of differentials in section B of the appendix. The Commission will leave to the Texas Commission such action as may be necessary to remove the undue prejudice found to exist by reason of the present intrastate rates in Texas. No. 14321. The uncontroverted testimony of complainant is that cars under 36 ft. in length can not be loaded to the present minimum of 20,000 pounds, but it appears that 18,000 pounds can be loaded. HELD, minimum of 20,000 pounds unreasonable to extent it exceeds 18,000 pounds. Fourth section applications denied except defendants will be authorized to establish and maintain, via all routes between the points covered by this report, the lowest rates prescribed herein as maximum rates via any route between the said points, and to maintain higher rates from, to and between intermediate points; provided that the rates from, to or between said intermediate points shall not exceed the respective scales of rates prescribed herein, and shall in no case exceed the lowest combination and provide further than the relief herein authorized shall not apply, where the distance over the short line or route is 500 miles or less and the longer line or route is more than 70% circuitous; where the distance over the short line or route exceeds 500 miles but does not exceed 1,000 miles and the longer line or route is more than 50% circuitous, except that in instances where the short line or route exceeds 500 miles and the longer line or route does not exceed 850 miles, relief will apply to such longer line or route even though the latter is more than 50% circuitous. Where the distance over the short line or route exceeds 1,000 miles and the longer line or route is more than 33 1-3 per cent circuitous, except that in instances where the short line or route exceeds 1,000 miles. and the longer line or route does not exceed 1,500 miles, relief will apply to such longer line or route even though the latter is more than 33 1-3 per cent circuitous. Section A of Appendix prescribes 10 miles and under single line wheat and flour 7c, joint line 10c, single line coarse grain 6c joint line 9c and on hay single line 8c joint line 11c to over 800 miles, single line wheat and flour 41c, joint line the same, single line and joint line on coarse grains 37c, and on hay, single and joint line 44c. Section B prescribes differentials on wheat, flour, hay and articles taking same rates 25 miles and under 1c, coarse grains 1c, over 400 miles 9c and 8c respectively. Oklahoma Corporation Commission v. A. & S. Ry., 101 I. C. C. 116.

(nn) Complainant attacked commodity rates on beef and feeder cattle from Arizona to California as unreasonable, unjustly discriminatory and unduly prejudicial. Arizona feeder cattle are lighter and consequently less valuable than those produced in Texas, Oklahoma and the northwestern states. The facts presented on this record indicate that the single line rates on beef cattle from Arizona to California are, in general, reasonable, and that it would be improper to reduce them to the level of the 1716 scale. In recent cases involving livestock the Commission has not authorized the addition of joint line arbitraries for distances in excess of 500 miles, and that principle would be applied to the rates here attacked. The same is true of additional charges for shipments from and to branch points. Branch line operation is probably somewhat more expensive than that on main lines, but there appears to be no uniform recognition of this fact in construction of livestock rates. The level of rates herein approved would be remunerative if applied to the movement from Arizona to California as a whole, including those involving branch line service. Under present conditions it would seem that the rates on feeder cattle from Arizona to California should be not more than 80 per cent of the rates on beef cattle. HELD, rates attacked unreasonable to extent they exceed single line the rates shown in Santa Fe I. C. C. 9975, the branch lines to be on same basis as main lines, and rates on feeder cattle 80 per cent of beef cattle. Arizona Cattle Growers Asso. v. Apache Ry., 101 I. C. C. 181.

(oo) Rock Island, respondent, proposed to cancel present distance scale of rates on brick and related articles, carloads, from Carbon Cliff, Ill., to Iowa on Rock Island and to apply in lieu thereof distance scale of group rates in effect from Illinois points to destinations in

Iowa, whichever produces the lower rate. Davenport is on the west bank of the Mississippi river. Rock Island is directly opposite on the east bank. Carbon Cliff is 11 miles from Davenport and 10.2 miles from Rock Island. Gilchrist, Ill., 29 miles from Rock Island is served by the Burlington and Rock Island Southern, a shale plant being located there. Present rates from Carbon Cliff are the distance rates under the Iowa scale applied to the mileage from Davenport to destination, minimum haul 15 miles, and are materially lower than those in effect from Shale City to the same destinations. The issues of undue prejudice need not be decided in view of the admitted fact that rates here under suspension are unreasonable per se. The record is too meager to afford a basis for prescribing a rate from Shale City and Carbon Cliff to Iowa. HELD, schedules not justified. Rates on brick from Carbon Cliff, 101 I. C. C. 297.

(pp) Respondents proposed to increase the scale of distance rates applicable from and to points in Iowa on interstate shipments of butternut, cherry, holly, mahogany, and walnut lumber maximum increase 5c. From Des Moines to west bank Mississippi river crossings there are no specific commodity rates. The Iowa lumber scale produces rates of 12c to Burlington and 11.5c to other points. A specific proportional rate of 13.5c is in effect from Des Moines to the upper east bank Mississippi river crossings prescribed in 64 I. C. C. 673. Rates are made to points east of the Illinois Indiana state line based upon this proportional and specific proportionals in effect from the east bank points to destinations. The east bank combination is lower to most destinations in central territory and the west bank combinations to most destinations in trunk line territory. To destinations in the extreme east the spread between the rates produced by the two bases is only 2c. The fact that protestant has been favored with a basis of interstate rates on walnut lumber lower than that available to other shippers in western trunk line territory is no justification for the continuation of this lower basis. HELD, schedules justified. Lumber from and to Iowa points 101 I. C. C. 299.

(qq) Respondents proposed to establish revised commodity rates on 10 commodities in compliance with the order in 77 I. C. C. 473. Generally speaking the proposed rates are for application between points in Arkansas, Louisiana west of the Mississippi river, southern Missouri, and a few points in southeastern Kansas, eastern Oklahoma and eastern Texas; and between such points, on the one hand, and defined territories in central western trunk line, and southern territories, on the other, the rates to and from the defined territories being predicated upon differentials over Kansas City and St. Louis, Mo., or other river crossings. WOODEN BARRELS CASKS, KEGS. Western classification rates loose barrels, casks, kegs, etc., third class, minimum 10,000 pounds, and tight barrels, casks, kegs, etc., fourth class, minimum 12,000 pounds, subject to rule 34. Third class is 70 per cent and fourth class 60 per cent of the first class rates. HELD, proposed rates justified, but differentials on such traffic from defined territories in excess of existing differentials not justified. BAKERY GOODS INCLUDING BISCUITS BREAD CRACKERS CAKES CRACKER DUST AND RELATED ARTICLES. Bakery goods are rated fourth class minimum 20,000 pounds. The proposed scale for single line hauls is about 52 per cent of the first class scale. Proposed joint line scale is 5c higher than the single line scale for distances greater than 5 miles. HELD, respondents have not justified proposed rates and for future reasonable maximum rates on these points will be those shown under Table 15, Appendix 8, in 77 I. C. C. 473. CANS BOXES PAILS ETC. IRON STEEL OR TIN. Under exceptions many of these articles are rated fourth class in the southwest, although some, take third class ratings. The proposed scale for single line hauls is about 50 per cent. of the first class scale. Special rates, substantially less than 50 per cent of the first class rates, are proposed for application on tin cans from Chicago, Hoopeston and Maywood, Ill., to 12 points in this territory. The proposed scale for joint line hauls is from 5 to 2c higher than the proposed single line scale for distances to and including 500 miles, but for distances in excess of 500 miles the proposed scales for joint line and single line hauls are the same. HELD, proposed rates not justified, reasonable maximum rates are those shown in Table 15 Appendix 8, in 77 I. C. C. 473. WIRE

FENCING WIRE NAILS STAPLES ETC. Most of the articles included in this group are rated fifth class. These articles generally move on commodity rates in the southwest. The proposed scale for single line hauls is about 26 per cent of first class. The proposed joint line scale is from 2c to 1c higher than the proposed single line scale for distances to and including 500 miles; beyond 500 miles the proposed single line and joint line scales are the same. To make rates on these articles from defined territories to the territory under consideration respondents propose to add fifth class differentials to the rates proposed from St. Louis and other basing points. These differentials are now in force from defined territories to most of the territory under consideration. HELD, proposed rates justified, but respondents will be expected to amend the joint line scale so as to make the differential over the single line scale 1c, instead of 0.5c for distances of 381 to 400 miles. BUTTS HINGES DOOR HANGERS, ETC. Some of these articles are rated fourth class others fifth class in western classification. In many instances commodity rates apply from and to the territories under consideration. Proposed rates are 39 per cent of first class scale. No serious objection was interposed. HELD. proposed rates justified. FRESH MEATS AND PACKING HOUSE PRODUCTS. Respondents proposed the rate that would be applicable for the highest rated 1716 block wholly or partly included in the larger Memphis-Southwestern blocks. HELD, schedules not justified. Rates shown in distance scales in Appendix A will be reasonable rates. STOVES STOVE FURNITURE RANGES ETC. Most of these articles are rated fifth class, in western classification, although some stoves and certain stove furniture are given ratings higher than fifth class. Proposed single line scale is about 42 per cent of first class. HELD, schedules not justified, but reasonable maximum rates are those in Table 14, Appendix I, in 77 I. C. C. 473. PULL AND SUCKER RODS. Pull rods are rated class A and are grouped with oil well outfits or supplies in western classification. That classification rates sucker rods fifth class when made of iron and steel or combination of wood and iron. Proposed scale is the same as that appearing under Table 12, Appendix 8 in 77 I. C. C. 473. That scale, approximating 30 per cent of the first class scale, was prescribed for application on bags, soap and potatoes. The record discloses no heavy movement of these articles in the territory under consideration. HELD, schedules justified. WOODENWARE. Woodenware is rated fourth class, proposed scale for single line application is about 50 per cent of first class. It appears it was not respondents intention to cancel present rates on straight or mixed carloads of butter and lard tubs from Blytheville, Ark. They state it is not necessary to change the northbound rates from Blytheville to remove undue prejudice. The movement of butter tubs is heavier than that of ither varieties of woodenware. HELD: Proposed rates not justified, reasonable maximum rates being those under Table 15, Appendix 8, in 77 I. C. C. 473. The present rates on butter and lard tubs from Blytheville may be continued. GENERAL PROVISIONS. The scales of rates prescribed herein should be made applicable from and to points on class A railroads as designated in 77 I. C. C. 473, requiring that in determining the rates prescribed the direct routes, embracing as a maximum that lines or parts of lines of not more than three carriers not under common ownership and control, via existing connections for the interchange of carload traffic. An arbitrary of 2c may be added to the rates to and from Memphis for the river crossing at that point; and arbitraries of 2.5c for the crossings at Vicksburg, Baton Rouge and New Orleans. Distance rates on fresh meats and packing house products prescribed as per Appendix A., ranging single line 15c joint line 19c for 5 miles and under on fresh meats, and 12c single line 15c joint line on packing house products to 97c on fresh meats and 82c on packing house products over 800 miles, Memphis bridge toll 2c on each. Commodity Rates in Southwestern Territory, 101 I. C. C. 308.

(rr) Complainant attacked rates charged on wrought iron or steel pipe, carloads, between Oct. 1, 1922 and Nov. 27, 1923, from and to numerous points in Louisiana, except Shreveport, to and from points in Arkansas as unreasonable and unduly prejudicial. In 96 I. C. C. 81 the Commission found the rates to Arkansas unreasonable to extent they exceeded rates intrastate in Louisiana and awarded reparation, but found rates from

Shreveport to Arkansas not unreasonable. Upon reconsideration, HELD, previous finding affirmed. Texas Co. v. K. C. S. Ry., 101 I. C. C. 345.

(ss) Complainant attacked carload rates on soap, soap powders, and scouring and cleaning compounds from c. f. a. and western trunk line territory to Oklahoma, Arkansas, Texas, Louisiana west of Mississippi river, southern Missouri, southern Kansas and eastern New Mexico, as unjust and unreasonable; that the rates from South Omaha, Dallas, Fort Worth, Houston, Kansas City and Oklahoma City to Memphis, Vicksburg, Baton Rouge and New Orleans are unreasonable that rates on lard substitutes and vegetable cooking oils, carloads from Houston, Tex.to Arkansas and Louisiana are unreasonable; that rates on these commodities from Sherman, Tex., to the same territory are unjust and unreasonable and unduly prejudicial. Respondents proposed to increase rates and lard substitutes, carloads, from New Orleans to El Paso, Tex., and grouped points. The term "present rates" as used herein in connection with soap refers to the rates in force prior to Nov. 27, 1923, the date on which rates under the 9702 scale went into effect. **Soap.** The evidence relates almost exclusively to common or so-called laundry soap, which comprise about 95 per cent of complainants soap shipments. Soap is rates fifth class in official and western classification territories. It is packed in baxes or barrels, uniform and convenient in size, weight and form, to permit easy handling and economical stowage in the car. Claims for loss or damage are negligible. From a transportation standpoint soap is a desirable commodity. Commodity rates generally apply from St. Louis and Kansas City. **Rates to New Mexico.** Because of higher operating costs, rates to New Mexico are and should be on a higher level than rates to the more populous regions of the southwest. New Mexico is somewhat analogous to the sparsely settled Texas differential territory, to which rates are on a higher basis than to Texas common points. The record does not afford a basis for a conclusion respecting the adjustment to New Mexico. **Texas Adjustment.** In 40 I. C. C. 699 the Commission prescribed carload rates from St. Louis and Kansas City to Dallas, Fort Worth, Paris and Denison on numerous commodities, including soap which were lower than those applicable to the remaining portions of what is generally known as Texas common point territory. Rates on the basis then prescribed were established from Kansas City and St. Louis and a few other points in the vicinity of the latter, but not from other points in the Kansas City and St. Louis groups and rates from defined territories which usually base over St. Louis or Kansas City were not similarly adjusted. The rates then prescribed, modified by the subsequent general changes, are still in effect, On this record there is no reason to disrupt the adjustment established following the case cited. With certain exceptions, rates to Texas common point territory from St. Louis and other so-called defined territories, except Kansas City, have been upon a group basis for many years. **Rates from Points Beyond St. Louis and Kansas City.** From points east of the Mississippi river to Southwestern territory generally the rates are based on differentials over St. Louis. These differentials, added to the rates from St. Louis, locals or proportionals, compose the thru rates. The record with respect to rates from defined territories beyond Kansas City and St. Louis is comparatively meager. **Conclusions Soap and Related Articles.** HELD: Rates attacked unreasonable to extent: from Kansas City, Kans., and St. Louis, Mo., to Arkansas, Louisiana west of Missisippi river, to points in Missouri south of the Missouri river, in Kansas on and south of the Santa Fe through Dodge City, Great Bend McPherson, Emporia, and Ottawa Junction, and in Oklahoma, where and to extent they exceed rates under table 12 of Appendix 8 of 77 I. C. C. 473; from St. Louis, Mo., to points in Texas now subject to Texas common point rates on soap to extent they exceed 71c; from Kansas City, Kans., to points in western and north central Texas subject to Dallas-Fort Worth group rates to extent they exceed 64c to Dallas, Fort Worth, Paris, Denison and Greenville, Tex., to extent they exceed 66c from St. Louis and 57.5c from Kansas City; from Kansas City and St. Louis to Texas differential territory to extent they exceed 71c, plus the present arbitrary over Texas common points, where rates to such points are now constructed differentially over Texas common points, and to extent they exceed 64c plus present arbitrary over Dallas-Fort Worth group. where rates are now constructed differentially over the latter group. **Lard and Lard Substitutes.** They are used for the same purposes and are in active competition. They are practically

always listed in the packing house product list of the various tariffs, although there are instances where they move under specific commodity rates. They move in box cars, are put up in similar packages for shipping, and from a transportation standpoint are substantially alike. Lard is strictly a hog product, with no other ingredient added. Lard substitutes is, generally speaking, a vegetable product. It is made in solid, semi-solid and liquid form **1716 Scale.** In 22 I. C. C. 160 the Commission prescribed a scale of rates for application for distances up to 1,000 miles to the transportation of packing house products, carloads, between new Mexico, Texas, Oklahoma, Arkansas, Missouri south of the Missouri river, and Louisiana west of the Mississippi river, also from Wichita, Kans., to points in that territory. This is known as the 1716 scale. Defendants expressed willingness to establish the 1716 scale for application from Houston and Sherman to the territory covered by these complaints. **Rates from Dallas, St. Louis, New Orleans and Memphis.** The 1716 scale has not been prescribed for application between New Orleans or Memphis and the destination territory here involved. To Texas common points the rates are made differentially under St. Louis. From Memphis to Arkansas points they are substantially on the 1716 scale plus a bridge arbitrary, and to Louisiana, Oklahoma, southern Missouri and southern Kansas they are higher than the 1716 scale. From New Orleans to Louisiana and Arkansas the fifth class rates were originally used as a basis, but by reason of increases in the class rates the commodity rates are now below the class basis. To southern Missouri and southern Kansas points the rates from New Orleans are based on Memphis. To Arkansas destinations the Memphis combination is lower than the applicable rate. To Oklahoma and New Mexico the rates from New Orleans generally, are on the basis applying from St. Louis and Chicago, respectively. **Rates to Mississippi River Crossings.** The attacked rates rates in a majority of instances on lard substitutes to Memphis, Vicksburg, Baton Rouge and New Orleans are lower than rates which could be established under the 1716 scale. **Rates to New Mexico.** Present rate Kansas City to Albuquerque is $1.215 for a distance of 884 miles. Specific commodity rates, subject to the alternative application of the 1716 scale when it would make lower rates, are maintanied by the Santa Fe from Wichita, Oklahoma City, Fort Worth and Dallas to Albuquerque and northern New Mexico points. **Rates from Points Beyond St. Louis and Kansas City.** The record indicates that rates to Oklahoma, Arkansas, Texas and Louisiana from points north and east of St. Louis are generally constructed on differentials over the rates from St. Louis similar to those applied on soap. No reason appears why existing differentials should be changed. **Lard and Related Articles—Conclusions.** The 1716 scale was originally designed to cover movements between Fort Worth, Oklahoma City and Wichita, on the one hand, and comparatively sparsely settled regions in New Mexico, Texas, and Oklahoma. For that reason throughout the scale the increase in the rate kept fairly even pace with the increase in distance. This is in contrast with principles generally observed at the present time in the construction of distance scales of rates and of rates generally. Ordinarily, where the territory traversed is reasonably homogeneous from a transportation standpoint, as the distance increases the increase in rates become relatively less. Rates attacked from St. Louis, Kansas City, New Orleans, Memphis, Dallas, Fort Worth, Sherman, Greenville, Taft, San Antonio, and Houston, Oklahoma City to destination territory involved unreasonable to extent they exceed rates shown in appendix B plus 2c arbitrary for bridge from Memphis, and 2.5c arbitrary for crossings at Vicksburg, Baton Rouge and New Orleans, nothing to be construed to increase proportional rates or rates on packing house products where they are less than the 1716 scale. From S. Omaha, Omaha, Sioux City and St. Paul unreasonable to extent they exceed rates from Kansas City by more than 9c from Omaha and South Omaha, 14c from Sioux City and 23c from South St. Paul, and from South St. Joseph to Oklahoma and Texas unreasonable to extent they exceed rates from Kansas City. Rates from Houston to Louisiana and Arkansas unreasonable to extent they exceeded 1716 scale, subject to general advances and reductions, reparation awarded. **General Provisions.** The findings herein do not relate to rates over lines east of the Mississippi river and south of Cairo, Ill. In addition to lines other than class A in Arkansas and western Louisiana, similar lines in other parts of the territory covered by the findings now receiving arbitraries over the normal rates will be permitted to add to the maximum rates herein prescribed the present arbitraries received by them.

Joint line rates shall be applied only when the lines embraced in the route are not under a common ownership or control. Distances shall be determined by the shortest route, embracing the lines or parts of lines of not more than three lines not under common ownership or control, via existing connections for the interchange of carload traffic. I. & S. 2242. The suspended schedules proposed to increase the rates of $1.01 then in effect on lard substitutes, carloads, from New Orleans to El Paso to $1.39. The schedules should be canceled. Appendix B names rates ranging from 12c single line and 15c joint line for 5 miles and under to 94.5c single and joint line over 1,200 miles. Proctor & Gamble Distributing Co. v. St. L. S. F. Ry., 101 I. C. C. 563.

(tt) Complainant attacked commodity rates on petroleum oil, including gasoline, carloads, from Casper, Wyo., to Colorado points as unreasonable, but as complaint was withdrawn, it will be dismissed. Complainant attacked commodity rates on petroleum oil, including gasoline, from Casper, Wyo., to Montana as unreasonable, unjustly discriminatory, and unduly prejudicial as compared with the rates from Greybull and Cowley, Wyo., to Montana points. Casper is on the Burlington and Northwestern. Greybull and Cowley are on the former line about 202 and 245 miles northwest of Casper. A history of the rates from Casper and Greybull to 39 points in Montana said to be representative shows that on July 24, 1918, Greybull generally enjoyed a rate of 10c less than Casper. With the increases in 1920 this difference became 12.5c. Following the general reductions of 1922 the differences became 11 and 11.5c. On Sept. 15, 1922, the rates from Greybull were reduced but no corresponding reduction was made from Casper. The average difference, Casper over Greybull, to all points in Montana is about 22.5c. Rates from Greybull are generally based upon the so-called Montana distributing scale, which scale was prescribed by the Montana Commission for intrastate application and subsequently applied by defendants for interstate application. Defendants expressed a willingness to establish from Casper the same scale of rates as now applies from Greybull subject to the present rates of 95c to Spokane as maximum. The rates proposed would be practically the same as those from Greybull to points in Montana equally distant from Casper except where maximum rates are in effect. The record indicates that the proposed rates would compare favorably with the rates in effect from Miles City and Billings, Mont., and Seattle, Wash., to Montana, Idaho and Washington. The proposed rates would also compare favorably with the rates for equal distances from Casper to other points in Wyoming, as well as points in Utah and Idaho, and from Richmond, Calif., and Salt Lake City to California, Nevada, Oregon, Utah and Arizona. HELD: Rates attacked not unreasonable but unduly prejudicial to extent the rates from Casper exceed those from Greybull by more than the differences between the rates for the respective distances from each point to destination under the Montana distributing scale, subject to present rates from both points to Spokane as maxima. Montana distributing scale ranges from 11c for 5 miles to 97c for 700 miles. Texas Company v. C. B. & Q. R. R., 101 I. C. C. 734.

(uu) Rates on pulp wood from points in Idaho to Millwood, Wash., found unreasonable to extent that factor to Spokane exceeded by more than $4 the Northern Pacific's charge for the switching movement at Spokane, the corresponding factor subsequently established in conformity with the distance scale found reasonable by commission in Wood Rates between North Pacific Coast Points, 61 I. C. C. 159. Reparation awarded. Inland Empire Paper Co. v. C., M. & St. P., 92 I. C. C. 29.

(vv) Upon further consideration, original report 85 I. C. C. 217, rates on wheat and corn from South Dakota points to Omaha, in connection with the C., M. & St. P. Ry., as delivering line, found unreasonable to extent they exceed rates that would obtain under the distance scale of rates prescribed in 73 I. C. C. 347, 357, subject to rates in effect via the C. & N. W. as representing the lowest rates required. South Dakota R. R. Commrs. v. C. & N. W., 92 I. C. C. 174.

(ww) In original report, the commission prescribed distance rates on class and commodities between Meridian, Miss., and points in Alabama equal to Alabama intrastate rates. Upon further hearing, rates on hay and gravel between Meridian and points in Alabama found not so related to intrastate rates on the same commodities within Alabama as to require continued operation of prior orders with respect to such rates. Prior reports, 60 I. C. C. 5, and 66 I. C. C. 179, modified. Meridian Traffic Bureau v. S. Ry., 92 I. C. C. 439, 442, 446.

(xx) Upon reconsideration, rates assessed on sporadic shipments of pipe from Gahagan, South Mansfield, and Harmon, La., and on oil-well supplies from Gahagan and Mansfield, to El Dorado, Ark., found excessive as compared with numerous rates fixed by commission on these commodities for application in the Southwest, and unreasonable to extent those on the pipe exceeded rates prescribed in 77 I. C. C. 473, and on the oil-well supplies to extent they exceeded those prescribed in 58 I. C. C. 610, for similar distances. Reparation awarded and former report, 85 I. C. C. 753, reversed. Crawford & Sebastian v. C., R. I. & P., 92 I. C. C. 453.

(yy) Rates on fertilizer and fertilizer compounds, c. l. and l. c. l., from Little Rock to Texas points found unreasonable for future to extent they exceed for all distances to Texas common-point territory the distance scale of single-line and joint-line rates prescribed in Memphis-Southwestern Investigation, 55 I. C. C. 515, as modified by subsequent general increases and reductions, and to Texas differential territory to extent they exceed same distance scales plus present differentials on traffic from Little Rock to destinations in Texas differential territory. Arkansas Fertilizer Co. v. A. & S. Ry., 92 I. C. C. 504.

(zz) Rates on slag from producing points in eastern Pennsylvania to destinations in New York, New Jersey, Delaware, Maryland, Virginia, and District of Columbia, found unreasonable and unduly prejudicial to extent they exceed rates on crushed stone. Reasonable and nonprejudicial distance scale of rates prescribed for future. Duquesne Slag Products Co. v. P. R. R., 92 I. C. C. 554.

(3a) Proposal to restrict basis for computing distance for application of mileage rates on brick and articles taking same rates between points in Oklahoma and Texas and between points in Arkansas and Oklahoma, to distances over routes embracing as a maximum, lines, or parts of lines of not more than three carriers, without exception, found not justified. Increases in rates will result to certain destinations in Texas to which short line distances from Oklahoma are now figured over four or more lines: Texas intrastate rates are figured by use of routes embracing more than three lines; and schedules on other commodities are not similarly limited. Brick between Oklahoma and Texas Points, 93 I. C. C. 210.

(3b) Rates on iron and steel articles from Niles, Ohio, to Mexia, Tex., found not unreasonable because in excess of rates prescribed in Memphis-Southwestern Investigation, 55 I. C. C. 515; 77 I. C. C. 473, for like distances. Rates prescribed in case cited did not include Texas territory and question of propriety of its extension thereto is pending in another case upon a far more comprehensive record. Standard Boiler & Plate Iron Co. v. P. R. R., 93 I. C. C. 285.

(3c) Rates on clean rice from points in Arkansas, Louisiana, and Texas to points in Oklahoma found unreasonable. The rice adjustment presents many incongruities, rates from producing territories to Oklahoma points being higher than to more distant points in practically all directions, in violation of the fourth section. Jobbers located at points in Arkansas and Texas near the Oklahoma border are able to purchase rice in carloads and distribute in less than carloads to Oklahoma points at transportation charges substantially lower than rice can be similarly handled by Oklahoma jobbers. Reasonable scale of distance rates, which will give each distributing point the benefit of its location, prescribed. Alton Mercantile Co. v. A. & W. Ry., 95 I. C. C. 645.

(3d) Rates on horses and mules between Fort Worth and points in Arkansas, Kansas, Oklahoma, western Louisiana, southern Missouri, portions of Colorado and New Mexico, and in Texas other than differential territory found unreasonable and unduly prejudicial to Fort Worth and unduly preferential of Wichita, Kansas City, St. Joseph, St. Louis, and Oklahoma City. Reasonable and nonprejudicial distance rates prescribed. Horse and Mule Rates in the Southwest, 1924, 93 I. C. C. 479.

(3e) Rates on broken stone or chatts from Joplin, Webb City, and Oronogo, Mo., to destinations in Crawford County, Kans., over the Missouri Pacific, found unreasonable to extent they exceeded rates prescribed in Memphis-Southwestern Investigation, 77 I. C. C. 473, for similar distances involving single-line hauls. Reasonable rates prescribed for the future. Crawford County Commrs. v. St. L.-S. F., 93 I. C. C. 502.

(3f) Use of other than actual distance in applying distance rates on shipments of wrought-iron pipe and other iron and steel articles and oil-well supplies between points in Oklahoma and

points in Kansas, as specifically provided in applicable tariffs, found to have resulted in overcharges. While it was intention of carriers to make rates from farther distant points applicable from unnamed intermediate stations, the tariff as published does not carry out that intent and must be construed against framers. Cosden Oil & Gas Co. v. A., T. & S. F., 95 I. C. C. 116.

(3g) Distance rates and rates related thereto between Chicago, Ill., district, on the one hand, and Michigan City, Valparaiso, LaPorte, and Crown Point, Ind., and intermediate points on the other, based on an arbitrary distance of 70 miles, found unreasonable and unduly prejudicial as compared with distance rates between Chicago and competing points in c. f. a. territory based on actual direct-line distances. Reasonable and nonprejudicial distance rates based on distances via direct routes prescribed. Indiana Chamber of Commerce v. A., T. & S. F., 95 I. C. C. 177.

(3h) Rates on prepared roofing, asphalt shingles, building and roofing paper, roofing cement, and related articles from East St. Louis and Kansas City to points in Oklahoma found unreasonable. Reasonable scale of distance rates prescribed. Certain-Teed Products Corp. v. A. & L. M. Ry., 95 I. C. C. 273.

(3i) On further consideration, original report 89 I. C. C. 508, rates on animal manure from Perth and Lovelock, Nev., to certain eastbound transcontinental groups found unreasonable. Reasonable rates prescribed by taking average distance to representative points in the respective groups and applying thereto the Calivada scale approved in 73 I. C. C. 496, extended to distances in excess of 800 miles. Reparation awarded. Pacific Manure & Fertilizer Co. v. A. & R. R. R., 95 I. C. C. 430.

(3j) Fifth-class rates on wrought-iron pipe from Goose Creek and Docbrown, Tex., to Olivier, La., and from Goose Creek to Anse La Butte, La., found unreasonable as compared with lower commodity rates contemporaneously in effect in reverse direction, with lower commodity rates which have been in effect for many years in the same general territory for similar distances, and to extent they exceeded the normal rate on this traffic, based differentially under St. Louis. Reasonable distance rates based upon the scale approved in Memphis-Southwestern Investigation, 77 I. C. C. 473, prescribed and reparation awarded. Humble Oil & Rfg. Co. v. D.-G. C. Ry., 95 I. C. C. 435.

(3k) Upon a stipulation of record between the parties, rate on tobacco from Savannah, Ga., to Havana, Fla., found unreasonable to the extent it exceeded a lower rate equal to the Georgia scale for a distance similar to that here involved. Reparation awarded. American Sumatra Tobacco Co. v. A. C. L., 95 I. C. C. 463.

(3l) Rates on cement from Cape Girardeau (Gulf Junction), Mo., to points in Illinois found unreasonable and unduly prejudicial as compared with rates from competing Illinois mills to same destinations and to extent they exceed those which would result under the distance scale of rates prescribed in Atlas Portland Cement Co., 81 I. C. C. 1. Reasonable and nonprejudicial rates prescribed. Cape Girardeau Portland Cement Co. v. B. & O., 95 I. C. C. 632.

(3m) Class C rates on prepared roofing from Port Neches, Tex., to Couchwood, Cotton Valley, and Haynesville, La., and State Line and Emerson, Ark., found unreasonable as compared with rates from St. Louis and Kansas City to same destinations, from Port Neches to Shreveport, Monroe, New Orleans, Vicksburg, and Memphis, and to extent they exceeded lower commodity rates subsequently established equal to basis prescribed in Memphis Southwestern Investigation, 77 I. C. C. 473, 562, for distances the same as those between Port Neches and destinations here involved. Reparation awarded. Texas Pipe Line Co. v. L. & A., 95 I. C. C. 674.

(3n) Rates on wrought-iron and steel pipe from points in Texas common-point territory to points in Little Rock-Fort Smith territory found unreasonable. Reasonable rate prescribed based upon Memphis-Southwestern scale approved in 77 I. C. C. 473, 595, and reparation awarded. Humble Oil & Rfg. Co. v. M. P., 95 I. C. C. 709.

(3o) Proposed readjustment of rates on butter, eggs, and live and dressed poultry from points in Arkansas, Oklahoma, and Texas to certain defined territories and eastern destinations found not justified. Present rates on these commodities from points in Texas to certain eastern destinations found unreasonable and reasonable distance scale of rates

prescribed for the future. Butter, Eggs, Dairy Products, and Poultry, 96 I. C. C. 19.

(3p) Rates from New Albany to other points in Indiana on bituminous coal originating in Kentucky and West Virginia and barged to New Albany down the Ohio River, found unreasonable as compared with rates from Cincinnati, a competing point shipping to the same destinations and to which traffic moves under similar transportation conditions. Moreover, rates for the short intrastate movement are on too high a level as compared with intrastate rates on bituminous coal prescribed by the commission in 66 I. C. C. 338, and numerous other cases. Reasonable distance scale of rates prescribed for the future. Slider v. B. & O., 96 I. C. C. 65.

(3q) Rates on cabbage from St. Francisville, to Monroe, La., via an interstate route through Vicksburg, found unreasonable as compared with rates from and to same points via another route, with distance rates for equal hauls in Arkansas, Texas, and Louisiana, with rate subsequently established via route of movement, and to extent they exceeded rate prescribed for like distances in Natchez Chamber of Commerce, 52 I. C. C. 105; 58 I. C. C. 610; and 63 I. C. C. 288. Reparation awarded. Sugar Bros. Co. v. Y. & M. V., 96 I. C. C. 97.

(3r) Joint fifth-class rates assessed on fabricated steel tank material, k. d., from Shreveport, La., to El Dorado, Ark., found unreasonable as compared with lower commodity rates subsequently established and to extent they exceeded rates based upon distance scale prescribed in Memphis-Southwestern Investigation, 77 I. C. C. 473. Earnings which these rates yield are sufficiently remunerative for a heavy loading commodity of the character under consideration. Reparation awarded. Parkersburg Rig & Reel Co. v. C., R. I. & P., 96 I. C. C. 99.

(3s) Distance scale prescribed by commission in Memphis-Southwestern Investigation, 77 I. C. C. 473, was made without reference to frequency of movement. Parkersburg Rig & Reel Co. v. C., R. I. & P., 96 I. C. C. 99, 101.

(3t) Rates on pulp wood, for joint-line hauls, to Covington, Va., from certain points in southern territory, found unreasonable and unduly prejudicial to complainant and preferential of wood pulp and paper manufacturers at Coleman, Big Island, and Hopewell, Va., Canton, N. C., Kingsport, Tenn., and Bristol, Va.-Tenn. Defendants oppose the establishment of joint mileage scales on this traffic, pointing out that there are no such scales in effect on any traffic between official and southern territories. Reasonable and nonpreferential and nonprejudicial rates based on joint distance scale prescribed for the future. West Virginia Pulp & Paper Co. v. S. Ry., 96 I. C. C. 244.

(3u) Rates on vegetable oils from Oklahoma points to Sherman, Texas, for distances of 325 miles or less, found unreasonable and unduly prejudicial to the extent they exceeded or exceed rates for like distances under the scale prescribed in Proctor & Gamble, 64 I. C. C. 213, graded downward in manner indicated, which scale applies from origin points to Dallas and Fort Worth, competing points, and is in effect from Arkansas and Louisiana points to Sherman. Reparation awarded. Determination of future rates left pending decisions in Corporation Commission of Oklahoma v. A. & S. Ry. Co., and Texas Cottonseed Crushers Asso. v. Same, now before the commission. Texas Chamber of Commerce v. A., T. & S. F., 96 I. C. C. 283.

(3v) Rates on straw from certain points in Illinois to Noblesville, Ind., found not to have been or to be unreasonable as compared with distance rates prescribed in the Straw case, 36 I. C. C. 30. In National Hay Asso., 19 I. C. C. 34, the commission said that the ultimate test from the carrier's standpoint of the reasonableness of a rate must be the return for the occupation and use of its facilities. American Strawboard Co. v. I. C. R. R., 96 I. C. C. 289.

(3w) Third-class rates on butter to Fort Worth, Houston, and San Antonio, Tex., from various points and territories found unreasonable as compared with distance rates in the same general territory on various commodities as prescribed in 77 I. C. C. 473, and 57 I. C. C. 231, and to the extent they exceeded rates based on the distance scale of reasonable maximum rates on butter, eggs, and dressed poultry prescribed in Butter, Eggs, and Dairy Products, 96 I. C. C. 19. Reasonable rates prescribed and reparation awarded. Mistletoe Creameries v. A., T. & S. F., 96 I. C. C. 303.

(3x) Mileage scale of reasonable maximum rates prescribed on shipments

of haydite from Kansas City, Mo., to Memphis, Tenn., and destinations in Iowa, Kansas, Nebraska, Oklahoma, Arkansas, Louisiana, and Texas. Haydite Co. v. A., T. & S. F., 96 I. C. C. 312.

(3y) Rate on crushed asphalt rock from Dougherty, Okla., to Kansas City, Mo.-Kans., assessed under distance scale, found unreasonable as compared with rates contemporaneously in effect on similar commodities for comparable distances in same general territory. Reparation awarded to basis found reasonable and reasonable rate prescribed for future. Roudebush v. A., T. & S. F., 96 I. C. C. 319.

(3z) Fifth-class rates for the transportation of manufactured iron and steel articles from points in the Pittsburgh, Pa., district to St. Louis, Mo., and points in Illinois and Indiana, found unjust and unreasonable to extent they exceed or may exceed, scale prescribed. In computing distances under this scale, the shortest routes by existing connections for the interchange of carload traffic shall be used, embracing as a maximum the lines of not more than three line-haul carriers. Jones & Laughlin Steel Corp. v. B. & O., 96 I. C. C. 682.

(4a) Proposed restriction of the application of distance class rates between points in Nebraska, except Omaha, and points in Wyoming, so as to make them inapplicable from and to points on the lines of the C., B. & Q. lying generally east of Lincoln, Crete, Beatrice, and Wymore, Nebr., resulting in higher specific class rates becoming applicable found not justified. Casper Chamber of Commerce v. C. & N. W. Ry. Co., 96 I. C. C. 736.

(4b) Interstate rates and minimum weights on cottonseed, c. l., between defined points in the Southwest; between such points, on the one hand, and Mississippi River crossings, Memphis to New Orleans, on the other, and from points in the Southwest to East St. Louis, Cairo, and Thebes, Ill., and Kansas City, Mo., found unreasonable to extent they exceed or may exceed rates under the distance scale shown in Appendix 7, subject to a minimum weight of 40,000 pounds, with certain exceptions. Oklahoma Corp. Commission v. A. & S. Ry. Co., 98 I. C. C. 183, 216.

(4c) Contention that addition of joint-line differentials would place defendant Fort Smith & Western at a disadvantage in competition with other trunk lines cannot be sustained. The commission has repeatedly approved the general practice in the Southwest of adding differentials for joint-line hauls, on intrastate as well as interstate traffic, where rates are constructed on a distance basis, and the record does not warrant a reversal of such general practice. Accordingly, joint-line differentials have been prescribed which diminish in proportion to length of haul and are allowed only for distances not exceeding 500 miles. Oklahoma Corp. Commission v. A. & S. Ry. Co., 98 I. C. C. 183, 248.

(4d) In computing distances under scales herein prescribed, shortest routes via existing connections to be used, embracing as a maximum the lines of not more than three line-haul carriers for distances not exceeding 500 miles, not more than four line-haul carriers for distances not exceeding 800 miles, and not more than five line-haul carriers for distances exceeding 800 miles. Lines under common ownership or control will be considered a single line, and each time a portion of the same railroad is used in computing distance it will be counted as a separate line. Oklahoma Corp. Commission v. A. & S. Ry. Co., 98 I. C. C. 183, 249.

(4e) Rates on cottonseed from Oklahoma points to Sherman, Tex., found unreasonable during period up to August 15, 1923, to extent they exceeded rates contemporaneously applied for like distances between Shreveport, La., and points in Texas; and on and subsequent to August 15, 1923, found unreasonable to extent they exceeded or may exceed rates under the distance scale shown in Appendix 7, applied in the manner hereinbefore indicated. Reparation awarded, the similarity of transportation conditions throughout this territory justifying a retroactive rate adjustment to Sherman. Oklahoma Corp. Commission v. A. & S. Ry. Co., 98 I. C. C. 183, 253.

(4f) Following American Sand & Gravel Co., 88 I. C. C. 1, rates on sand, gravel, and crushed rock from certain points in Minnesota to certain destinations in North Dakota found unreasonable to the extent they exceed rates based upon the scale set forth in the appendix to the report, which, except for a small increase for distances over 130 miles, is equal to the present Nebraska

interstate and intrastate scale for the distances here considered, plus an arbitrary of 1 cent per 100 pounds for joint-line hauls. Reasonable basis of rates prescribed and reparation awarded. Hopeman Material Co. v. N. P. Ry. Co., 98 I. C. C. 361.

(4g) Upon contention of complainants that the comparative operating conditions in the portions of Minnesota and North Dakota here considered the Minnesota intrastate scale of rates applicable on sand, gravel, and crushed rock should be held to be a reasonable level of rates for application on these commodities from Minnesota points to North Dakota destinations, FOUND: The record supports the conclusion that there is no justification for the maintenance of any higher level of rates in the one than in the other, and complainants' contention would be correct if the intrastate scale was on a reasonable maximum basis. The commission takes into consideration the level of intrastate rates in reaching a conclusion as to the reasonableness of interstate rates in the same general territory, but it is not bound to adopt the intrastate level of rates as proper for application to interstate traffic. Hopeman Material Co. v. N. P. Ry. Co., 98 I. C. C. 361, 366.

(4h) Proposed increase in rates on sand and gravel from Barnesville, Downer, and Downer Pit, Minn., to Fargo, N. Dak., in order to again place the rates of respondent on a parity with the Northern Pacific's rate from Muskoda, Minn., to Fargo, found not justified. The evidence offered in connection with the formal docket herein considered was also offered with the proposed increase, and it is found that under the scale found reasonable in the formal docket the rate for these distances would be the same as the rate now in effect. Hopeman Material Co. v. N. P. Ry. Co., 98 I. C. C. 361.

(4i) Rate on gravel from Melvin, Minn., to Grand Forks, N. Dak., found unreasonable to extent it exceeded the rate subsequently established between the same points. In another formal docket considered herewith the commission prescribed a distance scale and although a request for rates for the future is not made by complainant in this case, defendant should in the future apply the basis of rates found in that scale to be just and reasonable for this distance for application to movement in the territory in which these points are located, and avoid the filing of a further formal complaint to obtain the same result. Reparation awarded. Hopeman Material Co. v. N. P. Ry. Co., 98 I. C. C. 361, 373.

(4j) Upon further hearing, findings in 77 I. C. C. 473, with respect to rates on fruits and vegetables, other than potatoes, between St. Louis, Mo., Memphis, Tenn., and other Mississippi River crossings on one hand, and points in Arkansas, southern Missouri, and western Louisiana on other, modified so that the maximum scale of distance rates designated in Table 14, Appendix 8 of original report, will apply on berries, peaches, pears, plums, and grapes, and lower scale of rates designated in Table 13 of same appendix on all fruits, vegetables and melons, other than potatoes, berries, peaches, pears, plums, and grapes. Memphis-Southwestern Investigation, 98 I. C. C. 654.

(4k) Complainants attacked commodity rates to Haynesville, La., between July 18, 1921 and May 30, 1922 of wrought iron pipe, carloads, from Breckenridge, Jakehamon, Hall and Goose Creek, Tex., and of oil well supplies, carloads, from Goose Creek, as unreasonable. Complainant attacked rates charged to Haynesville in March and April 1923, of wrought iron or steel pipe, carloads, from Electra, Tex., and of wrought iron or steel pipe fittings, carloads, from Houston and Clinton, Tex., as unreasonable. Haynesville is a local point on the L. & N. W., 32.5 miles north of Gibbsland, La. Breckenridge is about 28 miles north of Cisco, Tex., on the C. & N. E., and the same distance north of Ranger, Tex., on the W. F. R. & Ft. W. Jakehamon is on the W. F. R. & Ft. W., 19 miles south of Ranger. Electra is on the Ft. W. & D. C., 26 miles north of Wichita Falls, Tex. Goose Creek is on the D. G. C. Ry. 23 miles south of Dayton, Tex. Hull is on the B. S. L. & W., 56 miles east of Houston. Clinton is on the T. & N. O., 8 miles south of Houston. The distances at Haynesville are 441 miles from Breckenridge, 482 miles from Jakehaman, 438 miles from Electra, 356 miles from Goose Creek, 313 miles from Hull, 304 miles from Houston and 312 miles from Clinton. Haynesville is located in the northwestern portion of what is

known as the New Orleans group, which takes in practically the entire state of Louisiana, and from Texas common points the same rates generally apply to points in this group. In 95 I. C. C. 709 the commission prescribed group rates on these commodities from Texas common point territory to points in the Little Rock-Fort Smith territory, using as a basis the average distance between points in these groups as applied to table 11, appendix 8 of the 9702 scale, 77 I. C. C. 473. Since the cases referred to the Commission prescribed distance rates on these commodities from Texas common point territory to Little Rock, Ark., and with the addition of a differential to compensate for the extra interchange service the Commission sees no reason why the basis fixed in that case should not be deemed reasonable for these movements. HELD, rates attacked unreasonable to extent they exceed from Breckenridge, Jakehamon Hull, and Goose Creek, 58.5, 61, 50 and 43c, prior to July 1, 1922, and 53, 55, 45, 48c on and after that date; From Electra 53c on and after July 1, 1922; from Houston and Clinton 45c on and after July 1, 1922 on wrought iron or steel pipe fittings, and on oil well supplies from Goose Creek, 73c prior to July 1, 1922 and 60c on and after that date. Also, in view of the shipments being transported via routes involving four lines, the addition of a reasonable differential to compensate for extra line haul was proper. Reparation awarded. Humble Oil & Refining Co. v. L. & N. W. R. R., 102 I. C. C. 761.

(4l) Complainant attacked commodity rate of $4.90 charged on a car of sand, shipped March 31, 1923 from Lipe, Tenn., to Sheffield, Ala., as unreasonable and to Florence, Sheffield and Tuscumbia, Ala., as unjust, unreasonable and unduly prejudicial. March 31, 1923 the car was delivered to N. C. & St. L., unrouted, moved via that line to Nashville, thence L. & N., charged $4.90, applicable rate $4.10 resulting in overcharge. Subsequent to the shipment defendants published rates of $1.67 to Florence and $1.76 to Sheffield and Tuscumbia, and are willing to refund charges collected in excess of $1.76. Distance is 220 miles and the $1.76 rate established by defendants is the rate for 220 miles under the distance scale proposed by the major lines in the south for application in Georgia and Alabama. HELD, rate at present not unreasonable, reparation awarded to basis of $1.76. Florence Chamber of Commerce v. N. C. & St. L. Ry., 104 I. C. C. 393.

(4m) In cases where the Commission prescribe distance scales, carriers are not required to establish over circuitous routes the rates found reasonable for application over rate making routes. They may do so if section four is observed or if relief therefrom is granted. Because of excessive transportation costs resulting from excessive circuity in the granting of relief from the long and short haul provision of section four of the act, circumstances in each case must govern. In 98 I. C. C. 183 and 101 I. C. C. 116 circuitous lines or routes longer than 1,500 miles and more than 33 1-3 per cent circuitous were denied fourth section relief which would have been required for the purpose of meeting the rates of the short lines or routes. Grain and grain products to Mississippi Valley 107 I. C. C. 167, 169.

(4n) In 87 I. C. C. 654 Commission found rates on fertilizer, carloads and less carloads, from Blackshear, Ga., to Florida as unreasonable and prescribed reasonable maximum rates based on distance scales. Maximum carload rates were prescribed to the destinations in northern Florida on a slightly higher level than to southern Florida. To the destinations on the short lines the maximum rates prescribed were differently higher than on the basis of the scales. The basis prescribed for less carload traffic was 120 per cent of the carload rates. To northern Florida the rates and the bases of rates prescribed as maxima were generally lower than the previously existing rates. To southern Florida they were higher in many instances than the previous rates. No revision of the Florida intrastate rates was made. HELD, undue prejudice to be removed so that the interstate rates from Jacksonville will not be higher than from Blackshear used as basing rates to the same destinations. Blackshear Mfg. Co. v. A. C. L. R. R., 107 I. C. C. 538.

(4o) Rates on peddler-car quantities of fresh meat and packing-house products from Fort Worth, Tex., Oklahoma City, Okla., and Wichita Kans., to points in Arizona, New Mexico, and Texas differential territory, found unduly preferential of packers at said points of or-

igin and unduly prejudicial of complainant packer at El Paso. Commission finds that the establishment of less-than-carload rates upon the basis prescribed in the Arizona Packing case, 81 I. C. C. 115, will result in reasonable maximum rates and remove the undue prejudice to El Paso. Reasonable rates prescribed for the future. Peyton Packing Co. v. A. E. R. R. Co., 100 I. C. C. 4, 20.

(4p) Rates on cottonseed oil, cake, meal, and hulls from Los Angeles, El Centro, and Calexico, Calif., and from Phoenix Ariz., to El Paso, Tex., found unreasonable. Rates established upon the distance scales of rates on these commodities prescribed in Oklahoma Corporation Commission, 98 I. C. C. 183, plus differentials for hauls in this territory, would be reasonable. The differences between the levels of the rates under the prescribed standard scales for cottonseed oil on the one hand and cottonseed cake, meal, and hulls on the other indicate that the differentials on cottonseed oil for hauls in this territory should be higher than on the cake, meal, and hulls. Reasonable rates prescribed for the future. Peyton Packing Co. v. A. E. R. R. Co., 100 I. C. C. 4, 23.

(4q) Combination baggage or baggage and express rates on interline shipments of milk and cream in 10-gallon cans, from points in Iowa and South Dakota, to Omaha, Nebr., found unreasonable and reasonable maximum rates constructed on basis of specific joint-line distance scales, with the addition of drayage charges where necessary, prescribed for future and reparation awarded to that basis. Kirschbraun & Sons, Inc. v. G. N. Rys, 100 I. C. C. 28, 40.

(4r) Charges assessed on milk and cream in 10-gallon cans, for single-line hauls in baggage service from points in Iowa, to Omaha, Nebr., via circuitous routes, found not unreasonable, but new and more direct interline routes and reasonable maximum rates, constructed upon basis of specific joint-line distance scales, with the addition of drayage charges where drayage is necessary in order to transfer shipments between separate passenger depots of connecting rail carriers, prescribed for future. Kirschbraun & Sons, Inc. v. G. N. Rys., 100 I. C. C. 28, 40.

(4s) Undue prejudice to Galveston should be removed by establishing the same rates to or from Galveston or New Orleans, as the case may be, in instances where the differences in distance from and to the two ports are not greater than 100 miles and by establishing rates to or from Galveston, as the case may be, certain specific differentials under New Orleans in instances where the differences in distance in favor of Galveston are greater than 100 miles. Defendants will be expected to grade up the differentials prescribed from or to Texas, so that for the shorter distances between Galveston and Texas points more appropriate recognition may be given to the greater differences in distance to or from the two ports. Galveston Commercial Asso. v. G. H. & S. A. Ry. Co., 100 I. C. C. 110, 123, 124.

(4t) Rates on cottonseed from points in Oklahoma to Dallas and Forth Worth, Tex., found unreasonable to extent indicated in 80 I. C. C. 18, involving same territory; after effective date of order therein, to extent they exceed or may exceed distance rates prescribed in 98 I. C. C. 183, and applied in manner indicated therein. Reparation awarded. International Vegetable Oil Co. v. A., T. & S. F., 100 I. C. C. 240.

(4u) Rates on fabricated steel tank material, knocked down, and steel pipe, from Houston, Orange, Iowa Park, and Kosse, Tex., to El Dorado and Smackover, Ark., found unreasonable to extent they exceeded distance rates prescribed in Texas-Pacific Coal & Oil Co. v. T. & P. Ry. Co., 95 I. C. C. 625, and Humble Oil & Refining Co. v. M. P. R. R., 95 I. C. C. 709. Reasonable rates prescribed for future and reparation awarded. Parkersburg Rig & Reel Co. v. G., C. & S. F. Ry. Co., 100 I. C. C. 245.

(4v) Schedules proposing readjustment of class rates, both interstate and intrastate, between points in Missouri, and between Missouri and other sections, based upon a maximum distance scale which would result in substantial increases to some points, and reductions between points where the so-called Memphis-Southwestern scale is now in effect, found not justified. Scale of maximum reasonable rates prescribed. Recognized bridge arbitraries at Mississippi River crossings may be added wherever and to extent they now apply, and rates to and from defined territories should be based on the differentials over the river crossings. Class Rates between Missouri and

Interstate Points, 100 I. C. C. 274.

(4w) Rate assessed on shipment of crushed stone from Port Deposit, Md., a producing point, consigned through error to Linden Hall, Pa., and reconsigned at Marysville, Pa., to Mendenhall, Pa., found unreasonable to extent it exceeded lower contemporaneous distance rate on like traffic prescribed as reasonable in the Birdsboro case, 49 I. C. C. 681. Reparation awarded. Budding Co. v. P. R. R. Co., 100 I. C. C. 411.

(4x) It is a generally recognized principle of rate making that the rate per ton mile should continually decrease as distance increases, and this theory is hereby confirmed. Southern Class Rate Investigation, 100 I. C. C. 513, 642, 644.

(4y) Maximum distance scale of interstate class rates on standard lines between points in southern territory and over routes lying wholly within such territory, except between points in Virginia and points in North Carolina and except to and from points in Florida peninsula, prescribed. Appendix K. Southern Class Rate Investigation, 100 I. C. C. 513, 646.

(4y) Maximum distance scale of interstate class rates prescribed on standard lines between points in Florida peninsula south of line of Seaboard Air Line from Jacksonville to River Junction, on one hand, and other points in southern territory, on other, plus certain specified arbitraries for that part of the distance lying south of aforesaid line. Southern Class Rate Investigation, 100 I. C. C. 513, 646.

(5a) Claim of carriers that the use of a rule such as that in Western Cement Rate case, 52 I. C. C. 225, with respect to determination of mileages where a distance scale of rates, as herein prescribed, has been employed in contrary to law upon the ground that it is, in effect, an infringement of the provision which protects them against being short hauled, not sustained. Southern Class Rate Investigation, 100 I. C. C. 513, 656.

(5b) Method of determining mileages in connection with application of scales of distance rates approved. Southern Class Rate Investigation, 100 I. C. C. 513, 655, 656.

(5c) There is nothing sacred about distance rates. They are recommended as, on the whole, a convenient, logical, and readily understood method of measuring the service afforded in the movement of class traffic, and a method which is further supported by averaging underlying costs. But distance rates should not be so rigidly observed as to violate considerations of convenience and simplicity in tariff construction without any substantial compensating gain. Southern Class Rate Investigation, 100 I. C. C. 513, 657.

(5d) Rates on salt from Salduro, Utah, to main-line points on lines of defendants in Montana found to have been unreasonable to extent they exceeded rates shown in distance scale appearing in the Crystal case, 78 I. C. C. 659, 665, for the actual distances from Salduro, and rates on same commodity from Salduro to branch-line points on defendants' lines in Montana found to have been unreasonable to extent they exceeded rates herein found reasonable to main-line points by more than the amounts by which rates from North Pacific ports to said branch-line points exceeded rates to said main-line points. Reparation awarded. Capell Salt Co. v. C., M. & St. P., 101 I. C. C. 34.

(5e) Upon further hearing, joint-line rates under agreed-distance scales on livestock to, from, and between points in the Southeast found not justified for interstate application over certain specified lines under common management and control, and wherever such rates have been applied over these lines since date of establishment under authority conveyed in original report, 74 I. C. C. 419, they have been, are, and for the future will be unreasonable to extent they exceeded, exceed or may exceed single-line rates under the agreed scales, as set out in appendixes to original report, on a joint or continuous mileage basis. Livestock, to from, and between Points in Southeast, 101 I. C. C. 105.

(5f) In prescribing scales of distance rates for single and joint-line hauls, commission has almost invariably required lines under a common management and control to apply the single-line rates. These decisions were based on fact that such management and control result in certain benefits in operation, and on commission's opinion that single-line rates would be reasonable for application over such lines. No reason is apparent for departing from those precedents. Livestock to, from, and between

Points in the Southeast, 101 I. C. C. 105, 107.

(5g) Rates on grain, grain products, hay and straw, and related articles taking same rates, or rates basing thereon, between Oklahoma, on one hand, and Kansas and Missouri, on other hand, found unreasonable to extent they exceed rates made by applying distance scales set forth herein to short-route distances. Reasonable maximum rates prescribed for future. Oklahoma Corp. Comm. v. A. & S. Ry., 101 I. C. C. 116.

(5h) Rates on grain, grain products, hay and straw, and related articles taking same rates, or rates basing thereon, from Oklahoma to specifically designated Texas territory, found unreasonable to extent they exceed distance scale of rates set forth herein, with the application of certain differentials to that portion of Texas not herein otherwise provided for, including a designated section of the Texas Panhandle. The distance scale of rates and differentials is prescribed as reasonable for future. Oklahoma Corp. Comm. v. A. S. Ry., 101 I. C. C. 116.

(5i) Rates on grain, grain products, hay and straw, and related articles taking same rates, or rates basing thereon, between Oklahoma, on one hand, and Kansas and Missouri, on other hand, found unreasonable to extent they exceed rates made by applying distance scales set forth herein to short-route distances. Reasonable maximum rates prescribed for future. Oklahoma Corp. Comm. v. A. & S. Ry., 101 I. C. C. 116, 128.

(5j) Rates on grain and grain products from points in the Panhandle of Texas to Kansas City, Kans.-Mo., found unreasonable to extent they exceed rates made by applying distance scales set forth herein, computed in manner herein provided. Reasonable maximum distance rates prescribed for future. Oklahoma Corp. Comm. v. A. & S. Ry., 101 I. C. C. 116, 130.

(5k) Rates on grain and grain products from eastern New Mexico to Kansas City, Kans.-Mo., found unreasonable to extent they exceed rates constructed by adding to the distance scales herein found reasonable from the Panhandle of Texas to Kansas City, the scale of differentials set forth herein, to be applied only to the mileage within New Mexico. Reasonable maximum rates, with application of differentials, prescribed for future. Oklahoma Corp. Comm. v. A. & S. Ry., 101 I. C. C. 116, 130.

(5l) In establishing rates on grain, grain products, and related articles from Oklahoma to Texas points, and from and to other points here involved, under the distance scale prescribed herein, grouping of points of origin not more than 50 miles apart, and a like grouping of points, of destination, will meet all requirements, provided that group rates be computed so as to produce substantially same average rates that would result from the application of the scale from and to each point in the group. Oklahoma Corp. Comm. v. A. & S. Ry., 101 I. C. C. 116, 134.

(5m) In establishing rates on grain, grain products and related articles from Oklahoma to Texas points and from, and to other points here involved, under the distance scale set forth herein, carriers should not content themselves with the filing of tariffs containing the distance scales, but specific rates computed on the bases prescribed should be published, and in doing so, grouping of points of origin and points of destination may be employed. Oklahoma Corp. Comm. v. A. & S. Ry., 101 I. C. C. 116, 134.

(5n) Contention that rates on strawboard between c. f. a. and trunk-line territories are unreasonable because they exceed rates based on scale prescribed in C. F. A. Class Scale case, 45 I. C. C. 254, not sustained. That scale was not intended as a measure of interterritorial rates, it being recognized that c. f. a. rates would not entirely harmonize with rates between central and trunk-line territories. Lafayette Box Board & Paper Co. v. A. C. & Y., 101 I. C. C. 273, 276.

(5o) Proposed cancellation of present distance rates on brick and related articles from Carbon Cliff, Ill., to destinations in Iowa, making applicable specific group rates in effect from certain Illinois points to Iowa, for purpose of removing alleged undue prejudice against Shale City, Ill., found not justified. Application of proposed rates would result in unreasonableness in certain of the rates from Carbon Cliff and present rate situation can be corrected by establishing rates in conformity with commission's forthcoming report in Mason City Brick & Tile Co., Docket No.

11672. Rates on Brick and Related Articles, 101 I. C. C. 297.

(5oa) Rates on iron and steel pipe from points in Texas to points in Oklahoma, and from points in Oklahoma to points in Texas found unreasonable to extent they exceeded rates for like distances computed under the scale prescribed on iron and steel pipe in Memphis Southwestern Investigation, 77 I. C. C. 473. Reparation awarded. Texas-Pacific Coal & Oil Co. v. C., R. I. & P., 102 I. C. C. 369.

(5ob) Rates on vegetable oils from points in Oklahoma to Houston found unreasonable to extent they exceed rates for like distances under the scale prescribed in Oklahoma Corp. Comm., 93 I. C. C. 183. Reparation awarded. Houston Packing Co. v. A., T. & S. F., 102 I. C. C. 385.

(5oc) Rates on mine timbers from points in Missouri to destinations in Illinois found unreasonable to extent they exceeded rates per net ton based on distance scale prescribed in Palmer case, 87 I. C. C. 622, on like traffic from and to points in same general territory. Reparation awarded. Collins Timber Co. v. B. & O., 102 I. C. C. 467.

(5od) Rates on salt from Anse La Butte, Avery, Salt Mine, Weeks Island, and Jefferson Island, La., to points in Mississippi and from Baldwin, La., to Jackson, Miss., found unreasonable and unduly prejudicial as compared with rates from Memphis and New Orleans, competing points. Distance scales were prescribed in 77 I. C. C. 473, and other cases where rates between points in southern territory were considered and a similar basis is appropriate here since it would be less likely to create difficulties in subsequent readjustments. Distance rates with a 45,000-pound minimum prescribed for future and reparation awarded. Miss R. R. Comm. v. A. & V., 102 I. C. C. 540.

(5oe) Rates on rough rice from producing points in Arkansas to New Orleans found not unreasonable, and on clean rice from Arkansas milling points to New Orleans, for export, found not unduly prejudicial. Present rates were established for purpose of enabling Arkansas millers to compete with Memphis and various Louisiana and Texas milling points in the export market and the rough-rice rates are a development from distance scales several times approved by commission as reasonable. A material increase in the clean-rice rates, as sought by complainant, would virtually restore a discriminatory situation which present rates were designed to remove. New Orleans Joint Traffic Bureau v. B., S. L. & W., 102 I. C. C. 686.

(5of) Rates on wrought iron and steel pipe and fittings and on oil-well supplies from certain points in Texas to Haynesville, La., found unreasonable to extent they exceeded specific commodity rates fixed on basis of distance scale prescribed in Memphis-Southwestern Investigation, 77 I. C. C. 473, with addition of a differential to compensate for an extra line haul. Reasonable rates prescribed and reparation awarded. Humble Oil & Refining Co. v. L. & N. W. R. R., 102 I. C. C. 761.

(5p) Complainant attacked commodity rates on cottonseed, carloads, between Oklahoma and Texas as unjust and unreasonable. HELD, rates attacked unreasonable during the reparation period up to August 15, 1923 to extent they exceeded rates prescribed on cottonseed in the southwest in 98 I. C. C. 103, reparation awarded. Altus Cotton Oil Meal v. A. T. & S. F. Ry., 109 I. C. C. 92.

(5q) Undue prejudice can hardly be predicated upon observance of a properly graded distance scale. Galveston Commercial Asso. v. A. & S. Ry., 109 I. C. C. 114, 124.

(5r) Complainant attacked combination rates charged on mine timbers, including mine props, carloads, between April 28, 1920 and Feb. 21, 1924 from Missouri to Illinois as unreasonable. Shipments originated in southeastern Missouri on M. P., St. L. S. F., and Rock Island and moved to Illinois coal mining points. HELD, rates attacked unreasonable to extent they exceeded rates prescribed in 87 I. C. C. 622, reparation awarded. Egyptian Tie & Timber Co. v. M. P. R. R., 112 I. C. C. 101.

ALL OTHER CITATIONS

Beaumont Chamber of Commerce v. Director General, as Agent, 85 I. C. C. 139; Lehigh Lime Co. v. A. C. & Y. Ry. Co., 85 I. C. C. 341; Interstate Rice Milling Co. v. L. W. Ry. Co., 85 I. C. C. 606; American Sand & Gravel Co. v. C. & N. W. Ry. Co., 88 I. C. C. 1; Pulp Wood Co. v. Director General, as Agent, 88 I. C. C. 196; Scheidenhelm Co. v. C. B. & Q. R.

R. Co., 88 I. C. C. 319; Parkersburg Rig & Reel Co. v. T. & P. Ry. Co., 88 I. C. C. 463; Brick and Clay Products in the South, 88 I. C. C. 543; Great Western Paper Co. v. M. St. P. & S. S. M .Ry. Co., 88 I. C. C. 582; Swift & Co. v. T. & P. Ry. Co., 88 I. C. C. 610.

DIVISIONS.

I. CONTROL AND REGULATION.
§1. Jurisdiction of Commission.
§1a. Orders of Commission.

II. PUBLICATION AND TARIFFS.
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III. AMOUNT OF DIVISIONS.
§2½. In general.
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IV. LEGALITY.
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V. REASONABLENESS.
§9. In general.
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CROSS REFERENCES

See Advanced Rates §7 (6), §18 (10); Allowances; Barge Service (l); Commodity Rates §5 (7b); Common Carrier §6½; Evidence §13 (3); Express Companies §37; Industrial Railroads; Jurisdiction of Commission; Passenger Fares and Facilities §11½; Percentage Rates; Proportional Rates; Reasonableness of Rates §10½; Statutes (e); Tap Lines §6½, §7, §14; Through Routes and Joint Rates §14, §18.

I. CONTROL AND REGULATION.

See Control and Regulation.

§1. Jurisdiction of Commission.

See Interstate Commerce Commission I; Jurisdiction of Commission.

(ab) The commission can not order a readjustment of divisions prior to date of filing of complaint. New York Dock Ry Co. v. B. & O. R. R. Co., 89 I. C. C. 695, 707.

(c) In determining the divisions of joint rates the Commission is required under paragraph 6 section 15 to give due consideration among other things to the efficiency with which the carriers concerned are operated; the amount of revenue required to pay their respective operating expenses, taxes, and a fair return upon their railway property held for and used in the service of transportation; the importance to the public of the transportation service of such carriers; whether any particular participating carrier is the originating, intermediate or delivering line; and any other facts or circumstances which would ordinarily without regard to the mileage haul entitle one carrier to a greater or less proportion than another carrier of the joint rate, fare or charge. Salina Northern R. R. v. A. T. & S. F. Ry., 92 I. C. C. 475, 478.

(d) The Supreme Court has held that the divisions fixed by the Commission must be adequate to avoid a confiscatory result. Clearly the fixing of a minus quantity as a division would bring about such a result. U. S. War Department v. A. & S. Ry., 92 I. C. C. 528, 537.

(e) Interstate Commerce Commission's action in making the physical connection of one railroad with others the sole test for determining which carriers should have their division of joint rates reduced in favor of weaker road held not arbitrary. United States v. Abilene & S. Ry. Co., 44 Sup. Ct. 565.

(f) Interstate Commerce Commission's order relating to divisions of joint rates must be based on evidence as to the individual joint rates and divisions; data dealing with the traffic in the aggregate, though proper for consideration, being insufficient. United States v. Abilene & S. Ry. Co., 44 Sup. Ct. 565.

(g) Interstate Commerce Commission's order, under Interstate Commerce Act, §15 (6), as amended by Transportation Act 1920, §418 (Comp. St. Ann. Supp. 1923, § 8583), relating to divisions of interstate joint rates on traffic interchanged by certain railroad with railroads making direct connection with it, HELD, not void for failure to make all carriers participating in joint rates parties to proceedings before Commission,

where order affected only the railroads connecting directly with railroad favored by order, and all such carriers were parties to the proceedings. United States v. Abilene & S. Ry. Co., 44 Sup. Ct. 565.

(h) The Interstate Commerce Commission, in determining divisions of interstate joint rates on traffic interchanged by certain railroad with other railroads, must consider, in addition to the relative cost of service, whether a particular carrier is an originating, intermediate, or delivering line, the efficiency with which the several carriers are operated, the amount of revenue required to pay their respective operating expenses, taxes, and a fair return on their railway property, the importance to the public of the transportation service of such carriers, and other facts, if any, which ordinarily without regard to mileage haul, entitle one carrier to a greater or less proportion than another of the joint rate. United States v. Abilene & S. Ry. Co. 44 Sup. Ct. 565.

(i) In determining divisions of joint rates, the Interstate Commerce Commission may in the public interest consider the financial needs of a weaker road, and give a division larger than justice merely as between the parties would suggest, in order to maintain it in effective operation as part of an adequate transportation system, provided the share left to its connections is adequate to avoid a confiscatory result. United States v. Abilene & S. Ry. Co., 44 Sup. Ct. 565.

(j) It is settled that in determining what the divisions should be, the Commission may, in the public interest, take into consideration the financial needs of the weaker road; and that it may be given a division larger than justice merely as between the parties would suggest in order to maintain it in effective operation as part of an adequate transportation system, provided the share left to its connections is adequate to avoid a confiscatory result. Southern Class Rate Investigation, 100 I. C. C. 513, 653.

(k) While divisions, in first instance, are properly the concern of carriers, the commission has certain jurisdiction with regard to them, exercise of which requires the consideration of many factors. Peoria & Pekin Union, 93 I. C. C. 3, 19.

(l) In determining and prescribing divisions the commission is enjoined to give due consideration, among other matters, to efficiency with which carriers concerned are operated and importance to public of the transportation services of such carriers. Christie and Eastern Ry. v. K. C. S., 93 I. C. C. 675, 679.

(m) Upon contention that a suspension order of the commission prohibiting proposed increased rates from going into effect and requiring the maintenance of present rates, constituted establishment of present rates "pursuant to a finding or order of the commission," and that therefore the commission has authority to require readjustment of divisions of the present rates back at least to date of order of suspension. HELD, an order of suspension is not an order such as is contemplated by Congress when it refers to the "establishment" of a rate by the commission's order. Petroleum Oil from Arkansas to Louisiana, 95 I. C. C. 55, 64, 65.

(n) Rights of carriers in matter of divisions when fixed by the commission, must be decided in view of the amendment to the interstate commerce act of February 29, 1920, as embraced in section 15 (6). L. & N. v. C. & M., 95 I. C. C. 107, 113.

(o) The commission is empowered, under section 15 (6) of the interstate commerce act, to require a readjustment of divisions of joint rates for the period subsequent to the filing of a complaint in cases where such rates were established pursuant to a finding or order of the commission See 89 I. C. C. 695. Marion & Eastern R. R. Co. v. C. & E. I. Ry. Co., 96 I. C. C. 402.

(p) All carriers whose lines connect directly with the line of Missouri and North Arkansas having been joined as respondents, FOUND: That other carriers which unite in publishing interstate joint rates applying to, and which participate in transporting, certain of the traffic interchanged are not necessary parties in a proceeding to determine the divisions of such joint rates between carrier named and each of its immediate connections, following decision of U. S. Supreme Court in Orient Divisions case, 265 U. S. 274. Divisions of Joint Rates and Fares of M. & N. A. Ry. Co., 98 I. C. C. 119.

(q) Contention of carriers which joined in petition for rehearing that commission was without jurisdiction to make the order entered for the reason

that not all of the carriers which participated in publishing the joint rates to which the order fixing divisions applied were joined as respondents in the proceeding, not sustained in view of the decision of U. S. Supreme Court in the Orient Divisions case, 265 U. S. 274. Divisions of Joint Rates and Fares of M. & N. A. Ry. Co., 98 I. C. C. 119, 122, 123.

(r) If the carriers were correct in their contention that the commission is without power to compel any one of them to accept divisions which would prevent it from earning a fair return, result would be that the commission could never control divisions unless the portion remaining to each carrier was clearly adequate to avoid confiscation and the commission's power to prescribe just, reasonable, and equitable divisions of rates so low as to border on confiscation would be doubtful. Divisions of Joint Rates and Fares on M. & N. A. Ry. Co., 98 I. C. C. 119, 139, 140.

(s) All of the joint rates here considered were established pursuant to findings under Increased Rates, 1920, 58 I. C. C. 220. Rates so established come within the plain language of paragraph 6 of section 15 which gives the Commission power to require readjustment of divisions for the period subsequent to the date the investigation was instituted where the joint rates were established pursuant to a finding or order by the Commission. Divisions received by the Brimstone R. R. & Canal Co. 104 I. C. C. 415, 434.

(t) The Minnesota law prohibits the pooling of revenues by competing rail carriers, but the Federal commission has jurisdiction in the matter under section 5 of the act, paragraph 1 of which gives it authority to enter orders approving certain pooling arrangements, and paragraph 8 of which provides that the carriers affected by such orders shall be relieved of all restraints or prohibitions by law, state or federal, in so far as may be necessary to enable them to do anything authorized or required by such orders. Joint passenger train service, 107 I. C. C. 493, 495.

(u) The Commission is authorized to prescribe divisions only where joint rates are involved, or in a proceeding where joint rates are prescribed. Proportional rates on livestock, 109 I. C. C. 417, 424.

ALL OTHER CITATIONS

New England Divisions, 85 I. C. C. 482; Hampton & Branchville R. R. & Lumber Co. v. A. C. L. R. R. Co., 88 I. C. C. 77.

§1a. Orders of Commission.

(a) In the administration of that portion of the act dealing with divisions, it is necessary to proceed in a practical way. As was said by U. S. Supreme Court in the New England Divisions case, 261 U. S. 184; "Obviously, Congress intended that a method should be pursued by which the task, which it imposed upon the commission, could be performed." To insist that every adjustment of divisions between two connecting lines must be accompanied by a readjustment of divisions between all lines participating in the joint rates would often be tantamount to denying the possibility of granting needed relief. Divisions of Joint Rates and Fares of M. & N. A. Ry. Co., 98 I. C. C. 119, 123.

ALL OTHER CITATIONS

New England Divisions, 85 I. C. C. 482; Carriers Division of Bituminous Coal Rates, 85 I. C. C. 617.

II. PUBLICATION AND TARIFFS.

See Tariffs.

§2. Obligation to file.

(a) Divisions are affected with a public interest and are not a mere matter of bargain and trade between carriers. One of the duties of a common carrier is to participate in such joint rates as the public interest requires. This is an incident of their public undertaking, and equity does not necessarily demand that they be compensated by larger divisions in the instances where it might be more advantageous to confine traffic to their own lines. U. S. War Department v. A. & S. Ry., 92 I. C. C. 528, 538.

III. AMOUNT OF DIVISIONS.

§2½. In General.

(a) Divisions accorded southern carriers out of joint transcontinental class and commodity rates found unreasonable and inequitable and measure of divisions prescribed for future. While divisions received prior to Federal control were to an extent dictated by the southern lines, present divisions were promulgated with-

out their consult or consent and in a sense may be said to have been forced on them. Moreover, they appear to be substantially on the mileage prorate basis and when consideration is given to the respective hauls west and east of the Mississippi, the southern carriers are entitled to receive more than a mileage prorate. Alabama & Mississippi Ry. Co. v. A., T. & S. F., 95 I. C. C. 385.

(b) It is one of the duties of a common carrier to participate in joint rates if the public interest requires such participation. And equity does not demand that carriers be compensated by larger divisions because they are not in great need of certain joint rates, or because they would be financially bettered if they were not maintained. Pittsburgh & W. Va. Ry. Co., 61 I. C. C. 272, 282, 283, Alabama & Mississippi Ry. Co. v. A., T. & S. F., 95 I. C. C. 385, 394.

§3. Computation.

See Advanced Rates §18 (10).

(a) In 66 I. C. C. 535 the Commission found the Fore River R. R. Corporation, was a common carrier and prescribed reasonable joint rates on oil, carloads, from complainants refinery on the Fore River to destinations in the New England states. The case was reopened for the purpose of prescribing divisions. The traffic of the refining company involved here consists wholly of outbound shipments loaded in privately owned cars. Distance of loaded movement is about 1.5 miles. The evidence shows that this service is extremely simple, no interference, congestion, or operating difficulties being encountered. HELD, between May 15, 1922 and July 1, 1922 just divisions of joint rates on oil would have been $8 per car to the Fore River and remainder to defendant carriers; that on and after that date $7.20 to Fore River. Massachusetts Oil Refining Co. v. B. & A. R. R., 93 I. C. C. 110.

(b) Complainant Christie & Eastern Ry., is a common carrier, and alleged that the divisions accorded it by defendants out of the joint interstate rates on lumber and forest products in which it participates are inadequate, unjust and inequitable. Christie & Eastern Ry., is controlled by the Peavy Wilson Lumber Co., operating 78.82 miles of main line, equipment consisting of two locomotives two freight cars, one caboose car and two gasoline motor cars. The trunk line connections are with the K. C. S., at Sandel, La., M. P., at Long Leaf, La., C. R. I. & P., T. & P., and M. L. & T., at LeCompte, La. Charges for divisions now are, for switching one mile or less from the junction $3 per car; over 1 mile and up to 3 miles, $4.05 per car; over 3 miles and not more than 10 miles, 2.5c; over 10 miles and not more than 20 miles, 3.5c; over 20 miles and not more than 40 miles, 4.5c and over 40 miles, 5.5c. The tap line scale is requested to be extended for distances from 40 miles to 70 miles. The lumber rates from Pearson to all points except New Orleans and points intermediate thereto are the same via all junctions. In view of the lower rate to New Orleans for export the C. & E., accepts a division of 3.5c on lumber hauled to Lecompte, a distance of 69 miles the same as it would receive if hauled to Candel, a distance of 10.17 miles and no change is sought in this division. This carrier is before the Commission seeking increased divisions with its trunk line connections at Long Leaf and Lecompte to compensate it for the additional costs which it has incurred in moving its traffic to those points instead of to Sandel. This record does not establish any benefit to the public from the extension of the service though it does show that this extension will be of benefit to the proprietary lumber company both in affording connection with other carriers and in better car supply. It is clearly established that the hauling of the traffic to Long Leaf or Lecompte, instead of to the less distant connection at Sandell, is an unnecessary and uneconomic service and not in the public interest. The traffic may now move from Pearson to all important consuming points, with few exceptions, via Sandel at rates as low as and over distances as short as by way of the routes through Long Leaf and Lecompte. HELD, complaint dismissed. Christie & Eastern Ry. v. K. C. S. Ry., 93 I. C. C. 675.

(c) A tap line is entitled only to just compensation for the actual and reasonable necessary services performed by it as a part of the transportation of the traffic from point of origin to destination, and orders relative to divisions out of the through rates are framed upon this principle. Christie & Eastern Ry. v. K. C. S. Ry., 93 I. C. C. 675, 677.

(d) In determining and prescribing divisions the Commission is enjoined to give due consideration, among other matters, to the efficiency with which the carriers concerned are operated and the importance to the public of the transportation services of such carriers. Christie & Eastern Ry. v. K. C. S. Ry., 93 I. C. C. 675, 679.

(e) Dansville & Mount Morris Ry., complained as to the divisions accorded it out of joint rates participated in by the several carriers on carload and less carload traffic moving between points on the D. & Mt. M., and interstate points as unjust, unreasonable, inequitable and unduly prejudicial and preferential. Complainant is a common carrier, extending from Dansville, N. Y., to Mount Morris, N. Y., 14.6 miles. Its only connection is with the Erie at Mount Morris and it has no track facilities there except those leased for the interchange of traffic. All freight cars for traffic of its line are furnished by the Erie. Since the complaint was filed the Erie has accorded the D. & Mt. M., increased divisions on particular traffic local to its own lines, and was and is willing to join with other carriers in according certain increased divisions on traffc to and from points on their lines in New England, trunk line and central territories. The Erie also increased complainants division on anthracite coal originating on its system lines from 61c to 80c per ton. The D. & Mt. M., is an originating and delivering operated efficiently and that the is negligible and its average haul is 14.6 miles, the length of its line. The record indicates that complainant is being operated efficiently and that the service rendered is satisfactory to its patrons. It does not appear that the D. & Mt. M., is put to any unusual expense in the joint service and, when consideration is given to the simplicity of the interchange, level grade, preponderance of inbound traffic, average haul, and other facts of record, such earnings can not be said to be unreasonable. HELD, present divisions not unjust, unreasonable, inequitable or otherwise unlawful, complaint dismissed. Murray, Receiver, v. E. R. R. Co., 95 I. C. C. 13.

(f) Financial need is but one of the elements which the Commission is directed to consider in determining divisions of joint rates, and the fact that a carrier is being operated at a loss is not of itself sufficient ground, on which to order an increase of divisions in its favor. Murray, Receiver, v. E. R. R. Co., 95 I. C. C. 13, 18.

(g) Complainant L. & N. R. R., alleged that the divisions accruing to the Cumberland & Manchester R. R., out of joint rates on coal originating at stations on that road and moving over complainants lines to Cincinnati, O., and other northern and western destinations and to Knoxville, Tenn., Atlanta, Ga., and other southern and southeastern destinations are unreasonable, excessive and inequitable. The Manchester owns and operates a short line railroad extending from a connection at Heidrick with complainants line at Manchester, 22.9 miles. Mines on the Southern were in operation when mines on complainants road were opened, and rates from the latter mines were made on a basis which would enable them to compete with mines on the Southern. The divisions received by lines north of the Ohio river on coal from the Kentucky mines are the same as those received by them on coal from the West Virginia mines on the C. & O. The carriers north and those south of the Ohio river have been accustomed to divide their coal rates in such wise that carriers south of the river take care of southern lateral line divisions out of the divisions accruing south of the river, and northern lines take care of northern lateral line divisions out of divisions accruing north of the river. HELD, present divisions of rates attacked not unjust, unreasonable, inequitable, or otherwise in violation of the act, complaint dismissed. L. & N. R. R., v. C. & M. R. R., 95 I. C. C. 107.

(h) Complainant, Prescott & Northwestern R. R. Co., alleged divisions allowed it to be unreasonable. Original report in 23 I. C. C. 549, 569. In 31 I. C. C. 490, the Commission fixed the maximum absorptions and divisions that might be paid by trunk lines to connecting tap lines, out of joint rates on lumber and forest products to interstate destinations. Evidence shows that all the lumber tributary to this line has been removed and none of the stockholders of either petition or the proprietary company owns or is interested in any timber or industry on or near petitioners line. HELD, petitioner dismissed from this proceeding and released from outstanding orders. Tap Line case, 95 I. C. C. 235.

(i) Carriers serving southern territory attacked as unjust, unreasonable, unduly prejudicial and inequitable divisions received by them out of joint eastbound transcontinental class and commodity rates from Pacific coast territory to points in southern territory, via Mississippi river gateways, East St. Louis, Ill., Memphis, Tenn., Natchez and Vicksburg, Miss., and Baton Rouge and New Orleans, La. Class and commodity rates between transcontinental and southern territories are made according to a group or blanket basis. For divisional purposes these rate groups are subdivided into nine further groups, and divisions to points in these several divisional groups are determined by certain fixed percentages, which vary in amount according to the distance of the group from the gateway. Prior to federal control there was no general line of joint class and commodity rates from transcontinental territory into the southeast. The blanket rate adjustment was established by the director general Feb. 20, 1918, and was in effect the extension of the same rate basis into the south on traffic to and from transcontinental territory that had long been in effect north of the Ohio river. It appears that a revenue prorate based on the commodity rates in effect prior to federal control is recommended as the principal guide that should aid the Commission in the determination of the issues presented. The transcontinental carriers originate the traffic and the southeastern lines deliver the same. In the transportation of this traffic some of the transcontinental and some of the southeastern lines are intermediate carriers. The evidence in this case justifies the statement that traffic density as a whole in the southern district exceeds that in the western district, but the general rate levels in the western district are higher than in the southern; also that the operating expenses of the carriers in the western district are proportionately higher than those of the carrier in the southern district and the latter have been for some time in the past, and are, yielding a higher return on their investment than the former. However, it is probable that comparisons between the southern and western districts as a whole do not in all respects accurately reflect the conditions under which the traffic under consideration is handled. The transcontinental lines have all rail hauls in excess of 2,000 miles to the Mississippi river crossings, largely over main lines of traffic density greater than the average in western territory, while the hauls of the southeastern lines are shorter and probably consist to a less degree of main line movements, being distributive to destinations throughout southern territory. The present transcontinental rates are blanketed throughout the southeastern territory and are lower than the southern lines prefer to have. The maintenance of this blanket system of rates is apparently to the interest of the transcontinental lines as well as of the public. The evidence justifies the continuance of the plan of grouping the southeast and fixing divisions on a percentage basis to the several groups. Under such a plan carriers are relieved of much computation and no difficulties are encountered when changes in rate levels are made. The boundaries as now maintained appear to be satisfactory to both complainants and defendants. They are substantially as agreed to during the negotiations of 1902. HELD, present divisions accorded complainants out of joint eastbound transcontinental class and commodity rates here involved are unjust, unreasonable and inequitable and for future divisions should be on the basis of allowing complainants the following percentages of such joint rates, subject, to the local rates from the respective gateways to destination points as maxima: Divisions group 1, east of East St. Louis, 14.5%; east of Memphis 17% east of New Orleans 21%; Divisions group No. 2, east of East St. Louis 19%, east of Memphis 14.5%, east of New Orleans 19%; Divisions group No. 3, east of East St. Louis 21%, east of Memphis 19%, east of New Orleans 14.5%; Divisions group No. 4, east of East St. Louis 19%, east of Memphis 19% east of New Orleans 24%; Divisions group No. 5, east of East St. Louis 21%, east of Memphis 18%, east of New Orleans 21%; Divisions group No. 6, east of East St. Louis 24%, east of Memphis 20%, east of New Orleans 20%; Division group No. 7, east of East St. Louis 29%, east of Mmephis 28%, east of New Orleans 29%; Divisions group No. 8, east of East St. Louis 28%, east of Memphis 25% east of New Orleans 27%; Divisional group No. 9, east of East St. Louis 29%, east of Memphis 27% east of New Orleans 25%.

Alabama & Mississippi Ry. v. A. T. & S. F. Ry., 95 I. C. C. 385.

(j) In 73 I. C. C. 319, the Commission found the divisions of joint rates on traffic interchanged between the K. C. M. & O., and its connections, as unjust, unreasonable and inequitable. The case was reopened and further hearing had. If it can be assumed that proper recognition was originally given to the lack of traffic density on the Orient, the gradual leveling of conditions east and west of the Missouri river, resulting from the more rapidly increasing population and production west of the river, would indicate that the advantage of the Orient in ton mile earnings should not be decreased rather than increased, but the history of the Orient abundantly proves that its divisions, whatever their basis, have not been sufficient to meet the cost of service. HELD, the general finding of the former report to the effect that the Orient is a necessary transportation agency, the efficient service of which should be continued in the public interest, should be affirmed. The Orient is operated with reasonable efficiency. Its report of railway operating income for the year 1923 does not fairly reflect the results of normal operation, the revenues having been increased by temporary measures and its expenses for maintenance understated. That its cost per unit, including use of capital, for the transportation of interstate joint freight traffic has been heretofore, is now, and for the immediate future, will be greater than that of its connections for handling the same joint traffic. That the divisions of interstate joint freight rates, except as noted, on traffic interchanged with its immediate connections, are since Sept. 15, 1922, unjust, unreasonable and inequitable. That just divisions accruing to the Orient since Sept. 15, 1922 will be not less than the divisions accruing on the present basis plus the following percentages A. S., 12%, A. T. & S. F., 20%, C. R. I. & P., 16%, Ft. W. & D. C., 24%, G. H. & S. A., 20%, G. C. & S. F., 24%, Midland Valley 16%, M. K. & T., 16% M. P., 16%, St. L. S. F., 16%, T. & P., 16%. K. C. M. & O. Ry. Divisions, 96 I. C. C. 378.

(k) While the division of a through rate should not exceed a local rate, the rule is not a proper one for universal application, nor has it been so applied by the Commission or by the carriers themselves. K. C. M. & O. Ry. divisions, 96 I. C. C. 378, 395.

(l) In 68 I. C. C. the Commission found the divisions accorded complainant out of joint rates on coal from mines on its line to interstate destinations on and over the lines of defendants not unjust, unreasonable, inequitable or unjustly discriminatory. Complainant, Marion & Eastern R. R. Co., extends from Paulton, Ill., 11.5 miles to a point about 1 mile from Marion, Ill. Its only connection are with the I. C. C. & E. I., and M. P., at or near Marion. All freight cars for through traffic off its line are furnished by defendants under the uniform demurrage rules. Complainant pays no per diem on such equipment. Complainant is primarily an originating carrier and coal mining is the principal industry on its line. Complainant is a party with defendants to joint rates on coal from mines on its line to numerous interstate destinations on and over their lines. The mines served by complainant are in the socalled southern Illinois district with respect to the rates on this traffic, and take the group rates to all destinations. Applying all of the elements required by the statute to be considered in prescribing divisions of joint rates to the facts disclosed upon the record in this case, the Commission is of the opinion that complainant is lawfully entitled to a larger share of the increases just mentioned than was accorded it. HELD, divisions received by complainant out of the joint rates on coal were on and after Jan. 1, 1922 unjust, unreasonable and inquitable. Reasonable divisions between Jan. 1, 1922 and June 30, 1922 would have been 24c per ton, subsequently 22c per ton. Marion & Eastern R. R. v. C. & E. I. R. R., 96 I. C. C. 402.

(m) In prescribing divisions of joint rates the Commission is directed by the statute to give due consideration, among other things, to the amount of revenue required to pay operating expenses, taxes and a fair return on the railway property held for and used in the service of transportation of the respective carriers parties thereto. Marion & Eastern R. R. v. C. & E. I. Ry., 96 I. C. C. 402, 405.

(n) In 68 I. C. C. 47 the Commission established the divisions of interstate joint freight rates which the Missouri & North Arkansas and each of its eight

immediate connections should receive on certain freight traffic interchanged between them, which divisions were established since March 1, 1922. Carriers petitioned for further hearing. HELD, divisions of interstate joint freight rates on traffic originating or terminating at stations on the M. & N. A., and interchanged prior to March 1, 1922 between the M. & N. A., and its immediate connections, as unjust unreasonable and inequitable. HELD, further, divisions prescribed in the original report are just, reasonable and equitable divisions to apply, excluding that traffic as to which the M. & N. A., serves solely as an intermediate carrier. Divisions of joint rates and fares of M. & N. A. Ry., 98 I. C. C. 119.

(o) Complainant, Erie R. R., alleged divisions accruing to it out of joint transcontinental rates on fresh fruits and vegetables from California, Oregon, Washington, Idaho, Utah and Colorado to New York and Newark, N. J., as unjust, unreasonable, inequitable and unduly prejudicial. Piers 20 and 21 on Manhattan Island, New York are leased from the city and constitute the Eries Duane St. station. Only Pier 20 can be heated; therefore, during the winter it, only, is used for fruits and vegetables. About 85% of the fruits and vegetables destined to New York city from the Pacific coast states moves over the Erie to its Duane street station. Prior to May 1, 1922 such joint rates were divided 75% to lines west of Chicago and 25% to lines east of Chicago. Effective on that date the western lines allowed and eastern lines accepted on all kinds of traffic moving between the points involved 72.5% and 27.5% west and east of Chicago, respectively. The distance from Chicago to New York is 987 miles over the Erie and 907 miles over the short line. Some of the services performed by the Erie on fruits and vegetables which it does not perform on other traffic are telegraphic advice of the eastbound movement of the cars; switching at Croxton yard to segregate the cars ordered each day and arranging them so as to arrive at the Jersey City slip in such order that the floats as they successively arrive alongside the Duane street piers will carry the cars of the particular consignee to whom nearby floor space has been allotted for that day; operating a close time schedule; coopering broken packages; and removing damaged fruits and vegetables. From this record the conclusion must be reached that the principal carriers parties to this proceeding are efficiently operated and that the transportation services performed by them are important to the public. While extra service performed by the Erie incident only to the marketing of fruit may not be charged to its connections, if that extra service is also necessary to secure maximum use of available transportation facilities, and indispensable to the handling of the traffic in order to avoid congestion and to prevent increased damage claims, then to that extent the extra service may and should be considered in the fixation of divisions between the carriers. HELD, present divisions of the joint eastbound transcontinental rates on fresh fruits and vegetables to the Duane street station of the Erie at New York have been and are unjust, unreasonable and inequitable; that for the future the just, reasonable, and equitable divisions thereof will be 3c per 100 pounds to the Erie and the remainder of the revenue 27.5% to the lines east of Chicago and 72.5% to the lines west of Chicago; that those divisions would have been the just, reasonable, and equitable divisions on and after Sept. 13, 1922 and adjustment in accordance therewith is required. Erie R. R. v. A. & V. Ry., 98 I. C. C. 268.

(p) Complainant attacked reasonableness of rates on ores and concentrates from Plumas County, Calif., to Wabushka, Nev., the relationship of those rates on like traffic from the same points of origin to Utah smelters, and the reasonableness and propriety of the interstate rates and divisions of interstate rates of of the Indian Valley R. R. and its connections on such traffic. Previous report in 64 I. C. C. 477. The Indian Valley R. R. was organized and has at all times been maintained and operated as a separate and distinct enterprise from the Engels Co. It has its own distinct organization, it pays its own office rent, and is conducted independently. It has undertaken to perform all the obligations resting upon a common carrier by railroad engaged in intrastate and interstate commerce. HELD: Rates on ores and concentrates in carloads, minimum 40,000 pounds, from Paxton, Spring Garden and Engels, Calif., to Wabushka, Nev., will for future be unreasonable to extent they exceed rates ranging from Paxton to Spring Garden from $2.40 for $20 value to $4.80 for $100 value and from Engels,

Calif., $4.40 for $20 to $6.80 for $100 value. HELD: Failure of defendants to maintain from Paxton and Spring Garden to Wabushka rates similar in all respects as to the conditions under which such rates are applicable to those maintained on like traffic from Spring Garden to Garfield and International, Utah, but not in excess of 60 per cent thereof, will be unduly prejudicial to Wabushka. HELD: Rates from Engels, carloads, and other local stations on the Indian Valley R. R. to Wabushka will be unduly prejudicial to Wabushka to extent they exceed the rates from Paxton, Calif., to Wabushka by more than the amount by which the rates maintained on like traffic from the same points of origin to Garfield and International exceed the rates from Paxton to Garfield and International. HELD, further, Divisions accruing to the Indian Valley out of the joint rates on ores and concentrates, carloads, from Engels, Calif., and other local stations on its line to Wabushka, Nev., will be unjust unreasonable, inequitable and unduly prejudicial as between the carriers parties thereto to the extent they are greater or less in amount than those out of the rates maintained on like traffic from the same points of origin to Garfield and International or either of them. Mason Valley Mines Co. v. W. P. R. R., 100 I. C. C. 180.

(q) A line participating in a joint rate does not prove that it is entitled to a division equal to its local rate by showing that the service which it performs in in connection with the point haul is not less expensive than its local service. That may be a reason why a joint rate lower than the combination of locals should not have been established, but it does not demonstrate that the carrier should have an amount equal to its local as its fair share of the joint rate which has been established. Nor does it prove, necessarily, that the joint rate should not have been established. It is a generally accepted principle of rate making which has frequently found expression in the Commission's decisions, that through rates should be less than the sum of the intermediate rates. This is a principle, which like other principles of rate making, is not wholly dependent upon immediate costs of service. It looks also to the future and recognizes that such joint rates stimulate commerce and business and induce a flow of traffic which in itself has a tendency to lessen the cost of service. Michigan R. R. v. P. M. R. R., 101 I. C. C. 146, 152.

(r) When considered in light of the ordinary rule of rate making that as distance increases the rate of earnings decreases, divisions received by a carrier whose earnings for a single year were 72.16 per cent of the revenue for 90.07 per cent of the haul can not be said to be unreasonable, unjust, and inequitable. L. & N. v. C. & N., 95 I. C. C. 107, 115.

(s) While, generally speaking, the division of a through rate should not exceed the local rate, the rule is not a proper one for universal application, nor has it been so applied by us or by the carriers themselves. Allowances on Divisions Received by Texas Gulf Sulphur Co., 96 I. C. C. 371, 395.

(t) During the period of its operations in 1922 and 1923, the Missouri and North Arkansas was benefited in respect of its revenues by reason of fourth-section order No. 8128, which authorized the carrier to meet the rates of its competitors to and from common points on its line and to maintain higher rates at intermediate stations. Divisions of Joint Rates and Fares of M. & N. A. Ry. Co., 98 I. C. C. 119, 126.

(u) In 68 I. C. C. 375 the Commission found the Brimstone Railroad & Canal Company was a common carrier subject to the act and prescribed divisions to apply between it and its trunk line connections, the Louisiana Western, Southern Pacific, and Kansas City Southern. Record was held open to permit respondents to make necessary cost studies for the purpose of arriving at lawful divisions. Second report found in 88 I. C. C. 62, and upon petition the entire subject was reopened. HELD, based upon the cost of the service and a fair return upon the value of the property held for and used in the service of transportation for the public generally, during the period from Aug. 1, 1921 to but not including July 1, 1922 just, reasonable, and equitable divisions to the Brimstone would have been: From the S. P., on all carload traffic $7.22 per car; on merchandise, less carload, 11.5c per 100 pounds. From the K. C. S., on all carload traffic $8.89 per car; on merchandise, less carload, 11.5c per 100 pounds. On and after July 1, 1922, from the S. P., on all carload traffic $6.50 per car; on merchandise, less car loads, 10.5c per 100 pounds. From the K. C. S., on all carload traffic $8 per car; on merchandise, less carload

14c per 100 pounds. Divisions received by Brimstone R. R. & Canal Co., 104 I. C. C. 415.

(v) Under the schedules now in effect, the Mississippi Central technically offers or concurs in transportation at stated charges from and to points east of Hattiesburg which it neither reaches nor serves by trackage agreements with its connecting lines. The B. & H. S. and G., M. & N. have been hauling carload freight between Hattiesburg and Mobile for the account of the Mississippi Central without any agreement with respect to compensation therefor. Adjustments of divisions on traffic thus handled should be based upon strict mileage prorates. Cancellation of Rates and Routes via Mississippi Central, 100 I. C. C. 71.

(w) Upon contention that disparity between the divisions allowed the Indian Valley Railroad out of the Utah rates and out of the joint rates to Wabuska, Nev., together with the proprietary interest of the Engels Copper Mining Company in that line, creates an incentive for proprietary company to ship its products to Utah, thereby creating undue prejudice to smelter at Wabuska. HELD: Divisions accorded Indian Valley Railroad out of joint freight rates on ores and concentrates from Engels, Calif., and other stations local on its line, to Wabuska, Nev., will for the future be unjust, unreasonable, inequitable and unduly prejudicial as between carriers parties thereto, to extent they are greater or less than divisions accorded out of corresponding rates contemporaneously maintained on like traffic from same points of origin to Garfield and International, Utah, like divisions to Utah smelters and to Wabuska being required. Mason Valley Mines Co. v. W. P. R. R. Co., 100 I. C. C. 180, 181, 182.

(x) In no instance should the minimum division of joint rates to either the Warrior River Barge Line or the L & N. be less than 25 per cent. U. S. War Dept. v. A. & S. Ry. Co., 100 I. C. C. 491, 510.

ALL OTHER CITATIONS

New England Divisions, 85 I. C. C. 482; Utah Gilsonite Co. v. A. T. & S. F. Ry. Co., 85 I. C. C. 557; Carriers Division of Bituminous Coal Rates, 85 I. C. C. 617; St. L. S. F. Ry. Co. v N. A. Ry. Co., 85 I. C. C. 107.

§4. Inability to agree.

See Advanced Rates §7 (6); Discrimination §10½; Through Routes and Joint Rates §5.

(a) A dispute among carriers over divisions is no justification for increased rates. Transit privileges on grain, 92 I. C. C. 161, 162.

§7. As evidence.

See Comparative Rates; Evidence §13 (2), §13 (3); Through Routes and Joint Rates §14.

(a) Unsatisfactory divisions is not recognized as a sufficient justification for increased rates. Transit on lumber at Buffalo, 92 I. C. C. 181, 182.

(b) Although divisions may be considered as evidence they are not conclusive and ordinarily do not afford a sound basis upon which to determine the reasonableness of rates. Schloss & Kahn Grocery Co. v. L. & N. R. R., 95 I. C. C. 618, 619.

(c) Divisions do not ordinarily afford a sound basis upon which to judge the unreasonableness of rates. Chicago Heights Mfrs. Asso. v. B. & C. C. T. R R., 101 I. C. C. 675, 679.

(de) Derived directly from a freight rate or a division thereof does not in all cases measure the benefit to the carrier of participating in a traffic. Kansas City, Mexico & Orient Divisions, 96 I. C. C. 378.

(f) The matter of divisions is no part of this case; nor is the fact that the carriers are in disagreement as to the proportions of the through revenue they should receive a sufficient justification for the increased rates. It is fundamental that disagreements or controversies between the carriers will not be permitted to work injury to the shipper. Switching at Hagerstown, Md., 102 I. C. C. 14, 18.

(g) Fact that divisions accruing to various carriers participating in a through movement are not satisfactory to all of them is insufficient justification for depriving a shipper of an existing rate basis. Grain and Products from Argo, 101 I. C. C. 303, 306.

IV. LEGALITY.

§8. In general.

See Allowances IV; Legality; Tap Lines §7.

(a) The Commission has repeatedly

condemned the attempts to make the application of rates dependent upon the existence of division arrangements Routing on paper from Michigan, 91 I. C. C. 452, 453.

V. REASONABLENESS.

§9. In general.

See Reasonableness of Rates.

(a) Divisions of joint rates on bituminous coal and joint class rates accorded Federal Valley R. R. Co., found unjust, unreasonable, and inequitable, and just, reasonable, and equitable divisions for future prescribed. The road has been efficiently operated, is important to the public at large, the territory served is dependent upon it for transportation, and it was shown that in the past it has failed to earn enough to cover operating expenses, taxes, and a fair return upon value. Ohio Farm Bureau Federation v. A. & W. Ry. Co., 89 I. C. C. 489.

(b) Where a short line's compensation has not kept pace with the general increases in rates of trunk lines, although its operating expenses have increased in common with theirs, such short line should be accorded the benefit of a proportionate share of the increase in rates. See Ohio & Kentucky Ry Co., 77 I. C. C. 636. New York Dock Ry. v. B. & O. R. R. Co., 89 I. C. C. 695, 706.

(c) Divisions of joint freight rates accorded the New York Dock Ry., found unjust, unreasonable and inequitable. Just, reasonable, and equitable divisions prescribed for future and readjustment required back to date of filing of complaint. Previous report, 73 I. C. C. 656. New York Dock Ry. v. B. & O. R. R. Co., 89 I. C. C. 695.

(d) Complainant, New York Dock Ry., operates certain freight terminals in borough of Brooklyn, New York City, N. Y. and attacked rates and divisions between points on its line and the lines of all common carriers in the United States as unreasonable, unjust, inequitable and prejudicial. On August 25, 1920 the rates of payment to the dock railway were 4.2c on carload freight and 6.2c on less carload freight to or from trunk line western termini or points east thereof and 5.4c to and from points west thereof; except that on coal the amount paid was 35c per long ton, on coke 60c per net ton, and on traffic to and from the New Haven the amounts were 4c on carload freight and 6c on less carload freight. During the period from August 26, 1920 to June 30, 1922, the dock railway retained amounts equivalent to 40% over those accepted on August 25, 1920 pursuant to 58 I. C. C. 220, Ex Parte 74, and on and after July 1, 1922, 26% over those accepted on August 25, 1920, following Reduced Rates, 1922 68 I. C. C. 676. About 90% of the gross revenue of the dock railway is from traffic interchanged with the trunk lines. The original allowances of 3 and 4.2c are deducted from the through freight rates before division is made among the other interested carriers, the excess of the present payment or retentions over those amounts being borne by the trunk lines connecting with the dock railway. The valuation claimed by the dock railway can not be accepted upon this record as a basis for prescribing divisions of joint rates. Its right of way is merely a right of user in common with the use made of the same property by the dock company and its lessees, which may be compared with trackage rights given by one railroad to another, the tracks being used jointly, or with the right of a railroad in a street used in common with the public. In either case the right is not valued the same as though the right of way were owned or used exclusively by the carrier being valued. HELD, the Commission would not be warranted in prescribing divisions to the dock railway sufficient to take care of its showing of revenue needs, and it is impracticable for the Commission to determine from that showing just how much additional revenue the dock railway really needs and is entitled to in the form of increased divisions. But the dock railways compensation has not kept pace with the general increases in the rates of the trunk lines, although its operating expenses have increased in common with theirs, and no reason has been shown why it should not be accorded the benefit of a proportionate share of the increase in the rates. HELD, divisions received by the dock railway on interstate traffic moving on legally established joint rates unjust, unreasonable and inequitable to the following extent: carload 6.3c, less carload, 9.3c coal 49c, coke 84c, between July 28, 1921 and June 30, 1922, from or to trunk line western termini and east thereof; carload 8.9c, less carload 12.3c, coal 49c coke 84c, from or to west of such western termini; carload 6c, less

carload 9c, from or to New Haven R. R. Subsequent to July 1, 1922, on traffic moving from or to trunk line western termini and east thereof, carload, 5.7c, 8.4c, less carload, coal 44c, coke 76c; west of such western termini, carload 8c, less carload 11c, coal 44c, coke 76c; from or to New Haven R. R., carload, 5.4c, less carload 8.1c. New York Dock Ry. v. B. & O. R. R., 89 I. C. C. 695.

(e) While divisions are properly the concern of the carriers, the Commission has certain jurisdiction with regard to them, the exercise of which requires the consideration of many factors not adequately covered by the present record. The Commission also has jurisdiction over discrimination by carriers against their connections as well as against shippers. Peoria & Pekin Union Ry. Co., 93 I. C. C. 3, 19.

(f) The fact that a carrier has been operating at a deficit does not of itself prove that it is fairly entitled to increased divisions, and still less when it is coupled with the fact that the coal tonnage from mines located on its line has been far below normal. Massachusetts Oil Refining Co. v. B. & A. R. R., 93 I. C. C. 110, 114.

(g) Equity does not demand that carriers be compensated by larger divisions because they are not in great need of certain joint rates, or because they would be financially bettered if they were not maintained. Alabama & Mississippi Ry. v. A. T. & S. F. Ry., 95 I. C. C. 385, 394.

(h) The revenue derived directly from a freight rate or a division thereof does not in all cases measure the benefit to the carrier of participating in a traffic. The propriety of a particular division, dissassociated from others, can be determined only by investigation of the circumstances and conditions surrounding the traffic. K. C. M. & O. Ry. divisions, 96 I. C. C. 378, 395.

(i) The Supreme Court has spoken of the provisions of the act concerning divisions as an integral part of the machinery for distributing the funds except to be raised by the new rate making sections. Marion & Eastern R. R. v. C. & E. I. R. R., 96 I. C. C. 402, 409.

(j) The Commission in making division of joint rates between groups of carriers might in the public interest consult the financial needs of a weaker group in order to maintain it in effective operation as part of an adequate transportation system, and give it a greater share of such rates if the share of the other group was adequate to avoid a confiscatory result. Divisions of joint rates and fares of M. & N. A. Ry., 98 I. C. C. 119, 122.

(k) The character of traffic interchange, the manner in which it is handled, the loading, and average length of haul, and other factors which determine the rates and the earnings on the ton mile and car mile basis may not be the same for the traffic interchanged as for the total freight traffic of the carrier. In fact, these elements differed widely in the instances of carriers which are parties in this proceeding. The factors which control rates and earnings on ton mile and car mile basis and many other facts affect costs of the service in such a way that in the absence of a satisfactory showing of approximate similarity in all things which have a bearing upon such costs no one can say that average system freight costs per unit are a proper measure of the same units of cost incident to traffic interchanged with a single connecting carrier. Divisions of joint rates and fares on M. & N. A. Ry., 98 I. C. C. 119, 129.

(l) The fact that the apportionment of revenue accruing to the various carriers in a through movement is not satisfactory to all of them is far from being a sufficient justification for depriving a shipper of an existing rate basis. Grain and Grain Products from Argo, 101 I. C. C. 303, 306.

(m) Divisions fixed by commission must be "adequate to avoid a confiscatory result." See U. S. v. Abilene & Southern Ry. Co., 265 U. S. 274. U. S. War Dept. v. A. & S. Ry., 92 I. C. C. 528, 537.

(n) Upon further hearing original report 77 I. C. C. 317, basis of just, reasonable, and equitable divisions of joint rail-barge-rail rates on sugar from points in Louisiana to northern destinations prescribed. U. S. War Dept. v. A. & S. Ry., 92 I. C. C. 528.

(o) Dividing rates largely in accordance with amount and cost of service rendered by each carrier does not mean that they must be divided on a mileage basis. Consideration must be given, as the statute requires, to whether a particular carrier is an originating, inter-

mediate, or delivering line, all of which has a bearing upon question of cost of service. Nor can it be determined with precision what is the cost of service rendered by a particular carrier. All that the commission can do is to use its best judgment in the light of evidence before it. U. S. War Dept. v. A. & S. Ry. 92 I. C. C. 528, 538.

(p) While divisions, in first instance, are properly the concern of carriers, commission has certain jurisdiction with regard to them, exercise of which requires the consideration of many factors. Peoria & Pekin Union, 93 I. C. C. 3, 19.

(q) Upon further hearing, just, reasonable, and equitable divisions to be received by Fore River R. R. Corp., out of joint rates on petroleum and products established pursuant to finding in original report, 66 I. C. C. 535, prescribed, and adjustment thereof required upon basis herein found just, reasonable, and equitable. Massachusetts Oil Rfg. Co. v. B. & A., 93 I. C. C. 110.

(r) Carrier, which operated at a deficit, contended that under section 15 (6) of the act it is entitled to such just, reasonable, and equitable divisions out of joint rates as will pay proportions of its operating expenses, taxes, rentals, and a fair return on value of property used in service of transportation, properly attributable to services performed. HELD, following Federal Valley R. R. Co., 68 I. C. C. 496, fact that carrier has been operating at a deficit does not of itself prove that it is fairly entitled to increased divisions. Massachusetts Oil Rfg. Co. v. B. & A., 93 I. C. C. 110, 114.

(s) In determining and prescribing divisions the commission is enjoined to give due consideration, among other matters, to efficiency with which carriers concerned are operated and importance to public of the transportation services of such carriers. Christie and Eastern Ry. v. K. C. S., 93 I. C. C. 675, 679.

(t) Divisions accorded the Dansville & Mt. Morris R. R., not shown unjust, unreasonable, inequitable, or otherwise unlawful. Claim for increased divisions is based upon carrier's poor financial condition and contention that the line should be sustained in the public interest by larger divisions measured by those accorded other comparable short lines in the same general locality. However, there is no uniformity of treatment in the matter of divisions to short lines throughout this territory, many of which received less favorable divisions than the D. & Mt. M. Moreover, complaining carrier is not put to any unusual expense in performing its joint service and, when consideration is given to simplicity of its interchange arrangement and operations, level grades, preponderance of inbound traffic, and average haul, earnings on its traffic can not be said to be unreasonable. Murray, Receiver v. E. R. R., 95 I. C. C. 13.

(u) Financial need is but one of the elements which the commission is directed to consider in determining divisions of joint rates, and fact that a carrier is being operated at a loss is not of itself sufficient ground on which to order an increase of divisions in its favor. Murray, Receiver v. E. R. R., 95 I. C. C. 13, 18.

(v) Just, reasonable, and equitable divisions to be received by Rock Island, Vicksburg, Shreveport & Pacific, and Yazoo & Mississippi Valley on crude and refined petroleum oil from points in the Smackover-El Dorado, Ark., field on the Rock Island to points in Louisiana on the Y. & M. V., prescribed for the future. Petroleum Oil from Arkansas to Louisiana, 95 I. C. C. 55.

(w) Divisions of joint rates applicable on coal moving from points on the Cumberland & Manchester R. R. over the L. & N. to destinations in the North, West, and South, as between the two carriers named, not shown unjust, unreasonable, inequitable, or otherwise unlawful. L. & N. v. C. & M., 95 I. C. C. 107.

(x) When considered in light of the ordinary rule of rate making that as distance increases the rate of earnings decreases, divisions received by a carrier whose earnings for a single year were 72.16 per cent of the revenue for 90.07 per cent of the haul can not be said to be unreasonable, unjust and inequitable. L. & N. v. C. & M., 95 I. C. C. 107, 115.

(y) Investigation instituted concerning the justness, reasonableness, and equitableness of the allowances or divisions received by the Texas Gulf Sulphur Company out of the rates applicable to the transportation of sulphur from Gulf Hill, Tex., to Texas Gulf ports, discontinued. Allowances or Divisions Received by Texas Gulf Sulphur Co., 96 I. C. C. 371.

(z) Upon further hearing, in view of the opinion of the Supreme Court, in U.

S. v. Abilene & So. Ry. Co., 265 U. S. 274, findings in original report modified. Divisions on traffic interchanged between the Kansas City, Mexico, and Orient Lines and their immediate connections found unjust and unreasonable and just and reasonable divisions prescribed. Kansas City, Mexico & Orient Divisions, 96 I. C. C. 378.

(aa) Division accorded the Marion & Eastern Railroad Company out of joint rates on coal from mines on its line to interstate destinations found unjust, unreasonable and inequitable, but not unjustly discriminatory. Just, reasonable and equitable division prescribed. Former report, 68 I. C. C. 17, reversed. Marion & Eastern R. R. Co. v. C. & E. I. Ry. Co., 96 I. C. C. 402.

(bb) The commission is empowered, under section 15 (6) of the interstate commerce act, to require a readjustment of divisions of joint rates for the period subsequent to the filing of a complaint in cases where such rates were established pursuant to a finding or order of the commission. See 89 I. C. C. 695. Marion & Eastern R. R. Co. v. C. & E. I. Ry. Co., 96 I. C. C. 402, 409, 410.

(cc) Car-ownership cost is one of the transportation costs which should be considered in connection with the portion of the transportation performed by the independent line-haul carrier when fixing its division of the through rate. Virginia Blue Ridge Ry. v. S. Ry. Co., 96 I. C. C. 591, 594.

(dd) Upon further hearing, and consideration of reports of respondent carriers showing fully their experience in handling the interchanged traffic and in dividing the revenues in accordance with the divisions prescribed in original report, 68 I. C. C. 47; FOUND: That such divisions of the interstate joint freight rates applying to traffic interchanged between Missouri and North Arkansas and the eight other respondent carriers herein are, and for the future will be, just, reasonable, and equitable, excluding that traffic as to which the carrier named serves solely as an intermediate carrier. Divisions of Joint Rates and Fares of M. & N. A. Ry. Co., 98 I. C. C. 119.

(ee) Divisions accorded Erie Railroad out of the joint eastbound transcontinental rates on fresh fruits and vegetables to Newark, N. J., found not unjust, unreasonable, inequitable, or unduly prejudicial. Erie R. R. Co. v. A. & V. Ry. Co., 98 I. C. C. 268.

(ff) Divisions accorded the Erie Railroad out of the joint eastbound transcontinental rates on fresh fruits and vegetables to the Duane Street Station, New York, N. Y., found unjust, unreasonable, and inequitable. The Erie performs special transportation services in connection with the delivery of this traffic and the record shows that the principal carriers parties to this proceeding are efficiently operated and that the transportation services performed by them are important to the public. Just, reasonable and equitable divisions prescribed for the future and retroactive adjustment required. Erie R. R. Co. v. A. & V. Ry. Co., 98 I. C. C. 268.

(gg) Upon contention that retroactive adjustment of divisions should not be made because there is no showing that the rates were established pursuant to a finding or order of the commission, FOUND: That the record shows that since the date and complaint was filed the rates have carried increases accorded in Increased Rates, 1920, 58 I. C. C. 220, and adjustment should be made from date of complaint and not from the date the increases were authorized, as sought by complainant, since the commission's authority to require adjustment extends only over the period subsequent to the filing of the complaint. Erie R. R. Co. v. A. & V. Ry. Co., 98 I. C. C. 268, 281.

(hh) The question is not whether defendants are legally separate entities, nor whether they are operated in all respects as they would be operated if ownership and management were concentrated in a single corporation. Rather the problem is to find a fair measure for the fixing of reasonable divisions. In determining the application of single line and joint line scales, the Commission has in numerous cases found that lines which are under common control and management, though owned by separate corporations, shall be deemed single units for rate making purposes. Raleigh Freight Traffic Bureau v. A. C. L. Ry., 107 I. C. C. 156, 158.

(ii) Under the schedules now in effect, the Mississippi Central technically offers or concurs in transportation at stated charges from and to points east of Hattiesburg which it neither reaches

nor serves by trackage agreements with its connecting lines. The B. & H. S., and G., M. & N. have been hauling carload freight between Hattiesburg and Mobile for the account of the Mississippi Central without any agreement with respect to compensation therefor. Adjustments of divisions on traffic thus handled should be based upon strict mileage prorates. Divisions prescribed for future. Cancellation of Rates and Routes via Mississippi Central, 100 I. C. C. 71, 72.

(jj) Upon investigation, divisions accruing to the Indian Valley Railroad out of joint rates on ores and concentrates, from local stations on its line to Wabuska, Nev., found unjust, unreasonable, inequitable, and unduly prejudicial as between carriers parties thereto to the extent that they are not the same as divisions of corresponding rates contemporaneously maintained on like traffic from same points of origin to Utah smelters. Mason Valley Mines Co. v. W. P. R. R. Co., 100 I. C. C. 180.

(kk) Upon contention that disparity between the divisions allowed the Indian Valley Railroad out of the Utah rates and out of the joint rates to Waubuska, Nev., together with the proprietary interest of the Engels Copper Mining Company in that line, creates an incentive for proprietary company to ship its products to Utah, thereby creating undue prejudice to smelter at Wabuska, HELD: Divisions accorded Indian Valley Railroad out of joint freight rates on ores and concentrates from Engels, Calif., and other stations local on its line, to Wabuska, Nev., will for the future be unjust, unreasonable, inequitable, and unduly prejudicial as between carriers parties thereto, to extent they are greater or less than divisions accorded out of corresponding rates contemporaneously maintained on like traffic from same points of origin to Garfield and International, Utah, like divisions to Utah smelters and to Wabuska being required. Mason Valley Mines Co. v. W. P. R. R. Co., 100 I. C. C. 180, 181, 182.

(ll) Contention of the Western Pacific that the quite general practice of blanketing long-haul rates on certain commodities from branch and independent lines on the junction-point basis of maintaining short-haul rates from such origins on an arbitrary over the junction point rate is a sufficient justification for divisions to respondent out of the rates to Garfield different from those out of the rates to Wabuska, not sustained. Mason Valley Mines Co. v. W. P. R. R. Co., 100 I. C. C. 180, 201.

(mm) Divisions of joint class and commodity rates between New Orleans, La., and Mobile, Ala., on one hand, and interior points on L. & N., on other, interchanged either at Mobile or Tuscaloosa, Ala., found just and reasonable both to Warrior River Service Barge Line and to L. & N., if divided upon a rate prorate basis, consisting of two prescribed factors, the percentages which such factors bear to the whole to be used in arriving at divisions of joint barge-and-rail rates which shall accrue to barge line and L. & N., respectively, with qualification that 25 per cent of joint barge-and-rail commodity rates between New Orleans and Mobile, on one hand, and points in Birmingham, Ala., district, on other, when the traffic is interchanged at Tuscaloosa, will result in just and reasonable divisions to L. & N. and in just and reasonable balance to barge line. U. S. War Dept. v. A. & S. Ry. Co., 100 I. C. C. 491.

(nn) In prescribing reasonable divisions of joint rates between Warrior River Barge Line and L. & N., proposal of barge line that the originating or delivering carrier shall assume its own terminal disabilities, and where a charge is made for terminal service in addition to the line-haul rate, such charge is to accrue to the carrier performing the service, found just and reasonable. U. S. War Dept. v. A. & S. Ry. Co., 100 I. C. C. 491.

(oo) Upon further hearing, basis of the rates, and equitable divisions thereof prescribed in connection with the through routes and joint rates required to be established between points on Michigan Railroad in Michigan and interstate points, by previous orders of the commission in original report, 74 I. C. C. 496. The affected stations should be accorded the same basis of rates as apply from or to stations on other lines in the immediate territory, to wit, as to class of traffic and commodity rates bearing a direct relation thereto, rates based on the so-called zone B, c. f. a. scale, and as to other commodities group rates where such apply, and relatively aligned rates where some other basis is used; and further that the equitable di-

visions thereof to be accorded the electric lines, on the one hand, and defendants, on the other, will be those computed on the percentage basis contemporaneously in effect between the Michigan's Allegan-Battle Creek line on the one hand and defendants on the other. Michigan Railroad Co. v. P. M. R. R. Co., 101 I. C. C. 146.

(ooa) Just, reasonable, and equitable division to be received by Chaffee R. R. out of joint rates on coal originating on that line prescribed in Hamill Coal & Coke Co. v. W. M. Ry. Co., 81 I. C. C. 72, determined and adjustment on that basis required. Chaffee R. R. v. W. M. Ry., 102 I. C. C. 53.

(oob) Fact that a carrier may show a deficit on one of its divisions can not be controlling in determining just divisions of joint rates. Chaffee R. R. v. W. M., 102 I. C. C. 53, 58.

(pp) Complainant, Minnesota Western Ry, alleged its divisions of the interstate joint freight rates applicable on classes and commodities delivered to, or received from, defendants were and are unreasonable and inequitable in violations of section 1 and 15 of the act. In 90 I. C. C. 637, the financial structure of the company was before the Commission. The Minnesota Western extends westerly from Luce Line Junction, Minn., a distance of 82.4 miles to Lake Lillian, Minn., its only connection is with the Electric Short Line Terminal Co., at Luce Line Junction, near Minneapolis. Minn. Interchange with the G. N. and C. B. & Q., is made through the terminal company. With roads other than those named interchange is made through the G. N. Per diem is paid on foreign equipment. The bulk of the traffic originating on the Minnesota Western is grain, hay and drain tile, while that moving inbound, other than less carloads consists of lumber, coal, cement, drain tile, stone, sand and oil. Complainant introduced little evidence as to the measure of the divisions received and did not attempt to show that they were unreasonable per se for the service performed. It asserts that because it is a delivering and originating road having no intermediate traffic its proportion of the revenue should be relatively greater than its portion of the haul. No comparisons were made to show that the divisions received were less favorable than those accorded by defendants to other short lines. From the figures given it is apparent that its average divisions are greater than those of its connections but this is necessarily so due to its short mileage and low traffic density. Taking into consideration the relative cost of service, the fact that complainant is wholly an originating and delivering line, the amounts of revenue required to pay respective operating expenses, taxes, and a fair return, and the importance to the public of the transportation services afforded by complainant, as well as by defendants, the Commission is of the opinion that the existing divisions since Feb. 29, 1924 are unreasonable and inequitable, and that reasonable and equitable divisions to which complainant will be entitled out of the joint interstate rates will be 20 per cent in excess of the present divisions, except that in no instance need the divisions be increased to exceed the local rates over complainants line. Minnesota Western Ry. v. A. T. & S. F. Ry., 109 I. C. C. 127.

ALL OTHER CITATIONS

Carriers Divisions of Bituminous Coal Rates, 85 I. C. C. 617; Divisions Received by Brimstone R. R. & Canal Co., 88 I. C. C. 62; Hampton & Branchville R. R. & Lbr. Co. v. A. C. L. R. R. Co., 88 I. C. C. 77; St. L. S. F. Ry. Co. v. N. A. Ry. Co., 88 I. C. C. 107.

§10. Evidence and Procedure.

See Evidence; Procedure Before Commission.

(a) A carrier's statements regarding its value and revenue needs, as submitted in Increased Rates, 1920, 58 I. C. C. 220, are not pertinent in another proceeding seeking increased divisions if not supported by the record. New York Dock Ry. v. B. & O. R. R. Co., 89 I. C. C. 695, 705.

(b) A prime factor in determining the fair and equitable share of joint revenue which each carrier shall receive is the relative amount and cost of the joint services rendered. Salina Northern R. R. v. A. T. & S. F. Ry., 92 I. C. C. 475, 480.

(cd) Fact that a carrier has been operating at a deficit does not of itself prove that it is fairly entitled to increased divisions. Federal Valley R. R. Case, 68 I. C. C. 499, 502. Salina Northern R. R. Co. v. A. T. & S. F., 92 I. C. C. 475, 481.

(e) Financial need is but one of the elements which the commission is directed to consider in determining divisions of joint rates, and fact that a carrier is being operated at a loss is not of itself sufficient ground on which to order an increase of divisions in its favor. Murrage, Receiver v. E. R. R., 95 I. C. C. 13, 18.

(f) All carriers whose lines connect directly with the line of Missouri and North Arkansas having been joined as respondents; FOUND: That other carriers which unite in publishing interstate joint rates applying to, and which participate in transporting, certain of the traffic interchanged are not necessary parties in a proceeding to determine the divisions of such joint rates between carrier named and each of its immediate connections, following decision of U. S. Supreme Court in Orient Divisions case, 265 U. S. 274. Divisions of Joint Rates and Fares of M. & N. A. Ry. Co., 98 I. C. C. 119.

(g) Relative cost of service is not the only factor to be considered in determining just divisions. The fact that a carrier may show a deficit on one of its divisions can not be determining issues such as are here presented. Chaffee R. R. v. W. M. Ry., 102 I. C. C. 53, 58.

(h) Car ownership and car rental expenses are transportation costs which should be considered when divisions of the freight rate are fixed. Chaffee R. R. v. W. M. Ry., 102 I. C. C. 53, 59.

(i) In fixing divisions the Commission may take into consideration the financial needs of the weaker road and give it a division larger than justice merely as between the parties would suggest in order to maintain it in effective operation as part of an adequate transportation system. Similar considerations may properly govern the Commission in establishing through routes, and the Commission has frequently taken them into account in previous cases of this nature. 78 I. C. C. 328, 95 I. C. C. 237, 88 I. C. C. 312. Fort Smith S. & R. I. Ry. v. A. & V. Ry., 107 I. C. C. 523, 525.

DOCKAGE

ALL CITATIONS

Dockage, Handling, and Storage Charges, 88 I. C. C. 24.

DOUBLE ADVANCES

See Advanced Rates §9½.

DOUBLE LOADING

See Classification §7½.

DRAYAGE

See Allowances §8 (8).

(a) Drayage charges assessed on milk and cream in 10-gallon cans, for single-line hauls in baggage service from points in Iowa, to Omaha, Nebr., via circuitous routes, found not unreasonable, but new and more direct interline routes and reasonable maximum rates constructed upon basis of specific joint-line distance scales, with the addition of drayage charges where drayage is necessary in order to transfer shipments between separate passenger depots of connecting rail carriers, prescribed for future. Kirschbraun & Sons, Inc., v. G. N. Ry. Co., 100 I. C. C. 28, 40.

DRESSING IN TRANSIT

See Facilities and Privileges, §6½, §15.

DUNNAGE

See Allowances §8 (2½).

DUPLICATE SHIPMENT

See Classification §12½.

ELECTRIC LINES

I. CONTROL AND REGULATION.
II. THRU RATES WITH STEAM ROADS.
III. RIGHT TO FUEL RATES.
IV. RATES, TRANSFERS AND DIVISIONS.
V. FACILITIES.
VI. OPERATION.
VII. REGULATIONS.
VIII. SWITCHING CONNECTIONS.

I. CONTROL AND REGULATION.

See Control and Regulation; Interstate Commerce II.

(a) A carrier operating electric passenger cars between Buffalo and Queenston, Ontario, held engaged in "interstate commerce," in operating another line wholly within the city of Buffalo, issuing transfers to the international line and accepting transfers from it, though the bulk of the traffic was intrastate. Barelli v. International Ry. Co., 203 N. Y. S. 704.

(b) Under Act to Regulate Commerce Feb. 4, 1887, §1, as amended (Comp. St. §8563) giving Interstate Commerce Commission jurisdiction over transportation of passengers or of property by "railroad," without distinction between steam and electric railroads, the Interstate Commerce Commission has jurisdiction to regulate interstate interurban passenger fares of electric railroad operating line between cities in different states, not constituting a part of a steam railroad system, or engaged in general transportation of freight in addition to passenger business, the only limitation on such jurisdiction being contained in Act June 18, 1910, §12 (Comp. St. §8583), and Transportation Act 1920 (Comp. St. Ann. Supp. 1923, §10071¼ et seq), in view of federal Employers' Liability Act (Comp. St. §§8657, 8665), Safety Appliance Act March 2, 1893, as amended by Act March 2, 1903 (Comp. St. §§8613, 8615), and Hours of Service Act (Comp. St. §§8677, 8680). United States v. Village of Hubbard, Ohio, 45 Sup. Ct., 160.

(c) The Commission is authorized to establish joint rates on traffic interchanged between steam roads and electric lines engaged in the general business of transporting freight, and there is no doubt that upon a proper record it can pass upon the justness, reasonableness, and equitableness of the divisions of the rates for such interchanged traffic. The exercise of this jurisdiction, however, must be attended by great difficulty due to the lack of proper elements of comparison. Spokane & Eastern Ry. & P. Co. v. S. P. & S. Ry., 109 I. C. C. 713, 716.

ALL OTHER CITATIONS

Depreciation Charges of W. Ry. & E. Co., 85 I. C. C. 126.

II. THROUGH RATES WITH STEAM ROADS.

See Through Routes and Joint Rates.

(a) Electric lines invoked the commission's power under section 15 "to establish the joint rates to be charged" in connection with through routes established pursuant to commission's previous orders. In view of the fact that these lines are willing to forego arbitraries in order that they may be offered an opportunity to develop traffic, joint rates to be charged on traffic under consideration may properly be on same basis as are the corresponding joint rates from and to points on the Michigan's Allegan-Battle Creek line and other points in the immediate territory, nor does there appear to be any persuasive reason why the divisions of such joint rates should not be on the percentage basis applying in connection with that line. Michigan R. R. Co. v. P. M. R. R. Co., 101 I. C. C. 146.

(b) Upon further hearing, basis of the rates, and the equitable divisions thereof prescribed in connection with the through routes and joint rates required to be established between points on Michigan Railroad in Michigan and interstate points by previous orders of the commission in original report, 74 I. C. C. 496. The affected stations should be accorded the same basis of rates as apply from or to stations on other lines in the immediate territory, to wit, as to class traffic and commodity rates bearing a direct relation thereto, rates based on the so-called zone B, c. f. a. scale, and as to other commodities, group rates where such apply, and relatively aligned rates where some other basis is used; and further that the equitable divisions thereof to be accorded the electric lines, on the one hand, and defendants, on the other, will be those computed on the percentage basis contemporaneously in effect between the Michigan's Allegan-Battle Creek line, on the one hand, and defendants, on the other. Michigan Railroad Co. v. P. M. R. R., 101 I. C. C. 146.

(c) Application for authority to establish class rates between points on the lines of the Interstate Public Service Co., in Indiana and Kentucky, and certain points on the lines of the Illinois Traction System in Missouri and Illinois, without observing the long-and-

short haul provision of section 4 of the act, denied. Routing of traffic over applicant's lines as proposed would result in wasteful transportation, and proposed rates would not be reasonably compensatory. Class Rates via I. P. S. Co., 101 I. C. C. 189.

IV. RATES, TRANSFERS AND DIVISIONS.

(a) Practice of the Peoria & Pekin Union Ry., in assessing charges at and in vicinity of Peoria, Ill., for interchange service between connections with its tenants and the rails of Minneapolis & St. Louis, and St. Louis, Springfield & Peoria, an electric line, while contemporaneously performing a like service between connections with its tenants and rails of C., B. & Q., and Rock Island without charge, found unjustly discriminatory and unduly prejudicial. Peoria & Pekin Union, 93 I. C. C. 3, 23.

(b) Electric lines invoke the commission's power under section 15 "to establish the joint rates to be charged" in connection with through routes established pursuant to our previous orders. In view of the fact that these lines are willing to forego arbitraries in order that they may be afforded an opportunity to develop traffic, joint rates to be charged on traffic under consideration may properly be on same basis as are the corresponding joint rates from and to points on the Michigan's Allegan-Battle Creek line and other points in the immediate territory, nor does there appear to be any persuasive reason why the divisions of such joint rates should not be on the percentage basis applying in connection with that line. Michigan R. R. Co. v. P. M. R. R., 101 I. C. C. 146.

(c) Complainants, Spokane & Eastern Ry. & Power Co. and Inland Empire R. R. Co., alleged their divisions of joint rates and charges on traffic interchanged between them and defendants are unjust, unreasonable, inequitable and unduly prejudicial. Complainants are electrically operated common carriers, independently owned and operated and transport both freight and passengers. Total trackage of Spokane line 94 miles, Inland Empire 149 miles. Joint rates are in effect between points on complainants lines and points on lines of defendants as well as points reached through their connections in practically all sections of the country. The allegation that the present divisions were determined by the defendants is denied by them, nor is it shown by the evidence that the lines of complainants were constructed with the view to equal support from passenger and freight business. The record as a whole, in its final form, compels the conclusion that the present plea for readjustment of divisions on freight traffic is based very largely, if not wholly, upon financial needs. The record in this case still fails to disclose evidence upon which the Commission can arrive at satisfactory conclusions regarding the relative expense of freight transportation on the lines of complainants and defendants, respectively, or as to the relative expense of the freight and passenger operations of complainants. HELD, complaint dismissed without prejudice. Spokane & Eastern Ry. & P. Co. v. S. P. Ry., 109 I. C. C. 713.

VIII. SWITCHING CONNECTIONS.

See Switch Tracks and Switching.

ALL CITATIONS

C., L. S. & S. B. Ry. Co. v. L. E. & W. R. R. Co., 88 I. C. C. 525.

ELECTRICITY

(a) Transportation of electricity furnished local distributing company in another state by resident corporation, which was continuous from this state to its ultimate destination, constituted interstate commerce. Attleboro Steam & Electric Co. v. Public Utilities Commission (R. I., 1925), 129 Atl. 495.

(b) Sale and transportation of electricity, generated in one state and conveyed directly to purchaser in another state, is interstate commerce. Attleboro Steam & Electric Co. v. Public Utilities Commission (R. I., 1925) 129 Atl. 495.

ELEVATION

See Allowances §8 (3); Transit.

ELKINS ACT

See Crimes. I.

EMBARGOES

See Car Congestion; Demurrage §3½; Reconsignment §4½;

Routing and Misrouting §4¼; Through Routes and Joint Rates §22 (h).

(a) Desired route being embargoed, complainant notified consignor to forward shipments via unembargoed route. Subsequently permit obtained authorizing movement over embargoed route, which complainant forwarded to carrier together with letter setting forth name of consignor and requesting carrier to "be governed accordingly." Complainant, however, failed to change instructions previously given consignor and shipments were billed and moved via higher-rated route. HELD: Applicable tariff provided that "request for diversion or reconsignment must be made or confirmed in writing * * *," but no proper request in conformity therewith was made. Moreover, tender of permit or direction in letter to "be governed accordingly" laid no obligation on carrier to forward shipments via embargoed route in view of specific instructions designed in bills of lading. Weston Dodson & Co. v. N. Y., O. & W. Ry. Co., 91 I. C. C. 659.

(b) Due to strike of defendant's employees, certain destinations were embargoed, resulting in complainant being unable to make outbound or unload inbound shipments. Necessity for embargo was unquestioned and record failed to establish that defendant refused to furnish cars for shipments to unembargoed points. Complainant might have stopped cars from arriving at its plant before storage capacity became exhausted by diverting cars to other points. HELD: Under above circumstances demurrage charges assessed were not unreasonable or otherwise unlawful. Big Diamond Mills Co. v. C. G. W. R. R., 92 I. C. C. 709.

(c) Due to embargo, shipments of feldspar from Keene, N. H., to Manchester, Conn., were forwarded over an indirect route to Willimantic, Conn., thence reconsigned to destination. Combination rates assessed found unreasonable, the initial factor to extent it exceeded lower rate subsequently established and equivalent to 90 per cent of sixth class, the basis maintained by carriers in this territory, and the Willimantic-Manchester factor as compared with rates for entire distance via the direct route and with rates and earnings on numerous comparable commodities for like distances. Reasonable rate for the Willimantic-Manchester factor prescribed and reparation awarded. Orford Soap Co. v. B. & M., 95 I. C. C. 615.

(d) Even though embargoes are properly laid, shippers should not be debarred from reasonable rates via accessible routes where direct lines find it impossible to maintain adequate transportation facilities. Orford Soap Co. v. B. & M., 95 I. C. C. 615, 616.

(e) Embargo notice of delivering line specified in routing instructions provided that delivery at embargoed point would be accepted only on permits issued by its superintendent of car service. Shipper obtained permit from an operating committee from which delivering line had withdrawn, resulting in shipments being held at reconsignment point until proper permit obtained. FOUND, demurrage and penalty charges accruing during interim found not illegal or unreasonable since applicable reconsignment tariff provided that shipments would not be reconsigned to embargoed points except under authorized permits, and the detention here was due to failure of shipper to furnish proper permit. Laumer Lbr. Co. v. A. C. L., 96 I. C. C. 93.

(f) Demurrage and penalty charges on a shipment of lumber from Paden, Miss., to Cairo, Ill., and reconsigned to Cleveland, Ohio, which were assessed from the time of notification of the existence of an embargo over the route specified in the reconsignment order until the date on which the embargo was lifted found to have been applicable and not unreasonable, following decision of the court that such charges had been legally assessed. Complaint dismissed. Krauss Bros. Lumber Co. v. I. C. R. R. Co., 96 I. C. C. 760.

(fa) Shipment of lumber moved from Jasper, Tex., to St. Louis, and was ordered reconsigned to Harlem Transfer, N. Y., or if that point was embargoed, Long Island City, N. Y. Complainant was notified reconsignment could not be made due to an eastern embargo. Shipment was placed in storage and subsequently moved under permit to New York. While applicable tariff prohibited reconsignment to embargoed points not only was there no embargo on eastern lines against Long Island City, but one of such lines reaching St. Louis was willing to accept shipment for transportation. Carriers disability preventing immediate movement was theoretical disability based

upon supposed embargo and it follows that charges assessed as result of refusal to reconsign were illegal. Reparation awarded. Milne Lbr. Co. v. Director General, 102 I. C. C. 520.

(g) Complainant alleged that by reason of the refusal of the Apalachicola Northern to accept at Hosford, Fla., for movement via eastern gateways two cars of lumber consigned to the Pennsylvania, Jersey City, N. J. the cars were shipped to Montgomery, Ala., and reconsigned from that point to Jersey City. The refusal was on the grounds that the A. C. L., its connection had in effect an embargo on traffic routed by way of the eastern gateways. Charged 42c a rate of 33.5c would have been applicable had the cars moved over the more direct route. The embargo remained in effect from June 22, 1920 to July 8, 1920 and there appears to have been no valid reason for further refusal by the A. N., on that date to accept these shipments, as the route was open. The statement in the telegram of the A. N., superintendent was clearly erroneous. HELD, refusal unlawful reparation awarded at rate of 33.5c plus reconsignment of $10, reparation awarded. Haviland v. A. N. R. R., 109 I. C. C. 253.

ALL OTHER CITATIONS

Empire Lumber Co. v. Director General, as Agent, 88 I. C. C. 424.

EMERGENCY RATES

See Evidence §21½; Long and Short Hauls §4½ (a).

(a) Emergency rates on hay from Keenesburg and Hudson, Colo., to St. Louis, Mo., were excepted from reductions required in 64 I. C. C. 85, but similar rates from competing Colorado common points were not so excepted. Long-and-short-haul violation of fourth section thereby created was subsequently removed by restoration of rate parity. HELD: Higher rates assessed during interim from Keenesburg and Hudson found not unreasonable; in absence of proof of damage unauthorized departure from fourth section does not warrant an award of reparation; and since there is no showing that competitors were enabled to control the St. Louis market, compelling complainant to meet their price, no damage has been shown by reason of undue prejudice which may have existed. National Hay & Milling Co. v. C., B. & Q. R. R. Co., 89 I. C. C. 1.

(b) Third-class rates on oleomargarine found not unreasonable as compared with rates on butter. Both before and after shipments here involved moved, same rates applied on oleomargarine, butter, cheese, dressed poultry and eggs, but during period of movement lower emergency rates on all these commodities, except oleomargarine, were in effect, having been established by carriers as a temporary relief for farmers. Oleomargarine was not included in the reductions as it was not considered a direct product of the farm or ranch, but purely a manufactured product. Moreover, in Kansas Car-Lot Egg Shippers' Asso., 53 I. C. C. 59, third-class rates were found by the commission to be just and reasonable maximum rates on butter, butterine, oleomargarine, dressed poultry, and eggs. Jelke Co. v. C. & N. W., 95 I. C. C. 643.

ALL OTHER CITATIONS

Arizona Egyptian Cotton Co. v. Director General, as Agent, 88 I. C. C. 263; Valley Camp Coal Co. v. B. & O. R. R. Co., 88 I. C. C. 682.

EMPLOYERS' LIABILITY ACTS

See Personal Injuries; Safety Appliance Acts.

EMPTY CARS

See Cars and Car Supply §7⅝; Classification §12⅞; Demurrage §2 (q), §10¾ (a); Evidence §22 (d).

EQUALIZATION OF RATES

I. CONTROL AND REGULATION.

§1. Jurisdiction of Commission.

II. CIRCUMSTANCES AND CONDITIONS.

§2. In general.
§3. Commercial advantages and disabilities.
§4. Competition.
(1) In general.
(2) Railroads.
(3) Rail-and-water.
(4) Water.

(5) Market competition.
§5. Low state rate.
§6. Preference of markets.
§7. Size of community.

III. EFFECT OF EQUALIZATION.
§8. Adjustment of related rates.

CROSS REFERENCES

See Advanced Rates §5 (2); §11½; Blanket Rates §7, §8, §10; Classification §20; Differentials §5, §6, §7; Discrimination; Evidence §66; Export Rates and Facilities §6 (gg); Local Rates and Combinations; Long and Short Hauls; Market Competition; Proportional Rates II (p); Reasonableness of Rates §28; Relative Rates.

I. CONTROL AND REGULATION

See Control and Regulation.

§1. Jurisdiction of Commission.

See Interstate Commerce Commission I; Jurisdiction of Commission.

(a) It is not the commission's function to equalize milling costs. Stuttgart Rice Mill Co. v. A. & V. Ry., 93 I. C. C. 517, 528.

(b) The solution of questions of industrial and commercial policy has not been committed to the commission. Kloeber v. N. P. Ry. Co., 96 I. C. C. 437, 440.

II. CIRCUMSTANCES AND CONDITIONS.

§2. In general.

See Differentials; Evidence §2, §56; Reasonableness of Rates §12½, §28.

(a) Complainant attacked commodity rates charged on fresh fruits and vegetables, carloads, from producing points in Indiana and Illinois to Chicago, Ill., as unreasonable, and unjustly discriminatory. With few exceptions fruits and vegetables shipped from Indiana to Chicago move under class rates, where as from Illinois to Chicago most of this traffic moves under commodity rates lower than class rates. There are no transportation conditions which justify a higher level of rates on fruits and vegetables from Indiana to Chicago than is maintained from Illinois to Chicago. Substantially the same fruits and vegetables are grown in Indiana and Illinois, and producers in the two states compete in the Chicago market in the sale of their products. HELD, rates attacked from Indiana to Chicago unreasonable to extent they exceeded third class rates on strawberries, fourth class on peaches, class C rates on other fresh fruits and vegetables. Indiana Public Service Commission v. B. & O. R. R. 89 I. C. C. 651.

(b) Complainant attacked class rates charged on six cars of monochlorobenzol from Kingsport, Tenn., to Carneys Point, N. J., in Nov. and Dec. 1918, as unreasonable, unjustly discriminatory and unduly prejudicial. Kingsport is on the C. C. & O., 26 miles north of Johnson City, Tenn. Carneys Point is on the W. J. & S., 30 miles southwest of Camden, N. J. Shipments moved C. C. & O., to St. Paul, Va., N. & W., to Hagerstown, Md., Cumberland Valley to Harrisburg, Pa., Pennsylvania to Camden, W. J. & S., beyond, distance 724 miles, charged fifth class rate of 69c. Commodity rates of 44c were contemporaneously in effect from Kingsport to New York, Philadelphia, and points taking same rates. HELD, rate attacked unreasonably to extent it exceeded 44c, reparation awarded. Du Pont de Nemours & Company v. Director General, 91 I. C. C. 15.

(c) Complainant attacked commodity rate charged on 50 cars of lumber and lumber products from Melrose, Oakland, Calif., to Cactus and Phoenix, Ariz., between Oct. 10, 1920 and May 4, 1921, as unjust and unreasonable. Cactus is 7 miles south of Phoenix on the A. E. R. R., distance from Oakland 902 miles, charged 71.5c. The rate to Tucson which is generally on the same basis as Cactus and Phoenix, was 65c. HELD, rate attacked unreasonable to extent it exceeded 65c, reparation awarded. Pacific Tank & Pipe Co. v. S. P. Co., 91 I. C. C. 24.

(d) Complainant attacked commodity rates on phosphate rock, carloads, from Mount Pleasant, Columbia and Sigle, Tenn., to New Albany, Ind., since March 1, 1920, as unreasonable, unjustly discriminatory and unduly prejudicial. New Albany is on the north bank of the Ohio river and complainants plant is 3.6 miles from Louisville served by the Pan Handle. Mount Pleasant group are on the L. & N., an average distance of 238 miles from Louisville. Phosphate rock

is desirable traffic because it can be transported in any kind of a box car and is practically immune from damage in transit. Defendant expressed willingness to establish a joint rate of $3.88 to New Albany, and a rate of $3.49 was established on Sept. 7, 1922, which reflected the 10% reduction of July 1, 1922. Rates charged proportional rates to Louisville and local rates beyond. During all of this period joint commodity rates applied to Evansville, Ind., Cairo, Ill., and Cincinnati, O., where competitors of complainant are located. To Evansville, 215 miles Cairo, 254 miles and Cincinnati 357 miles, rates from the Mount Pleasant group were the same. For many years it has been the tendency of carriers to equalize rates to the several crossings on long hauls but to charge differentials or local rates to north bank points on the short haul traffic. The services of two carriers beyond Louisville are required in order to make delivery at complainants plant, one over an expensive bridge, the other in switching the cars. Clearly the carriers are entitled to compensation for these services. HELD, there is no basis for a finding of undue prejudice to New Albany upon the sole premise that rates to north and south banks at the Cincinnati crossing are equalized. At Cincinnati and Evansville the situation is different. The Commission sees no reason why these points should have been accorded lower rates than those applicable to New Albany. HELD, rates attacked unduly prejudicial to extent they exceeded rates to Evansville and Cincinnati, and unduly prejudicial to extent they exceeded rates to Louisville by more than 30c from March 1, 1920 to August 25, 1920 38c from August 26, 1920 to June 30, 1922 and 34c thereafter, reparation awarded. Calumet Fertilizer Company v. L. & N. R. R., 91 I. C. C. 31.

(e) Complainant attacked fifth class rates charged on nine cars of sugar in bags, shipped from Seattle, Wash., to Chicago, Ill., Boston, Mass. and Landisville, N. Y., in October and Nov. 1919, and May 1920 and that rates on sugar from north Pacific coast points and interior Washington beet sugar producing points to the same destinations, as unreasonable to extent they exceeded commodity rates from California. Since the hearing defendants have satisfied the complaint against the rates from interior Washington points by establishing the California basis from Yakima, Toppenish and Sunnyside, Wash. Charged $2.19 from Seattle to Chicago and $2.375 to Boston and Landisville. Rates from California were 82c, minimum 60,000 pounds, 70c minimum 80,000 pounds to Chicago, and $1.30, minimum 60,000 pounds and $1.18, minimum 80,000 pounds to Boston and $1.315 minimum 60,000 pounds and $1.195 minimum 80,000 pounds to Landisville, being combinations on Chicago. These were the only shipments of sugar known to have been made from Seattle to Chicago and points beyond. There are no refineries at Seattle, and no future shipments are assured or reasonably to be anticipated. There is a considerable movement of sugar from California to the east. Under the circumstances affecting these shipments the class rates were proper. HELD, rates attacked not unreasonable, complaint dismissed. Armour & Company v. N. P. Ry., 91 I. C. C. 75.

(f) In 77 I. C. C. 473, the Commission found, inter alia, that rates on commodities from Memphis, Tenn., to points in western Louisiana were unduly prejudicial to Memphis and unduly preferential of New Orleans to the extent that the rates from Memphis, minus bridge tolls, exceed the rates, minus reasonable allowances for the Mississippi river crossings, maintained from New Orleans to said destinations for like distances. The application of the maximum rates prescribed in the original report on sugar on traffic from New Orleans to western Louisiana would materially increase the present rates while other producing points would still enjoy the lower intrastate rates, creating a discriminatory situation against New Orleans. The evidence on further hearing clearly shows that there is no present or probable movement of sugar in carloads from Memphis to Louisiana points. HELD, rates on sugar from Memphis should be the same as from New Orleans to western Louisiana. Memphis Southwestern Investigation, 92 I. C. C. 447.

(g) Complainant attacked combination rates charged on carloads of hogshead staves and headings, carloads, from Helena, Ark., to Adairville, Glencoe, Springfield, Carlisle, Pleasureville, Horse Cave, Eminence, Russellville, Campbellsburg, Hopkinsville, Madisonville and Cynthiana, Ky., and Springfield, Tenn., since Oct. 1, 1921 as unreasonable. Complainants mills are now dismantled and moved

from Helena on account of a shortage of timber in that vicinity. It does not expect to make further shipments from that point. Effective March 20, 1922 joint rates were made applicable over the L. & N., to Ohio river crossings, Louisville and west, and these rates were observed as maxima at intermediate points in Kentucky. Movement of the shipments was over the Y. & M. V., to Memphis and the L. & N., beyond. Hogshead staves and heading ordinarily take lumber rates, and the rates applied were lumber rates. Helena is 66 miles from Memphis. Complainants plant was on the M. P., which road crosses the river at Memphis by bridge. Charges of $4 per car for switching cars from the latter road to the Y. & M. V., were absorbed by defendants. There is no bridge at Helena. To reach the east bank of the river, inclines and a ferry are maintained by the Y. & M. V. HELD, rates attacked not unreasonable, complaint dismissed. Forbes Mfg. Co. v. Y. & M. V. Ry., 92 I. C. C. 465.

(h) Respondents proposed to revise their rates on fiberboard, pulpboard, and strawboard boxes, carloads, knocked down, from Nashville and Chattanooga, Tenn., Atlanta, Ga., and Birmingham, Ala., to southeastern and south Atlantic coast points. They are also manufactured at Cincinnati, O., Louisville, Ky., New Orleans, La., and at eastern points, which also compete. Paper boxes, carloads, are rated fifth class in southern classification, and move on this basis between all points in the south, except that commodity rates are published to the south Atlantic ports, and from Nashville to Chattanooga and Knoxville, Tenn., Atlanta, Macon, and Augusta, Ga., and Birmingham and Montgomery, Ala. Revised rates are proposed to practically all points in southeastern territory. It is intended only as a temporary measure to take care of the situation until such time as all rates on paper and paper articles between points in the southeast may be revised on a more comprehensive scale. The rates from Chattanooga and Atlanta to Nashville and the Ohio river crossings were established in order to permit manufacturers at those points to meet competition from central territory at the Ohio river and beyond. It was the custom to make Nashville rates a fixed differential under the rates to the Ohio river crossings which accounts for the comparatively low rate to that point at the present time. HELD, proposed rates justified except rate from Chattanooga to Anniston should not exceed 35c; Birmingham to Savannah and Brunswick should not exceed 50c; from Nashville should not exceed 54c to Savannah and Brunswick, 57c to Jacksonville and 56c to Charleston, Beaufort and Port Royal. The port rates should not be exceeded at intermediate points. Paper boxes between southeastern points, 93 I. C. C. 559.

(i) Complainant attacked commodity rates on cement, carloads from Cape Girardeau, Mo., to Illinois on and south of the B. & O., from East St. Louis, Ill., to Vincennes, Ind., as unreasonable, and as compared with the rates from La Salle, Odlesby, Dixon, Ill., unjustly discriminatory and unduly prejudicial. Cape Girardeau is served by the Frisco, 132 miles south of St. Louis, Mo., 6.2 miles north of Illmo, Mo., at the western end of the bridge over the Mississippi river at Thebes, Ill. Distance to Thebes over the route through Illmo is 6.5 miles. The rates from Cape Girardeau to southern Ilinois points except to points on the C. & E. I., range from 0.5 to 3c higher than Scale 11 for the short three line distance while the rates from La Salle are in practically all instances substantially lower than Scale 11 and somewhat lower than Scale 1. Defendants admit that the basis of rates from Cape Girardeau should not exceed the basis applicable from the Illinois mills, and particularly from Hannibal and St. Louis, traffic from which points, must cross the Mississippi river. Cement is a low grade commodity which loads heavily. The minimum generally is is 50,000 pounds but the average loading is much greater. It moves quite regularly throughout the year in large volume, and of all products transported is one of the least expensive to manufacture. It is recognized as a raw material and is one of the most important building materials in use. HELD, rates attacked unreasonable to extent they exceed rates in effect from the Illinois mills. Cape Girardeau Portland Cement Co. v. B. & O. R. R. 95 I. C. C. 632.

(j) Complainant attacked commodity rates on coal, including anthracite, bituminous and lignite coal, from Colorado and northern New Mexico coal producing districts to destinations in South Dakota west of the Missouri river, in Nebraska and Kansas, and to Sioux City, Council Bluffs and Pacific Junction, Iowa,

and Kansas City, Mo., as unreasonable, unduly prejudicial. The locations and general descriptions of the districts in which complainant operates mines, and of its Wyoming competitors, are given in 80 I. C. C. 383, 386, 389. The character and quality of the coals mined in all these districts, and sometimes in the same district, vary greatly. To these destinations complainant has available generally three sets of rates, namely on lump, nut and slack coals. Anthracite coal is mined by complainant only in the Crested Butte district. Effective in October, 1923 the carriers extended to these anthracite rates the basis prescribed in 80 I. C. C. 383, namely, 50c higher than the rates on bituminous soft coal. At the hearing complainants counsel expressed satisfaction with this basis and said that anthracite rates may be regarded as not in issue. Walsenburg, Canon City and Routt County produce high grade bituminous coals for domestic purposes; Trinidad bituminous coal suitable for coking; and Pikeview and the northern Colorado districts, lignite for domestic purposes. The fine coal or slack screened out in preparing domestic sizes is consumed generally by steam plants. **Rates to Missouri River Cities and Destinations in Nebraska and Kansas.** The lump coal rates from Walsenburg may be generally described as follows: to Missouri river points, Omaha, Neb., to Kansas City, $5.27. This rate is blanketed back over the direct lines to, but not including, such points as Grand Island, Hastings and Bloomington, Neb., and Smith Center and Abilene, Kansas. It also applies to points in southeastern Kansas sout of the U. P., line to Kansas City and east of a north and south line drawn just west of Emporia, Kans. To Sioux City and a few other points intermediate thereto the rate is $5.49. To southwestern Nebraska and northwestern Kansas a rate of $5.04 applies. To the rest of Kansas the rates are graded with some regard for distance until they reach the $5.27 rate. To Alliance, Neb., and points east thereof on the Burlington, and generally to branch line points on the Burlington and U. P., south of that line of the Burlington, the $5.27 rate applies. North of that line various rates higher than $5.27 apply, reaching $7.20 at Pierre, S. D. The rates on nut and slack do not seem to bear any definite relationship to those on lump. HELD, rates on lump coal from the Walsenburg district to destinations shown below unreasonable to extent they exceed the following: Barton, Neb. $4.15; Sanborn, Neb., $3.90, Kanarado, Kas., $3.30, Coolidge, Kas., $2.90, and Scott City, Kas., $3.30 other points being related thereto. HELD, further rates on lump coal from northern Colorado to Missouri river territory unreasonable to extent they exceed 75c less than the rates prescribed to Missouri river points, and to other points taking $5 rate from Walsenburg. **Rates to Destinations in Northwestern Nebraska and Western South Dakota.** In so far as destinations in this territory are concerned complainants principal interest is in rates from northern Colorado. The present rates on lump coal from Lafayette, a representative point in the northern Colorado district, is $3.60. This applies to a group of destinations including Northport, Neb., 226 miles, and Edgemont, S. D., 371 miles, a spread of 145 miles. From Kirby, Wyo., on the Budlington the same rate applies to these destinations from distances ranging from 217 miles at Scotts Bluff, Neb., to 492 miles at Edgemont. The distances to Edgemont and other points north of Northport are figured over the Burlington direct. But in connection with the Northwestern from Orin, Wyo., to Crawford, Neb., the hauls from Kirby to many destinations would be less, as, for instances to Edgemont, 367 miles. HELD, rates on lump coal, carloads, from northern Colorado to these grouped destinations are not and will not be unreasonable except that the rate to Northport on lump coal will be unreasonable for future to extent it may exceed $3.40 per ton. This will leave a destination group from northern Colorado ranging from 257 miles to 371 miles as against a destination group from Kirby ranging from 217 miles to 367 miles, the latter distance in connection with the Northwestern. HELD, rates on lump coal, carloads, from the Walsenburg and northern Colorado unreasonable to extent they exceed the following rates: Sidney, Neb., from Walsenburg $4.00; Rapid City $5.50, Northport, Neb., $4.30, Scottsbluff, $4.50, Alliance $4.80, Crawford $5.00, Edgemont, $5.25, Lead, $5.50, Buffalo Gap $5.50. **Screening Specifications Governing Rates from Northern Colorado to Northwestern Nebraska and Black Hill Regions.** HELD, the screening specifications on coal to these des-

tinations from northern colorado unduly prejudicial to extent they permit the Kirby and Sheridan mines to ship coal of a size larger than may be shipped from the northern Colorado district under the corresponding rate. **Rates from Routt County Oak Hills District.** HELD, taking into account the unusual transportation conditions on the Moffett road the Commission is constrained to find that rates on lump coal from this district are unreasonable to extent they exceed the hereinbefore prescribed rates from Walsenburg by more than the present differences between the existing rates. **Rates from Other Districts in Colorado and New Mexico.** HELD, rates on lump coal from the Canon City district are unreasonable to extent they exceed rates prescribed from Walsenburg. Rates on lump coal from Trinidad, Raton, Dawson, Cameo, Palisade, Bowie, Somerset and Crested Butte districts are unreasonable to extent they may exceed the prescribed rates from Walsenburg by more than the present differences between the existing rates. **Relationship of Nut and Slack Coal Rates to Lump Coal Rates.** The present rate on slack from Walsenburg to the Missouri river is $1.05 less than the rate the Commission has prescribed on lump coal. This rate is not unreasonable. Considering the rates on lump coal prescribed some readjustment of the rates on nut and slack will become necessary. Nut coal is used for practically the same purposes as lump coal and it would seem that the rates should be closely related. As slack moves to comparatively few points and is subject to special influences the Commission will not now undertake to prescribe for its specific rates. Colorado & New Mexico Coal Operators Asso. v. D. & R. G. W. R. R., 98 I. C. C. 377..

(k) Complainant attacked commodity rates charged on paper carloads from Hamilton, West Carrolton and Miamisburg, O., and Chicago to Dallas, Texas in Sept., Oct. and Nov. 1922, as unreasonable. The complaint is based upon the fact that the rates charged were out of line with the contemporaneous rates from Wisconsin territory, the rates from that territory having been revised in conformity with 66 I. C. C. 571, effective June 15, 1922, while the old rates from the related territory covered by this complaint remained in effect until Dec. 15, 1922. HELD, rates attacked unreasonable to extent they exceeded rates from and to points in question, effective Dec. 15, 1922, reparation awarded. Butler Paper Co. v. C. I. & W. Ry., 102 I. C. C. 311.

(l) Complainant attacked commodity rate charged on eight cars of sulphuric acid shipped in Sept. and Oct. 1922 from New Orleans—seven to Manchester, Tex., and one to Houston—as unreasonable. Manchester is about 8 miles west of Houston and generally takes the same rates. Shipments moved M. K. & T., to Lafayette, La., La. Western to Echo, Tex., and T. & N. O., beyond, charged 23c. On June 10, 1922 complainant requested the establishment of a rate of 15c, the rate then in effect from Port Arthur to Baton Rouge, this being reduced on July 1, 1922 to 13.5c The rate of 13.5c was established Nov. 23, 1922. HELD, rate attacked not unreasonable, complaint dismissed. Armour Fertilizer Works v. M. L. & T. Ry., 102 I. C. C. 350.

(m) Complainant attacked commodity rates on lime, in carloads, from Milltown, Ind., to Illinois, Indiana, Michigan, Iowa, Wisconsin, Missouri, Kentucky, West Virginia, Ohio, Pennsylvania and New York as unreasonable and unduly prejudicial as compared with the rates on lime, in carloads, from Mitchell, Bedford and Salem, Ind. to the same destinations. Milltown is a local point on the Southern. Mitchell, Salem and Bedford are on the Monon. Mitchell is also on the B. & O., and Bedford on the Milwaukee. The rates from Mitchell are based on the scale prescribed in 85 I. C. C. 341. To accord the same rates to Bedford as apply from Mitchell certainly is not unduly preferential, that point is nearer the destination than Mitchell; or can the Commission conclude that Milltown has been unduly prejudiced in having to pay rates from 0.5 to 2.5c over Mitchell and Bedford for additional distances from 20.7 miles to 63.3 miles. HELD, rate attacked not unreasonable or unduly prejudicial, complaint dismissed. Louisville Cement Co. v. Southern Ry., 104 I. C. C. 455.

(n) Complainant attacked commodity rates charged on 52 cars of prepared roofing and asphalt shingles, in straight and mixed carloads, moving between Jan. 28, 1922 and March 15, 1924 from Chicago, Ill., Cairo, Ill., St. Louis, Mo.,

Evansville, Ind., Louisville, Ky., and Cincinnati, O., to Florence, Ala., as unreasonable, unjustly discriminatory and unduly prejudicial. Florence, Sheffield and Tuscumbia are on the Tennessee river about 4 or 5 miles apart. They are reached from the north by the L. & N., and the Southern. On account of their close proximity the same rate applies to all of these cities and will be referred to as the Florence rate. The rate from Chicago prior to March 10, 1924 was based on 90 per cent. of the sixth class rate to the Ohio river, and the class A rate beyond, and after that date 90 per cent of the sixth class rate to the river and a commodity rate beyond. From St. Louis, the class A rate applied until March 10, 1924 when a commodity rate was established. From the other points named class A rates applied. Corinth, Miss., is on the Southern about 5 miles from the southern border of Tennessee and 93.5 miles east of Memphis. Florence, Sheffield and Tuscumbia are about 55 miles east of Corinth. Sheffield and Tuscumbia are on the main line of the Southern, Florence being on a branch line extending 4 miles from Sheffield. The rates to Corinth are considerably lower than the rates to destinations attacked. Rate from St. Louis to Atlanta 611 miles is 42c, to Florence 379 miles 36.5c. From Cincinnati to Birmingham 481 miles, and to Florence 422 miles is 34c. From Louisville to Memphis, 380 miles and to Corinth 363 miles is 27c while to Florence 312 miles it is 28.5c. The route over the L. & N. from Louisville and Cincinnati to Corinth is through Florence, Sheffield and Tuscumbia. Having in view the level of the rates in Mississippi valley territory and the circumstances under which they were established in comparison with the rates applicable in the southeast at points adjacent to that territory it is manifest that the spread between the rates that have for many years prevailed at Corinth and the rates at Florence, Sheffield and Tuscumbia is too great thereby subjecting the jobbing at that point to undue prejudice in competing with jobbers at Corinth for trade in the same common territory. HELD, rates attacked not unreasonable but unduly prejudicial to extent they exceed rates to Corinth by more than 2.5c; that rates from Louisville, Evansville and Cincinnati unduly prejudicial to extent they exceed 2c lower than rates to Corinth. Florence Chamber of Commerce v. L. & N. R. R. 104 I. C. C. 459.

(o) Complainant attacked commodity rates charged on tomatoes, carloads from Fruitland and Gibson, Tenn. to Hutchinson, Kans., as unreasonable, unjustly discriminatory and unduly prejudicial. Rate applicable $1.23 with routing via East St. Louis. Fruitland is a local station on the M. & O., 5 north of Humboldt, Tenn., a common point with the L. & N. Gibson is a local station on the L. & N., 6 miles east of Humboldt. Rate from Gibson was 98.5c prior to April 22, 1923 and $1.23 thereafter. Hutchinson is 219 miles west of Kansas City via the Rock Island and in active competition with jobbers located at Kansas City, Topeka and Salina, Kas. The rates to these points from both Fruitland and Gibson are 75, 83 and $1.155c respectively. Salina is 199 miles west of Kansas City via the Rock Island and 221 miles via the M. P. The rate on tomatoes from Fruitland to Hutchinson is 164 per cent of the rate to Kansas City while the mileage is 141 per cent of the distance to Kansas City. Salina is in the same general territory as Hutchinson, being but 63 miles north of the latter point via McPherson, Kas., and Santa Fe and about 123 miles via the Rock Island direct. On this record there appears to be no reason why the rates to Hutchinson should be higher than to Salina. HELD, rates attacked not unreasonable but unduly prejudicial to extent they exceed the rates to Salina and Kansas City by more than 40.5c. Grovier Starr Produce Co. v. C. R. I. & P. Ry., 104 I. C. C. 745.

(p) Complainant attacked class rates charged on three cars of empty steel sheils shipped from Penniman, Va., one on April 21, 1922 to Carnegie, Pa., and the others on April 28, 1922 to Canton, O., as unjust and unreasonable, unjustly discriminatory and unduly prejudicial. Penniman is located at the end of a short branch line of the C. & O., extending 4.68 miles from Penniman Junction, Va., a main line points between Richmond and Newport News, Va., and a short distance east of Williamsburg, Va. The shipments had value for remelting purposes only, charged sixth class rates of 36.5c to Carnegie and 37.5c to Canton. Class rates from Penniman to central territory were the same as from Richmond, Williamsburg Penniman

Junction New Port News and other so-called Virginia cities. A commodity rate of $6.86 per gross ton was contemporaneously maintained on scrap iron and steel, carloads, from these points to Canton and Carnegie. HELD, rates attacked unreasonable to extent they exceeded rates from Williamsburg, reparation awarded. Hyman Michaels Co. v. C. & O. Ry., 104 I. C. C. 749.

(q) Complainant attacked commodity rates charged of 38c on 16 cars of lumber from Cornwall, Va., to Boston, Mass., between Sept. 1, 1922 and April 30, 1923, 25c charged from Cornwall to Glen Rock, Pa., between August 1, 1922 and Jan. 31, 1924, and 31.5c charged from Cornwall to Coaldale, Lansford, Lock Haven, Montgomery, Muncy, Shenandoah Sunbury, Watsontown and Williamsport, Pa., between July 1, 1922 and Feb. 29, 1924 as unreasonable, unjustly discriminatory, and unduly prejudicial to extent they exceeded rates applicable from Hotchkiss, Va., to the same destinations. Subsequently rates from Cornwall the same as from Hotchkiss were established to all the destinations except Glen Rock. Cornwall is on the N. & W., about 40 miles south of Basic, W. Va., and Hotchkiss on the C. & O., 50 miles west of Basic. Although Basic is common to both carriers and a point through which shipments intended for the destinations named would move it is not a transfer point. HELD, rates attacked not unreasonable or otherwise unlawful, complaint dismissed. South River Lumber Co. v. N. & W. Ry., 109 I. C. C. 173.

(r) Complainant attacked commodity rates charged on 11 cars of fire brick from Wellsville, Mo., to Bigheart, Bristow, Devol, Tulsa and Wilson, Okla., and Grand Prairie, Tex., between Oct. 18, 1919 and Feb. 20, 1920 as unreasonable, unduly prejudicial and in violation of the fourth section. Wellsville is on the Burlington, 91 miles west of St. Louis, and took St. Louis rates, higher than those applicable from the Mexico group. Mexico is 18 miles west of Wellsville. The Mexico basis was published from Wellsville Feb. 29, 1920 and June 21, 1920. In some instances the rates charged were higher than the combination on Mexico or St. Louis. HELD, rates attacked unreasonable to extent they exceed the rates from Mexico, reparation awarded. Wellsville Fire Brick Co. v. Director General, 112 I. C. 98.

§3. Commercial Advantages and Disabilities.

See Blanket Rates §7; Differentials §5, §6, §7; Discrimination §4, §5; Evidence §2; Express Companies §19; Interstate Commerce Commission; Reasonableness of Rates §12½.

(a) It is not the function of the Commission to equalize, by means of rates, natural or commercial advantages of location. Young v. C. I. & L. Ry., 89 I. C. C. 428, 436.

(b) It is not the function of the Commission to attempt to equalize milling costs even if it were possible to do so. Stuttgart Rice Mill Co. v. A. & V. Ry., 93 I. C. C. 517, 528.

(c) The right of complainants to the natural advantages of their geographical location can not be taken away from them by rate adjustments and the wide differences in distances between the various fields to common destinations must be recognized. Stuttgart Rice Mill Co. v. A. & V. Ry., 93 I. C. C. 517, 530.

(d) Complainant attacked commodity rates on sugar, carloads from New Orleans, La., to Omaha, Kansas City and Atchison, as unreasonable and unduly prejudicial as compared with rates to Chicago, St. Louis and the Twin Cities. Although the Missouri river cities are grouped as to rates on this commodity and although there is no suggestion on the part of complainants that the group be disrupted, the interest of Kansas City and Atchison is primarily in their relationship to St. Louis, while that of Omaha is in the relationship to Chicago and Twin Cities. The old spread between Kansas City and St. Louis was 15c. At the time of hearing it was 13.5c but under the proposed reduction in the St. Louis rate it would have become 19c. At the hearing southern carriers agreed to reduce the rates to Kansas City and other complaining points from 73 to 69c and as that action would have restored the old relationship, assuming that the proposed rate of 54c to St. Louis would also have been established, the Kansas City and Atchison complainants agreed that the impending undue prejudice would be obviated. The spread is now 15c as a result of the adjustment of Jan. 5, 1924. The spread in the rates to Omaha and Chicago was 9c in 1915, 13c at time of hearing and now 11c.

Prior to and at the time of hearing the rates to the Twin Cities were 3c under those at Omaha. Under the adjustment of Jan. 5, 1924 the spread was reduced to 2c. HELD, rates on sugar to Omaha unduly prejudicial to extent they exceed rates to Twin Cities, and rates to Missouri river cities not unreasonable. Omaha Chamber of Commerce v. A. T. & S. F. Ry., 95 I. C. C. 713.

(e) Complainant attacked commodity rates on prepared sizes of anthracite coal, carloads, from Pennsylvania to Newport News, Va. Newport News is near the southeastern point of the peninsula which lies between the James and York rivers. Norfolk is southeast of Newport News. Cape Charles is north of and opposite Norfolk at the southern end of the peninsula. Newport News is served only by the C. & O. This defendant, when able to control the situation, maintains a parity of inbound and outbound rates to Norfolk and Newport News and is desirous of applying the Norfolk basis on anthracite coal to Newport News by way of the Richmond route. To Norfolk the all rail movement is over the route through the Maryland-Delaware-Virginia peninsula to Cape Charles and thence by car float across the bay to Port Norfolk about 36 miles from Cape Charles. To Richmond the movement is through Potomac Yards, Va., in connection with the R. F. & P. beyond. To Newport News traffic may move by way of Richmond and the C. & O., beyond, or through Cape Charles and Port Norfolk. Over the latter route traffic to Newport News was formerly handled by the C. & O., with its car floats direct from Port Norfolk; presumably to shorten the floatage movement, it is now hauled by a belt line about 19 miles from Port Norfolk to Sewalls Point, north of Norfolk, and thence 7 miles by car float to destination. Joint group rates of $3.40 are published from the Pennsylvania mines to Norfolk and Richmond. Rates to Newport News are constructed on combination based on either Richmond or Norfolk. Over the Richmond route the rate is $4.30, a 90c proportional applying beyond the gateway. Over the route through Norfolk the combination is $4.96, composed of the $3.40 factor to that point, plus $1.39 per ton. Joint class rates are maintained from New York, Philadelphia, Baltimore, Md., and points grouped therewith to Norfolk, Newport News and Richmond. HELD, rates attacked not unreasonable except to extent that the rate by way of Cape Charles exceeds $4.30 per long on. HELD, relative adjustment unduly prejudicial to Newport News and this should be removed by publication of rates to Newport News applicable by way of the routes through Richmond and by way of routes through Cape Charles not more than 51c higher than to Richmond or Norfolk. Newport News v. B. & O. R. R., 96 I. C. C. 425.

(fg) A tariff schedule may not be framed to equalize conditions of private business by giving special privileges and advantages to a particular shipper or class of shippers. Turner, Dennis & Lowry Lumber Co. v. Chicago, M. & St. P. Ry. Co., 2 Fed. 291.

(h) Proposed increased proportional rates on canned goods and iron and steel articles from Gulf ports to points on and north of Ohio River, applicable on traffic from Pacific coast through Panama Canal, for purpose of equalizing such rates with local rates applicable from New York, N. Y., to Chicago, Ill., found not justified. No similar increases are proposed in rates from south Atlantic ports, and undue prejudice in favor of such ports would result. Canned Goods and Iron and Steel Articles, 91 I. C. C. 623.

(i) Rates on liquid asphalt, in tank-car loads, from Port Arthur and Port Neches, Tex., to West Monroe, La., found not unreasonable as compared with lower rate subsequently established for purpose of equalizing those rates with others applicable between points in same general territory. Moreover, rates charged were shown to reflect lower percentage relationship to class D rates than those prescribed on a number of low-grade commodities in Natchez Chamber of Commerce, 58 I. C. C. 610. Deas Co. v. K. C. S., 92 I. C. C. 256.

(j) Proposal to equalize rates on chloride of zinc, whether moving in fused or liquid form, from Chicago and St. Louis group points to Arkansas destinations, found justified. While value of the dry is twice that of the liquid, such differences are frequently disregarded in rate making where articles are essentially of same nature and highly competitive. These two commodities are rated the same throughout the country generally; service rendered in transporting the liquid is as great as in trans-

porting fused; and form in which commodity is shipped is a matter of convenience to shipper and preference to consumer. Moreover, evidence shows that rates proposed are not unduly high. Chloride of Zinc to Texarkana, 92 I. C. C. 569.

(k) Commission would not be justified in attempting to neutralize disadvantages of geographical location by requiring wasteful or additional service without adequate compensation, although shipper may be in dire need. Flory Milling Co. v. C. N. E. Ry., 93 I. C. C. 129, 134.

(l) It is not the commission's function to equalize milling costs. Stuttgart Rice Mill Co. v. A. & V. Ry., 93 I. C. C. 517, 528.

(m) The commission doubts if it would be in the public interest to give to the high-grade, favorably circumstanced coal fields and mines a monopoly of production, even if lower costs to consumers would follow. Such a course would result in first completely exhausting the best portion of a natural resource and weaken our national position by compelling utilization in even greater degree of the poorer, less economical raw products, until in the end the country would have nothing left but the lowest grade, most costly, bituminous coal, with none of the higher grades for any of the special purposes which are so dependent upon such fuel. Widest possible equable use of coal of all qualities, rather than forced use of most readily accessible highest grades, is that which is consonant with public good. Rules Governing Ratings of Coal Mines, 95 I. C. C. 309, 334.

(n) Carriers should take steps, either by publication of joint through rates or by appropriate adjustment of present combinations, to equalize charges on grain and products moving to north Atlantic ports for export from points west of the Mississippi, where advantage of any one of the ports, as compared with Boston, in total length of haul is 10 per cent or less. Maritime Asso., Boston Chamber of Commerce v. A. A. R. R., 95 I. C. C. 539, 569.

(o) Rates can not be fixed on the theory of equalizing the total transportation cost of the inbound raw material plus that of the outbound finished product. West Virginia Pulp & Paper Co. v. S. Ry. Co., 96 I. C. C. 244, 252.

(p) Carriers sometimes extend an equalization which the commission could not compel. Carrier and market competition would be more potent to compel an equalization of rate in rates on commodities produced or manufactured at numerous points in a wide territory served by many competing lines than on anthracite coal which has its origin in only one small field. Newport News v. B. & O. R. R. Co., 96 I. C. C. 425.

(q) The maintenance by defendants of a rate relationship between the Yakima Valley and southern Idaho, which subject some shippers in the former district to a rate disadvantage, as compared with shippers in the latter district, if not justified by transportation conditions, is undue prejudice within the meaning of the act and can not be justified by the fears as to the commercial effect upon the industry of its removal. Kloeber v. N. P. Ry. Co., 96 I. C. C. 437, 440.

(r) Rates on bituminous lump coal from Duluth and West Duluth, Minn., to Ladysmith, Wis., found not unreasonable or unjustly discriminatory. Coal rates in Wisconsin are not constructed primarily with regard to distance, but the controlling consideration is the equalization of ports and grouping of destinations. Original order vacated and complaint dismissed. Great Western Paper Co. v. M., St. P. & S. S. M. Ry. Co., 96 I. C. C. 444.

(s) The commission has frequently said, the act does not require that in-and-out charges be equalized through all jobbing points. Lagomarcino-Grupe Co. v. A., T. & S. F. Ry. Co., 96 I. C. C. 465, 467.

(t) Complainant attacked class and commodity rates from Jackson, Miss., to Louisiana and southern Arkansas as unjust, unreasonable and unduly preferential of Memphis, Tenn., Natchez, Miss. and New Orleans, La., and in excess of aggregate of intermediate rates. With respect to rates to Louisiana, the evidence relates only to points west of the Mississippi river. Memphis and New Orleans, like Jackson, are on the east side of the Mississippi river, the former cities being located on the bank of the river, while the latter is about 44 miles east thereof. It is contended by complainant that Jackson is deprived of its geographical advantages and denied its right to compete in territory adja-

cent to it by the present rate adjustment which permits Memphis, Natchez, and New Orleans to ship into Louisiana and southern Arkansas on rates based on scales prescribed in 77 I. C. C. 473 and denies Jackson the same privilege. The transportation conditions from Jackson to Vicksburg do not differ greatly from those for a similar distance from Vicksburg, on the west side. HELD, rates attacked unreasonable and unduly prejudicial to extent they exceeded rates from Memphis, Natchez and New Orleans. Jackson Traffic Bureau v. A. & V. Ry., 102 I. C. C. 129.

(u) Complainant attacked commodity rates on green coffee, carloads, from New Orleans, La., and Galveston, Tex., to Oklahoma City and Enid, Okla., as unreasonable, subsequent to April 12, 1921. Oklahoma City and Enid are served directly or indirectly by the Frisco Rock Island and Santa Fe and MKT. These roads reach New Orleans and Galveston over their own rails or in connection with those of other carriers. HELD, between April 12, 1921 and April 23, 1922, rates attacked unreasonable to extent they exceed from New Orleans to Oklahoma City 72.5c, to Enid, 77c, from Galveston, to Oklahoma City 66.5c to Enid 71c, reparation awarded. Alton Mercantile Co. v. A. G. S. R. R., 102 I. C. C. 146.

(v) It is not the purpose of the act that the Commission should attempt to equalize fortunes, opportunities, or abilities and disregard transportation conditions but this principle does not foreclose the Commission from considering the probable effects which would follow the prescribing of relationships in rates proposed by certain shippers and opposed by their competitors. Morrell & Company v. N. Y. C. R. R., 104 I. C. C. 104, 124.

(w) Complainant attacked rates, rules and regulations applicable to the transportation of rosin, carloads, from points of origin in southern states of the United States to Burlington, Ont., Canada, as unreasonable unduly prejudicial. Burlington is at the west end of Lake Ontario on the C. P., and G. T., about 6 miles north of Hamilton, Ont., about 67 miles northwest of Buffalo, N. Y., and about 40 miles southwest of Toronto, Ont. The usual route of movement of this commodity is through Cincinnati, O., and Detroit, Mich. Burlington is about 200 miles northeast of Detroit. The haul beyond Detroit is over Canadian lines. Defendants offered no justification for a higher rate to Burlington than to Hamilton. The rates from south Atlantic ports were and are the same to Burlington as to Hamilton. The average distance from Jacksonville and from Savannah and Brunswick, Ga., to Buffalo is 1,146 miles and to Burlington 1,208 miles. This traffic is desirable. It is not injured by water and may be transported in inferior box car equipment. The loading is comparatively heavy and damage claims are rare. The present rates apply only on rosin packed in barrels. The facts of record do not warrant disturbing the long established packing requirements of the carriers. HELD, rules, regulations attacked not unreasonable or otherwise unlawful. HELD, rates to Burlington not unduly prejudicial; rates from Gulf ports not unreasonable; rates from south Atlantic ports for future unreasonable to extent they exceed 56.5c from April 15, to June 30, 1922, and 51c thereafter, reparation awarded. Vera Chemical Co. of Canada, Ltd. v. A. C. Ry. 104 I. C. C. 408.

(x) Complainant attacked commodity rates maintained on forest products, carloads, including lumber, timber and box and crate material from Los Angeles, Wilmington and San Pedro, Calif., to destinations on the S. P., A. E., G. H. & S. A., in Arizona and New Mexico and to El Paso, Tex., as unreasonable, unjustly discriminatory and, as compared with lower rates to the same destinations from competing producing points on defendants lines, unduly prejudicial. The principal Arizona lumber mills are at Flagstaff and Williams on the Santa Fe and at McNary on the Apache R. R. The latter road connects with the Sante Fe at Holbrook, 72 miles north of Cady. The complaint rested largely on the allegation that the rates applied from San Pedro to Arizona and New Mexico and El Paso applicable on lumber previously brought into San Pedro by water from British Columbia, Washington, Oregon and northern California are unduly high compared with the all rail rates from the same territory to the same destinations. Timbers for building purposes may be brought into Arizona under the timber rate rather than under the lumber rate.

There were two sources of supply for this timber, the north Pacific coast principally producing fir, and the long leaf pine belt in Texas and Louisiana. The rates on lumber from San Pedro to destination territory are grouped. The rate to Yuma is blanketed back from that group to Flowing Well, Calif., a distance of 61 miles. The next group east extends from Ivalon, Ariz., just east of Yuma to Tucson, a distance of 248 miles. The territory between Cochise and El Paso, a distance of 231 miles, likewise is blanketed, and there are smaller intermediate groups between Tucson and Cochise. Lumber rates from competitive producing points in northern California, Oregon, and Washington are grouped in much the same manner. On lumber from Seattle, Portland and common points a single destination blanket extends through Arizona and New Mexico to El Paso. The San Francisco and northern California group rates apply from substantially all producing points in California, San Francisco Bay and north, and from Klamath Falls in Oregon. The present system of grouping origin and destination points with respect to the rates on lumber from the extensive wooded areas on the Pacific coast has grown up from the practice of permitting all producing sections to as great an extent as possible to reach the chief consuming markets. This adjustment is one on which the industry has developed, and it should not be seriously disturbed for any but the strongest reasons. In the instant case the nature of the destination territory does not call for a minute graduation of rates according to distance such as might be appropriate through a more highly developed territory. This consideration is, of course, not a justification for group rates from San Pedro to Arizona which bear no relation to distance. In general, the 51c rate from San Pedro seems appropriate at El Paso and Deming, but the present rates to intermediate points are higher than a proper alignment would suggest. HELD, carload rates on lumber and lumber products taking same rates from San Pedro, Wilmington and Los Angeles Calif., to Yuma, Gila, Maricopa, Phoenix, Tucson and Benson, Ariz., Lordsburg and Deming, N. M., and El Paso, Tex., are unreasonable and unduly prejudicial to extent they exceed to Yuma 31c, to Gila 36c, to Maricopa, Phoenix and Tucson 41c, to Benson 44.5c, to Lordsburg 47.5c and to Deming and El Paso 51c. Lumbermen's Exchange v. S. P. Co., 104 I. C. C. 538.

(y) New Orleans, La., has certain natural advantages over Galveston, Tex., which have affected the relationship of rates to the two points. The fact in itself warrants careful scrutiny of a rate adjustment which is alleged to be unduly prejudicial to the port least favored by natural advantages. While those natural advantages are entitled to consideration in so far as they have been brought about by geographical location, they are not entitled to much respect in so far as they have been brought about by rate advantages such as those here complained of. Galveston Commercial Asso. v. G. H. & S. A. Ry. Co., 100 I. C. C. 110, 121.

(z) The policy of the southwestern carriers serving New Orleans, La., has been, generally speaking, to apply the Galveston, Tex., rates to New Orleans on traffic moving from or to all points west of the Mississippi River, except points in Texas south of a certain line. Such an adjustment necessarily disregards distance and commercial instead of natural advantages control. The commission has consistently refused to condemn such an adjustment where it is shown to serve the best interests of the public, but where, as here, it builds up one port at the expense of another equally favored by natural advantages from the origin territory here considered, a line must be found beyond which distance may not be disregarded. Galveston Commercial Asso. v. G., H. & S. A. Ry. Co., 100 I. C. C. 110, 121, 122.

(aa) It is not the function of the commission arbitrarily to equalize rates in such manner as to deprive any industry of the legitimate advantage of its location. Application of Rates on Cotton to Gulf Ports, 100 I. C. C. 159, 166.

(bb) Springfield jobbers contend that the proposed readjustment of class rates between points in Missouri, and between points in Missouri and other sections, will increase both their inbound and outbound rates while only outbound rates of St. Louis and Kansas City will be affected, thus causing a disruption in the parity of rates existing between these points. The fact that disparities may be created, lying outside the limits of the situation under consideration, can not be accepted as ground for not rem-

edying undue prejudice where it has been established. Class Rates between Missouri and Interstate Points, 100 I. C. C. 274, 284.

(cc) Rates on peanuts, shelled or unshelled, from Suffolk, Franklin, Norfolk, and Petersburg, Va., and other points in Group A, to McAlester, Shawnee, and Oklahoma City, Okla., found unreasonable to extent they exceeded lower contemporaneous rates on like traffic from same points of origin to farther distant points in Texas and lower rates on shelled peanuts from the Virginia points to Oklahoma City subsequently established. Maximum reasonable rates prescribed for future and reparation awarded. Oklahoma Traffic Asso. v. C., R. I. & P., 100 I. C. C. 307.

(cca) It is not the commission's province to equalize different natural or economic conditions. New Orleans Joint Traffic Bureau v. B., S. L. & W., 102 I. C. C. 686, 691.

(dd) Carriers may voluntarily equalize commercial or geographical disadvantages in many instances in which the Commission could not require such equalization. Galveston Commercial Asso v. A. & S. Ry., 109 I. C. C. 114, 121.

(ee) Right of carriers to meet competitive conditions and equalize localities is subject to the limitation that no undue prejudice will be caused thereby. Lincoln Gas Coal Co. v. B. & O. R. R. Co., 88 I. C. C. 379, 384.

ALL OTHER CITATIONS

North Carolina Pine Asso v. A. C. L. R. R. Co., 85 I C. C. 270; Wickwire Spencer Steel Corp. v. Director General, as Agent, 88 I. C. C. 54; Wichita Motors Co., v. A. & V. Ry. Co., 88 I. C. C. 152.

§4. Competition.

(1) In General.

See Competition.

(a) Complainant attacked commodity rate of $2.50 charged on 29 cars of slack coal shipped from Superior and Lion, Wyo., to Sugarton, Utah and 16 cars from Lion to Cornish, Utah between Oct. 15 and 27, 1921 as unreasonable to extent it exceeded rate of $2 subsequently established and unduly prejudicial as compared with rate of $2 contemporaneously in effect from the Castle Gate district in Utah to the same destinations. The points of destination are north of Ogden. Points of origin are in the Rock Springs district of Wyoming. Shipments moved U. P., to Ogden, thence Utah-Idaho Central to Sugarton and over O. S. L., to Cornish. For many years prior to the general increase of August 26, 1920 the rates from the Castle Gate district and from the Rock Springs district to the destinations here considered were the same, and these districts were keenly competitive. On the date named the $2 rate from the Rock Springs district was increased 25 per cent making the rate $2.50. The Utah Commission declined to permit any increase in the intrastate rates on coal. Effective Oct. 29, 1921 the rate from Rock Springs district was reduced to $2. HELD, rates attacked unreasonable to extent they exceeded $2 per ton, reparation awarded. Amalgamated Sugar Co. v. U. P. R. R., 107 I. C. C. 635.

§4 (4). Water Competition.

See Evidence §14 (5); Water Competition.

(a) Complainant attacked commodity rates on cement plaster, carloads, from Plasterco, Plasterco Junction and Hamlin, Tex., to Alabama, Florida, Georgia, Kentucky, Mississippi and Tennessee as unreasonable and in violation of the fourth section and in addition that rates to Jacksonville and other destinations in Florida were and are unduly prejudicial to extent they exceeded rates from Acme and Agatite, Tex. Complainants plant is reached by the K. C. M. & O., and M. K. T. 5.2 and 4.2 miles from Hamlin. Except to Jacksonville and to destinations in Florida basing thereon, the same rates have applied for several years to southeastern destinations from Plasterco, Acme and Agatite, Tex., and on Jan. 20, 1923 Plasterco Junction was added to this list of origins. The rate from Acme and Agatite was established to meet competition from the east, largely of water carriers, but no reason is stated for justifying more favorable treatment of Acme and Agatite than of Plasterco in meeting this competition. HELD, from and after July 1, 1922 such of the rates as exceeded by more than 20% the rates in effect on August 25, 1920 unreasonable in amount of such excess. HELD, further, rates attacked to Meridian and Middlesborough unreasonable to extent they exceeded 33 and 50c, between April 1 and June 30, 1922 and 29.5c and 45c thereafter until July

21, 1923. Rates to Jacksonville and other Florida points subjected complainant to undue prejudice to extent they exceeded rates from Acme and Agatite reparation awarded. Texas Cement Plaster Co. v. A. & M. R. R., 98 I. C. C. 519.

(b) For many years it has been tendency of carriers to equalize rates to the several Ohio river crossings on long hauls but to charge differentials or local rates to north-bank points on short-haul traffic. Calumet Fertilizer Co. v. L. N. R. R. Co., 91 I. C. C. 31, 34.

(c) Complainant attacked commodity rate of 11.5c charged on sand, carloads, from Roff, Okla., to Fort Smith, Ark., as unjust, unreasonable, unduly preferential and prejudicial in favor of shippers of sand from Guion, Ark., and Pacific and Grays Summit, Mo. Roff is on the Frisco southwest of Fort Smith. Distance direct over route of movement, 260 miles, short line distance over Frisco, Holdenville, Rock Island, Wister, Okla., and Frisco 190 miles. Pacific is on the Frisco and M. P., west of St. Louis, and Grays Summit is on the M. P., just west of Pacific. Guion is on the M. P., between Little Rock and Fort Smith. The transportation conditions from all producing points are similar. HELD, rate attacked unreasonable and unduly prejudicial to extent it exceeded 9c, reparation awarded. Harding Glass Co. v. St. L. S. F. Ry., 102 I. C. C. 126.

§4 (5). Market Competition.

See Market Competition.

(a) Respondents proposed a general revision, consisting of increases and reductions, but principally increases, in the socalled short haul rates on iron and steel articles, carloads and less carloads, in the Pittsburgh district and adjacent territory in Pennsylvania, New York, Ohio, West Virginia and Maryland. The adjustment proposed was promulgated primarily to bring the rates which were then in effect within the provisions of the fourth section. The volume of this short haul traffic is the largest of its kind in the country. Commodity rates lower than fifth class are maintained for these short hauls, while, according to respondents, the fifth class rates are, generally speaking, maintained for the longer hauls throughout central territory. The rates between Pittsburgh and the Mahoning and Shenango Valleys, of which Youngstown is the central point, and between the Valleys and Cleveland, are the key rates around which the entire short haul rate structure has been built. The distance between Pittsburgh and the Valleys is about the same as that between the Valleys and Cleveland, and a rate of 5c was established, which made the combination on the Valleys the same as the through rate from Pittsburgh to Cleveland. On July 1, 1922, the respective rates between Pittsburgh and the Valleys and between the Valleys and Cleveland became 9.5c, making the combination 19c as compared with the through fifth class rate from Pittsburgh to Cleveland of 21.5c, which rates are in force today. The fifth class rate from Pittsburgh to Cleveland is blanketed from all points in the Pittsburgh short haul group, as well as from additional surrounding territory, and the rates from all points in the short haul group to Cleveland and grouped points exceed the combination on the Valleys. Respondents propose, an increase of 15.8% in the rates which, in combination, are lower than the applicable through rates between so-called long haul points; a like percentage of increase in various rates directly related thereto, in order to maintain existing relationships; and in numerous other instances, varying percentages of increase above or below that figure, in order to establish what, in their opinion, will be proper relationships. The more noticeable increases above 15.8% are in the comparatively large number of instances in which class rates are proposed in lieu of present commodity rates for socalled long hauls. Material departures from the class basis already exist, and the removal of the existing fourth section departures by establishing through rates on the combination basis apparently would affect less actual traffic than would the present proposal. The proposal to cancel the through commodity rates is not of course, a part of the adjustment intended to remove fourth section violations. The heavy movement and the keen competition in this territory appear to have been largely responsible for the present comparatively low basis of short haul rates, but the Commission does not feel that they are sufficient to warrant it in requiring the continuance of that basis in all instances. While the Commission finds that the proposed short haul adjustment as a whole has not been justified, some changes in these rates are warranted; and the proposed rates may in general

be approved, provided that no increased rate is approved which exceeds the present rate by more than 15.8%, subject to a maximum resulting carload rate of 15.5c, and provided further, that no such rate shall be increased by a greater amount than is proposed in the suspended schedules. Exceptions are the proposed rates from the Johnstown and Latrobe groups to the Valleys and the Wheeling group. The present rate of 17.5c from the Johnstown group to the Valleys, and Wheeling group is already in excess of many rates for comparable hauls in Indiana and Illinois and compares favorably with rates in trunk line territory. This proposed rate has not been justified. If the present rates from the Johnstown group are to be continued, manifestly the proposed increase in those from the Latrobe group from 14.5c to 17c can not be approved. The proposed rate of 10.5c from Woodlawn, which is now in the Beaver group on short haul traffic, to the Valleys represents an increase of about 31% over the present rate of 8c. The rates from Woodlawn should not exceed those from other points in the Beaver group. This would also be true of increased short haul rates which are proposed in order to bring about proper relationships with the proposed rates from Woodlawn. At present Lorain and Cleveland take the same rate, 9.5c, to and from the Valleys. It is proposed to increase the Cleveland rate to 11c and the Lorain rate to 12.5c. Lorain and Cleveland have for a long time taken the same rates to and from the Valleys. The proposed increase is not warranted. The present less carload rates might properly be increased by the same percentages as the carload rates between the same points may be increased in pursuance of the views herein expressed, subject to fourth class rates as maxima. This approval can not be regarded as approving the application of class rates on iron and steel traffic either generally or between particular points. Iron and steel articles, 89 I. C. C. 606.

(b) While defendants evidence may not explain all equalized rates, it is obvious that carrier and market competition would be more potent to compel an equalization in rates on commodities produced or manufactured at numerous points in a wide territory served by many competing lines than an anthracite coal which has its origin in only one small field. The carriers sometimes extend an equalization which the Commission could not compel. Newport News v. B. & O. R. R., 96 I. C. C. 425, 430.

(c) Carriers sometimes extend an equalization which the commission could not compel. Carrier and market competition would be more potent to compel an equalization of rate in rates on commodities produced or manufactured at numerous points in a wide territory served by many competing lines than on anthracite coal which has its origin in only one small field. Newport News v. B. & O. R. R. Co., 96 I. C. C. 425.

(d) Complainant attacked commodity rate of 26c carloads and 63.5c less carloads, class rate, on iron and steel articles from Birmingham, Ala., to Nashville, Tenn., as unjust, unreasonable and unduly prejudicial in that they exceed rates to Chattanooga and Knoxville, Tenn. Prior to July 1, 1923 thereafter and at the present time, the rates on certain iron articles, including bar, band and boiler iron, in both carloads and less carloads, were and are 18.5c from Birmingham to Knoxville, 254 miles, and 14c to Chattanooga, 143 miles. The increase to Nashville without a corresponding increase to Knoxville and Chattanooga is one of the principal causes of the complaint. The 26c rate from Birmingham to Nashville, 205 miles is the same as the rate from Louisville to Nashville, 187 miles. Commodity rates are usually published in the southeast on special iron and steel articles but in their absence sixth class rates usually apply. The sixth class rate from Birmingham to Nashville is 43c while the class C rate which nearest approximates the 26c rate attacked on iron and steel articles is 26.5c. There appears to be no justification whatever for the application of the same rate on bar iron, in less carloads as on carloads, between many of these points. HELD, rates attacked not unreasonable or unduly prejudicial, except carload rate of 26c unduly prejudicial to Nashville to advantage of Chattanooga and Knoxville to extent it exceeds 3c more than to Chattanooga and 4c less than to Knoxville. Nashville Traffic Bureau v. L. & N. R. R., 102 I. C. C. 641.

(e) Complainant attacked fifth class rate of 32c on wood flour, carloads, from North Tonawanda, N. Y., to New York, N. Y., and Philadelphia,

Pa., as unreasonable to extent it exceeded 23c. North Tonawanda is near Buffalo, N. Y., and is in the Buffalo rate group. The rate sought by complainant is the same as that now applying on wood pulp from Niagara Frontier points to these destinations. A commodity rate of 28.5c applies from Newhall, Me., to a majority of these destinations. The rate also applies on wood pulp. The fifth class rate from Newhall is 36.5c and sixth class 30.5c. Wood pulp is rated sixth class in official classification. HELD, rate attacked unreasonable to extent it exceeded 28.5c, reparation awarded. Becker Moore & Co. v. N. Y. C. R. R., 104 I. C. C. 11.

(f) Complainants attacked rates on fresh and cured meats and by products from Chicago, Ill., and other central territory packing points, including Mississippi river packing points, St. Louis, Mo., to Dubuque, Iowa, inclusive, to trunk line and New England territories as unjust and unreasonable; through rates on fresh and cured meats and by products from points west of the Mississippi river to destinations in trunk line and New England territories as unjust and unreasonable; relationships between the rates on live edible meats and the rates on fresh and cured meats and by products, from the Mississippi river crossings and points west thereof, and from Chicago and other points in central territory, to destinations in trunk line and New England territories as unduly prejudicial; rates on fresh and cured meats from Missouri river packing points to destinations in trunk line and New England territories as unduly prejudicial to the Missouri river cities and unduly preferential of interior packing points; that fourth class rates under the official classification on cured meats, loose, are unreasonable or unduly prejudicial to the extent that they exceed fifth class rates on cured meats, packed. GENERAL RATE STRUCTURE. The application of rates in the destination territory is simplified by the fact that New York, N. Y., is the basing point, and upon its rates the usual port differentials are generally applied to obtain the rates to Boston, Philadelphia, and Baltimore rate points, and by the further fact that interior points in trunk line territory take fixed percentages of the base rates to New York. PRESENT RATES. The present rates from Chicago to New York on packed cured meats and on cattle and hogs are 56.5c and on fresh meats 87c. The rate of 56.5c is fifth class and the equal rate on livestock is a commodity rate. The rate of 87c is a commodity rate less than the third class rate of 94.5c. The proportional rates from the Mississippi river crossings to New York are 63c on cattle, 64.5c on packed cured meats, or 1.5c higher than on cattle, and 93c on fresh meats, or 30c higher than on cattle. The proportional rates from the Mississippi river to New York on hogs originating in Iowa are 3c less than on cattle and hogs originating at any other point west of the river. The through rates from interior Iowa country points in the vicinity of Cedar Rapids to New York are 79.5c on hogs, 71c on packed cured meats, and 99.5c on fresh meats. It is apparent that the proportional rates from the interior Iowa packing points to the Mississippi river were made by the carriers with the idea of equalizing, either partially or wholly, the rates on hogs to Cedar Rapids and the products to the river with the rates on hogs from the interior Iowa producing points to the river. The reasonableness of the rates on livestock is not directly in issue in these cases, those rates having been brought into issue only to the extent of their relationship to the rates on fresh meats and packing house products. Except from St. Louis, most of the present local rates on packed cured meats to points in trunk line territory from points on and east of the Mississippi river are the full fifth class rates governed by the official classification. It is generally conceded that the lighter loading and other factors in connection with the transportation of fresh meats warrant higher rates than on packed cured meats from and to the same points where both commodities move in substantial volume, though most of the parties contend that the spreads of fresh meats over cured meats and livestock are excessive. The through rates from the Missouri river to New York on fresh meats are based upon the full combinations of the local rate of 28c to the river and 93c beyond. On bulk cured meats the factor east of the river is less than the fourth class rate and is pub-

lished as a commodity rate in order to equalize the full combination of locals on Chicago. The through rate on cured meats, packed, is based upon a commodity rate from the Missouri river to Chicago of 36c and full fifth class rate east, and this is equalized on the river combination by a proportional fifth class rate from the river east of 64.5 as compared with local rate of 66c. Armour & Company attack present local rates of 27.5c on fresh meats and 24.5c on cured meats and hides from South St. Paul, Minn., to Chicago which are used in combination with the local rates from Chicago in constructing through rates to eastern destinations, as unjust and unreasonable. The through rates from South St. Paul and Faribault are combinations of the full locals upon Chicago and are to New York on fresh meats 114.5c and on packed cured meats 81c. From Albert Lea, Minn., the through rates are combinations of proportionals upon the Mississippi river and are to New York 104.5c on fresh meats and 76c on cured packed meats. The distance from South St. Paul to New York is 1,320 miles and from Albert Lea 1,293 miles. The short line distances to Chicago are from South St. Paul 396 miles, from Faribault 401 miles, and from Albert Lea 375 miles. Faribault is intermediate between South St. Paul and Chicago via the Rock Island. Tested by several scales, the existing rates from South St. Paul to Chicago are relatively lower than the rates from Chicago to New York or other rates in central and trunk line territories. The western and southern classifications apply the same ratings to dried, dry salted, smoked and pickled meats, when loose as when in packages. The distinction which the official classification makes in ratings between packed and loose cured meats is the only exception of this kind under the general heading of meats in the consolidated classification. The distinction of a higher rating on an article when shipped loose that when shipped in packages, both subject to the same carload minimum, is unique in freight rate classification. The situation revealed by this record confirms the Commission in the view that fixed relationships are desirable and that until such relationships are made effective and maintained, complaints with respect to these rates will recur. But having in mind the varying conditions found to exist, the large amounts of capital invested under existing rates, the great disturbance which would result from prescribing fixed relationships, and the fact that it is not the province of the Commission to prescribe rates which appear desirable to it, but to ascertain whether existing rates are unlawful and, if so, to prescribe lawful rates in lieu thereof, the Commission is again led to the conclusion that no fixed rate relationships between the respective commodities can or should be prescribed in these proceedings. HELD, rates attacked on cured meats, packed, and green salted hides, carloads, from Chicago and other central packing points, including Mississippi river points, St. Louis to Dubuque, inclusive, to trunk line and New England territories not unreasonable or unduly prejudicial in relation to the rates on hogs and sheep in double deck cars or on cattle from and to the same points. HELD, that the base rate of 87c on fresh meats, carloads, from Chicago to New York unreasonable to extent it exceeds 79c; that rates on fresh meats to other points in central territory will be made with relation to established percentages of the rate to New York. HELD, rates attacked on cured meats and green salted hides, carloads, from points west of the Mississippi river to destinations in trunk line and New England territories not unreasonable, except that for the future the rate from Cedar Rapids to New York will be unreasonable to extent that it exceeds 69c; the rates from Missouri river points, Kansas City to Sioux City to New York unreasonable to extent it exceed 87c; and rates from Cedar Rapids and from Missouri river points to other destinations in trunk line and New England territory should be based upon differentials; That this unreasonableness exists only with respect to the factors east of the Mississippi river or Chicago and that for the future said rates from points west of the Mississippi river will not be unduly prejudicial in relation to the rates on cattle from and to the same points. Similar changes should be made in the rates from Wichita, Fort Worth, Oklahoma City and Denver. HELD, rates on fresh meats, carloads, from points west of the Mississippi river to trunk line and New England terri-

tories unreasonable to extent they exceed the lowest combination of the factors west of the river or Chicago plus the rates herein found reasonable east thereof. HELD, rates attacked on fresh meats, cured meats, and green salted hides, carloads, from South St. Paul to Chicago applicable on shipments destined to points in trunk line and New England territories not unreasonable. HELD, Rating in official classification of fourth class and the rates on dried, dry salted, smoked and pickled meats, loose, carloads, from and to territory involved unreasonable to extent it exceeds fifth class on like traffic in packages, and to extent they exceed rates on cured meats and packing house products, packed. Morrell & Company v. N. Y. C. R. R., 104 I. C. C. 104.

(g) Complainant attacked commodity rate of 19c charged on 56 cars of gasoline, kerosene, lubricating oil and gas oil shipped from Beverly, Mass., to Concord, N. H., between June 16 and Oct. 25, 1924 as unreasonable and unduly prejudicial to extent it exceeded 17c, and the 17c rate charged on 14 cars of like products from Beverly to Manchester, N. H., between Oct. 8, and Oct. 21, 1924 as unreasonable to extent it exceeded 16c. Beverly is located 18 miles north of Boston. East Boston and Everett are within the switching limits of Boston and at these stations competitors of complainant maintain storage facilities similar to those maintained by complainant at Beverly. The terminals at East Boston and Everett are served jointly by the B. & M., and B. & A. It is claimed therefore that the increase in the rates from those stations to Concord via the B. & M., direct on Sept. 29, 1924 did not in fact affect the charges therefrom, inasmuch as the route of the B. & A., in connection with the B. & M., remained open and available. It appears that the short line route from Beverly to Manchester and Concord is via the B. & M., through Lawrence, Mass., and Windham, N. H., 49 miles to Manchester and 67c miles to Concord. Complainant points out that the actual route of its shipments was the normal route via the B. & M. through Salem and Lowell, Mass., and Nashua, N. H., wholly over class A lines and that the distances over this route were 57 miles to Manchester and 75 miles to Concord or but 8 miles longer than the route through Windham. For these distances the class A scale is 16c and 17c, respectively, and it is to this basis that complainant sought reparation. It does not appear that freight from Beverly to Manchester and Concord actually moves over the route through Windham. HELD, rates attacked unreasonable to extent they exceeded 16c and 17c, reparation awarded. Gulf Refining Co. v. B. & A. R. R., 104 I. C. C. 165.

(h) Complainant attacked combination rates charged on zinc skimmings, zinc sal-ammoniac skimmings, zinc dross, and zinc ashes, carloads, between Jan. 18, 1923 and June 11, 1924 from Ohio, Illinois, Wisconsin and Missouri to Van Buren, Ark., as unreasonable, unjustly discriminatory and unduly prejudicial as compared with rates to Oklahoma points. The commodities shipped are waste material bought by smelters as a raw material for use in the production of zinc. Shipments are made in ordinary box cars and are not susceptible to damage. Charged 27.5c from Chicago and Sterling, Ill., and Milwaukee, Wis., and 20.5c from St. Louis, Mo. From points in Ohio a combination was charged of 20.5c from St. Louis, the factor up to St. Louis not being under attack. On March 27, 1925 a rate of 22.5c became applicable from Chicago and Sterling and 16.5c from St. Louis. The present rates to Van Buren are the same as the rates to competing points excepting Bartlesville, Okla., which takes a slightly lower rate. HELD, rate attacked not unreasonable and complainant has not been shown to have been damaged by reason of the alleged undue prejudice, complaint dismissed. Falcon Zinc Co. v. M. P. R. R., 104 I. C. C. 267.

(i) Complainant attacked rates on lumber and its products carloads, from Westwood, Calif., Grants Pass, Medford and Klamath Falls, Ore., and points taking the same rates to Sacramento and other points in California as unjustly and unreasonably low in violation of section 1 of the act, and as compared with rates from San Pedro, Calif., unjustly discriminatory and unduly prejudicial. PRODUCING AREAS AND CHARACTER OF PRODUCTION AND GENERAL DISTRIBUTION. Complainant controls some 89,000 acres of hemlock, spruce and cedar timber, an estimated

stand of 3,500,000,000 board feet, on Graham Island, one of the most northerly of the Queen Charlotte Islands in British Columbia. Under its method of operation the logs are cut on the island to an average size of 18 ft. in length by 2 ft. square and are carried by boats of a subsidiary company south to San Pedro, a distance of about 1,400 miles. The lumber producing regions with which complainant has chiefly to compete in the California markets extend almost continuously from the southern end of the Sierra Nevada north to the Canadian boundary. They include areas in the Sierra Nevada east of the San Joaquin valley, areas in the northern Sierra and southern Cascade range east and north of the Sacramento valley and extending into southern Oregon, the Coast Range section in northwestern California, and extensive areas in western Washington and in and adjacent to the Willamette valley in western Oregon. The lines of the Southern Pacific directly or indirectly serve almost all of the described lumber producing areas in Oregon and California. In Oregon the S. P., reaches a number of the mills along the Pacific coast served by water, and practically all of them in the Willamette valley and in interior southern Oregon. Except for the redwood mills along the lines of the Northwestern Pacific, in which road the S. P., has an interest, those east of Oroville served by the Western Pacific and those reached by independent short lines such as the McCloud River R. R., and the Yosemite Valley Ry., the S. P., serves directly practically all of the important California lumber producing sections. As to most of the traffic originating on independent short lines the S. P., is a necessary carrier. CALIFORNIA MARKETS AND SOURCES OF SUPPLY. California consumes more lumber per capita and uses a larger supply of the Oregon and Washington production of Douglas fir than any other one state of the United States. Water borne lumber largely supplies the two great markets around Los Angeles and San Francisco bay. It is important that the shook consuming sections of the state be able to draw their supplies from all producing points. To a considerable extent shooks are cut from scrap lumber, and to secure the best utilization thereof different kinds of shooks for different crops are currently manufactured instead of producing only one variety. Unusually large crops may require on short notice more shooks of a kind that near by mills can supply. Also packers with plants in widely separated parts of the state will frequently contract with one mill for the requirements of all their plants. For much the same reasons a reasonable basis of rates to all shook markets is essential to the producer. The practical necessity of cutting shooks suitable for the different crops raised in the different sections of the state, the fluctuation from year to year in the size of the crops, and the frequent inability of near by mills to meet the immediate demands of consumers all combine to make important a wide distributive market. ABILITY OF SAN PEDRO TO COMPETE IN INTERIOR MARKETS. The crux of the proceedings is the alleged undue disadvantage of complainant and San Pedro in distributing forest products in the interior markets of California in competition with the California and Oregon lumber producing sections. Practically all its rail shipments of lumber went to destinations within 50 or 60 miles of Los Angeles. Complainants shook shipments by rail went to a broader territory although one half of them went to destinations whose rates were not in excess of 8.5c. The balance of the rail shipments of shooks were distributed throughout the consuming markets of the state, partly on emergency orders and partly to introduce complainants spruce and hemlock products. RATE ADJUSTMENT. To California consuming territory the rates from the northern pine mills and from the fir mills of the Willamette valley are blanketed quite extensively as to points of origin and to some extent, particularly from the Willamette valley, as to points of destination. The rates from Westwood to California destinations are blanketed from all intermediate points to and including Newcastle, 293 miles less distant. To California destinations, Sacramento and south and Penryn and west, the rates from the Weed group are generally the same as from the Westwood-Newcastle group. The Weed group rates apply from stations south of the California-Oregon state to Red Bluff in the case of traffic to Sacramento, Oakland, and Merced, from stations south to Marysville on traffic destined to Fresno

and Bakersfield, and the southern boundary of the blanket is South Vallejo on traffic to Los Angeles. Southern Oregon origin points are blanketed into small groups. San Pedro has commodity rates on lumber and shooks on a graded basis to Imperial Valley points and to points north as far as Bakersfield on the Valley line, and Arguello, about 60 miles beyond Santa Barbara, on the Coast line of the S. P. To more northerly destinations the rates from San Pedro are based wholly or in part upon class rates. The rate to Bakersfield from San Pedro is nearly as great for a distance less than 200 miles as the rates from competing points about 400 miles more distant. The present adjustment of rates on lumber and box shooks to California destinations has been influenced by several factors. Chief among these were the necessity of making rates from interior mills to meet the competition of water borne lumber and lumber produced within the consuming territory, requirements of the California Railroad Commission and of the Interstate Commerce Commission, and actual and potential carrier competition. WATER COMPETITION AS AFFECTING OREGON RATES. The interior mills in Oregon, shipping by rail to California, meet their strongest competition with lumber moving by water to Los Angeles harbor and San Francisco bay points. The water borne lumber received at California ports moves in vessels that do not file rates with either the California or Interstate Commissions and are not subject to the jurisdiction of either body. From Portland Puget Sound points to San Francisco Bay and San Pedro the water rates on lumber at the time of the hearing were respectively $5 and $5.50 per thousand feet. These rates, especially that to San Pedro, are on a low basis. Normal compensatory rates, from the standpoint of owners who have vessels to charter, would be $6 and $7 per thousand feet. Probably 80 to 85 per cent of the lumber brought into these ports is handled by companies operating their own boats. The present rate adjustment does not permit the interior mills of either Oregon or California to ship their lower grades of lumber to the San Francisco or Los Angeles markets. Oregon mills having access to both rail and water facilities make practically all their shipments of lower grades and some of their shipments of higher grade lumber to San Francisco and Los Angeles by water. While the rates to the ports are not so adjusted as to permit the interior mills to compete at the water's edge, they are designed to permit the interior mills to serve the inland territory. In selling lumber throughout the interior of California, rail shippers have in the past encountered active competition from waterborne lumber. At the present time the mills shipping all rail appear to have an advantage at interior destinations over water bore lumber shipped from San Francisco by rail. REASONABLENESS. Of the rates from Portland to California destinations it is mainly with respect to those to the Sacramento-Stockton territory that complainant claims they are unduly low. Complainant expressly admits that as compared with the rates it suggests from San Pedro the rates from Portland are reasonable at Los Angeles and somewhat high in the lower San Joaquin Valley and in the Imperial Valley. The record also bears out that the rates to destinations Modesto and south are in general not too low. The record contains data indicating that the heavier loading of shipments from the Willamette valley into the Sacramento territory produce car earnings fairly comparable with those under the rates to the balance of California. The California market is highly important to the Oregon fir lumber industry. For many years it has been the chief outlet for the low grade lumber produced in the Willamette valley. Without this great market the industry would not have developed to its present state, as the low grades can not pay the transcontinental rates and compete in distant eastern markets. If the low grades could not be marketed to advantage, the industry could not succeed by marketing upper grades only. Any substantial increase in the rail rates to California would be reflected in a curtailment of output and would have a serious effect upon the Oregon mills, particularly the small mills whose output is largely or wholly lower grade lumber. At the time of the hearing the Willamette valley mills were operating on a part time basis. Further restriction would also seriously affect the revenues of defendant. The rates from Westwood and southern Oregon to California con-

suming territory do not fully represent the value of the traffic to the defendant. The marketing of the upper grades of lumber, which go in large volume to eastern destinations, could not be profitably carried on unless the low grade products could continue to move freely to the California markets. In addition there is a large incidental and consequential traffic to and from the mill points in the northern pine territory which is almost wholly dependent upon the lumber industry. Included in this incidental traffic is a considerable log movement to mills, notably to the mills at Susanville and Weed. PROPOSED RATE ADJUSTMENTS FROM SAN PEDRO. The record clearly indicates that San Pedro is entitled to a more favorable rate adjustment than that which now obtains to destinations in the interior of California. The excessive character of the rates from San Pedro, more especially in the instances where based in whole or in part upon class rates, appears from the comparisons with many other lumber rates between points in western states. The disparity between the San Pedro rates and those from other producing sections from the standpoint of distance alone has been noted. CONCLUSIONS. The rates from the Willamette valley to the Sacramento district are substantially those prescribed by the Commission as affected by the general increases and reductions. Considering the heavy loading of fir lumber and the limited number of items that may be shipped on the group C lumber rates it is clear that the Willamette valley rates are not unreasonably low. That the rates from southern Oregon and Westwood to Sacramento and vicinity are on a low basis there can be no doubt, but they do not appear to be unjustifiedly low, as they yield to the carrier something in excess of out of pocket cost, in addition to making possible a profitable traffic in transcontinental lumber and inbound supplies. These rates have been made voluntarily by the carriers and have been maintained for upwards of 10 years. The total cost of rail and water transportation through San Pedro would obviously be in excess of the cost of transportation from the northern pine mills, some of which are located adjacent to the destination territory. The record does not establish any undue prejudice to San Pedro or undue preference to interstate producing points with respect to the existing adjustment of rates on lumber to the Sacramento district. It is chiefly with respect to the rates on shooks from the northern pine mills that complainant stresses the claim of undue prejudice in the Sacramento territory. Complainant clearly should be accorded a reasonable and nonprejudicial basis of rates on shooks to the consuming territories in California. That the existing basis of rates from San Pedro does not meet this standard it not open to doubt. As concerns San Pedro only a proper relative adjustment might be made either by increasing the rates from competitive producing points or by reducing the San Pedro rates or both. The present proceeding brings before the Commission only producers whose interest is mainly in a relative adjustment of rates. The consumers of shooks are not before it. In the absence of a clear showing that, as a whole, the rates on shooks from producing sections competitive with San Pedro to the Sacramento district are unduly low, the readjustment necessary to accord San Pedro a proper relationship should not be so made on this record as to increase the price of all shooks to consumers in that district. The record contains no such showing. The record in the case indicates that such readjustment as complainant is entitled to should be accomplished by reducing certain of the rates from San Pedro. The decision of the California Commission in this joint case determines that the rates prescribed therein from San Pedro and San Joaquin mills are reasonable and are properly related to existing intrastate rates from the other producing sections of California. In this connection it may be observed that the distance of many of the fir mills of the Willamette valley and the pine mills of northern California and southern Oregon from the interior markets of California and the proximity of lumber producing regions to those markets, in connection with the movement of large quantities of lumber to the California ports, have resulted in the development of a group basis of rates under which the mills of all producing points have been able to dispose of an important share of their products in the California markets. To the extent that the reasonableness of the

San Pedro rates and their relation to existing intrastate rates may be incidentally involved in the disposition of these issues, the basis prescribed by the California body is lawful. HELD, complaint dismissed. Los Angeles Lumber Products Co. v. S. P. Co., 104 I. C. C. 297.

(j) Complainant attacked commodity and class rates on sewer pipe and wall coping, carloads, from Mecca and Brazil, Ind., to Illinois, Wisconsin, upper Michigan, Minnesota, Iowa, and Missouri, as unreasonable, unjustly discriminatory and unduly prejudicial to complainants and unduly preferential of competitors in Illinois, Iowa, Missouri and Minnesota. Mecca and Brazil are within about 20 miles of the Illinois-Indiana boundary line, the latter about 20 miles south of the former, both being served by the C. I. & W. Sewer pipe and wall coping are rated sixth class in official, class A in southern, and class E in western and Illinois classification territories. The present scale of class rates in the Illinois district was established in accordance with 55 I. C. C. 290, 56 I. C. C. 202 and 687. This scale is the same as the c. f. a. scale on the first five classes. Class E rates, applicable generally throughout the Illinois district on sewer pipe and wall coping, are based on 20 per cent of the first class rating. Joint commodity rates are maintained from Brazil and Mecca to Illinois, Wisconsin and upper Michigan and to St. Paul, Minneapolis and Duluth and other Minnesota points intermediate thereto. To points in Iowa and Missouri, other than those included in the Illinois district, combination rates apply, composed generally of commodity rates to Danville, Peoria, Ill., or St. Louis and class E rates beyond. Commodity rates have been in effect on this traffic from Mecca and Brazil to points in Illinois for over 25 years. When these rates were originally established they were based on the tenth class rates, governed by the Illinois classification, applicable from St. Louis and Illinois producing points. The present rates from Brazil and Mecca are on a materially higher basis than from competing points indicated. The rates from Brazil to points in the Illinois district are also materially higher than the rates, generally class E, from What Cheer, Des Moines, Fort Dodge, and Webster City, Iowa and Red Wing, Minn. The carriers should adjust their rates to points in Missouri which are intermediate to Kansas City in harmony with rates to Kansas City, distance considered. Although the distances from Brazil to the greater part of Wisconsin are less on an average than those from St. Louis, its rates are in no instance lower, and average considerably higher, than those from St. Louis. Giving due weight to the expensive Chicago terminals through which traffic from Brazil and Mecca moves, no such differences as the record discloses are justified by any conditions shown to exist in the territory involved. HELD, rates on sewer pipe and wall coping from Brazil and Mecca to points in Illinois classification territory were, are, and will be unreasonable and unduly prejudicial to extent they exceed rates from St. Louis to the same destinations. HELD, further to destinations in Wisconsin not included in the Illinois classification territory and to Minnesota except St. Paul and Duluth, unreasonable and unduly prejudicial to extent the rates to Duluth group exceeded rates from St. Louis to that group; that rates to St. Paul unreasonable to extent they exceed by more than 1c rates from St. Louis, and that rates to the remainder of the territory in question exceed rates from St. Louis, reparation denied. Chicago Fire Brick Co. v. A. W. Ry., 107 I. C. C. 399.

(k) Complainant attacked commodity rates on sugar, carloads from New Orleans, La., and points taking Louisiana rates to Texarkana, Ashdown, Hope and Nashville, Ark., as unreasonable, unjustly discriminatory and unduly prejudicial as compared with the rate to Shreveport, La. Texarkana is on the K. C. S., M. P., St. L. S. W., and T. & P. Ashdown is on the K. C. S., Hope on the L. & A., and M. P., and Nashville on the M. P. Shreveport is on all the lines above named except the M. P. Sugar is rated fifth class. The rate to Shreveport is about 38 per cent of the fifth class rate. To the other points, the rates are 63, 59, 60 and 60 per cent of the fifth class rates. The record shows that the New Orleans-Shreveport rate was originally established to meet the competition of boat lines operating on the Red River. No such competition exists now and it appears doubtful that boat line service will be restored in the immediate

future. The original rate established on a competitive basis has been maintained by orders of the Louisiana Commission. Effective Sept. 8, 1925 a rate of 21c was established from New Orleans to Shreveport by way of the Mississippi river Warrior barge line to Vicksburg, Miss., and rail lines beyond, which in effect created a new form of competition. Various comparisons of rates submitted by defendants fully demonstrate that the New Orleans-Shreveport rate of 26c is subnormal and should not be used as a measure in determining the reasonableness of rates to farther distant points in Arkansas. HELD, rates at present in effect just and reasonable, but unduly prejudicial to extent the rates to Texarkana and Hope exceed rates to Shreveport by more than 5c and to Ashdown and Nashville by more than 7c over Shreveport. Four States Grocery Co. v. K. C. S. Ry., 107 I. C. C. 485.

(l) Complainant attacked commodity rates charged on crate and box material, carloads, from Bainbridge, Ga., to destinations served by the East Coast Ry., as greatly in excess of and bear no reasonable relation to the intrastate rates applicable from points within Florida to the same destinations, and unjust, unreasonable, unduly prejudicial and unjustly discriminatory against complainant in favor of like traffic moving intrastate between points in Florida. Complainant attacked rates on crate and box material from Brunswick, Ga., to destinations on the East Coast as unreasonable, unduly prejudicial and unjustly discriminatory against complainant in favor of traffic to the same destinations from Savannah, Ga., and intrastate from points in Florida. Traffic from Bainbridge and Brunswick to East Coast destinations is delivered to that line at Jacksonville. Tallahassee, Fla., a competitive point, is 40 miles south of Bainbridge and traffic from Bainbridge may move to Jacksonville either over the G. F. & A., to Tallahassee, thence S. A. L., a total distance of 205 miles or entirely over the A. C. L., 215 miles. The latter is the rate making line. There are two available routes from Brunswick to Jacksonville, one over the A. B. A. to Thelman, Ga., and S. A. L., beyond, a total distance of 90 miles and the other over the A. C. L., 103 miles. The through rates from Bainbridge and Brunswick to East Coast destinations are made by combination on Jacksonville. From Bainbridge the full local rate to Jacksonville of $27.60 per car is used as a factor while the proportional factors from Brunswick to Jacksonville range from $20.50 to $21.50 per car, and were at the time of the hearing less than the local rate. Beyond Jacksonville the East Coast applies its interstate basing scale. The rates from Bruswick are published as joint rates. The situation complained of is brought about chiefly by the fact that the factors applied by the East Coast from Jacksonville in constructing the through rates from Bainbridge and Brunswick to East Coast destinations are on a higher basis than the intrastate rates prescribed by the Florida Commission. Class P rates apply on crate and box material within Florida. The present mileage scale applicable to Florida intrastate traffic became effective March 25, 1914. For two lines hauls the rates are 90 per cent of the sum of the locals and for three line hauls 80 per cent of such sum. Crate and box material whether moving intrastate or interstate to East Coast points is handled beyond Jacksonville under the same conditions, and it is admitted by defendants that the present adjustment works to the disadvantage of the interstate shipper. The record shows that complainants are in active competition with shippers of like material to destinations on the East Coast under the intrastate rates maintained in Florida; that the conditions affecting intrastate traffic in Florida are not more favorable than those affecting interstate traffic from Bainbridge and Brunswick to these destinations; and that the existing rate situation operates to the disadvantage of complainants and their traffic and the advantage of complainants competitors and their traffic moving intrastate in Florida. HELD, rates attacked from Bainbridge and Brunswick not unreasonable and not unduly prejudicial as compared with rates from Savannah; they are unduly prejudicial to extent they exceed Florida intrastate rates and that this should be removed by increasing the intrastate rates to the reasonable interstate basis. Elberta Crate Co. v. A. C. L. R. R., 107 I. C. C. 499.

(m) Complainant attacked rates charged on cabbage, car loads since March 1924 from San Benito and Donna.

Tex., to Columbus, Miss., as unreasonable, and, as compared with rates from the same points to Artesia, Corinth, Tupelo and Okolona, Miss., unduly prejudicial. For rate making purposes the railroads have drawn a dividing line between southeastern and Mississippi valley territories, and in publishing rates from Texas points to Columbus that destination has been treated as being in southeastern territory. It is, however, immediately east of the dividing line and short distances from West Point, Tupelo and Artesia, which for rate making purposes are in Mississippi valley territory. No joint rates are published from the points of origin to Columbus, the lowest combination of rates on the Mississippi river being applicable, which is the Memphis combination. The evidence indicates that Columbus may properly be included in Mississippi valley territory in case of the adjustment in question. HELD, rates attacked not unreasonable or unjustly discriminatory but unduly prejudicial to extent they exceed the rates to West Point, Corinth, Tupelo and Okolona, Miss. Northeast Miss. Traffic Bureau v. N. O. T. & M. Ry., 107 I. C. C. 673.

(n) Complainant attacked sixth class rates charged on sulphuric acid, carloads, from Evansville, Ind., and Louisville, Ky. to Lawrenceville, Ill., as unreasonable and unduly prejudicial as compared with the rates from East St. Louis, Danville, Hillsboro, La Salle and Peru and Depue, Ill. This commodity is rated fifth class but under exceptions takes sixth class in central territory. Rates are from Evansville 59 miles, $2.70, and from Louisville, 140 miles $3.70. Commodity rates materially lower than sixth class are maintained from the Illinois points to Lawrenceville. Sulphuric acid is a low grade commodity, average loading is about 100,000 pounds per car, and risk of damage is negligible. Rates which will permit by product sulphuric acid to move to markets are of great importance to producers thereof. Complainant seeks rates of $1.60 from Evansville and $2.30 from Louisville. The former is the same as and the latter 10c higher than rates which the southeastern sulphuric acid scale would produce for the same distances. These rates compare favorably with the rates maintained from Illinois points to Lawrenceville and other destinations. It is obvious that the present rates from Evansville and Louisville to Lawrenceville are so high as to preclude a movement. The desirability of the establishment of rates which will permit the movement and marketing of byproducts sulphuric acid has already been touched upon. HELD, rates attacked for future unreasonable and unduly prejudicial to extent they exceed $1.60 per ton from Evansville and $2.30 from Louisville. Southern Agricultural Chemical Corp. v. C. C. C. & St. L. Ry., 109 I. C. C. 227.

III. EFFECT OF EQUALIZATION.

§8. Adjustment of related rates.

See Relative Rates.

(a) Complainant attacked commodity rates charged from Cincinnati, O., and from points taking Cincinnati rates to Nashville, Tenn., between September 1917 and July 1922 as illegal in that they exceeded the contemporaneous rates from Jeffersonville, Ind., to Nashville. It was the intention of the southeastern carriers to restrict the equalization note to shipments originating beyond Cincinnati for the purpose of equalizing rates to southeastern territory on through traffic from the territory north of the Ohio river and west via the various Ohio river crossings. The fair and reasonable conclusion to be drawn, when all the pertinent tariff provisions are considered together, is that the equalization notes did not make the Jeffersonville rates applicable from Cincinnati on traffic originating at Cincinnati or at Cleveland rate points. The Commission is confirmed in this conclusion by the fact that for about five years while these notes were in effect, although as the record indicates thousands of shipments moved from and to these points, none of the shippers or carriers considered the tariffs as authorizing the application of the Jeffersonville rates on this traffic. No shipper, therefore, was misled, or relied upon the lower rates to his damage. HELD, rates charged not illegal, complaint dismissed. Nashville Traffic Bureau v. Director General 92 I. C. C. 211.

(b) Complainant attacked commodity rates charged on grapefruit in straight carloads and in mixed carloads with oranges, from producing points south of Jacksonville, Fla., to Billings, Helena, and Great Falls, Mont., as unreasonable. The basis of rates prayed for the future is that applicable on oranges in straight carloads from and to the same points.

The rate on grapefruit attacked is $1.625 prescribed by the Commission and voluntarily reduced by the carriers to a basis 40.5c lower than it would be if only the general increases and reductions approved by the Commission had been applied thereto. The shipments all moved subsequent to the disruption of the equalization of the rates on grapefruit and oranges. There is no justification for charging higher rates on grapefruit than on oranges. Both move in refrigerator cars under substantially the same conditions of transportation. The grapefruit rate from Florida to Montana actually moves traffic in substantial and continuous volume. The orange rate does not. The director general gave no special thought to the reasonableness of the rate on oranges when he established the group A basis on oranges from Florida. That rate from New York to Montana was essentially an import rate. It, rather than the grapefruit prescribed by the Commission can not be accepted as the reasonable basis for grapefruit and oranges from Jacksonville. HELD, complaint dismissed. Devine & Asselstine v. A. C. L. R. R., 93 I. C. C. 174.

(c) Complainant attacked commodity rates on newsprint paper, carloads, from Shawinigan Falls, Quebec, and from other points taking same rates or related thereto, in Canada and in Maine to Knoxville, Tenn., as unjust, unreasonable, unjustly discriminatory, unduly preferential of Nashville and Memphis, Tenn., Cincinnati, O., and Lexington, Ky. Commodity rate charged on 66.5c prior to July 1, 1922 and 60c thereafter. Shawinigan Falls is typical of the points of origin. In 78 I. C. C. 258 the Commission found that the reasonableness of a proposed rate of 57c on newsprint paper from the Northeast, including Canada and certain main points, to Nashville had been established but that it would result in undue preference of Memphis. The rate from Shawinigan Falls to Knoxville, 1,197 miles, is the same as the rate from the north Wisconsin group to the same destination for a distance of 913 miles. The rates from Millinocket, Me., to many of the principal points in the southeast are higher, distance considered, than the rate attacked. Moreover, the rates on newsprint paper from Shawinigan Falls to every point situated in the south except Nashville, Memphis and Lexington are substantially the same as or relatively higher than the rate attacked. It is obvious that the rates from Fort Frances and the Fox River group to points in the Mississippi Valley are on a lower basis than those prevailing from Shawinigan Falls. It is not disclosed that this more disparity of rates is inimical to the interests of complainant, nor is there any undue prejudice alleged with respect to the origin points; the same rate applies to Knoxville from both Shawinigan Falls and Fort Frances. The record is insufficient to justify a finding of unreasonableness. HELD, rates attacked not unreasonable but are unduly prejudicial to Knoxville and unduly preferential of Nashville to extent they exceed rates to Nashville via the Detroit, Mich., gateway. Knoxville Traffic Bureau v. C. P. Ry., 101 I. C. C. 605.

ERRONEOUS RATES

See Advanced Rates §5 (6); Class Rates §1 (g); Demurrage §17; Evidence §22¼; Passenger Fares and Facilities §15; Reasonableness of Rates §13a; Reparation §8; Routing and Misrouting §3; Tariffs §3 (2).

ESTIMATED WEIGHTS

See Live Stock Shipments (k); Weights and Weighing §5.

EVIDENCE

I. BURDEN OF PROOF.

§1. In general.

II. CIRCUMSTANCES AND CONDITIONS OF PROBATIVE VALUE.

§1½. In general.
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§4. Averages.
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§8½. Categorical answers.
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(1) In general.
§13. Comparison of rates.
(1) In general.
(1½) Commodity and class rates.
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(3) Divisions and local rates.
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§14. Competition.
(1) In general.
(1½) Cross country.
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§15. Contract relying on rate.
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§16. Cost of production.
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§41. Original cost of road.
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§43½a. Physical valuation.
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§44. Previous haul on raw material.
§44¼. Prior decision of Commission.
§44½. Public interest.
§44¾. Public records.
§45. Profit to shipper.
§46. Rate to carrier as shipper or consignee.
§47. Rate via competing route.
§47a. Rate wars.
§47b. Rate territories.
§48. Rebates.
§48½. Repair of equipment.
§33. Merger of terminals.
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§51. Revenue of road.
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§52½. River crossings.
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§54. Size of load.
§54½. Speed of train.
§55. Standard of lines.
§56. Standard of rates.
§56½. Statistical tables.
§57. Surplus.
§57½. System line haul.
§57½a. Taxes.

§57¾. Terminal facilities.
§58. Ton-mile revenue.
§59. Two or three line haul.
§59½. Unearned increment.
§60. Unpublished rate.
§60½. Use of commodity.
§61. Value of commodity.
§62. Value of service.
§63. Volume of traffic.
§64. Voluntary or subsequent reduction of rate.
§64½. Wages.
§64¾. Wagon roads.
§64⅞. War conditions.
§65. Weight or bulk of shipment.
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III. JUDICIAL NOTICE.
§67. In general.
IV. PRESUMPTIONS.
§68. In general.
V. STARE DECISIS.
§69. In general.

CROSS REFERENCES

See Advanced Rates III, §5 (4), §6, §16½, §18, §18 (4); Blanket Rates §3, VII; Cars and Car Supply III, §6, §36; Claims §2½; Classification II, §17, §19; Courts VI; Discrimination V, §4; Divisions §7, §10; Equalization of Rates II; Express Companies VII, XIII; Long and Short Hauls §12, §12 (2); Loss and Damage II, III, IV; Overcharges; Passenger Fares and Facilities II; Procedure Before Commission VII, VIII; Proportional Rates IV; Reasonableness of Rates II; Reparation III, §25; Special Contracts V; State Rates and Regulation; Switch Tracks and Switching V; Tariffs §19; Through Routes and Joint Rates §15; Undercharges III, §4; Water Carriers V; Weights and Weighing IV.

I. BURDEN OF PROOF.

§1. In General.

See Advanced Rates §3; Blanket Rates §16; Burden of Proof; Crimes §25; Discrimination §14; Long and Short Hauls §12 (1); Loss and Damage §15; Routing and Misrouting §8; Through Routes and Joint Rates §15; Undercharges §5; Weights and Weighing IV.

(a) The law places the burden on respondents to prove that their proposed adjustment is just and reasonable, and this the record does not show. The mere fact that they are attempting to make the readjustment because some of the participating carriers desire that they do so, or that it may help remove a complaint of discrimination pending before the Commission, is not sufficient evidence or proof of the reasonableness of the proposed rates, or that the present rates are unremunerative. Boots and shoes from New York points, 91 I. C. C. 591, 596.

(b) In proceedings before Interstate Commerce Commission, nothing can be treated as evidence, which is not introduced as such. United States v. Abilene & S. Ry. Co., 44 Sup Ct. 565.

(c) Lack of recollection does not constitute a denial of positive affirmative evidence. Union Bag & Paper Corp. v. Director General, 95 I. C. C. 222, 232.

(d) Protestants' conclusions with regard to proposed revision of all-rail and rail-and-water rates, c. l. and l. c. l., on furniture from southern district to eastern points, are based upon premises open to serious criticism. The assumption that capital cost and operating expense may be charged entirely to freight, for purpose of this case, disregards the immensely greater expense of passenger terminals in the eastern than in the southern district. Furniture from Southern Points, 100 I. C. C. 127, 144.

(e) Since there was no evidence to show that tolerance rules of the carrier had been changed since 1910, defendants rested when complainants failed to introduce adequate proof of their contentions. Complaint dismissed. Smith & Duckworth v. C., C., C. & St. L. R. R. Co., 100 I. C. C. 300, 302.

(f) Doubt as to nature of commodity shipped must be resolved in favor of complainant, since defendant's only evidence consisted of a statement of its witness that an inspector of the Transcontinental Inspection Bureau changed the rate basis. Hercules Powder Co. v. Director General, 100 I. C. C. 393, 394.

(g) Prayer for rates from nonproducing points in Maryland and Pennsylvania to points on lines of Pennsylvania R. R. Co. applicable on shipments of crushed stone reconsigned out of route or return hauled, denied, in view of fact

that the record is inadequate to afford a basis for the prescription of such rates. Budding Co. v. P. R. R. Co., 100 I. C. C. 411, 413, 414.

(h) Defendant having sustained the burden of proof, it is unnecessary to decide whether there is a distinction between the director general and the corporate carriers in so far as the provision of the act which places the burden of proof on the carriers is concerned. International Harvester Co. v. N. Y. C., 101 I. C. C. 89.

ALL OTHER CITATIONS

Cohen v. A. T. & S. F. Ry. Co., 88 I. C. C. 143; Gottlieb-Bertsch Co. v. Director General, as Agent, 88 I. C. C. 177.

II. CIRCUMSTANCES AND CONDITIONS OF PROBATIVE VALUE.

§1½. In General.

See Advanced Rates §18; Blanket Rates §18; Divisions §7; Equalization of Rates II; Long and Short Hauls §12; Procedure Before Commission VII, VIII; Reasonableness of Rates II; Reparation III.

(a) The commission has recognized that greater traffic density and more favorable operating conditions north of the Ohio River than south thereof warrant lower rates north of the river. Commercial Club of Carrollton, 55 I. C. C. 697. Cincinnati Asso. of Purchasing Agents v. L. & N. R. R. Co., 89 I. C. C. 285, 294.

(b) Fact that, because of a falling off in business, among other things, rates determined by the commission under section 15a of the act, did not yield carriers generally the contemplated return prescribed, confirms the soundness of the commission's statement, viz., that its duty in such cases includes an appropriate consideration of all evident circumstances and conditions which, in its judgment, will affect the final result. Express Rates 1922, 89 I. C. C. 297, 311.

(c) Proportional rates both from Missouri River and from St. Louis, Mo., to Memphis, Tenn., are among the lowest rates in the country on high-grade traffic. Helena Traffic Bureau v. M. P. R. R. Co., 89 I. C. C. 405, 411.

(d) It is neither necessary nor practicable to reflect in a general rate structure all the differences in transportation conditions that affect particular movements. Nebraska Livestock 89 I. C. C. 445, 457.

(e) Proper rate making secures to every shipper the performance of the transportation service for no more than a reasonable charge for every service rendered. Wool rates investigation, 1923, 91 I. C. C. 235, 280.

(f) Laches is purely a personal matter, and has no application in a suit of a public or quasi public nature. Lancaster v. Gulf C. & S. F. Ry. Co., (Tex. 1924) 298 F. 488.

(g) The Commission has repeatedly condemned the action of carriers in adjusting rates so as to impede or stifle the movement of commodities in any given direction. Wyoming Coal Co. v. V. Ry., 96 I. C. C. 359, 362.

(h) If all the factors which influence a given traffic situation are known and the effect of each of the factors has been measured, and its influence in the past determined, and if, further, these factors are known not to change but probably to remain the same in the future, it is relatively easy to determine the future effect of contemporary action. However, in rate, traffic, and operating matters this is rarely if ever the case. Not only do the factors themselves change, but their relationship to one another change, with the result that future effects and probable outcomes are necessarily in this sense guesses and speculations. The most that any one can do is to express a guess or a speculation, informed, restricted, and regulated by the facts of record. Interchangeable mileage ticket investigation, 98 I. C. C. 298, 310.

(i) Upon an extensive investigation as to what rates, as applied to a particular class of traffic to be offered, will be likely to produce a fair return hereafter, past or present statistics of operation and earnings are serviceable only as they illuminate the future. Rates and Charges on Grain and Products, 91 I. C. C. 105, 122.

(j) The farmer's dollar has depreciated, not only with general decline in purchasing power of money, but to a greater extent than in case of most other industries. This is particularly so of the dollar of the grain farmer in the West. Rates and Charges on Grain and Products, 91 I. C. C. 105, 134.

(k) Persons engaged chiefly in farming or tillage of soil, in fact insolvent, may not be adjudged involuntary bankrupts under Federal law. Rates and Charges on Grain and Products, 91 I. C. C. 105, 138.

(l) The country's permanent prosperity depends largely upon flourishing condition of agriculture and transportation industries. To assist one unduly at expense of the other at a time when neither is in an ideally prosperous condition, merely because one may be in a worse condition economically than the other, would be of doubtful value to assisted industry or to the country, assuming that it is within commission's power arbitrarily to render this assistance. It must be recognized that commission can not require unduly low rates on some commodities for benefit of one class of shippers any more than it can arbitrarily increase rates on other commodities because shippers thereof may be enjoying excessive profits. Rates and Charges on Grain and Products, 91 I. C. C. 105, 153.

(m) Differences in transportation conditions and density of traffic justify relatively higher rates in western territory than in the East. Wool Rates Investigation, 91 I. C. C. 235, 272.

(n) Considering difference in transportation conditions in western territory as compared with the East, the volume of movement, distance traversed, and density of traffic, rates on wool and mohair in the grease from intermountain territory to Pacific coast terminals, for application on shipments moving locally or when destined beyond, found unjust and unreasonable. Reasonable basis of maximum percentage rates prescribed for future. Wool Rates Investigation, 91 I. C. C. 235, 272, 273.

(o) Shippers are governed by applicable tariffs and have no direct concern with fact of a change in ownership or control of particular carrier. General Petroleum Corp. v. C. B. & Q. R. R. Co., 91 I. C. C. 388, 392.

(p) The reasonableness of charges is to be tested not by the way in which they are arrived at but by their aggregate amount. Dunn v. American Railway Association, 100 I. C. C. 229, 232.

(q) The record will not support the conclusion that the earnings would be noncompensatory but that fact of itself does not establish that the substantial out of line hauls proposed do not constitute wasteful transportation. Transit at Kansas City, 101 I. C. C. 696, 701.

(r) Generally, testimony that a transaction took place is to be accorded more weight than testimony to the contrary. Especially is this so where negative testimony is merely that witness does not remember the alleged occurrence. Larabee Flour Mills Corp. v. Director General, 92 I. C. C. 745, 747.

(s) Congestion existing at piers on Manhattan Island has been referred to by the commission in various cases, and reasonable rules and regulations designed for its relief and to facilitate handling of increasing tonnage of merchandise freight at the piers will not be condemned. Somerville Iron Works v. C. R. R. Co. of N. J., 93 I. C. C. 39, 42.

(t) Basic price of spelter, irrespective of point of production, is fixed by the East St. Louis market. Athletic Mining & Smelting Co. v. K. C. S., 93 I. C. C. 119, 120.

(u) Commission would not be justified in attempting to neutralize disadvantages of geographical location by requiring wasteful or additional service without adequate compensation, although shipper may be in dire need. Flory Milling Co. v. C. N. E. Ry., 93 I. C. C. 129, 134.

(v) Reasonableness of rates charged, and not strict conformity with prescribed method of making percentage reductions in their predecessors, is the controlling consideration. Anaconda Copper Mining Co., 57 I. C. C. 723, and other cited cases. N. Y. Stable Manure Co. v. Director General, 93 I. C. C. 349, 351.

(w) Quite generally the rate levels in the Southwest are somewhat higher than in the Southeast. Horse and Mule Rates in the Southwest, 1924, 93 I. C. C. 479, 489.

(x) Chemical and building lime found not sufficiently dissimilar from a transportation standpoint to warrant maintenance of different rates thereon. Lime from Eastern Trunk Line Points, 93 I. C. C. 617, 631.

(y) Line-haul rates and switching charges are two methods of securing compensation for freight service which differ radically in principle. Both have developed naturally as the outgrowth of

particular conditions. In case of line-haul rates, cost and value of service are factors which are, in theory at least, taken into consideration in fixing the rates for each and every commodity and for each and every haul. Switching charges, on other hand, are largely based on average conditions. Rochester Switching Case, 95 I. C. C. 30, 45.

(z) It is the commission's view that the Southwest should be served by the Gulf port lines, that they should maintain through rates to that territory in general, and that rates to a great part of the Southwest via their lines, rather than those via the south Atlantic port lines, should set the standard. Rates to Southwestern Destinations, 95 I. C. C. 188, 199.

(aa) Monopolies are odious, alike by common law and under Federal statute. The commission can not consider with favor a proposition to create of an unregulated favored class of already favorably circumstanced producers a complete monopoly by compelling carriers to violate principle of equality of treatment which it is the right of every citizen to demand. Rules Governing Ratings of Coal Mines, 95 I. C. C. 309, 333.

(bb) The general rate levels in the western district are higher than in the southern district. Alabama & Mississippi Ry. Co. v. A., T. & S. F., 95 I. C. C. 385, 402.

(cc) Traffic density as a whole in the Southern district exceeds that in the western district. Alabama & Mississippi Ry. Co. v. A., T. & S. F., 95 I. C. C. 385, 402.

(dd) Differences in transportation conditions in the Southwest, including Texas common-point territory and Louisiana west of the Mississippi, are not sufficiently marked to warrant different levels of rates. Humble Oil & Rfg. Co. v. D.-G. C. Ry., 95 I. C. C. 435, 438.

(ee) Railroads are monopolies in many respects, and because of that fact are subject to public regulation. In this public regulation cost of service and hence distance are factors which must be taken into consideration. But railroads are also subject to competition with respect to much of their traffic, and it has been and is the policy of public regulation to allow them considerable latitude in meeting this competition. This accounts for many inconsistencies in the rate structure and also for many instances where distances are disregarded. Maritime Asso. Boston Chamber of Commerce v. A. A. R. R., 95 I. C. C. 539, 566, 567.

(ff) It is a recognized principle of rate making that the effect of differences in distance diminishes as the total length of haul increases; in other words, as the percentage of difference decreases. Maritime Asso. Boston Chamber of Commerce v. A. A. R. R., 95 I. C. C. 539, 568.

(gg) A carrier can not dictate sources from which shippers shall purchase their materials; and fact that a lower rate is available from one point does not justify an unreasonable rate from another. Kelly & Jones Co. v. P. R. R., 95 I. C. C. 640, 642.

(hh) Shipper claimed that relationship between dressed and live poultry is analogous to that which exists between a manufactured product and its raw material, and directed attention to rates on livestock which in many instances are lower than those on fresh meat and packing-house products. Considered from this standpoint it contended that live poultry should be entitled to rates at least as low as those on dressed poultry. FOUND, even if dressed poultry should be regarded as a manufactured product of the live fowl as raw material, the latter need not necessarily take as low a rate; moreover, live and dressed poultry are not analogous from a transportation standpoint nor are the conditions surrounding their shipment substantially similar. Butter, Eggs, Dairy Products, and Poultry, 96 I. C. C. 19, 35.

(ii) Fact that shipments were isolated or sporadic is a circumstance to be given weight in determining whether lower rates should be established for the future or reparation awarded, but it is not the sole determinative factor. See 78 I. C. C. 473 and 92 I. C. C. 453. Carter Oil Co. v. C., B. & Q., 96 I. C. C. 215, 216.

(jj) What would be a reasonable rate for a haul in a territory with no adverse transportation conditions would not be adequate to compensate carriers operating in another section of the country under adverse conditions. Carter Oil Co. v. C., B. & Q., 96 I. C. C. 217, 218.

(kk) Complainants are entitled to move their coal to any market at reasonable and nonprejudicial rates. The commission has repeatedly condemned the action of carriers in adjusting rates so

as to impede or stifle the movement of commodities in any direction. Wyoming Coal Co. v. V. Ry. Co., 96 I. C. C. 359, 363.

(ll) Tripoli and silica are trade names only in the sense that they are commonly used by the trade to distinguish between different grades of siliceous rock, mined in different territories; they are not trade names in the sense referred to in Andrews Soap Co. v. P., C. & St. L. Ry. Co., 41 I. C. C. 41. St. Louis Traffic Bureau v. A., T. & S. F. Ry. Co., 96 I. C. C. 421.

(mm) Differences in transportation conditions are so varied and interwoven that it is impracticable to make rates reflect all such differences that may be discovered. Moreover, it is important that simplicity and uniformity be considered in adjusting rates. As between Illinois and the territory east thereof, there are in general no differences in transportation conditions which would warrant material differences in rates. Jones & Laughlin Steel Corp. v. B. & O., 96 I. C. C. 682, 691.

(nn) Circumstances and conditions surrounding the transportation of cement over interstate and intrastate routes from Kansas City and Sugar Creek to St. Joseph, Mo., and intermediate points, also from points in the Kansas gas belt, including Dewey, Okla., to same destinations, and from Kansas City, Sugar Creek, and Bonner Springs, Kans., to St. Joseph, Atchison and Leavenworth and intermediate points in Kansas and Missouri, found to be substantially similar. Cement from Kansas City to St. Joseph, 96 I. C. C. 718, 725.

(oo) The commission has heretofore found, 46 I. C. C. 451, that if cotton is transported flat (uncompressed) in order to meet trade requirements and convenience, the resulting use of additional car space should be paid for by the shipper. Savannah Traffic Bureau v. A. & R. R. R. Co., 96 I. C. C. 749, 753.

(pp) In finding interstate rates on iron and steel articles and cast-iron pipe from points in Alabama to Pensacola, Fla., not unreasonable, it is further found that the transportation services under the rates in issue from Birmingham, Ala., and points grouped therewith taking same rates to Pensacola and Mobile, Ala., are performed by defendant carriers under substantially similar circumstances and conditions. Pensacola Chamber of Commerce v. L. & N. R. R. Co., 98 I. C. C. 567, 572.

(qq) The record reveals no reason for applying a different level of rates between Valley City and Jamestown, N. Dak., eastbound to Twin Cities than is applied westbound. Fargo Commercial Club v. A. & W. Ry. Co., 98 I. C. C. 691, 713.

(rr) It cannot be said that a rate is unlawful because under a different state of facts a lower rate would have applied. Refiners Oil Co. v. P. R. R. 102 I. C. C. 249, 250.

(ss) In passing upon the reasonableness of any particular rates or charges, it is necessary always to consider the special circumstances and conditions surrounding the situation under review. Continental Oil Co. v. Director General 102 I. C. C. 338, 342.

(tt) Generally speaking, transportation conditions are more favorable in the Mississippi Valley than in the southwest. Mississippi Railroad Commission v. A. & V. Ry. 102 I. C. C. 540, 545.

(uu) The Commission has frequently commented upon the more favorable transportation conditions in central territory than in the southern territory. Nashville Traffic Bureau v L. & N. R. R., 102 I. C. C. 641, 647.

(vv) A discouraging aspect of the commission's work has been the fact that rate complaints tend to increase rather than diminish in number. Once a controversy is apparently set at rest, new and unexpected complaints often crop out in other quarters. It is possible that the broader consideration which an investigation like the one here involved permits may result in a rate structure that will have more elements of permanence. Southern Class Rate Investigation, 100 I. C. C. 513, 602.

(ww) The carriers may accord rates which the Commission may not require, and their doing so not of necessity afford a criterion for testing the propriety of the refusal of carriers to accord similar treatment to other commodities, under other conditions, or in other territories. Western Paper Makers Chem. Co. v. A. A. R. R., 109 I. C. C. 133, 137.

(xx) The Commission has repeatedly condemned carriers for adjusting their rates and practices so as to impede or stifle the movement of commodities in

any given direction. Montgomery Cotton Exchange v. S. A. L. Ry., 109 I. C. C. 579, 586.

ALL OTHER CITATIONS

Arizona Corporation Commission v. A. E. R. R. Co., 85 I. C. C. 76; Mathieson Alkali Works v. B. & O. R. R. Co., 85 I. C. C. 728.

§2. Advantage of Location.

See Advanced Rates §5 (2) (o); Blanket Rates §7; Discrimination §9; Equalization of Rates §3; Reasonableness of Rates §19.

(a) Natural disadvantages under which the growers in one district may operate in getting his products to market are not such matters as the Commission may consider in determining the propriety of rail rates from competitive producing territories. Potatoes and onions to California, 100 I. C. C. 49, 53.

(b) While origin points nearer to destination points must not be unduly deprived of the benefit of their locations, and more distant origin points unduly favored, distance alone frequently is not controlling and must not be given undue weight, particularly where considerations which are largely determinative of the rates from the farther distant point exist in a markedly less degree from the nearer point. Distance is not and has not been a controlling factor in the rate adjustment. Galloway Coal Co., 40 I. C. C. 311. Oakland Chamber of Commerce v. S. P. Co., 100 I. C. C. 55, 62.

(c) The commission has repeatedly found that it is not its providence to prescribe rates less than reasonable maximum for the purpose of overcoming disadvantages of location or cost of manufacture, and unless the proposed rates are in themselves unreasonable or otherwise in violation of law, the commission may not require respondents to maintain lower rates, although it has recognized that carriers in order to meet competition may voluntarily establish rates lower than the commission is in position to prescribe, provided always that no undue prejudice, unjust discrimination, or other violation of law results. Glass and Glassware to Interstate Points, 98 I. C. C. 83, 86, 87.

(def) Where a point in a destination territory may have advantage over competitive jobbing points due to its location, it is not proper to draw the conclusion that because of such advantage the existing rates to such point are on a proper level. Salina Chamber of Commerce v. A. & W. Ry. Co., 98 I. C. C. 290, 293.

(g) New Orleans, La., has certain natural advantages over Galveston, Tex., which have affected the relationship of rates to the two points. The fact in itself warrants careful scrutiny of a rate adjustment which is alleged to be unduly prejudicial to the port least favored by natural advantages. While those natural advantages are entitled to consideration in so far as they have been brought about by geographical location, they are not entitled to much respect in so far as they have been brought about by rate advantages such as those here complained of. Galveston Commercial Asso. v. G., H. & S. A. Ry. Co., 100 I. C. C. 110, 121.

(h) Complainant is clearly entitled to a reasonable and nonprejudicial basis of rates, such basis being an inherent right of the localities served. If, however, with such rates, successful competition with other smelters can not be sustained, and Nevada mining industry languishes, the disability is one beyond the power of the commission to remove. Mason Valley Mines Co. v. W. P. R. R. Co., 100 I. C. C. 180, 202.

(i) Rates on fresh meat, fresh frozen meat, and packing-house products from Ogden, Utah, to various interstate destinations, except rates on fresh frozen meat to New York, Brooklyn, and Boston, found not unreasonable, discriminatory or unduly prejudicial. While it is clear complainant is at a disadvantage in marketing its products at some, if not all, of the destinations involved, its disadvantage arises not from the rate adjustment assailed but from its geographical location and commercial conditions. Ogden Packing and Provision Co. v. A., T. & S. F., 101 I. C. C. 236, 252, 253.

(j) Rates on fresh meats and packing-house products from Ogden, Utah, and rates on the same commodities and on by-products of livestock from Reno, Nev., to destinations in California, found not unreasonable, discriminatory, or unduly prejudicial as compared with rates on the live animals from and to the same and other points in the same general territory. Complainants' disadvant-

age here is due to their location with respect to this business and not to an improper relationship between the rates on their products and the rates on livestock. Ogden Packing and Provision Co. v. A. T. & S. F., 101 I. C. C. 236, 258.

(k) While shippers are entitled to the benefits of their location, shippers at other points may not be denied the right of access to markets at rates that are reasonable and free from undue prejudice and preference. Western Indiana Gravel Co. v. N. Y. C. & St. L. Ry., 109 I. C. C. 727, 730.

ALL OTHER CITATIONS

Acid from Moundsville, 85 I. C. C. 149.

§3. Agreed Facts, Admissions and Agreements.

See Absorption of Charges §2 (a); Allowances §8 (5) (m); Class Rates §2 (3i); Reparation §17.

(a) An agreement by a manufacturer of lumber to ship a certain proportion of its product over the lines of a railroad company implies an agreement by the company to furnish cars for such shipments, whether or not it furnishes cars to other shippers, which, being illegal, as preferential, leaves the contract lacking in mutuality. St. Paul & Tacoma Lumber Co. v. Northern Pac. Ry. Co., 296 F. 749.

(b) Correspondence leading up to the reduction of a rate can not be taken as an admission that the previous rate was unlawful. Memphis Freight Bureau v. C. & E. I., 101 I. C. C. 26, 27.

(c) The reasonableness or unreasonableness of a rate is a question to be determined upon the governing facts, and no admission on the part of the trunk lines is conclusive, especially as to the Director General of railroads, as agent, against whom a reparation order is here sought. Pressed Steel Car Co. v. Director General, 109 I. C. C. 75, 79.

§4. Averages.

(a) A comparison of earnings on a specified commodity with average earnings on all traffic is generally a little if any value in measuring the reasonableness of rates, for reasons, among others, that averages are based on class as well as commodity rates, divisions of joint rates as well as local rates, and c. l. and l. c. l. traffic; and because of differences between average and actual hauls. Iron and Steel Articles, 89 I. C. C. 606, 622.

(b) The reasonableness of any rate, can not be measured solely by comparing its earnings with average earnings on all traffic. If it could be, the inevitable result would be to bring all rates to a common level. Chicago Heights Mfrs. Asso. v. P. R. R., 92 I. C. C. 194, 196.

(c) The Commission has frequently commented on the impropriety of using the average revenue on all freight to measure the reasonableness of rates on any particular commodity, even though it be of low grade. Consistently applied, such a yardstick would ultimately reduce all rates to a common level. Union Sulphur Co. v. T. & N. O. R. R., 98 I. C. C. 76, 79.

(d) That a rate established by a railroad company on sand and gravel between two points gives it a higher rate per ton mile than its average earnings on all commodities is not evidence that such rate is unreasonable or excessive, without taking into consideration the length of the haul, as compared with the average haul, and other essential factors which may affect the question. Illinois Cent. R. Co. v. Railroad Commission of Kentucky, 1 Fed. (2d) 805.

(e) Average cost of handling traffic per revenue ton-mile is not a very satisfactory unit of comparison, as ton-miles are the measure of line-haul or movement expenses, being the product of tons by distance, while terminal or nonmovement expenses are measurable in terms of tons and not ton-miles. Obviously ton-mile cost for the movement expenses varies with load per car and terminal proportion of ton-mile cost is not same for different lengths of haul. Wool Rates Investigation, 1923, 91 I. C. C. 235, 262.

(f) If the reasonableness of any rate could be gauged solely by comparing it with the average earnings of the carriers on all traffic, the inevitable result would be to bring all rates to a common level. Procter & Gamble Distributing Co. v. St. L. S. F. Ry., 101 I. C. C. 563, 587.

(g) Comparisons of the average earnings an all revenue freight with the earnings on individual commodities, though frequently offered, throw little, if any light on the reasonableness of

rates on the individual commodities. Lafayette Box Board & Paper Co. v. A., C. & Y. Ry., 101 I. C. C. 273, 276, 277.

§5½. Back Haul.

ALL CITATIONS

Transit Privileges on Transcontinental Grain, 85 I. C. C. 43.

§8. Car-mile or Train-mile Revenue.

See Reasonableness of Rates §6.

(a) The probative force of car mile earnings in considering the rate level to be applied to a heavy loading commodity of the character of scrap iron is well recognized. Chicago Heights Mfrs. Asso. v. P. R. R., 92 I. C. C. 194, 195.

(b) For a somewhat longer average haul, earnings per car-mile on grain and products are slightly greater than average of all c. l. traffic, or on all c. l. traffic excluding grain and products. They are materially greater than earnings on products of forest, and animals and products, or average of all products of agricultural. Rates and Charges on Grain and Products, 91 I. C. C. 105, 124.

(cd) The earnings per car and per car-mile for iron and steel are nearly three times as great as on all traffic. The figures for all traffic, of course, reflect the loadings and earnings on coal, sand, gravel, and other heavy-loading commodities that move in greater volume on commodity rates. It is apparent, however, that if these commodities were eliminated from consideration the average loading per car on iron and steel would far exceed those on the remaining traffic. Jones & Laughlin Steel Corp. v. B. & O., 96 I. C. C. 682.

(e) The showing that double-deck loading by reducing the number of car-miles increases the car-mile revenue does not change the equally apparent fact that respondent would be compelled to accept double-deck rates for that portion of the movement made in single-deck cars. Under the proposed rules car-mile revenues would be further enhanced. Transit on Hogs, 98 I. C. C. 153, 155, 156.

(f) Although it is true that the revenue per car-mile on low-grade commodities such as sand exceeds that on higher-grade commodities, nevertheless it must not be overlooked that the revenue per ton-mile on the latter commodities is greater. Boldt Glass Co. v. C., B. & Q. R. R. Co., 98 I. C. C. 481, 485.

(fa) Earnings of 18.16 mills per ton-mile and 54.49 cents per car-mile on a commodity loading as heavily as canned goods do not appear excessive, especially in a territory where hauls over high mountain ranges are required. Canned Goods from Colorado, New Mexico, Texas & Wyoming, 102 I. C. C. 156, 160.

(g) Determination of the reasonableness or unreasonableness of rates is not a matter of mathematical computation but involves the exercise of informed judgment. It can scarcely be said with any degree of accuracy that comparison of car mile earnings under rates on one commodity computed on the same weight is lacking in probative value. There is no fixed scale of progression or regression with changing distance for earnings per mile. Furniture from southern points, 112 I. C. C. 302, 309.

ALL OTHER CITATIONS

Boldt Glass Co. v. C. B. & Q. R. R. Co., 85 I. C. C. 412.

§8½. Categorical Answers.

See Advanced Rates §3 (v).

§9. Change in Conditions or Service.

See Advanced Rates §7; Reasonableness of Rates §7; Through Routes and Joint Rates §20.

(a) A change in rates which is detrimental to the interests of a particular community is not necessarily inconsistent with the general public interest which the statutes which the Commission administers were designed to protect, although those who fear injury may be more vocal than those who expect benefit. Certainly this largely voiceless public interest is one which the Commission should not overlook. The concentration of population in large centers is a greater public menace now than it was sometime ago. Southern class rate investigation, 100 I. C. C. 513, 604.

§10. Combinations to Fix Rates.

See Class Rates §2 (4c).

§11. Comparison of Classification Territories.

See Comparative Rates.

(a) Differences in transportation con-

ditions and density of traffic justify relatively higher rates in western territory than in the East. Wool Rates Investigation, 1923, 91 I. C. C. 235, 272.

(b) Transportation conditions generally throughout southern Missouri, Arkansas, western Louisiana, Texas common-point territory, and Oklahoma are so similar as to warrant a fairly uniform basis of rates. Oklahoma Corp. Commission v. A. & S. Ry Co., 98 I. C. C. 183, 196.

(c) The transportation conditions in the territory under consideration in American Sand & Gravel Co., 88 I. C. C. 1, are not so materially different from those existing between the points in Minnesota and North Dakota as to warrant any different level of rates for application to these low-grade commodities which are of such great necessity for the building and maintenance of roads and other public and private projects. Reasonable basis of rates prescribed and reparation awarded. Hopeman Material Co., v. N. P. Ry. Co., 98 I. C. C. 361, 370.

(d) Transportation conditions are more favorable in Mississippi Valley than in the Southwest. Miss. R. R. Comm. v. A. & V., 102 I. C. C. 540, 545.

§12. Comparison or Character of Commodity.

(1) In General.

See Advanced Rates §5 (3); Class Rates §2 (tt); Classification §3½, §17, §18; Comparative Rates; Reasonableness of Rates §7½.

(a) Complainants sought to demonstrate intrinsic unreasonableness by comparing rates and revenues derived from cotton with rates and revenues derived from other commodities, but the well-settled rule is that most helpful evidence in determining reasonableness of rates is to compare them with rates on like traffic, moving under like circumstances, in the same general territory. Mississippi Railroad Commission v. A. & V. Ry. Co., 89 I. C. C. 47, 61.

(b) In dealing with the rates on vegetable meals and oils the commission has made the relationship of the commodities paramount to the inherent reasonableness of any particular rate. Midland Linseed Products Co. v. Director General, as Agent, 89 I. C. C. 260, 265.

(c) While the commission has condemned application of the same rate on both refined and crude oils, it does not follow that because the same rate is carried on crude oil as on refined oil that the rate on crude oil is thereby unreasonable, for it may be that the rate as applied to refined oil is low. Lubrite Refining Co., 80 I. C. C. 515. Atlantic Refining Co. v. A., B. & A. Ry. Co. 89 I. C. C. 279, 280.

(d) The commission has prescribed the same rates on crude, fuel, and gas oils in many cases; likewise it has prescribed rates on these oils a certain amount less than the rates on refined oils. This is sound when rates for the future are being prescribed, but in determining what would have been a reasonable rate on shipments of gas oil which moved during 1922 when various general rate changes become effective, other considerations must be taken into account. Relationship in the rates on these various oils moving at that time can be given little weight and the commission must resort to the ordinary tests of reasonableness. Standard Oil Co. v. M.-K.-T. R. R. Co., 89 I. C. C. 463, 468.

(e) Mere reference to a lower charge at other points is not sufficient to establish undue preference and prejudice. El Dorado Chamber of Commerce v. C. R. I. & P. Ry., 89 I. C. C. 743, 744.

(f) The rate level necessary to move a commodity is an element to be considered together with other elements in determining a reasonable rate on the commodity. Chicago Heights Mfrs. Asso. v. P. R. R., 92 I. C. C. 194, 198.

(g) Cereal food rates on Cream of Wheat found applicable and not unreasonable or unduly prejudicial as compared with rate on flour. Complainant failed to establish that there is substantial competition between Cream of Wheat and flour, notwithstanding that in some of its secondary uses, such as making of pancakes and waffles, Cream of Wheat displaces and to that extent competes with flour. Cream of Wheat Co. v. A., T. & S. F. Ry. Co., 91 I. C. C. 45.

(h) Following Midland Linseed Products Co., 88 I. C. C. 329, rates on oil, linseed, found unreasonable to extent they exceeded rates contemporaneously in effect on copra, peanut, and soya-bean oils. Reparation awarded. Bisbeen Linseed Co. v. P. R. R. Co., 91 I. C. C. 55.

(i) Rate on soda ash found unreasonable to extent it exceeded rate on caustic soda. The two commodities are similar in density and weight of load and there is but little difference in value. Both are soda products and generally move at the same rates. Reparation awarded. Grasselli Chemical Co. v. Director General, 91 I. C. C. 61.

(j) Fifth-class rate charged on dump cars found applicable and not unreasonable as compared with lower sixth-class rate on contractors' outfits in mixed carloads. Sixth-class item covering mixed carloads of miscellaneous equipment was provided as an approximation for convenience of shipper and carrier, in order to avoid separate weighing and rating of various articles of equipment shipped, and mixing requirement is a convenient and reasonable test for application of the item and to prevent its abuse. Complainant is not a contractor moving equipment from job to job, and no reason appears why straight carloads of designated articles under mixing provisions should take sixth-class rates. Johnson-Porter Clay Co. v. C., B. & Q. R. R. Co., 91 I. C. C. 71.

(k) Circumstances incident to transportation of coal which make it less expensive to handle than other freight are that it loads heavily, moves in great volume, and does not require expeditious service or expensive equipment. Coal from Crescent Districts, 91 I. C. C. 194, 199.

(l) Wool is a commodity of high value and can bear a higher rate than many commodities. Wool Rates Investigation, 1923, 91 I. C. C. 235, 263.

(m) Wool is a commodity of high value, generally loads much in excess of c. l. minimum, does not require special service, and claims for loss and damage are negligible. Wool Rates Investigation, 1923, 91 I. C. C. 235, 263.

(n) Ratings and rates on machines, adding, in boxes, l. c. l., in western classification, found unreasonable for the future as compared with ratings and rates on speedometers, in boxes, l. c. l. Functions of the two commodities are similar as are their transportation characteristics in many respects. Second class c. l. ratings and rates in official, southern, and western classifications found not unreasonable. Burroughs Adding Machine Co. v. M. C. R. R. Co., 91 I. C. C. 378.

(o) Rates on bichromate of potash, found not unreasonable as compared with rates on bichromate of soda. Value of bichromate of potash is greater than that of bichromate of soda and movement of former is much greater in volume than that of latter. Griess-Pfleger Tanning Co. v. C. R. R. Co. of N. J., 91 I. C. C. 566.

(p) Second-class rating in official classification territory on tinners' snips or shears found not unreasonable or unduly prejudicial as compared with third-class rating on mechanics' tools. Tinners' snips or shears are more closely related to cutlery and hand tree pruners and plant-cutting shears, which are accorded second-class ratings. Moreover, tinners' snips or shears are rated second class in southern and western classifications and such rating was recommended for them by commission's examiners in Consolidated Classification case, 54 I. C. C. 1. Peck Stow & Wilcox v. N. Y., N. H. & H. R. R. Co., 91 I. C. C. 747.

(q) "Naphtha" is a product of crude oil which is blended with casing-head gasoline to obtain ordinary commercial gasoline. Transcontinental Oil Co. v. M., K. & T., 92 I. C. C. 39.

(r) "Wax distillate" is a crude petroleum having a paraffine base, and has but little commercial value prior to separation of the wax from the oil, after which it is used in the manufacture of lubricating oils. Transcontinental Oil Co. v. M., K. & T., 92 I. C. C. 39.

(s) "Spelter" is a commercial term applied to metal commonly known as zinc. Spelter from Arkansas, 92 I. C. C. 136.

(t) In the trade usage stems of beets, carrots, and parsnips, are not considered as "tops." These commodities "with tops" are those with leaves unremoved, while term "clipped tops" signifies their removal, from 3 to 6 inches of the stem being retained to permit tying in bundles. Beets and Carrots from Texas, 92 I. C. C. 141, 142.

(u) "Munition linters" consist of practically all fiber taken from the seed after cotton has been removed, reasonably free from hull particles and other impurities. Cotton By-Products Co. v. S. Ry., 92 I. C. C. 201, 202, 203.

(v) When cotton linters are removed at a single cutting, the product is known

as mill-run linters, and when two cuttings are taken off, the first, consisting of from 10 to 35 pounds of the longer strands, is called first-cut linters, and the second, consisting of shorter strands, and hence of an inferior quality, is called second-cut linters. Cotton By-Products Co. v. S. Ry., 92 I. C. C. 201, 202.

(w) "Reilly carbon coke" is the residuum or tank bottom remaining after creosote oil and other chemical products have been extracted from coal-tar pitch. It is produced by a patented process and in general appearance resembles other kinds of coke, except that the individual units are generally smaller, although there are occasional chunks about a foot in diameter. Acheson Graphite Co. v. Director General, 92 I. C. C. 215, 217.

(x) Dead coal is coal which has been placed on the ground and which has lost its fuel properties because of exposure. It has no value as domestic or commercial fuel and is sold to smelters for fluxing purposes. Athletic Mining & Smelting Co. v. A. C. R. R., 92 I. C. C. 233, 234.

(y) Simple sirup is a mixture of sugar and water in approximately equal proportions. Concentrated sirups generally are fruit juices or extracts, usually with a preservative, to which a limited amount of simple sirup is added. Finished sirups are concentrated sirups diluted and sweetened by further addition of simple sirup, equivalent to about three times their volume. Coca-Cola Co. v. B. & O. 92 I. C. C. 340, 341.

(z) "Coco-Cola" is a finished sirup containing approximately 94 per cent simple sirup, which is a mixture of sugar and water in approximately equal portions, and 6 per cent other ingredients. It is prepared for consumption by addition of carbonated water, five ounces of the latter being mixed with one ounce of sirup. Coca-Cola Co. v. B. & O. 92 I. C. C. 340, 341.

(aa) Tin plate consists of an iron or steel base coated to various thicknesses with practically pure tin, and is used for manufacturing tin cans. Terne plate consists of the same base, with a coating 40 per cent tin and 60 per cent lead, and is used for roofing and other purposes necessitating exposure to weather. Black plate is the iron or steel base for the finished plate, and is used by manufacturers of tin and terne plate. Tin, Terne, and Black Plate, 92 I. C. C. 356.

(bb) "Rock salt:" Refers to condition of salt as it is mined and not to condition in which it is shipped. Salt Cases of 1923, 92 I. C. C. 388, 391.

(cc) "Evaporated salt:" The term is used to designate dry salt produced by solar and steam methods from brine pumped from the ground, as distinguished from rock salt that is blasted from a solid, crystalline state. Salt Cases of 1923, 92 I. C. C. 388, 391.

(dd) "Cottonseed bran" is made from residue of the cottonseed hull after both linters and shavings have been removed. East St. Louis Cotton Oil Co. v. B. & O., 92 I. C. C. 633, 634.

(ee) "Cottonseed-hull shavings pulp" is a product obtained by submitting cottonseed-hull shavings to a cleaning process by which all foreign matter, such as particles of hull, is removed, then running them through a pulping machine. East St. Louis Cotton Oil Co. v. B. & O., 92 I. C. C. 633, 634.

(ff) When cotton linters are removed at a single cutting, the product is known as mill-run linters, and when two cuttings are taken off, the first consisting of from 10 to 35 pounds of the longer strands, is called first-cut linters, and the second, consisting of shorter strands, and hence of an inferior quality, is called second-cut linters. Cotton By-Products Co. v. S. Ry., 92 I. C. C. 201, 202; East St. Louis Cotton Oil Co. v. B. & O., 92 I. C. C. 633.

(gg) "Feldspar" is a potassium-aluminum silicate mined in New England. It is used in the manufacture of white pottery, such as porcelain or china tableware, tiling, and sanitary plumbing fixtures. Ceramic Traffic Asso. v. M. C. R. R., 92 I. C. C. 675, 676.

(hh) Mere rate comparisons without a showing of conditions under which rates were established, volume of movement, or that transportation circumstances and conditions are substantially similar, are not helpful in determining reasonableness of rates on particular commodities. Salt Lake Potash Co., 87 I. C. C. 695. Chevrolet Motor Co. v. Director General, 93 I. C. C. 544, 546.

(ii) To show unreasonableness complainant compared transportation charges by freight with those by express. FOUND, express rates not being made with relation to freight rates, such comparisons are not convincing. Frost v. A. & G. Ry., 96 I. C. C. 15, 17.

(jj) Shippers stressed fact that fresh meat, fruits and vegetables, and dairy products, all move in refrigerator cars and have like transportation characteristics, except as to volume of movement, and urged the establishment of rates on dairy products on basis of either the fruit and vegetables or the fresh meat rates, preferably the latter. FOUND, same contentions have been urged in other cases wherein rates on dairy products have been in issue, but the commission has never been impressed with the cogency of this reasoning. Butter, Eggs, Dairy Products, and Poultry, 96 I. C. C. 19, 29.

(kk) Rates on fresh meats and perishable products such as fruit and vegetables offer no proper criterion for rates on dairy products. Commercial Club of Omaha, 19 I. C. C. 397. Butter, Eggs, Dairy Products, and Poultry, 96 I. C. C. 19, 35.

(ll) There is no fixed relationship between the rates on cotton-seed hulls, cake, and meal, but hulls generally take lower rates than cake and meal. Oklahoma Corp. Commission v. A. &. S. Ry. Co., 98 I. C. C. 183, 192.

(mm) The principal differences in the transportation characteristics of corn and cottonseed cake and meal are in the average loading and volume of movement. These differences are important, but a number of stock foods, with which cottonseed cake and meal are directly competitive, have long taken corn rates in this general territory. Oklahoma Corp. Commission v. A. & S. Ry. Co., 98 I. C. C. 183, 205, 208.

(nn) Rates on ground limestone, in sacks, or barrels, in water-tight cars, from Omaha and Ralston, Nebr., to Chicago, Ill., Minneapolis, Minn., St. Louis, Mo., Toledo, Ohio, and Detroit, Mich., during Federal control, found not unreasonable or otherwise unlawful as compared with rates on whiting, to which ground limestone is analogous in its transportation characteristics, from and to same points. Reparation awarded on certain shipments found to have been overcharged. Barker-Evans Paint Co. v. Director General, 98 I. C. C. 414.

(oo) Steel articles having a recognized commercial value other than that of the elementary metal from which they are manufactured do not properly come within the description scrap steel. Alaska Junk Co. v S., P. & S. Ry. Co., 98 I. C. C. 551, 552.

(pp) The transportation conditions surrounding the movement of petroleum products are in general less favorable than those surrounding the movement of other commodities. Texas Company v T. & P. Ry. 107 I. C. C. 147, 149.

(qq) Upon contention of complainant that rates on fuel oil from Pryse, Ky., to Newport News, Va., should be regarded as the refined-oil basis and that fuel oil should be less by the difference set in Midcontinent Oil Rates, 36 I. C. C. 109, and later cases, including Utah State Automobile Asso., 66 I. C. C. 8, and 92 I. C. C. 376, FOUND: The fuel-oil adjustment below refined oil is not in effect eastbound from points in this region, and the record is not sufficient for its initiation nor for a determination that under such an adjustment the present rates are on the corresponding refined-oil basis. Newport News Shipbuilding & Dry Dock Co. v. L. & N. R. R. Co., 100 I. C. C. 1, 2.

(rr) Rates on fresh deciduous fruits, other than apples, from California points to eastern transcontinental groups, found not unreasonable as compared with rates on grapes, peaches, and strawberries, for shorter hauls from points in the East and South. Differences in length of haul and other conditions surrounding the transportation weaken the force of comparisons made. Moreover, rates from California are blanketed to a destination territory extending more than half across the country, while other rates are more or less graded with respect to distance. Calif. Growers' & Shippers' Protective League v. S. P. Co., 100 I. C. C. 79, 87.

(ss) Rates on fresh deciduous fruits, other than apples, from California points to eastern transcontinental groups, found not unreasonable or unduly prejudicial as compared with rates on apples from and to same points, or with level of rates on other commodities in general. Apples load more heavily than the average of other deciduous fruits, which is a matter of considerable importance, and are subject to water competition which affects the all-rail rate, another feature which distinguishes them from the other deciduous fruits. Calif. Growers' & Shippers' Protective League v. S. P. Co., 100 I. C. C. 79, 80, 105.

(tt) Canned goods and canned milk, although by reason of analogy generally

given the same rates and ratings, are nevertheless distinct commodities not competing with each other. Carnation Milk Products Co., 55 I. C. C. 665. Carnation Milk Products Co. v. A., T. & S. F., 100 I. C. C. 254, 257.

(uu) The commission has frequently found that canned milk and canned goods are similar in character, so far as transportation is concerned, and that ordinarily the rates should be the same. Carnation Milk Products Co. v. A., T. & S. F. Ry. Co., 100 I. C. C. 254, 257.

(vv) Rates on pecans from points in Texas, Oklahoma and Louisiana, and from Natchez and Vicksburg, Miss., to St. Louis, Mo., and Chicago, Ill., found not unreasonable or otherwise unlawful as compared with the relationship between the pecan and peanut rates in the Southwest with the relationship between same rates in the Southeast. Funsten Co. v. A. & V. Ry. Co., 100 I. C. C. 357.

(ww) Rates on wood pulp found not applicable also on shipments of wood flour from Hercules, Calif, to Bacchus, Utah, at time shipments moved, and applicable rate on such shipments found unreasonable to extent it exceeded rate applicable on wood pulp, which was subsequently established on wood flour. Reparation awarded. Hercules Powder Co. v. Director General, 100 I. C. C. 393.

(xx) Following 78 I. C. C. 273 and 87 I. C. C. 51, rates for rail portions of hauls on wood pulp, shipped all-rail or water-and-rail route from points in Oregon and Washington to Los Angeles, Calif., found not unreasonable as compared with lower contemporaneous rates on paper. Crown Williamette Paper Co. v. Director General, 100 I. C. C. 397.

(yy) Rates applicable on shipments of blackstrap molasses, in tank-car loads, from certain points in Louisiana to Fort Calhoun, Nebr., found not unreasonable or unduly prejudicial as compared with rates on other commodities in tank cars between points for comparable distances. Crown Overall Mfg. Co. v. Director General, 100 I. C. C. 471.

(zz) Unless, contrary to decision in the Midland case, 68 I. C. C. 522, there is no substantial competition between the oils classed by the carriers as paint oils and those classed as soap oils, respondents' proposal to establish different rates on the soap oils between points in trunk-line territory and from such points to destinations in central territory is necessarily within the prohibition of section 3 of the act. Vegetable Oils from Trunk Line Points, 100 I. C. C., 736.

(3a) Proposal for a different basis of rates on so-called paint oils and soap oils between points in trunk-line territory and from such points to destinations in central territory, found not justified. No reason is suggested, other than the difference in value, why maximum reasonable rates on soap oils are, or should be, lower than on paint oils, and the record does not establish that any difference in the rates is warranted by this factor alone. Vegetable Oils from Trunk Line Points, 100 I. C. C. 736.

(3b) Applicable rates on bran, wheat from points in Western and Southwestern States to points in Louisiana, Texas, and New Mexico, found not unreasonable in the past and complainants found not to have been damaged by reason of any undue prejudice which may have existed, but for future such rates found unreasonable and unduly prejudicial to extent they may exceed contemporaneous rates applicable on wheat middlings or shorts, coarse grain and coarse grain products, from and to same points. Abilene Flour Mills Co. v. A. & S. Ry., 101 I. C. C., 14.

(3c) So-called normal or commercial rate on coal from East Birmingham to Jasper, Ala., found not unreasonable or unjustly discriminatory as compared with lower so-called special or industrial rates contemporaneously in effect on coal consigned to pig-iron furnaces and steel plants in Alabama. Sheffield Iron Corp. v. Director General, 101 I. C. C. 31.

(3d) Rates on wrapping paper, in straight and mixed carloads with toilet paper and paper towels, from Wisconsin and Michigan points to Wichita, Kans., found unreasonable to extent they exceed lower rate on newsprint paper plus certain percentages prescribed in the Paper case, 66 I. C. C. 571. Reparation awarded. Wichita Chamber of Commerce v. A., T. & S. F., 101 I. C. C. 55.

(3e) Following 80 I. C. C. 119, rates on bull-wheel material from Tulsa, Okla., to Breckenridge, Tex., found not to have been unreasonable or unduly prejudicial as compared with rates on like traffic from Parkersburg, W. Va., to Texas common points and rates on

lumber from Tulsa to San Antonio, Tex., except that rates charged on shipments which moved over a specified route between July 1, 1922, and Jan. 29, 1923, were unreasonable and unduly prejudicial to extent they exceeded contemporaneous rates on lumber from and to same points. Reparation awarded. Marion Machine, Foundry & Supply Co. v. C. & N. E., 101 I. C. C. 71.

(3f) While peanut oil is derived from peanuts its transportation characteristics are dissimilar from those surrounding the movement of peanuts, and there is no sufficient showing in this record to justify the prescription of rates on peanuts that bear any fixed relationship to rates on peanut oil, nor are rate comparisons between commodities of such diverse transportation characteristics particularly helpful. United Fig & Date Co. v. A. C. L., 101 I. C. C. 138.

(3g) Bananas are not necessarily entitled to same rates as fruits and vegetables due to differences in transportation of these commodities. Nevertheless comparison of rates on bananas with rates on fruits and fresh vegetables are not valueless, as the differences in transportation conditions may be taken into consideration when weighing the comparisons. Dawson Produce Co. v. A. & V., 101 I. C. C. 196, 205.

(3h) Rates on fresh meat and packing-house products found not unreasonable, discriminatory, or unduly prejudicial in their relation to and in comparison with contemporaneous rates on the live animals. Ogden Packing & Provision Co. v. A., T. & S. F., 101 I. C. C. 236.

(3i) Rates on fresh meats and packing house products from Ogden, Utah, and rates on the same commodities and on by-products of livestock from Reno, Nev., to destinations in California, found not unreasonable, discriminatory, or unduly prejudicial as compared with rates on the live animals from and to the same and other points in the same general territory. Complainants' disadvantage here is due to their location with respect to this business and not to an improper relationship between the rates on their products and the rates on livestock. Ogden Packing & Provision Co. v. D. & R. G., 101 I. C. C. 258.

(3j) Rival packing houses are entitled to reasonable rates, which should be fairly related, the one to the other, upon the live animals from various points of production and each is also entitled to a reasonable rate, which again should be so related, upon the products to various markets of consumption. Any locality which remains at a disadvantage after this has been done must sustain that burden, which is due to its location with respect to this business. See 22 I. C. C. 160. Ogden Packing and Provision Co. v. A. T. & S. F., 101 I. C. C. 236, 268, 269.

(3k) Rates on green salted hides found unreasonable as compared with rates on lard, lard compounds, and livestock. Shipping of latter named commodities is more hazardous than green salted hides, special equipment being necessary for their transportation, whereas ordinary box cars are used in transporting green salted hides. McElwain Co. v. S. & A. Ry., 101 I. C. C. 359, 360.

(3l) Commodity rate on grapefruit found unreasonable to extent it exceeded lower class C rate contemporaneously in effect on fresh fruits and vegetables. Reparation awarded. Levy & Zentner Co. v. A., T. & S. F., 101 I. C. C. 361.

(3m) Cement is shipped direct from manufacturer to point of consumption, in this respect differing from most other commodities. Competition is keen, and cement is sold on a delivered basis. The freight rate affects the ability of a manufacturer to compete at a given point, a difference of 1 cent per barrel in the freight rate, equivalent to about 4 cents per barrel, being sufficient to influence a sale. Missouri Portland Cement Co. v. A., T. & S. F., 101 I. C. C. 454, 457.

(3n) Rate on solid asphaltum found unreasonable to extent it exceeded rate on refined oil. Reparation awarded. Lone Star Gas Co. v. C., C., C. & St. L., 101 I. C. C. 465.

(3o) Pork-hide trimmings are always shipped in iced refrigerator cars and receive expedited service, whereas calfskin trimmings, sinews, and horn piths move in ordinary box cars without protective service, are not accorded expedited movement, load more heavily, and are of much less value. Glue Stock in Official Classification Territory, 101 I. C. C. 601, 603.

(3p) Combination rates assessed on common unglazed doors in straight or

mixed carloads, from points in Oregon and Washington, to destinations in trunk line and New England territories, found unreasonable to the extent they exceeded 115 per cent of rates on lumber, prescribed in Anson, Gilkey & Hurd Co., 78 I. C. C. 495. Reparation awarded. Pacific Mutual Door Co. v. A. A. R. R., 101 I. C. C. 633.

(3q) Rates on crude sulphur found not unreasonable or unduly prejudicial as compared with contemporaneous rates on analogous commodities. Detroit Chemical Works v. C. R. R. Co., 101 I. C. C., 671, 674.

(3r) Rates on handle material, not further finished than shaved or cut to shape, in straight carloads, or in mixed carloads with handle material not further finished than sawed square, rived or split from bolts, found unreasonable to extent they exceeded rates contemporaneously in effect on lumber manufactured from the same kind of wood. Reasonable basis of rates prescribed and reparation awarded. Chicago Heights Mfrs. Asso. v. B. & O. C. T. R. R., 101 I. C. C. 675.

(3s) Shippers contended that cheese throughout its transportation history has been improperly associated with butter, eggs, and dressed poultry, and that rates on cheese should not exceed 80 per cent of the rates on those commodities. FOUND: Record as a whole does not warrant a lower level of rates on cheese than would result under the scale prescribed on butter in the Dairy Products case, 96 I. C. C. 19. Cheese from Wisconsin, 101 I. C. C. 744, 754.

(3sa) Paving and roofing materials: Rates on, found unduly prejudicial and unreasonable to extent they exceeded lower contemporaneous class E rates applicable on roofing slate, paving slate and hard asbestos shingles. Reasonable rates prescribed for future and reparation awarded. Cameron & Co. v. A. & S., 102 I. C. C. 31.

(3sb) Rate on wire rope found unreasonable to extent it exceeded lower rate contemporaneously applicable on oil-well supplies or mining machinery, including steel cable. Reparation awarded. Black Steel & Wire Co. v. U. P., 102 I. C. C. 163.

(3sc) Mere rate comparisons without a showing of similarity of transportation conditions are not helpful in determining the reasonableness of rates on a particular commodity. Milne Chair Co. v. A. C. L., 102 I. C. C. 165, 166.

(3sd) Mirrors: Rate on, found not unreasonable as compared with rates on various kinds of furniture. Barker Bros. v. C., B. & Q., 102 I. C. C. 241.

(3se) Cowpeas: Rate on, found unreasonable to extent it exceeded lower rate on Mexican peas (garbanzo). Reparation awarded. Lewis-Simas-Jones Co. v. S. P., 102 I. C. C. 245.

(3sf) Rates on cylindrical cheese boxes found not unreasonable or otherwise unlawful as compared with rates on wooden drums, other wooden containers, and numerous other commodities. Considering the light loading of cylindrical cheese boxes the rates assessed do not produce earnings which may be regarded as excessive. Wisconsin Cheese Box Mfrs. v. A., T. & S. F., 102 I. C. C. 279.

(3sg) Petroleum gas, liquified: Rates on, found unreasonable as compared with lower rates on refined and crude oils. Reparation awarded. Tidal-Western Oil Corp. v. M., K. & T., 102 I. C. C. 322.

(3sh) Bagging, cotton: Rates on, found not unreasonable, but unduly prejudicial and preferential to extent they exceeded lower contemporaneous rates on cotton bags. Reparation denied. Fulton Bag & Cotton Mills v. A. & V. Ry., 102 I. C. C. 335.

(3si) Lime, agricultural: Rates on, found not unreasonable or unduly prejudicial as compared with rates on ground limestone. Riverton Lime Co. v. A. & R. R. R., 102 I. C. C. 415.

(3sj) Springs, helical: Rates on, found not unreasonable or unduly prejudicial as compared with rates on bed springs and various other commodities taking rates on iron and steel articles. Crescent Bed Co. v. A. & V. Ry., 102 I. C. C. 419.

(3sk) Coal, anthracite bird's eye: Upon further hearing, rates on, found unreasonable as compared with rates on bituminous coal and various other commodities transported under similar transportation and traffic conditions. Original report, 83 I. C. C. 712, affirmed. United Paperboard Co. v. G. & J. Ry., 102 I. C. C. 502.

(3sl) Gasoline and kerosene: Rates on, found not unreasonable as compared with rates on refined oils. Piedmont Oil Co. v. A. & V. Ry., 102 I. C. C. 583, 587.

(3sm) Coconut oil coagulates at certain temperature and then can not be unloaded from tank cars without being heated. Cudahy Packing Co. v. Director General, 102 I. C. C. 598, 599.

(3sn) Coke dust or breeze coke: Rate on, found unreasonable to extent it exceeded lower rate contemporaneously applicable on refined zinc and zinc-smelter products, which lower rate was established on coke dust or breeze coke subsequent to movement here involved. Reparation awarded. United Zinc Smelting Corp. v. P. R. R., 102 I. C. C. 601.

(3so) Built-up wood: Following 81 I. C. C. 227 and other cases cited, rates on, faced with veneer made from foreign woods, found not unreasonable as compared with rates on lumber, chair stock, and furniture. King-Haase Furniture Co. v. B. & O., 102 I. C. C. 629.

(3sp) Magnesite: Rate on ground calcined magnesite found not unreasonable as compared with lower rates on stucco and numerous other commodities. Mineralite Stucco Corp. v. C., R. I. & P., 102 I. C. C. 654.

(3sq) It can not be fairly assumed that rates on a particular commodity from competing points to a common destination should necessarily bear the same relationship to each other as the class rates from same points. Washington Publishers' Asso. v. B. & O., 102 I. C. C. 662, 663.

(3sr) Rates on frozen pig or hog skins found not unreasonable or unduly prejudicial as compared with lower rates on green salted hides. Frozen hog skins require use of refrigerator equipment and must be given expedited service whereas green salted hides may be transported in ordinary box cars, facts constituting a difference in transportation conditions which the commission can not overlook. Kiefer Tanning Co. v. E., J. & E., 102 I. C. C. 721.

(3ss) Rate on corn-sirup jelly and jelly and preserves in glass containers found unreasonable and unduly prejudicial to extent it exceeded lower contemporaneous rate on various kinds of canned goods in tin cans, including fruits, which lower rate was established on jelly and preserves, in both metal and glass containers, subsequent to movement here involved. Reparation awarded. Zaring & Co. v. C. S. Co., 102 I. C. C. 724.

(3st) Metal-cushion or seat-spring assemblies: Rate on, found not unreasonable, discriminatory, or unduly prejudicial in past but for future found unreasonable to extent it exceeds rate on davenport assemblies. Reasonable rate prescribed for future. Ft. Smith Couch & Bedding Co. v. B. & O., 102 I. C. C. 726.

(3t) The Commission has repeatedly found that rates upon the same commodity, varying according to the use to which it is put, are unlawful, but it has consistently found that there is nothing unlawful in the establishment of different rates on different commodities after taking into consideration, along with other factors, the general uses to which the commodities are respectively put. Eastern Lime Mfrs. Traffic Bureau v. A. & B. B. R. R. Co., 112 I. C. C. 7, 15.

(3u) The commodities selected for comparison are not analogous and such comparisons are of little probative value. Graham Paper Co. v. C. R. I. & P. Ry., 112 I. C. C. 51, 53.

(3v) While the offer to reduce the rates does not of itself establish the fact that the rates attacked were unreasonable, no dissimilarity in the service rendered for the transportation of camp outfits and of contractors outfits has been shown which warranted or warrants higher rates on the former. Standard Pipe Line Co. v. T. & P. Ry., 112 I. C. C. 186, 187.

(3w) The mere fact that two rates reflect varying general changes does not conclusively establish that each is on a proper level. And the fact that rates on one commodity may not be on a proper level does not prove that rates on other commodities which reflect the same general changes also are not on a proper level. Furniture from southern points, 112 I. C. C. 302, 309.

ALL OTHER CITATIONS

Michigan Traffic League v. A. A. R. R. Co., 85 I. C. C. 47; O-So-Ezy Products Co. v. Director General, as Agent, 85 I. C. C. 187; North Carolina Pine Asso. v. A. C. L. R. R. Co., 85 I. C. C. 270; Strawboard and other Paper Articles, 85 I. C. C. 470; Eshelman & Sons v. Director General, as Agent, 85 I. C. C. 578; Lackawanna Steel Co. v. P. R. R. Co., 88 I. C. C. 759.

§13. Comparison of Rates.

(1) In General.

See Infra §47; Advanced Rates §5 (3), §8½; Blanket Rates §18; Branch Lines §2; Classification IV; §17, §20; Comparative Rates; Discrimination §4; Rail and Water Rates; Reasonableness of Rates §7½, §28; Relative Rates; Tank Car Shipments (p); Through Routes and Joint Rates §13½, §15.

(a) Mere comparisons of rates without a showing of conditions under which such rates were established or volume of movement thereunder, are of slight probative value in determining the reasonableness of rates. Buxton-Smith Co. v. A., T. & S. F. Ry. Co., 89 I. C. C. 373, 376.

(b) In judging rates to or from points in the percentage groups the Commission has considered earnings and transportation conditions and not the mere relationship to sixth class. Washington Publishers Asso. v. B. & O. R. R., 98 I. C. C. 339, 344.

(c) Rates comparisons not accompanied by evidence as to volume of movement or average loading are of little probative force. Calumet Fertilizer Co. v. L. & N. R. R. Co., 91 I. C. C. 31, 33, 34.

(d) The mere showing that lower rates apply between other points without any other evidence is of little value. Rudolph & Co. v. P. R. R., 101 I. C. C. 111, 112.

(e) Traffic and transportation conditions are not radically different in eastern South Dakota from what they are in adjoining portions of Minnesota, Iowa and Nebraska. Watertown Chamber of Commerce v. A. & W. R. R., 101 I. C. C. 427, 439.

(f) The mere reference to rates without showing a similarity of traffic or transportation conditions is not sufficient to warrant a finding unreasonableness. Somerville Iron Works v. C. R. R. of N. J., 101 I. C. C. 683, 684.

(g) Little weight can be attached to rate comparisons of one commodity with other commodities in absence of a showing of their analogy from a transportation standpoint. Chapel v. P. R. R., 92 I. C. C. 662, 664.

(h) In absence of differentiating transportation conditions competitive articles should be accorded a parity in rates and ratings. Edlund Broom Corp. v. B. & M. R. R., 92 I. C. C. 749, 752.

(i) To show unreasonableness complainant compared transportation charges by freight with those by express. FOUND, express rates not being made with relation to freight rates, such comparisons are not convincing. Frost v. A. & G. Ry., 96 I. C. C. 15, 17.

(j) Levels of rates in Illinois and certain portions of western trunk-line territory are as a rule somewhat lower than in the southwest, and particularly on short-haul traffic, the differences being justified by varying degrees of traffic density; but, where the traffic density of all Class I carriers is comparatively heavy and the hauls are as long as those to these destinations, there is ample ground for disregarding such differences in rate levels. Oklahoma Corp. Commission v. A. & S. Ry. Co., 98 I. C. C. 183, 235.

(k) Rates on tanning extract from Newport, Tenn., to Olean, N. Y., found not unreasonable or unduly prejudicial. Complainant submitted no evidence of undue prejudice and relied solely on the showing of lower rates from Knoxville, Tenn., a more distant point, to support its allegation of unreasonableness. Rates charged found to compare favorably with rates from a number of other southern points shipping this commodity to northern destinations. Complaint dismissed. England Walton & Co. v. S. Ry. Co., 98 I. C. C. 449.

(l) A mere variation in some aspects of a comparative movement does not necessarily destroy its value as a measure of reasonableness if the operations are essentially similar. Comparisons of precisely similar situations would be difficult, if not impossible, to find. Utah Fuel Co. v. Director General 102 I. C. C. 493, 495.

(m) Many of the means commonly employed to prove that rates are reasonable, such as comparisons of ton mile and car mile revenue, comparisons with other rates, evidence relative to traffic density, volume of movement, cost of service, etc., are also adapted to show that depressed rates are reasonably compensatory. Statistics showing average revenue and average operating expense per ton mile and per car mile, average haul, and average car loading are also helpful. Mere statements of opinion that certain rates are believed to be compensatory are as insufficient

able, are regarded as reasonable. Class and commodity rates between western points 104 I. C. C. 578, 584.

(n) The rates instanced by complainant were simply selected from various tariffs examined and no showing is made of any of the circumstances and conditions under which they were established or have been maintained, without which they have little, if any, probative value. Greenwall Vinegar Co. v. B. & O. R. R. 104 I. C. C. 637, 639.

(o) Owing chiefly to difference in traffic density, a higher rate level prevails generally in the southwest than in central territory. West Coast Lumbermens Asso. v. A. & S. Ry. 104 I. C. C. 695, 699.

(p) Central territory is generally regarded as a whole for rate making purposes. The density of traffic in this limited territory is greater than in any other part of the country. Penn. Sand & Gravel Prod. Asso. v B. & O. R. R. 104 I. C. C. 717, 728.

(q) The level of rates is, and properly should be somewhat lower east than west of the Twin Cities. Rates from Upper Mississippi crossings 107 I. C. C. 256, 263.

(r) Contention that rates on deciduous fruits which exceed rates in effect prior to June 25, 1918, by greater percentage than in the case of the corresponding rates on other transcontinental traffic and certain traffic within Mountain-Pacific territory results in undue prejudice to shippers of deciduous fruits, not sustained. Defendant's witness testified that while rates used in complainant's comparisons were fairly representative, these rates were established because of competition with water lines operating through the Panama Canal, which competition has rapidly increased during the past few years, or to preserve carriers' tonnage, whereas deciduous fruits do not meet water competition, one experimental shipment by water having proved a failure, and conditions affecting rates used in complainant's comparisons are substantially different from those surrounding rates in issue. Calif. Growers' & Shippers' Protective League v. S. P. Co., 100 I. C. C., 79, 88, 90, 105.

(s) So-called normal or commercial rate on coal from East Birmingham to Jasper, Ala., found not unreasonable or unjustly discriminatory as compared with lower so-called special or industrial rates contemporaneously in effect on coal consigned to pig-iron furnaces and steel plants in Alabama. Sheffield Iron Corp. v. Director General, 101 I. C. C., 31.

(t) Mere rate comparisons without showing a similarity of traffic or transportation conditions is not sufficient to warrant a finding of unreasonableness. Somerville Iron Works v. C. R. R. Co. of N. J., 101 I. C. C., 683, 684.

(u) No attempt was made to show any movements under the contrasted rates, nor is the value, competition, similarity of transportation conditions, or other pertinent traffic information given. The comparisons are of little probative value. Dolese Bros. Co. v. C. R. I. & P. Ry., 109 I. C. C. 562, 563.

(v) The comparisons were not accompanied by a showing of similarity of transportation conditions and are of little probative value. Plaster board to Utah common points, 112 I. C. C. 3, 4.

ALL OTHER CITATIONS

Jackson Traffic Bureau v. St. L. S. F. Ry. Co., 88 I. C. C. 188; Universal Paper Bag Co. v. M. C. R. R. Co., 88 I. C. C. 593.

§13 (1½). Commodity and Class Rates.

See Class Rates; Commodity Rates.

(a) In the absence of other evidence that it is unreasonable or discriminatory the fact that a commodity rate is greater or less proportion of the corresponding class rate is not a sufficient ground for condemning the commodity rate as unreasonable. Proctor & Gamble Distributing Co. v. St. Louis S. F. Ry., 101 I. C. C. 563, 587.

(b) A comparison of class and commodity rates is of little value when the movement is occasional. Crabbs, Reynolds, Taylor Co. v. B. & O., 92 I. C. C. 621, 622.

(c) Various lines serving same points of origin and destination maintained different rates on coal. Complainant attempted to prove unreasonableness by showing that class rates of all lines on miscellaneous commodities from and to these points are identical. HELD: Competitive and transportation elements are vastly different as between coal and com-

modities moving on class rates, the former being made without regard to class-rate structure. Chapel v. P. R. R., 92 I. C. C. 662, 664.

(d) It is the general rule that where commodity rates are maintained they are lower than the contemporaneous class rates, and the fact that many such commodity rates may be found on various kinds of traffic does not prove that class rates are unreasonable for application on a particular class of traffic. Washington Publishers Asso. v. B. & O. R. R. 102 I. C. C. 662, 663.

(e) It cannot be fairly assumed that rates on a particular commodity from competing points to a common destination should necessarily bear the same relationship to each other as the class rates from the same points. Washington Publishers Asso. v. B. & O. R. R. 102 I. C. C. 662, 663.

§13 (2). Divisions and Joint Rates.

See Divisions; Local Rates and Combinations; Through Routes and Joint Rates.

(a) A comparison of class rates with divisions of through commodity rates is of little value. Best Foods, Inc. v. C. R. R. of N. J., 98 I. C. C. 331, 334.

§13 (5). Proportional and Local Rates.

See Local Rates and Combinations; Proportional Rates I (f).

§13. (6) State and Interstate Rates.

See Advanced Rates §5 (7¼); Discrimination §8 (6); Equalization of Rates §5; Routing and Misrouting §4¼; State Rates and Regulation.

(a) Differences in transportation and traffic conditions must be taken into account in considering comparisons of interstate rates in different states. Nebraska Livestock Case, 89 I. C. C. 444, 451.

(b) Upon contention of complainants that from the comparative operating conditions in the portions of Minnesota and North Dakota here considered the Minnesota intrastate scale of rates applicable on sand, gravel and crushed rock should be held to be a reasonable level of rates for application on these commodities from Minnesota points to North Dakota destinations, FOUND: The record supports the conclusion that there is no justification for the maintenance of any higher level of rates in the one than in the other, and complainants' contention would be correct if the intrastate scale was on a reasonable maximum basis. The commission takes into consideration the level of intrastate rates in reaching a conclusion as to the reasonableness of interstate rates in the same general territory, but it is not bound to adopt the intrastate level of rates as proper for application to interstate traffic. Hopeman Material Co. v. N. P. Ry. Co., 98 I. C. C. 361, 366.

(c) The Commission accords to the views of the state authorities weight and respect, but it does not regard the decisions of the state commission in the proceedings before it as controlling or persuasive in respect of the issues in the case before it. Pacific Portland Cement Co. v. Director General 102 I. C. C. 515, 517.

(d) Although in determining the reasonableness of an interstate rate the Commission may give consideration to comparisons with intrastate rates, the mere fact that the carriers comprising the longer interstate route do not see fit to meet the rate of the direct intrastate line does not establish the unreasonableness of the interstate rate. Florence Chamber of Commerce v C. of Ga. Ry. 104 I. C. C. 373, 375.

§13. (7) Rail and Water Rates.

See Rail and Water Rates.

(a) In a comparison of water transportation with rail transportation, where a ratio is used for the water haul, the ratio used can not be supposed to be the exact equivalent of the water haul expressed in terms of rail mileage. A comparison of such dissimilar services can not be made with mathematical accuracy. Reduced Commodity Rates to Pacific Coast, 89 I. C. C. 512, 524, 525.

§14. Competition.

(1) In General.

See Advanced Rates §5 (7); Competition; Discrimination §8 (3).

(a) The commission can not prohibit carriers from meeting competition so long as they are not guilty of undue preference and prejudice and so long as they do not charge rates which are so unreasonably low that they burden other traffic. On the other hand, the commission can not require carriers to meet

competition. Maritime Asso., Boston Chamber of Commerce v. A. A. R. R., 95 I. C. C. 539, 565, 566.

(b) The presence of competition at certain points and its absence at others has caused most of the confusion in the rate structure of the country. It is often said that present railroad competition is in service rather than rates, but there is only a degree of truth in this aphorism. Rate wars are less common than formerly, but present rate structure is full of low rates made for competitive reason and still defended on that ground. Carriers may, within limits, make low rates for the purpose of meeting competition, but commission is powerless to compel them to meet it. Competition, therefore, is not a factor which the commission may take into consideration in fixing maximum reasonable rates. Southern Class Rate Investigation, 100 I. C. C., 513, 611.

(c) Competition with other carriers has not influenced the level of the rates attacked. Its absence, however, does not warrant the maintenance of rates upon a level which is unduly high. Was-Cott Corp. v. K. G. J. & E. R. R., 109 I. C. C. 468, 470.

§14 (3). Railroad Competition.

See Discrimination §8 (3); Equalization of Rates §4 (2); Long and Short Hauls §9; Railroad Competition; Reasonableness of Rates §8 (2).

(a) It is not the commission's province to require carriers to maintain rates to meet carrier competition. The commission prescribes what it regards as reasonable maximum rates, based upon conditions usually considered by regulating authorities, and if carriers for their own reasons desire to maintain lower rates in certain instances they may do so subject to limitations of the law. Rates to Southwestern Destinations, 95 I. C. C. 188, 199.

§14 (5). Water Competition.

See Advanced Rates §17 (3d); Discrimination §8 (5); Equalization of Rates §4 (4); Long and Short Hauls §10; Reasonableness of Rates §8 (4).

(a) Water competition asserts a materially greater influence in depressing the rate on anthracite coal to Norfolk than to either Richmond or Newport News, Va. Newport News v. B. & O. R. R. Co., 96 I. C. C. 425, 432.

(b) Finding in 88 I. C. C. 709, that rates from Chicago, Ill., to St. Paul and Minneapolis, Minn., are depressed; that this depression was brought by water competition at those points when the bases of rates were originally established; and that since then the few changes which have been made have not materially modified the relative level of those rates, affirmed. Fargo Commercial Club v. A. & W. Ry Co., 98 I. C. C. 691, 723.

(c) Interstate class rates between Oakland, Calif., and various destinations in California and Nevada found not unreasonable or unduly prejudicial as compared with class rates between San Francisco and said points. The rates applying between the metropolitan district and points here considered, where there is actual water competition, are depressed by such competition, although it is shown that this competition is not so keen as to result in anything in the nature of rate wars between the rail and water lines, and further that the rates between the metropolitan district and points here considered which are not on navigable waters reflect the result of water competition to related points and are likewise lower than normal rates. The water competition from Oakland has been nowhere near as great as that from San Francisco. Oakland Chamber of Commerce v. S. P. Ry. Co., 100 I. C. C. 55, 59, 62.

(d) Relationship of general level of rates on other traffic to the level prior to June 25, 1918, which was affected by water competition or other conditions different from those relating to rates on deciduous fruits, here assailed, are not controlling in the determination of reasonable rates on traffic under consideration. Calif. Growers' & Shippers' Protective League v. S. P. Co., 100 I. C. C. 79, 107.

(e) Consolidation of railroad lines in the South probably accelerated elimination of water competition on navigable rivers. Prior to era of consolidation the drastic rate cutting of paralleling rail lines made it difficult for steamboats to operate, though they were aided in some instances by noncompetitive railroads that acted as feeders. Absorption of these feeders into larger systems deprived the boats of even this support

and they gradually disappeared from the scene. Southern Class Rate Investigation, 100 I. C. C. 513, 526.

ALL OTHER CITATIONS

Chapin Co. v C. M. & St. P. Ry. Co., 85 I. C. C. 263; North Carolina Pine Asso. v. A. C. L. R. R. Co., 85 I. C. C. 270.

§14 (6). Wagon and Motor Truck Competition.

See Motor Truck Competition.

(a) Question of meeting motor-truck competition is more a matter for the carriers than the commission to settle. Nebraska Livestock Case, 89 I. C. C. 444, 457.

§15½. Cost Computations.

See Infra §17; Weights and Weighing II.

(a) The figures of cost study by respondent's officials, and well-qualified cost experts can not be disregarded even if they do include some details not possible of mathematical proof and are based in part upon estimates founded on their best judgment. Switching at Kansas City, Mo., 96 I. C. C. 538, 555.

ALL OTHER CITATIONS

Oklahoma S. W. Ry. Co. v. St. L. S. F. Ry. Co., 88 I. C. C. 235.

§16. Cost of Production.

See Infra §17; Classification §17 (4).

ALL CITATIONS

Lackawanna Steel Co. v. P. R. R. Co., 88 I. C. C. 759.

§17. Cost of Operation.

See Infra §18; Supra §16; Advanced Rates §7 (2), §10, §11; Branch Lines §2 (c); Divisions §3; Reasonableness of Rates §9; Transportation §14.

(a) Extraordinary past expenditures, particularly for maintenance of way structures, and equipment, necessary to rehabilitate a line, can not be accepted as indicative of normal future operating expenditures. Ohio Farm Bureau Federation v. A. & W. Ry. Co., 89 I. C. C. 489, 495.

(b) Any reliable method for determining normal maintenance of equipment must give consideration to various conditions affecting cost. Differences in amount of use, amount of property to be maintained, tractive power of locomotives, capacity and loading of cars, cost of labor and materials, as well as in other things, can not be ignored. Commission can not confidently estimate normal maintenance expenses for a given traffic in any period, because it lacks means for equating all relevant factors involved, but it is able to take into account most of the principal things which bring about a different cost in different years, such as variation in use of property due to traffic, relative tractive power of locomotives, and relative cost of labor and materials. Rates and Charges on Grain and Products, 91 I. C. C. 105, 121, 122.

(c) Upon an extensive investigation as to what rates, as applied to a particular class of traffic to be offered, will be likely to produce a fair return hereafter, past or present statistics of operation and earnings are serviceable only as they illuminate the future. Rates and Charges on Grain and Products, 91 I. C. C. 105, 122.

(d) Cost of materials and amount of wages largely determine cost of railroad operation. Rates and Charges on Grain and Grain Products, 91 I. C. C. 105, 122, 146.

(e) Ordinarily service of making up and breaking up trains is an operating incident compensation for which is included in the transportation rate. Where, however, such service is rendered in some instances and not in others, and in still others is the only service performed by a common carrier, the charge for that service should be separately stated. Peoria & Pekin Union, 93 I. C. C. 3, 22.

(f) Operating expenses of carriers in the western district are proportionately higher than those of carriers in the southern district and the latter yield a higher return on investment than the former. Alabama & Mississipppi Ry. Co. v. A., T. & S. F., 95 I. C. C. 385, 402, 403.

(g) Protestants' conclusions with regard to proposed revision of all-rail and rail-and-water rates, c. l. and l. c. l., on furniture from southern district to eastern points, are based upon premises open to serious criticism. The assumption that capital cost and operating expense may be charged entirely to freight for purpose of this case, disregards the

immensely greater expense of passenger terminals in the eastern than in the southern district, and entirely omits consideration of the fact that interterritorial traffic moving largely in eastern district and not furniture rates within southern district is under consideration. Whatever weight might be given to such evidence with regard to portions of the hauls in southern district is largely neutralized when considering hauls beyond. Ton-mile earnings should ordinarily decrease with increasing distance, but it must be borne in mind that the average number of miles hauled in the southern district is approximately one-third greater than in eastern district. Furniture from Southern Points, 100 I. C. C. 127, 144.

(h) There are some items of operating expenses which properly would be chargeable in a cost study of a common carrier but not in the cost of operating a plant facility. The difference ordinarily would be slight, as the general character of the service performed for the proprietary industry is the same whether it be performed by a plant facility or a common carrier. Carnegie Steel Co. v. Director General, 101 I. C. C. 638, 643.

ALL OTHER CITATIONS

Mutual Products Trading Co. v. O. W. R. R. & N. Co., 85 I. C. C. 1; Cotton and Cotton Linters to Louisiana and Texas Ports, 85 I. C. C. 5; Arizona Corporation Commission v. A. E. R. R. Co., 85 I. C. C. 76; Utah Gilsonite Co. v. A. T. & S. F. Ry. Co., 85 I. C. C. 557.

§18. Cost of Service.

See Advanced Rates §7 (2); Reasonableness of Rates §9, §19.

(a) In passing upon the reasonableness of rates or in determining upon whether or not undue prejudice and preference exists, it is well settled that cost of service is a factor which must be taken into consideration. There are other factors which have weight, but cost of service is one of the most important. Certainly the Commission is not warranted, in its determination of these matters, in disregarding differences in distances which are substantial and material when compared with the total hauls involved. It is true that there are many instances in the rate structure where distance seems to have been given little or no consideration and that rates are often blanketed over great areas. But these situations are either the product of common consent, so that they are not subjected to the tests of the law, or they result from competitive influences. Maritime Asso. Boston Chamber of Commerce v. A. A. R. R., 95 I. C. C. 539, 565.

(b) Relative cost of service is not the only factor to be considered in determining just divisions. The Commission must consider, also, whether a particular carrier is an originating, intermediate or delivering line; the efficiency with which the several carriers are operated; the amount of revenue required to pay their respective operating expenses, taxes, and a fair return on their railway property; the importance to the public of the transportation service of such carriers; and other facts, if any, which would, ordinarily, without regard to mileage haul, entitle one carrier to a greater or less proportion than another of the joint rate. It is settled that in determining what the divisions should be, the Commission, may in the public interest, take into consideration the financial needs of a weaker road; and that it may be given a division larger than justice merely as between the parties would suggest in order to maintain it in effective operation as part of an adequate transportation system provided the share left to its connections is adequate to avoid a confiscatory result. Divisions of joint rates and fares of M. & A. Ry., 98 I. C. C. 119, 121.

(c) Cost of the service is one of the elements in rate making. It may be just to give the prosperous carrier a smaller proportion of the increased rate than of the original rate. Whether the rate is reasonable may depend largely upon the disposition which is to be made of the revenues derived therefrom. Divisions of joint rates and fares of M. & N. A. Ry., 98 I. C. C. 119, 140.

(d) Upon an extensive investigation as to what rates, as applied to a particular class of traffic to be offered, will be likely to produce a fair return hereafter, past or present statistics of operation and earnings are serviceable only as they illuminate future. Rates and Charges on Grain and Products, 91 I. C. C. 105, 122.

(e) Cost of service is never out of mind in rate making, if not always in

sight. Lake Cargo Coal rates, 1925, 101 I. C. C. 513, 531.

(f) Factor of cost of service, unless the difference is great, should not be controlling. In view of extent to which that factor has been disregarded by defendants in maintaining rates from competitive mines, the fact of a slight difference in operating costs can not be accepted as justification for withholding from a few additional mines the rate-making policy and the competitive advantages that have been accorded their competitors in the same field. Nelson Fuel Co. v. C. & O., 96 I. C. C. 124, 130.

(g) Defendants' evidence regarding cost of service in connection with transportation of deciduous fruits can not be accepted as showing actual cost of through transportation with any degree of certainty, but this evidence does show the service to be more expensive than on all traffic or on apples or citrus fruit. Calif. Growers' & Shippers, Protective League v. S. P. Co., 100 I. C. C. 95, 102.

(h) Making the allocation between passenger and freight services on a car-mile basis, the latter should bear 65.77 per cent of the total cost. Ore and concentrates constituted 76.27 per cent of the total freight tonnage in 1922. Assigning the freight costs on this basis, the costs attributable to ore traffic amounted to $65,569, which amount, divided by number of tons carried, produces a cost per ton of $2.40. Mason Valley Mines Co. v. W. P. R. R. Co., 100 I. C. C. 180, 193.

(i) Even though a shipper is at a disadvantage in marketing its packing-house products at some, if not all, destinations, it does not follow that rates on live animals and on the products thereof must be measured by the cost of service without consideration of other elements of rate making, or that shipper's disadvantage arises from the fact that the adjustment assailed is not so measured. Ogden Packing & Provision Co. v. A., T. & S. F., 101 I. C. C. 236 252.

(j) Cost of service is one of the recognized factors which the commission may properly take into consideration in fixing maximum reasonable rates. Distance scales are frequently criticized, as in this proceeding, on the ground that cost of service is not dependent on distance alone. This is true when service is viewed in detail, for other factors affect cost. Southern Class Rate Investigation, 100 I. C. C. 513, 611.

(k) There are some items of operating expenses which properly would be chargeable in a cost study of a common carrier but not in the cost of operating a plant facility. The difference ordinarily would be slight, as the general character of the service performed for the proprietary industry is the same whether it be performed by a plant facility or a common carrier. Carnegie Steel Co. v. Director General, 101 I. C. C. 638, 643.

§20. Distance of Haul.

See Supra §18 (9); Blanket Rates §9; Bridges and Tolls; Car Ferry; Class Rates §2 (3k) (7s); Differentials; Distance Rates; Evidence §58: Reasonableness of Rates §10, §36; Through Routes and Joint Rates §6, §13 (v).

(a) When distances of over 500 miles are involved fact that service is by two lines is largely negligible. Pacific Guano & Fertilizer Co. v. S. P. Co., 91 I. C. C. 228, 230.

(b) Sugar-beet traffic is peculiarly a short-haul traffic, and seldom moves for distances in excess of 100 miles. Average haul probably does not exceed 40 miles. Continental Sugar Co. v. N. Y. C. R. R. Co., 91 I. C. C. 677, 680.

(c) Rates to sections served by several lines of railroads should not necessarily be based upon the short line distance nor established with regard to either the weakest or strongest line, but should be established with reference to all reasonably direct lines. Southern class rate investigation, 100 I. C. C. 513, 696.

(d) When distance principle governs the making of rates the rate per ton-mile should decrease as distance increases. Maritime Asso., Boston Chamber of Commerce v. A. A. R. R., 95 I. C. C. 539, 552.

(e) Rates on bituminous lump coal from Duluth and West Duluth, Minn., to Ladysmith, Wis., found not unreasonable or unjustly discriminatory. Coal rates in Wisconsin are not constructed primarily with regard to distance, but the controlling consideration is the equalization of ports and grouping of destinations. Original order vacated and complaint dismissed. Great Western Paper Co. v. M., St. P. & S. S. M. Ry. Co., 96 I. C. C. 444.

(f) Just and reasonable rates for the transportation of manufactured iron and steel articles from points in the Pittsburgh, Pa., district to St. Louis, Mo., and points in Illinois and Indiana prescribed for the future, which are fixed according to distances via the shortest routes by existing connections for the interchange of carload traffic. Jones & Laughlin Steel Corp. v. B. & O. R. R. Co., 96 I. C. C. 682.

(g) Except where differences in transportation conditions or other dissimilar circumstances exist, rates should not increase in exact proportion with the distance. Class rates between Memphis, Tenn., Cairo, Ill., and W. T. L. points, 102 I. C. C. 207, 216.

(h) Distance is not a controlling element in fixing group rates. Alexander Grocery Co. v. B. S. L. & W. Ry., 104 I. C. C. 155, 159.

(i) In determining distances in compliance with the rates herein prescribed to or from Galveston, Tex., or New Orleans, La., the respective ports, the shortest routes via existing connections for the interchange of carload traffic shall be used, embracing as a maximum the lines or parts of lines of not more than three line-haul carriers, lines under common ownership or control to be considered as a single line. Galveston Commercial Asso. v. G., H. & S. A. Ry. Co., 100 I. C. C. 110, 123.

(j) Constructive distance of 50 miles for car-float transfer on the Tennessee River between Hobbs Island and Gunter Landing approved. Southern Class Rate Investigation, 100 I. C. C. 513, 626.

(k) Rates on grain, grain products, hay and straw, and related articles taking same rates, or rates basing thereon, between Oklahoma, on one hand, and Kansas and Missouri, on other hand, found unreasonable to extent they exceed rates made by applying distance scales set forth herein to short-route distances between respective points of origin and destination, as herein defined. Reasonable maximum rates prescribed for future. Oklahoma Corp. Comm. v. A. & S. Ry., 101 I. C. C. 116, 128.

(l) A spread of 26 cents in rates for an approximate average increase in distance of only 11 miles is out of all proportion to increased expense of transporting commodities, such as anthracite coal this slight additional distance and violates the principle that as distance increases ton-mile earnings, except under unusual circumstances, should decrease. No such unusual circumstances as would require a departure from this rule are here shown. Richmond County Coal Merchants Asso. v. B. & O., 101 I. C. C. 154, 163.

(m) Main-line rates on beef cattle from points on defendants' lines in Arizona to points on their lines in California found not unreasonable or otherwise unlawful, except that single-line rates in effect on Southern Pacific and its subsidiary lines for distance between 5 and 230 miles and between 1,000 and 1,200 miles are unjust and unreasonable to extent they exceed for corresponding distances rates contemporaneously maintained by Santa Fe. Reasonable basis of rates prescribed. Arizona Cattle Growers Asso. v. A. Ry. Co., 101 I. C. C. 181.

(n) Carriers are left free to ignore differences in distance for competitive or other reasons so long as they do not unduly prefer one port or locality or maintain rates so low as to burden other traffic. But an order requiring them to ignore such differences is quite a different thing. In situations where the rates standing by themselves are lawful and the Commission is called upon to impose rate equalization, the facts developed of record should leave no doubt that the exercise of such a power would be not only warranted by the law but necessary or appropriate in the public interest. Galveston Commercial Asso. v. A. & S. Ry., 109 I. C. C. 114, 125.

ALL OTHER CITATIONS

Jeremy Fuel & Grain Co. v. Director General, as Agent, 88 I. C. C. 397.

§21. Dividends.

(a) Evidence that for a series of years an annual dividend was paid on capital stock of a carrier, and in addition a substantial surplus accumulated, can have no direct bearing upon the reasonableness of rates on a single commodity to a few destinations, even though volume of movement of that commodity is admittedly larger. Cincinnati Asso. of Purchasing Agents v. L. & N. R. R. Co., 89 I. C. C. 285, 289, 290.

§22. Equipment Furnished.

See Infra §48½; Cars and Car Supply; Classification §12⅞; Minimums; Reasonableness of Rates §13; Refrigeration §4¼.

(a) Car ownership cost is one of the transportation costs which should be considered in connection with the portion of the transportation performed by the independent line haul carrier when fixing its division of the through rate. In any event, it is not entitled to both free time allowance on foreign cars it uses and divisions covering compensation for the hire of such cars. Virginia Blue Ridge Ry. v. S. Ry., 96 I. C. C. 591, 594.

(b) Commercial conditions have their place in the consideration of rates. Oklahoma Corporation Commission v. A. & S. Ry., 98 I. C. C. 183, 197.

(c) While the total mileage may be about twice that of the loaded mileage, this fact is to a large extent offset by the further fact that the maintenance expense to the owners of these tank cars is considerably more than twice the mileage allowance by the carriers. It is, of course, a convenience to intervenors who use these tank cars to have their own equipment, but the fact remains that if this equipment, or other equipment of like serviceability, were not purchased and maintained by the shippers the carriers would be put to a great deal of additional expense which is now borne by the shippers. Oklahoma Corporation Commission v. A. & S. Ry., 98 I. C. C. 183, 225.

(d) Hauling of an empty car is merely an incidental service in connection with load. Increased Switching Charges at Detroit, 91 I. C. C. 82, 96.

(e) In accordance with usual railroad practice, the matter of making and receiving deliveries of cars is the subject of mutual agreement, each line having the right within reasonable limits to designate the point where cars will be received. Peoria & Pekin Union Ry., 93 I. C. C. 3, 16.

(f) The transportation of black powder requires the best class of box car, which must be specially prepared and placed a certain number of car lengths back of the engine and forward of the caboose in order to insure safety in transportation. Grasselli Powder Co. v. A., C. & Y. Ry. Co., 96 I. C. C. 271, 275.

§22a. Equalization of Costs.

See Equalization of Rates.

(a) Rates can not be fixed on the theory of equalizing the total transportation cost of the inbound raw material plus that of the outbound finished product. West Virginia Pulp & Paper Co. v. S. Ry., 96 I. C. C. 244, 252.

§22¼. Erroneous Rate.

See Advanced Rates §5 (2) (p), §5 (6); Blanket Rates §10½ (ii); Erroneous Rates.

(a) The publication of a tariff provision through error does not justify a carrier's failure to comply with its requirements. Miles Lumber Co. v. C., B. & Q. R. R. Co., 89 I. C. C. 761, 763.

(b) Shipment of sugar from San Francisco to Leadville, Colo., moved as routed by shipper over a so-called "uneconomical and circuitous" route at a rate higher than that contemporaneously in effect over other more direct routes available, which lower rate was subsequently made applicable over route of movement. Complainant admits its own error in specifying higher-rated route but charges initial carrier with negligence for failure to point out at time of shipment that higher rate applied over specified route. HELD: Alleged error was apparently attributable to complainant's own carelessness rather than to negligence of initial carrier and rates can not be condemned upon the mere fact that a lower rate was subsequently established over route of movement. Rate assailed found not unreasonable, unduly prejudicial or otherwise unlawful. Western Sugar Refinery v. S. P. Co., 101 I. C. C. 113.

(c) A practice based on an error, however long continued, raises no presumption whatever. Berninghaus Co. v. C. & N. W. Ry., 109 I. C. C. 104, 106.

§22½. Expert Evidence.

See Supra §40; Undercharges §4.

(a) When well-qualified cost experts have made painstaking efforts to arrive at just and reasonable results, their figures are not to be disregarded because they may not be correct in every detail and are based in part on estimates. Increased Switching Charges at Detroit, 91 I. C. C. 82, 96.

§25½. Hearsay Evidence.

(a) Testimony by complainant's witness with reference to payment of freight charges will not be reviewed by the com-

mission, where such evidence is hearsay and is objected to by defendant on that ground. Southern Cotton Oil Co. v. Director General, as Agent, 89 I. C. C. 154, 155.

§29. Long Continuance of Voluntary Rate.

See Infra §43; Advanced Rates §5 (4); Evidence §68; Express Companies §22; Reasonableness of Rates §16, §16½, §25.

(a) The Commission has often recognized the principle that the long maintenance of rates is evidence that the same are reasonably high. Boots and shoes from New York points, 91 I. C. C. 591, 595.

§30. Low Rate in Opposite Direction.

See Class Rates §2 (v); Comparative Rates; Differentials §8 (e); Discrimination §11; Reasonableness of Rates §27¾.

(a) The Commission has frequently given weight to the existing voluntary rates in the opposite direction when no material difference in transportation conditions exists. Hayward Bros. Shoe Co. v. C. M. & St. P. Ry., 93 I. C. C. 243.

(b) The fact that a rate is in excess of the rate between the same points in the opposite direction is entitled to consideration, but alone does not demonstrate the unreasonableness of the higher rate. Proctor & Gamble Distributing Co. v. St. L. S. F. Ry., 101 I. C. C. 563, 584.

(c) Difference in transportation conditions in opposite directions may justify a difference in rates, provided the higher rate is not intrinsically unreasonable. Puritan Copper Works v. Director General, 92 I. C. C. 671, 672.

(d) Upon further consideration, original report, 83 I. C. C. 525, reversed, and rate on rubber articles from Seattle to Omaha found unreasonable to extent it exceeded rate in opposite direction. Rates on various other commodities between Seattle and Omaha are the same in both directions, and commission has frequently given weight to existing voluntary rates in opposite directions when no material difference in transportation conditions exist. Portland Traffic & Transportation Asso., 56 I. C. C. 410, and other cases cited. Reparation awarded. Hayward Bros. Shoe Co. v. C., M. & St. P., 93 I. C. C. 243.

(e) First-class rate on cotton shirt forms, l. c. l., from Baltimore to Washington, N. C., found not unreasonable as compared with lower commodity rate formerly in effect, or with rate on finished shirts in opposite direction. Commodity rate was canceled because other manufacturers of shirt forms in North Carolina requested establishment of similar rates lower than first class and defendants urged that it would be unduly prejudicial to charge first-class rates from other points while maintaining lower commodity rates from Washington. The finished shirt rate in the opposite direction was also subsequently canceled because considered subnormal, and first-class rates now apply in both directions. Moreover, defendants instanced first-class rates for similar and greater distances which are higher than rates charged. Flowers & Stell v. N. S. R. R., 93 I. C. C. 388.

(f) Rate applicable on shipments of wrought-iron pipe from Leeray, Tex., to Bristow, Okla., reconsigned to Okemah, Okla., via M-K-T, found unreasonable and unduly prejudicial to extent it exceeded lower rate contemporaneously in effect between origin and destination in opposite direction, which rate was subsequently established in both directions. Reparation awarded. Sinclair Oil & Gas Co. v. C. & N. E. Ry., 96 I. C. C. 286.

(g) Rates for interstate transportation of fresh meats and packing-house products from Duluth to St. Paul, Minn., found unduly prejudicial to extent they exceed lower contemporaneous rates on like traffic in the reverse direction. Reasonable rates prescribed and undue prejudice ordered removed. Duluth Chamber of Commerce v. C., St. P., M. & O. Ry. Co., 98 I. C. C. 352.

(h) Contention that the volume of a particular traffic moving northbound as compared with that moving southbound between same points warrants a difference in the southbound and northbound rates, not sustained. It is no answer to a prayer for a reasonable rate adjustment that the volume of traffic affected is light. Duluth Chamber of Commerce v. C., St. P., M. & O. Ry. Co., 98 I. C. C. 352, 356.

(i) Commodity rate charged on shipments of tomatoes from St. Louis, Mo., to New Orleans, La., during 1922 and 1923 and the present rate, which equals the rate on this commodity between same points in the reverse direc-

tion, found not unreasonable or unduly preferential, as compared with the adjustment of northbound rates on same commodity established pursuant to Fruits and Vegetables, 43 I. C. C. 291, and with rates on like traffic between other points for similar distances. Complaint dismissed. St. Louis Fruit & Vegetable Asso. v. L. & N. R. R. Co., 98 I. C. C. 553.

(j) The record reveals no reason for applying a different level of rates between Valley City and Jamestown, N. Dak., eastbound to Twin Cities than is applied westbound. Fargo Commercial Club v. A. & W. Ry. Co., 98 I. C. C. 691, 713.

(k) Rate on solid asphaltum from Franklin, Pa., to Ranger, Tex., found unreasonable to extent it exceeded rate on refined oil in reverse direction. Reparation awarded and reasonable rate prescribed for the future. Lone Star Gas Co. v. C., C., C. & St. L., 101 I. C. C. 465.

(l) Complainant attacked commodity rate charged of $1.58 on washing powder, carloads, since June 1, 1923 from San Diego, Calif., to Cleveland, O., as unjust, unreasonable and as compared with rate of $1.40 maintained in the opposite direction, unjustly discriminatory and unduly prejudicial. Since the filing of this complaint defendants have reduced the eastbound rate to $1.40. Prior to June 1, 1923 the rate was the same eastbound as westbound. It can hardly be considered that a reduction in the rate in one direction would necessarily require similar treatment in the reverse direction and failure to make such a change immediately would not constitute ground for awarding reparation without specific proof of damage, complaint dismissed. Citrus Soap Co. v. B. & O. R. R., 109 I. C. C. 63.

§31. Manufactured Product.

See Classification §10, §11, IV; Evidence §31, §44; Reasonableness of Rates §17.

(a) The spread in rates between manufactured products and the raw material from which made is not governed by the percentage of waste between the raw material and the finished product, but by comparative transportation characteristics, such as average loading, value, liability to loss and damage in transit, terminal expenses, etc. Mississippi R. R. Commission v. A. & V. Ry. Co., 89 I. C. C. 428, 436.

(b) Although commission has condemned rates on raw materials higher than on products manufactured therefrom, that fact, in and of itself, does not demonstrate that higher rates on the raw materials are unreasonable. Crown Willamette Paper Company, 78 I. C. C. 273. Minnesota & Ontario Paper Co. v. Director General, 93 I. C. C. 105, 108.

(c) Haydite is a manufactured article not to be classed with sand and gravel for rate-making purposes in either character, value, or use, being of considerably higher value than sand and gravel and with decided advantages over these commodities in certain lines of construction. It should take a higher rate than sand and gravel. Haydite Co. v. A., T. & S. F., 96 I. C. C. 312, 315, 316.

§32. Market Competition.

See Equalization of Rates §4 (5) §6; Express Companies §19; Long and Short Hauls §8; Market Competition.

(a) Evidence of undue prejudice consisting merely of a general contention that markets of New Orleans, La., and Memphis, Tenn., are accorded a more favorable rate adjustment than many Mississippi points, found to be of too general a character to justify a finding of a violation of section 3 of the act. Mississippi R. R. Commission v. A. & V. Ry. Co., 89 I. C. C. 47, 60.

(b) Complainants laid emphasis in fact that unless there is a great reduction in expenses incident to production and marketing of cotton, there will be a decrease in production with its concomitant economic evils. However, evidence failed to show that freight rates are contributing to lack of success of the cotton grower in any appreciable degree, or that a reduction in rates will stimulate production. The production of 1922 was about the same as in previous years, and the price since September of that year has increased, no changes in rates having been made during this period. If there is any item of expense entering into cost of producing and marketing this commodity that is disproportionally increasing, it is not the transportation charges, which have remained reasonably constant since 1920 and were reduced 1 per cent during 1922. Mississippi R. R. Commission v. A. & V. Ry. Co., 89 I. C. C. 47, 68, 69.

(c) Desire of a carrier to get the long hauls on traffic does not warrant it in maintaining rates that are unreasonable or otherwise unlawful to particular consuming territories. A shipper is entitled to forward its products to any market over any route it selects at reasonable rates. United Verde Extension Mining Co. v. A., T. & S. F. Ry. Co., 89 I. C. C. 95, 100.

(d) Upon complaint attacking rates on rough limestone from Bedford district in Indiana to St. Louis and Minneapolis, Minn., as unreasonable and urging that spread between rates on rough and dressed stone is too small and gives Bedford dealers an undue advantage over complainants. HELD: Competitive conditions between complainants in St. Paul and Minneapolis on the one hand, and Bedford stone dressers on the other, are not so unfavorable to former as would appear from allegations. Bedford stone dressers not only have to bear cost of careful packing of dressed stone but also primarily cost of getting the rough stone from quarries to their plants, whereas line-haul rates on rough stone apply from quarry ledges to final destinations. Young v. C., I. & L. Ry. Co., 89 I. C. C. 428.

(e) Carriers may for competitive or other reasons establish rates which the Commission could not initiate for them; and equality of distance from competing markets is not an absolute test of whether an equality of rates results in undue prejudice and preference. Reduced commodity rates to Pacific coast, 89 I. C. C. 512, 524.

(f) Consumers may properly have the widest possible markets consistent with justice to the carriers, and to that end and also in their own interests carriers may, within reasonable limits, as a matter of traffic policy, accord competing producing centers located at different distances from common centers of consumption identical rates. Lake cargo coal rates, 1925, 101 I. C. C. 513, 546.

(g) There is a commercial necessity for permitting grain produced in Group G to move eastward to the Missouri River cities for transit before being shipped to California. Indeed, this necessity appears to extend to points more than 150 miles west of the Missouri River cities. Provided reasonable charges are assessed for the total transportation, the commission is of the opinion that grain should be permitted to move from all of Group G via the Missouri River cities to California, and that carriers should not be permitted to increase their charges to an unreasonable basis which will prohibit, or nearly prohibit, that movement. Grain to Pacific Coast 98 I. C. C. 158.

(h) If competition from the Mississippi Valley is to influence the level of rates in the eastern section, consistency demands that consideration be given also to the commercial competition from the eastern section which the mills in the western section have to meet. The difference in the force of the competition in the two sections is only in degree and is brought about primarily by the lower level of rates east than west of the Mississippi River. Oklahoma Corp. Commission v. A. & S. Ry Co., 98 I. C. C. 183, 197.

(i) Cottonseed meal and hulls compete with corn and other coarse grains, linseed cake and meal, alfafa meals, grain feeds and hay throughout a substantial portion of western classification territory, but particularly in the intermountain states. The principal differences in the transportation characteristics of corn and cottonseed cake and meal are in the average loading and volume of movement. These differences are important, but a number of stock foods with which cottonseed cake and meal are directly competitive have long taken corn rates in this general territory. Oklahoma Corp. Commission v. A. & S. Ry. Co., 98 I. C. C. 183, 205, 208.

(j) In finding rates on coal from mines on the Virginian Railway in the New River district of West Virginia to interstate destinations unreasonable and unduly prejudicial, much evidence was introduced to show the advantages or disadvantages which would result to complainants, to interveners, and to defendants from opening the western markets to complainants' mines, and as to whether such action would be in the public interest. Irrespective of these considerations, complainants are entitled to move their coal to any market at reasonable and nonprejudicial rates. The commission has repeatedly condemned the action of carriers in adjusting rates so as to impede or stifle the movement of commodities in any given direction. Wyoming Coal Co. v. V. Ry. Co. 98 I. C. C. 488, 491.

(k) Disparity in rates does not necessarily result in undue prejudice. It must also appear that shipments are made under those rates or that shipments are hindered or prevented because of the rate relationship. The element of competition is usually potent. Pensacola Chamber of Commerce v. L. & N., 98 I. C. C. 567, 570.

(l) Mills at Petaluma, Calif., come into competition with mills located at San Francisco and points taking the San Francisco rate, and failure of carriers to accord Petaluma same basis of rates has prevented the mills at Petaluma from purchasing wheat and mill feed in territory of origin under consideration and has resulted in undue prejudice to Petaluma and undue preference of San Francisco and points taking same rate. Golden Eagle Milling Co. v. B. E. R. R. Co., 100 I. C. C. 41.

(m) Cement is shipped direct from manufacturer to point of consumption, in this respect differing from most other commodities. Competition is keen, and cement is sold on a delivered basis. The freight rate affects the ability of a manufacturer to compete at a given point. a difference of 1 cent per barrel in the freight rate, equivalent to about 4 cents per barrel, being sufficient to influence a sale. Missouri Portland Cement Co. v. A., T. & S. F., 101 I. C. C. 454, 457.

(n) Prejudice is rarely undue unless parties prejudiced and those preferred are upon a competitive basis. Detroit & Cleveland Nav. Co. v. M. C. R. R., 102 I. C. C. 607, 609.

(o) New Orleans is now, and has long been, the largest market and milling center for rice in this country, and is the principal port through which clean rice and rice products are exported to foreign countries and to Porto Rico from Arkansas and Louisiana points of production. New Orleans Joint Traffic Bureau v. B., S. L. & W., 102 I. C. C. 686, 689.

ALL OTHER CITATIONS

Elimination of Routes on Transcontinental Traffic, 85 I. C. C. 108; Lehigh Lime Co. v. A. C. & Y. Ry. Co., 85 I. C. C. 341.

§36. Need for Revenue.

See Infra §50, §51, §58; Advanced Rates §5 (4), §7 (6) (i); Reasonableness of Rates §20, §30, §36.

(a) It does not follow that any and every method advanced by the carrier to increase its revenues must receive the stamp of approval merely because of its financial needs. Fort Smith S. & R. I. R. R. v. A. & V. Ry. 102 I. C. C. 708, 712

§40½. Origin of Traffic.

See Advanced Rates §5 (8); Through Routes and Joint Rates §9.

(a) Carriers may ordinarily insist upon the long haul for traffic which they originate provided the routes afforded by them are not unreasonably long. Grain from western trunk line points, 91 I. C. C. 632, 647.

(b) A carrier can not dictate the sources from which shippers shall purchase their materials; and the fact that a lower rate is available from one point does not justify an unreasonable rate from another. Kelly & Jones v. Pennsylvania R. R., 95 I. C. C. 640, 642.

(c) Intent of section 15 of the act is that if a railroad has traffic in its possession it shall be allowed to handle it by its own line as far as it can unless the public interest will suffer thereby. Waverly Oil Works Co., 28 I. C. C. 621, 630. Jackson Traffic Bureau v. A. & V. Ry., 92 I. C. C. 89, 92.

(d) Carriers may reserve to themselves the long haul on traffic they originate or obtain from connections, but may not, in so doing, restrict markets in which shippers may dispose of their products. Such restriction may be as effectually accomplished through imposition of higher rates over competitive routes as by closing them entirely. Lumber from Alabama and Mississippi Points, 92 I. C. C. 156, 160.

(da) A carrier can not insist upon its long haul if undue prejudice results. Jackson Traffic Bureau v. G., & S. I., 102 I. C. C. 259, 260.

(e) The purpose of Congress is plain. If a railroad has traffic in its possession, it shall be allowed to handle it by its own line as far as it can unless the public interest will suffer thereby. Fort Smith S. & R. I. Ry. v. A. & V. Ry. 107 I. C. C. 523, 524.

ALL OTHER CITATIONS

Simms Oil Co. v. H. & T. C. R. R. Co., 85 I. C. C. 537.

§42¼. Paper Rates.

See Supra §25¾; Advanced Rates §5 (4), §5 (7½); Reasonableness of Rates §24.

(a) Sixth-class rate on epsom salts moving from Atlanta, Ga., to Greensboro, N. C., found not unreasonable as compared with lower paper rates contemporaneously in effect from Atlanta to various southeastern destinations for greater distances. Proximity Mfg. Co. v. Director General, 91 I. C. C. 612.

(b) Fact that there had been few, if any, shipments of a specific commodity between specific points prior to a certain year, does not justify the assessing of rates that were excessive. Parkersburg Rig & Reel Co. v. C., R. I. & P., 96 I. C. C. 99, 101.

(c) Fact that but few shipments of a commodity have moved between specified points can not operate to deprive shippers of a reasonable rate on such shipments. Harder Mfg. Corp. v. D. & H. Co., 102 I. C. C. 167, 168.

§13. Past Rates.

See Supra §29; Advanced Rates §5 (4); Reasonableness of Rates §25.

(a) Fact that a rate has been voluntarily maintained by a carrier for a period of years is evidence tending to show that it is reasonably high. See also 32 I. C. C. 361. Boots and Shoes from New York Points, 91 I. C. C. 591, 595, 596.

(b) While no prescriptive right arises by reason of the continuance of a rate, nevertheless, where rates are established voluntarily by carriers for purpose of building up industries, any readjustments of such rates should be accomplished with as few sharp breaks as possible. Canned Goods to Eastern Points, 101 I. C. C. 502, 505, 506.

§13¼. Percentage Contracts.

See Percentage Rates.

(a) The percentage of increase is not controlling if the resulting rates are not unreasonable. Virginia Can Co. v. A. & V. Ry., 89 I. C. C. 558, 562.

§43½a. Physical Valuation.

See Physical Valuation.

(a) Upon investigation by commission on its own motion into rates on grain, grain products, and hay; FOUND: (1) Record necessitates no change in basis of approximate value for rate-making purposes in western district adopted by commission in 1920 and reviewed in 1922; (2) whether or not expenditures for maintenance of equipment in 1923 were to some extent abnormal, conclusion is not warranted that earnings of carriers in western district were in excess of a fair return; and (3) upon applying usual tests, general basis of rates does not appear unreasonable or otherwise in violation of the act. Rates and Charges on Grain and Products, 91 I. C. C. 105.

(b) Upon investigation into rates and charges on grain, grain products, and hay; FOUND: That evidence submitted on question of value fails to lead commission to conclude that basis of approximate value for carriers in western district adopted in Increased Rates, 1920, 58 I. C. C. 220, and reviewed in Reduced Rates, 1922, 68 I. C. C. 676, should be changed. If value contended for by complainants were adopted, it would result in still less than present existing short fair return. Rates and Charges on Grain and Products, 91 I. C. C. 105, 110, 119.

ALL OTHER CITATIONS

Arizona Corporation Commission v. A. E. R. R. Co., 85 I. C. C. 76.

§43½b. Pittsburgh Plus.

(a) Shipments of tin plate were sold on the Pittsburgh-plus basis, which means that the sale price was determined by the market price at Pittsburgh, Pa., plus an amount equal to the freight charges which would accrue under the freight rate from Pittsburgh to destination regardless of the freight rate from actual point of origin. Borden Co. v. A. A. R. R. Co., 100 I. C. C., 153, 156; Atlas Metal Works v. A., C. & Y. Ry. Co., 100 I. C. C. 173, 177.

§44. Previous Haul on Raw Material.

(a) Ordinarily, manufactured products take a higher rate than the raw material from which made. Young v. C. I. & L. Ry. Co., 89 I. C. C. 428, 436.

§44¼. Prior Decision of Commission.

See Advanced Rates §14¾; Blanket Rates §4; Panama Canal Act; Previous Decisions of Commission; Through Routes and Joint Rates.

(a) Parties agreeing to abide by

decision in another case involving similar issues, such case followed in deciding instant case. Fairmont Creamery Co. v. Director General, as Agent, 89 I. C. C. 359.

(b) Rates prescribed in Mississippi Valley case, 64 I. C. C. 306, were not prescribed as standards of reasonable maximum rates, but primarily to bring about an adjustment in harmony with requirements of section 4 of the act and at same time conserve revenues of carriers. Nor may such rates be used as a measure of rates between points in the southeast. Paper Boxes between Southeastern Points, 93 I. C. C. 559, 563.

(c) Where traffic conditions and rate situation have materially changed, rates predicated upon findings of the commission in a prior decision are not controlling. Certain-Teed Products Corp. v. A. & L. M. Ry., 95 I. C. C. 273, 276.

(d) Upon contention by carriers that commission's findings in Minnesota & Ontario Paper case. 66 I. C. C. 571, required a widespread and comprehensive readjustment in rates and that it would be inequitable to require them to pay reparation; furthermore, that shippers can better afford to bear higher rates charged than carriers can afford further reductions in their earnings. FOUND, latter contention is obviously untenable; and as to former, the circumstances here are substantially the same as in a number of cases where reparation has been awarded to basis found reasonable in the cited case. Oklahoma Publishing Co. v. A., T. & S. F., 95 I. C. C. 448, 449.

(e) Rates on coal from mines in Ohio and Inner and Outer Crescent district to certain points in Indiana, found not unreasonable, unjustly discriminatory, or unduly prejudicial. Rates assailed have been passed upon and fixed by the commission in 80 I. C. C. 663, and 83 I. C. C. 591; no evidence has been offered justifying changes in the bases of rates prescribed in those cases. Bash & Co. v. B. & O., 96 I. C. C. 178.

(f) Rates on straw from certain points in Illinois to Noblesville, Ind., found not to have been or to be unreasonable as compared with distance rates prescribed in the Straw case, 36 I. C. C. 30. In National Hay Asso., 19 I. C. C. 34, the commission said that the ultimate test from the carrier's standpoint of the reasonableness of a rate must be the return for the occupation and use of its facilities. American Strawboard Co. v. I. C. R. R., 96 I. C. C. 289.

(g) Reversal in 69 I. C. C. 345 of finding in 63 I. C. C. 74, as to propriety of proposed reduction, was not tantamount to a finding that previous rate was unreasonable. Union Sulphur Co. v. T. & N. O. R. R. Co. 98 I. C. C. 76, 81.

(h) Upon further consideration, rates on clean rice from Memphis, Tenn., and points in Arkansas, Louisiana, and Texas, to Oklahoma points found unreasonable during period subsequent to June 30, 1922, to extent they exceeded rates based on a mileage scale prescribed in original report, 95 I. C. C. 645, and during period August 26, 1920, to June 30, 1922, inclusive, to extent they exceeded rates made by adding to such rates the percentages of reduction required in Reduced Rates, 1922, 68 I. C. C. 676. Reparation awarded. Alton Mercantile Co. v. A. & W. Ry. Co., 98 I. C. C. 581.

(i) Proposed general revision of all-rail and rail-and-water rates on furniture including chairs and mattresses, c. l. and l. c. l., from southern manufacturing points to eastern territory, which would result in both increases and reductions, found justified. Proposed schedules purport to comply with findings in original report, 91 I. C. C. 27; are designed to restore rates from southern manufacturing points to the East to a basis comparable with central-territory basis; and to bring about a greater uniformity in rates and carload minima. Findings in original report affirmed and order of suspension vacated. Furniture from Southern Points 100 I. C. C. 127.

(j) Contention that in C. F. A. Class Scale case, 45 I. C. C. 254, 272, the commission fixed the c. l. class rates high enough to cover cost of loading and unloading found untenable. Loading and Unloading C. L. Freight, 101 I. C. C. 394, 401.

(k) Upon contention that commission is not bound by former decision and that present case should be decided on its merits, HELD: When a given situation has been fully considered and deliberately passed upon, that decision should not be disregarded and the question kept

open indefinitely unless good cause is shown for adoption of a different course. Pacific Mutual Door Co. v. A. A. R. R. 101 I. C. C. 633.

(l) Following Phoenix Chamber of Commerce, 95 I. C. C. 244, wherein rates on sugar were found unreasonable from California points to Phoenix, Ariz., rate herein assessed on same commodity from San Francisco and other California points to Bowie, Ariz., found unreasonable. Bowie is more distant than Phoenix, but the latter is on a branch line of the Southern Pacific while Bowie is on the main line of the same road. Reasonable rate prescribed and reparation awarded. Solomon-Wickersham Co. v. S. M. V. R. R., 101 I. C. C. 667.

(la) Rates on newsprint paper from producing points in Minnesota, Wisconsin, and Ontario, in defined territories, in eastern seaboard territory and Canada, and in Oregon and Washington, to Dallas and Fort Worth, Tex., found unreasonable to extent they exceeded rates conforming to those prescribed in Minnesota & Ontario Paper Co., 66 I. C. C. 571. Reparation awarded. Wortham-Carter Publishing Co. v. Director General, 102 I. C. C. 729.

(m) A finding by the Commission of unreasonableness in the past inures to the benefit of every person who has been obliged to pay the unjust rate and who initiates his claim within the statutory period. Bell & Zoller Mining Co. v. I. C. R. R. 109 I. C. C. 484, 485.

(n) When, upon a given state of facts, the Commission reaches a conclusion regarding a certain rate, it will adhere to that conclusion in subsequent proceedings regarding the same rate, unless some new facts are brought to its attention, conditions are shown to have undergone a material change, or it proceeded on a misconception or misapprehension. Bell & Zoller Mining Co. v. I. C. R. R. 109 I. C. C. 484, 485.

§44½. Public Interest.

See Advanced Rates §14; Blanket Rates §4; Panama Canal Act; Through Routes and Joint Rates II.

(a) The interests of the individual carrier must yield in many respects to the public need. Salt cases of 1923, 92 I. C. C. 388, 412.

(b) Carriers as a whole in western group have yet to make a fair return on value of their properties over any considerable consecutive period of time, and it is evident that, if further substantial revenue losses are to be sustained, the public interest would be directly affected through a further weakening of railroad credit and a lowering of standard of railway service. Rates and Charges on Grain and Products, 91 I. C. C. 105, 153.

ALL OTHER CITATIONS

C. M. & St. P. Ry. Co. v. U. P. R. R. Co., 88 I. C. C. 312.

§45. Profit to Shipper.

See Infra §62; Advanced Rates §6 (6), §13; Express Companies §24; Reasonableness of Rates §27.

(a) The test of the reasonableness of a rate is not the amount of the profit in the business of a shipper or manufacturer, but whether the rate yields a reasonable compensation for the services rendered. If the prosperity of the manufacturer is to have a controlling influence, this would justify a higher rate on the traffic of the prosperous manufacturer than on that of one less prosperous. The right to participate in the prosperity of a shipper in raising rates is simply a license to the carrier to appropriate that prosperity, or, in other words to transfer the shippers legitimate profit in this business from the shipper to the carrier. Rates and charges on grain and grain products, 91 I. C. C. 105, 143.

(b) The country's permanent prosperity depends largely upon flourishing conditions of the agriculture and transportation industries. To assist one unduly at expense of the other at a time when neither is in an ideally prosperous condition, merely because one may be in a worse condition economically than the other, would be of doubtful value either to the assisted industry or to the country, assuming that it is within commission's power arbitrarily to render this assistance. It must be recognized that commission can not require unduly low rates on some commodities for benefit of one class of shippers any more than it can arbitrarily increase rates on other commodities because shipper thereof may be enjoying excessive profits. Rates and Charges on Grain & Products, 91 I. C. C. 105, 143, 153.

(c) It is well settled that rates may not be adjusted with the single view of enabling shippers to do business at a profit. Ogden Packing & Provision Co. v. D. & R. G. W. Ry., 101 I. C. C. 258, 264.

(d) Evidence as to profits realized by shippers on a particular commodity is of little value in determining reasonableness of the classification rating applied to that commodity. Coca-Cola Co. v. B. & O., 92 I. C. C. 340, 343.

(e) Present unfavorable financial conditions of the deciduous fruit industry may be chargeable to overproduction, the inability of eastern markets to absorb the supply. If this is so, economic laws, not rate adjustment, must remedy conditions. Calif. Growers' & Shippers' Protective League v. S. P. Co., 100 I. C. C. 79, 93, 95, 107.

(f) Even though a shipper is at a disadvantage in marketing its packing-house products at some, if not all, destinations, it does not follow that rates on live animals and on the products thereof must be measured by the cost of service without consideration of other elements of rate making, or that shipper's disadvantage arises from the fact that the adjustment assailed is not so measured. Ogden Packing & Provision Co. v. A., T. & S. F., 101 I. C. C. 236, 252.

(g) Rates may not be adjusted with the single view to enabling shippers to do business at a profit. Ogden Packing & Provision Co. v. D. & R. G., 101 I. C. C. 258, 264.

§47. Rate via Competing Route.

See Equalization of Rates §4 (2); Reasonableness of Rates §27½, §27¾; Reparation §11; Routing and Misrouting §4½, §5, §5½; Through Routes and Joint Rates §15½.

(a) The maintenance of a lower rate by a route other than the route of movement does not warrant a finding of unreasonableness. Midland Coal Company v. St. L. S. F. Ry., 92 I. C. C. 283, 284.

(b) The existence of a lower rate over a competing route does not of itself establish the unreasonableness of the rate actually charged. Rudolph & Co. v. P. R. R. 101 I. C. C. 111, 112.

(ba) Rates on bituminous coal over interstate routes from mines in the Linton and Clinton groups in Indiana to Marion, Kokomo, Elwood, Michigantown, and Warren, Ind.; found not unreasonable as compared with lower rates over intrastate routes, which rates were subsequently increased to basis of the interstate rates, or as compared with rates from Illinois mines to Indiana destinations. Wright & Wimmer v. C., T. H. & S. E., 93 I. C. C. 183.

(c) Shipment of lumber from Lonoke, Ark., was originally consigned to Deer Creek, Okla. Diversion requested to Nowata, Okla., could not be effected until after shipment passed point through which the short line route made. Combination rates based on Winfield, Kans., assessed found not unreasonable as compared with rates contemporaneously in effect via the direct route; nor were individual factors comprising the combination unreasonable as compared with rates between other points instanced by complainant. Shipment here involved was unusual and moved over the circuitous route at instance and for convenience of complainant. While ton-mile earnings thereunder are somewhat higher than those instanced, they can not be said to have been excessive for service performed. Nebraska Bridge Supply Co. v. A., T. & S. F., 93 I. C. C. 301.

(d) Existence of a lower rate over other routes does not of itself warrant a condemnation of the rate applicable via route of movement. Goodrich Bros. Hay & Grain Co. v. C., C., C. & St. L., 95 I. C. C. 5.

(e) Rate on coal from mines in Kentucky to Wabash, Ind., via route of movement, found not to have been unreasonable, unjustly discriminatory, or unduly prejudicial as compared with lower rate via another route, which was longer. The rates over the two routes have always been the same, except that during the period for which reparation is sought a lower rate over the longer route was erroneously published. This error was subsequently corrected, raising the rate over the longer route to the level of the rate over the route of movement. Bash & Co. v. B. & O., 96 I. C. C. 178, 184.

(f) Upon contention that commission ruled in 58 I. C. C. 205, 59 I. C. C. 119, and other cases, that during Federal control all lines were operated as a single system and that a rate applying over one

route of federally-controlled lines should apply over another route, if distances and operating conditions were favorably comparable, and that this ruling applicable via a route other than that of movement entitled shipper to lower rate. HELD, this contention goes beyond the scope of cited cases, and fact that two rates applied between same points over different routes, both routes under Federal control, does not establish unreasonableness of higher rate and defendant can not be called upon to protect the lower rate. Moreover, such action would subject the director general as operator of route over which higher rate applied to liability as operator of route over which lower rate applied. In Davis v. Donovan, 265 U. S. 257, his liability "was carefully limited to such as would have been incurred by some particular carrier if there had been no Federal control." California Packing Corp. v. Director General, 96 I. C. C. 239, 242, 243.

(g) It may not necessarily follow that the rates of the short line between two points would not be reasonably compensatory if applied via a route more than twice as long between the same points. There would, however, be a strong presumption that if the rates for the shorter distance via the direct line or route are reasonable they would not be reasonably compensatory for a haul of more than twice that distance, and such rates cannot be approved unless it is shown that they would be reasonably compensatory for application via the longer route. Class and commodity rates between western points 104 I. C. C. 578, 585.

(h) The existence of a lower rate over other routes and the subsequent reduction to that basis of the rate over a particular route of movement are not sufficient to establish the unreasonableness of the previous rate. Williams & Co. v. L. V. R. R., 112 I. C. C. 171, 173.

ALL OTHER CITATIONS

Staley Mfg. Co. v. Director General, as Agent, 85 I. C. C. 418; Jeremy Fuel & Grain Co. v. Director General, as Agent, 88 I. C. C. 397; Bender Streibig & Co. v. I. C. R. R. Co., 88 I. C. C. 474.

§47a. Rate Wars.

(a) Present rates on salt from Louisiana mines to Chicago were designed for purpose of promoting financial success of salt mines in disregard of measure of revenue which carriers are entitled to receive for services rendered. Retaliatory reductions have been established from other fields resulting in a salt-rate war and rates from all fields to highly competitive points have reached so low a level that many shippers are asking that it be raised in order that revenue may be sufficient to make the tonnage attractive to carriers, and in order that service may be improved. Salt Cases of 1923, 92 I. C. C. 388, 411.

§47b. Rate Territories.

(a) To show that operating conditions in Arizona and New Mexico are similar to, or no more difficult than those prevailing in Texas differential territory, complainants introduced comparisons of certain selected statistics of revenues and operations of carriers operating west of El Paso with like statistics of several south-western lines operating east thereof in Texas differential and common-point territory. Such statistics can not be accepted as establishing complainants' contention, because they are not predicated wholly upon operations within, or to and from, Arizona, New Mexico, and Texas differential territory. Peyton Packing Co. v. A. E. R. R. Co., 100 I. C. C. 4, 7.

(b) So far as operating conditions are concerned, it appears that the only distinction which can be drawn with any degree of validity between interterritorial service between central and southern territories and intraterritorial service within southern territory to the disadvantage of the former is the fact that at the boundary line there is ordinarily a change of carriers. Southern Class Rate Investigation, 100 I. C. C. 513, 662.

(c) Transportation conditions are sufficiently homogeneous in southern territory, leaving the Florida peninsula out of consideration, so that if no distinction is made between standard lines or between main lines and branch lines of standard roads, an attempt to draw a distinction between border territory and the more southerly territory would be without sufficient justification. Southern Class Rate Investigation 100 I. C. C. 513 623.

(d) Both class and commodity rates in southeastern territory are on a higher plane than in Mississippi valley territory. Hay to Mississippi points 109 I. C. C. 36, 38.

(e) Traffic and transportation conditions are not radically different in eastern South Dakota from what they are in the adjoining portions of Minnesota, Iowa and Nebraska. Sioux Falls Livestock Exchange v. A. T. & S. F. Ry., 109 I. C. C. 501, 506.

(f) Transportation conditions are more favorable in central territory than those in the southwest where the Memphis Southwestern rates apply. Parkersburg Rig & Reel Co. v. B. & O. R. R., 109 I. C. C. 569, 573.

(g) The Indiana Illinois line does not divide diverse transportation conditions. Burlington Shippers Asso. v. A. T. & S. F. Ry., 109 I. C. C. 694, 698.

§48½. Repair of Equipment.

See Cars and Car Supply §32⅛.

(a) Upon investigation into classified repairs made to 115 locomotives of the Central R. R. Co. of N. J., in 1920-1921, under contracts negotiated with the Baldwin Locomotive Works and American Locomotive Co.; FOUND: That cost of such repairs was greatly in excess of cost of similar work in respondent's own shops; that even though at end of Federal control some assistance in respondent's shops may have been necessary or expedient as an emergency, the contract work was carried beyond reasonable necessities and a large part of the excess expenditures could have been avoided; also that those expenditures would at least have gone far to provide respondent with much needed additional shop facilities. Construction and Repair of Ry. Equipment: C. R. R. of N. J., 89 I. C. C. 751.

§49. Reproduction Value of Road.

See Cars and Car Supply §32⅛; Reasonableness of Rates §26.

(a) An advantageous contract for the furnishing of electric power is a thing of value to be considered in the fixing of rates. Duluth St. Ry. Co. v. Railroad and Warehouse Commission, 4 Fed. (2d) 543.

ALL OTHER CITATIONS

Utah Gilsonite Co. v. A. T. & S. F. Ry. Co., 85 I. C. C. 557.

§50. Return on Investment.

See Supra §36; Infra §51; Advanced Rates §6.

(a) Upon an extensive investigation as to what rates, as applied to a particular class of traffic to be offered, will be likely to produce a fair return hereafter, past or present statistics of operation and earnings are serviceable only as they illuminate the future. Rates and Charges on Grain and Products, 91 I. C. C. 105, 122.

(b) Carriers as a whole in western group have yet to make a fair return on value of their properties over and considerable consecutive period of time, and it is evident that, if further substantial revenue losses are to be sustained, the public interest would be directly affected through a further weakening of railroad credit and a lowering of standard of railway service. Rates and Charges on Grain and Products, 91 I. C. C. 105, 153.

(c) Language of Supreme Court in Dayton Goose Creek Case, 263 U. S. 456, 480, to effect that statute does not require use of net return of carriers from all rates as evidence to fix a particular rate or class of rates, does not forbid commission to consider net return but merely says that it need not when considering a particular rate or class of rates. Nor does it limit or qualify commission's duty under section 15a. If a reduction in a particular rate or class of rates has no substantial effect upon aggregate revenue there may be no occasion for considering latter duty. If, on the other hand, it has a substantial effect upon aggregate revenue, such occasion arises. Rates and Charges on Grain and Products, 91 I. C. C. 105, 154, 155.

(d) Common carriers, being public utilities, are entitled as individual entities to receive from all their rates revenues sufficient to pay expenses and a reasonable return upon value of their properties, economically and efficiently managed, if obtainable through rate schedules not inherently unjust. Carriers' right to a fair return is based on fact that theirs is private property devoted to a public use, and, as such, certain rights are safeguarded by Constitution. Rates and Charges on Grain and Products, 91 I. C. C. 105, 155.

(e) Commission does not consider that when rates assailed are shown to be unreasonable its hands are bound so

tightly by provisions of section 15a of the act that it can not grant a general reduction unless and until interested carriers as a whole in their respective groups make a fair return. Rates and Charges on Grain and Products, 91 I. C. C. 105, 164.

(f) Class 1 carriers in the Southwest, excluding the Texas roads, came much closer to making the fair return of 5.75 per cent than did the Class I Texas carriers, separately considered. Oklahoma Corp. Commission v. A. & S. Ry Co., 98 I. C. C. 183, 211.

(g) Evidence concerning carriers' financial condition and reduction in operating costs since 1920, introduced and attempt made to show that operating returns to carriers handling deciduous fruit have increased in a marked degree during the last few years. Found Record fails to indicate that carriers involved are earning in excess of, or even as much as, a fair return of 5.75 per cent and reductions would seriously affect revenues of independent short lines on which a substantial portion of this traffic originates. Calif. Growers' & Shippers' Protective League v. S. P. Co., 100 I. C. C. 79. 93, 95, 107.

§51. Revenue of Road.

See Supra §36; Advanced Rates §5 (4), §6 (6), §7 (7), §15; Classification §5 (yy); Express Companies §24; Reasonableness of Rates §11, §30, §36.

(a) The measure of rates on a specific commodity such as salt from and to particular points or within narrowly defined areas can not fairly be determined by fluctuations in the aggregate earnings of the carriers as a whole. Salt cases of 1923, 92 I. C. C. 388, 437.

(ab) During the period of its operations in 1922 and 1923, the Missouri and North Arkansas was benefited in respect of its revenues by reason of fourth-section order No. 8128, which authorizes the carrier to meet the rates of its competitors to and from common points on its line and to maintain higher rates at intermediate stations. Divisions of Joint Rates and Fares of M. & N. A. Ry. Co, 98 I. C. C. 119, 126.

(b) The fact that a carriers net railway operating income is not as high as that which carriers as a group may earn under section 15a of the act does not prohibit the Commission from fixing a just and reasonable rate on a particular commodity between particular points on its line. Furthermore, in the establishment of rates on a single commodity the fact that the carriers are operating at a loss or on a narrow margin of profit should not be given too much weight, unless it appears clearly that the particular commodity constitutes the bulk of the traffic transported. United Paperboard Co. v. G. & J. Ry. 102 I. C. C. 502, 506.

(ba) Where a carrier is not earning a fair return on value of property used in service it does not follow that any and every method advanced by it to increase its revenues must receive stamp of commission's approval merely because of its financial needs. Fort Smith S. & R. I. R. R. v. A. & V. Ry., 102 I. C. C. 708. 712.

(c) Evidence as prosperity of carriers generally, is of little or no force in determining the propriety of the rate level on an individual commodity. Bananas from Gulf ports, 109 I. C. C. 211, 219.

(d) For many years prior to 1918 the Commission regarded 5 mills per ton mile as approaching the minimum limit of revenue for carload freight traffic. Tamms Silica Co. v. C. & N. W. Ry., 109 I. C. C. 618, 620.

§52. Risk of Loss or Damage.

See Infra §6, §61; Classification §9, §11¾ (a), §16; Reasonableness of Rates §32.

(a) In establishing reasonable rates the value of the commodity to be rated and its liability to damage incident to transportation must be considered. Jackson Traffic Bureau v. B. & O. R. R., 93 I. C. C. 342, 343.

(b) As to all freight generally, conditions affecting safety in transportation are different in carload traffic from those in less carload traffic, and loss and damage claims are relatively more frequent and serious in the latter. Rope Paper Sack Bureau v. A. & V. Ry., 98 I. C. C. 511, 514.

(c) It sometimes happens that the loss and damage claim paid on a shipment of furniture amounts to more than the freight revenue thereon, and this is especially true of shipments in less carloads. Furniture from southern points, 100 I. C. C. 127, 133.

(d) Fact that, as to all freight generally, conditions affecting safety in transportation are different in c. l. traffic from those in l. c. l. traffic, and that loss and damage claims are relatively more frequent and serious in latter, not overlooked, but record here involved is not convincing that the relative risk to carrier in handling l. c. l. shipments of flour in paper bags would be greater than that incurred in handling l. c. l. shipments of same commodity in cloth bags. Real justification, if any exists, for higher rates on shipments in paper than in cloth bags must be found in the relative greater shrinkage of carrier's revenues, through payments of claims for loss or damage, on shipments in paper bags. Rope Paper Sack Bureau v. A. & V. Ry. Co., 98 I. C. C. 511, 513, 514.

(e) Claim hazard is but one of many elements to be considered in determining the reasonableness of a rate. See 87 I. C. C. 711. Wortham Carter Publishing Co. v. Director General, 102 I. C. C. 729, 743.

§52½. River Crossings.

See River Crossings.

(a) The river combination method of making rates from the southwest to the southeast is general and is of long standing. Piedmont Oil Co. v. A. & V. Ry. 102 I. C. C. 583, 584.

(b) The Commission has had occasion to comment upon operating conditions east and west of the Mississippi river and have referred to the fact that the rates in the southeast are as a whole on a lower level than those in the southwest. Nashville Traffic Bureau v. L. & N. R. R. 102 I. C. C. 641, 647.

§55. Standard of Lines.

See Advanced Rates §15; Reasonableness of Rates.

(a) Upon general investigation on commission's own motion, of interstate class rates and l. c. l. commodity rates within southern territory and between southern and official territories, all-rail and rail-water, and of l. c. l. ratings in exceptions to southern classification, FOUND: That reasonable interstate rates between, from, or to points on specified weak lines are and for future will be, rates determined by scale shown in Appendix K plus differentials determined by a distance scale similar, but not necessarily the same as, scale shown in Appendix L applied to the haul over the weak line. Southern Class Rate Investigation, 100 I. C. C. 513, 653.

§56. Standard of Rates.

See Supra §55; Advanced Rates §15; Branch Lines §4; Discrimination §5, II; Reasonableness of Rates §32.

(a) A uniform scale of rates could with propriety be applied throughout southern Missouri, Oklahoma, Arkansas, Louisiana and common point territory in Texas. Atlas Metal Works v. A. C. & Y. Ry., 100 I. C. C. 173, 177.

(b) A uniform scale of rates could with propriety be applied throughout southern Missouri, Oklahoma, Arkansas, Louisiana, and common point territory in Texas. Proctor & Gamble Distributing Co. v. St. L. S. F. Ry., 101 I. C. C. 563 574.

(c) Upon general investigation, on commission's own motion, of interstate class rates, all-rail and rail-water, within southern territory, FOUND: That all such rates between points in southern territory should be not higher than a normal level based upon a distance scale or scales of such extent as to cover hauls of all lengths. Southern Class Rate Investigation, 100 I. C. C. 513, 615.

§57½. System line haul.

See Branch Lines §2, §3.

(a) Southern Ry. system lines, Atlanta & West Point R. R., and Western Ry. of Alabama, and Illinois Central and Yazoo & Mississippi Valley Railroads, respectively, found to be under same management and control, for purpose of applying single-line distance rates required to be established in original report, 74 I. C. C. 419, on livestock to, from, and between points in the Southeast. Livestock to, from, and between Points in the Southeast, 91 I. C. C. 292 293.

(b) Separately incorporated railroads under the same management and control, the stock of which is held in common ownership, should be considered as a unit for rate-making purposes. Transit Privilege on Lumber, 95 I. C. C. 154, 158.

(c) Although operated separately, the Greenwich & Johnsonville is owned entirely by the Delaware & Hudson and is

part of that system. United Paperboard Co. v. C. R. R. Co. of N. J., 95 I. C. C. 680, 683.

(d) Upon contention that commission's ruling that during Federal control all lines were operated as a single system and that a rate applying over one route of Federally controlled lines should apply over another route, if distances and operating conditions were favorably comparable, entitled shipper to lower rate citing 58 I. C. C. 205, 59 I. C. C. 119, and other cases. HELD, this contention goes beyond scope of cited decisions, and fact that two rates applied between same points over different routes, both routes being under Federal control, does not establish unreasonableness of higher rate and defendant can not be called upon to protect the lower rate. Moreover, such action would subject the director general as operator of route over which higher rate applied to liability as operator of route over which lower rate applied. In Davis v. Donovan, 265 U. S. 257, his liability "was carefully limited to such as would have been incurred by some particular carrier if there had been no Federal control." California Packing Corp. v. Director General, 96 I. C. C. 239, 242, 243.

(e) It should be understood that where the term "carriers under the same management and control" is used, it refers to carriers generally controlled through ownership, lease, or otherwise to the extent of controlling traffic policy, even though separate corporate entity may be maintained. Raleigh Freight Traffic Bureau v. A. C. L. Ry. 107 I. C. C. 156, 159.

(f) For rate-making purposes the Arizona Eastern and Southern Pacific should be treated as one line. Peyton Packing Co. v. A. E. R. R. Co., 100 I. C. C. 4, 9.

(g) In determining distances in compliance with the rates herein prescribed to or from Galveston, Tex, or New Orleans, La., the respective ports, the shortest routes via existing connections for the interchange of carload traffic shall be used, embracing as a maximum the lines or parts of lines of not more than three line-haul carriers, lines under common ownership or control to be considered as a single line. Galveston Commercial Asso. v. G., H. & S. A. Ry. Co., 100 I. C. C. 110, 123.

(h) In reality, there are now only four great railroad systems in the South in addition to numerous so-called short lines and certain independent railroads of greater importance In a broad way competition is still very active between the four great systems. The process of consolidation, however, has minimized the influence formerly exerted upon the rate structure by railroads whose interests were concentrated in certain communities. Southern Class Rate Investigation, 100 I. C. C. 513, 525.

(i) For purposes of rate making, movements over two or more carriers under common ownership or control are treated generally as single line rather than joint line hauls. Raleigh Chamber of Commerce v. N. S. R. R. 109 I. C. C. 52, 54.

ALL OTHER CITATIONS

Cotton Mfrs. Association of S. C. v. C. & O. Ry., 85 I. C. C. 131; Brick and Drain-tile from St. Louis, 85 I. C. C. 353; Routing of Lumber from A. T. & N. R. T. Stations, 85 I. C. C. 527.

§57¾. Terminal Facilities.

See Terminal Facilities.

(a) It is by no means unusual to recognize the additional cost of specific terminal services in constructing rates for short hauls. Chase & Norton v. A. A. R. R., 92 I. C. C. 322, 324.

(b) Fact that terminal costs at Chicago should be somewhat higher than the average in c. f. a. territory, does not justify imposition of a disproportionate share of those costs upon short-haul traffic. Indiana Chamber of Commerce v. A., T. & S. F., 95 I. C. C. 177, 179.

(c) Cost of handling all freight through freight houses is not an accurate measure of the cost of handling straight c. l. shipments of package freight. Loading and Unloading of C. L. Freight, 101 I. C. C. 394, 412.

§58. Ton-mile Revenue.

See Supra §20, §36; Advanced Rates §18 (1); Blanket Rates §10½ (oo); Comparative Rates; Distance Rates §3 (4x); Evidence §20; Reasonableness of Rates §36.

(a) The ton-mile yield returned by rates between points in other territories is not persuasive as to what should be considered reasonable for a haul over

a route between two points through an area of low productivity, largely swamp lands, where there are no settlements of any size at which traffic does or could originate. Atlantic Refining Co. v. A., B. & A. Ry. Co., 89 I. C. C. 279, 280.

(b) Earnings per mile for short hauls ordinarily are and should be higher than for longer hauls. Boston Wool Trade Association v. Director General, 89 I. C. C. 589, 629.

(c) Ordinarily ton-mile earnings should increase as distance decreases. Knoxville Traffic Bureau v. S. Ry. Co., 89 I. C. C. 708, 714.

(d) The rule is well recognized that ordinarily the per ton mile should decrease with distance. But this rule should find full application only where the conditions of haul are substantially similar, and where a prairie haul is compared with a mountain haul, the general rule may be qualified. Utah State Automobile Asso. v. A. T. & S. F. Ry., 92 I. C. C. 376, 381.

(e) Earnings per ton-mile on grain and products are greater than on products of mines and forests, but are substantially less than all c. l. traffic and on all c. l. traffic excluding grain, grain products, and hay. Rates and Charges on Grain and Products, 91 I. C. C. 105, 124.

(f) Ton mile earnings should ordinarily decrease with increasing distance, but it must be borne in mind that the average number of miles hauled in the southern district is about one third greater than in the eastern district. Furniture from southern points, 100 I. C. C. 127, 144.

(g) It is a generally recognized principle of rate making that the rate per ton per mile should continually decrease as distance increases. The freight rate combines two factors of cost, (1) terminal cost and (2) line haul cost. Since terminal cost remains constant, whatever the length of haul, it follows that even if line haul cost increases uniformly, the rate per ton mile, which combines the two factors of cost, will continually decrease with distance. This result will, of course, be much more marked in the shorter hauls. Stated in another way, the curve of the scale will gradually approach a straight line as distance increases, if we start with the assumptions that terminal cost is constant and that line haul cost increases uniformly. A second reason for a decreasing rate per ton mile, however, is the fact that line haul cost is relatively greater for short haul than for long hauls, particularly in the case of less carload service. Southern class rate investigation, 100 I. C. C. 513, 642.

(h) It is a well established principle that ton mile and car mile earnings should decrease as distance increases. St. Joseph Lead Co. v. L. & N. R. R., 101 I. C. C. 352, 354.

(i) Earnings of 17.53 mills per ton-mile, 59.84 cents per car-mile, and $587.04 per car on caustic soda are comparatively high for such low-grade traffic. Refinite Co. v. C. & N. W., 92 I. C. C. 266, 269.

(j) Considering rates in connection with recognized principle that ton-mile earnings decrease as distance increases, rates on green coffee from New Orleans to Montgomery found not unreasonable as compared with rates from same point of origin to Nashville, Louisville, St. Louis, and other farther distant points. Fletcher-Wilson Coffee Co. v. L. & N., 93 I. C. C. 555.

(k) The principle that ton-mile earnings should decrease as distance increases may be offset by the principle that a higher level of rates is justified in a territory of relatively low traffic density. Carnation Milk Products Co. v. A. & W. Ry. Co., 96 I. C. C. 208, 211.

(l) The principle that ton-mile earnings should decrease as distance increases may be offset by the principle that a higher level of rates is justified in a territory of relatively low traffic density. Carnation Milk Products Co. v. A. & W. Ry. Co., 96 I. C. C. 208, 213.

(m) The use of system average costs on a ton-mile might lead to erroneous conclusions in all of those instances where the average haul of the traffic interchange differs from the average on all freight operations of the system, and where the freight traffic interchanged differs materially in character from the system average, or the relative proportions of interchanged freight traffic or different kinds vary substantially from such proportions of freight handled in system operations. In the absence of better estimates of cost, the system averages have been used for purposes

of certain comparisons herein. Divisions of Joint Rates and Fares of M. & N. A. Ry Co., 98 I. C. C. 119, 129, 135.

(n) Although it is true that the revenue per car-mile on low-grade commodities such as sand exceeds that on higher grade commodities, nevertheless it must not be overlooked that the revenue per ton-mile on the latter commodities is greater. Boldt Glass Co. v. C., B. & Q. R. R. Co., 98 I. C. C. 481, 485.

(o) Rates on coal from mines on the Virginian Railway in the New River district of West Virginia to interstate destinations found unreasonable and unduly prejudicial. Under the circumstances of the case relative reasonableness, rather than intrinsic reasonableness, becomes the important thing to be considered, and other criteria, such as ton-mile earnings, fall into the background. Wyoming Coal Co. v. V. Ry. Co. 98 I. C. C. 488, 497.

(p) Rates charged on shipments of mussel shells from Hobbs Island, Ala., to Oswego, Kans., found not unreasonable or unduly prejudicial. Ton-mile earnings yielded are less than earnings at rates applicable on like traffic from Louisiana points to destinations in Kansas, including Oswego, for comparable distances. Pioneer Pearl Button Co. v. N., C. & St. L. Ry., 98 I. C. C. 578.

(q) For many years prior to 1918 the Commission regarded 5 mills per ton mile as approaching the minimum limit of revenue per carload of freight traffic. Florence Chamber of Commerce v. A. & V. Ry 107 I. C .C. 84 93.

(r) For many years prior to 1918 the Commission regarded 5 mills per ton mile as approaching the minimum limit of revenue for carload freight traffic. Grain and grain products to Mississippi valley 107 I. C. C. 167, 169.

(st) A spread of 26 cents in rates for an approximate average increase in distance of only 11 miles is out of all proportion to increased expense of transporting commodities, such as anthracite coal, this slight additional distance, and violates the principle that as distance increases ton-mile earnings, except under unusual circumstances, should decrease. No such unusual circumstances as would require a departure from this rule are here shown. Richmond County Coal Merchants Asso. v. B. & O., 101 I. C. C. 154, 163.

(ta) Earnings of 18.16 mills per ton-mile, and 54.49 cents per car-mile on a commodity loading as heavily as canned goods, do not appear excessive, especially in a territory where hauls over high mountain ranges are required. Canned Goods from Colorado, New Mexico, Texas & Wyoming, 102 I. C. C. 156, 160.

(u) Ton mile and car mile earnings yielded by present rates are in accord with the general rule that earnings per car and per ton mile should decrease with increases in distances. Gulf States Portland Cement Co. v. N. & W. Ry., 109 I. C. C. 231, 234.

(v) For many years prior to 1918 the Commission regarded 5 mills per ton mile as approaching the minimum limit of revenue for carload freight traffic. Leach v. C. N. O. & T. P. Ry., 112 I. C. C. 38, 40.

§59. Two or Three Line Haul.

See Advanced Rates §15½; Comparative Rates; Discrimination §11¼; Reasonableness of Rates §37.

(a) While, generally speaking, rates for a two line haul may be somewhat higher than for a one line haul, this is not necessarily true where the rates are part of a group adjustment. Orange Chamber of Commerce v. A. & W. Ry., 98 I. C. C. 101, 104.

(b) Joint line arbitraries are inconsistent with group or blanket rates, and even if a two line haul were more expensive than a one line haul, the additional expense, if slight, should not be reflected in the rate in a general group adjustment. Orange Chamber of Commerce v. A. & W. Ry., 98 I. C. C. 101, 107.

(c) When distance of over 500 miles are involved fact that service is by two lines is largely negligible. Pacific Guano & Fertlizer Co. v. S. P. Co., 91 I. C. C. 228, 230.

(d) The mere fact that one haul is two line and another one line does not in and of itself justify a higher charge for the two line haul. The Commission recognizes no principle that as a matter of law a higher charge may be made for a two line than for a one line haul. The reasonableness of a higher charge for the former than for the latter is a question of fact, and whether or not it shall be allowed in a particular case depends

solely upon a showing of increased cost or some other fact or circumstances which would warrant a higher charge. And even if a two line haul is more expensive, the additional expense, if slight, is not necessarily to be reflected in the rate adjustment. Richmond County Coal Merchants Asso. v. B. & O. R. R. 101 I. C. C. 154, 159.

(e) For many years prior to 1918 the Commission regarded 5 mills per ton mile as approaching the minimum limit of revenue for carload freight traffic. Thompson Weinman & Co. v. Southern Ry. 102 I. C. C. 247, 248.

§60½. Use of Commodity.

See Classification §10.

(a) Although rates may not be based upon use, use is a factor which may be considered in determining the proper description of a commodity. Crushed Stone from Maryland and Pennsylvania, 89 I. C. C. 681, 684.

(b) Value is undoubtedly an element which should be considered in the fixing of rates. It is often a most important element, but plainly can not be made an arbitrary standard independent of all other considerations. Rates and charges on grain and grain products, 91 I. C. C. 105, 145.

ALL OTHER CITATIONS

Van Dyke Smelting & Refining Works v. P. R. R. Co., 88 I. C. C. 743.

§61. Value of Commodity.

See Supra §31; Advanced Rates §18 (4), §18 (5); Classification §9, §10, §11, §17; Discrimination §5; Reasonableness of Rates §30; Released Rates.

(a) Complainant attacked combination class and commodity rates charged on 46 cars of wet wood pulp from International Falls, Minn., to destinations in central territory between Nov. 17, 1917 and Jan. 23, 1919 as unreasonable. No through rates were in effect charged at a combination rate made either over Chicago, Ill., or Manitowac, Wis., and consisted of commodity rates to those points plus 90% of sixth class rates beyond. In fall of 1917 complainants requested the carriers to establish joint ternational Falls. Commodity rates were established on August 29, 1919 to most of the destinations here considered. These joint commodity rates were made 6.5c higher than rates contemporaneously in effect to the same destinations from the Fox River district in Wisconsin. Complainant made no effort to prove that the earnings under the rates attacked were unreasonable. Although the Commission has condemned rates on raw materials higher than on the products manufactured therefrom, it does not necessarily follow from a showing that rates on wood pulp are higher than those on certain kinds of paper that the former rates are unreasonable in and of themselves. Kraft pulp admittedly is a greater value than ordinary wood pulp. HELD, rates attacked not unreasonable, complaint dismissed. Minnesota & Ontario Paper Co. v. Director General, 93 I. C. C. 105.

(b) The growth of an industry and the increase in value of a commodity which it produces do not necessarily warrant an increase in the rates for that commodity, particularly if the percentage increase in volume of movement keeps pace with the percentage increase in value. Oklahoma Corporation Commission v. A. & S. Ry., 98 I. C. C. 183, 207.

(c) Wool is a commodity of high value and can bear a higher rate than many commodities. Wool Rates Investigation, 1923, 91 I. C. C. 235, 263.

(ca) Value of commodity transported is an element in rate making aside from risk of loss or damage, because it serves to measure value of service rendered shipper. Released Rates on Stone in Southeast, 93 I. C. C. 90, 94.

(d) In establishing reasonable rates value of commodity to be rated must be considered. Jackson Traffic Bureau v. B. & O., 93 I. C. C. 342, 343.

(e) Haydite is a manufactured article not to be classed with sand and gravel for rate-making purposes in either character, value, or use, being of considerably higher value than sand and gravel and with decided advantages over these commodities in certain lines of construction. It should take a higher rate than sand and gravel. Haydite Co. v. A., T. & S. F., 96 I. C. C. 312, 315, 316.

(f) Artificial silk is a high-grade article and the freight charges bear a small ratio to its value. Viscose Co. v.

(g) It is impractical to grade furniture rates from a given point according to value. Furniture from Southern Points, 100 I. C. C. 127, 133.

(h) Ore of low value is usually produced in the course of mine development and the possibility of marketing it at a profit may, in some instances, be determinative of ability to develop. It may therefore be that the rates on the lower values need not in all instances be fully compensatory, if the average rate on the total movement yields a proper return. Mason Valley Mines Co. v. W. P. R. R. Co., 100 I. C. C. 180, 193.

(i) Upon further hearing original report, 80 I. C. C. 335, reversed, and rates on rig irons from Iola, Kans., to Tulsa, Okla., found not unreasonable. The present record does not substantiate the original finding that "there is a regular and substantial movement" there was little or no movement. Bradford Rig & Reel Co. v. Director General, 100 I. C. C. 261, 264.

(j) Rates on clothing, n. o. s., applied on l. c. l. shipments of overalls from Cincinnati, Ohio, to Pacific coast terminals and certain other western territory, found applicable since overalls were not of a value entitling them to the application of the commodity rates on overalls. Applicable rates found unreasonable to extent they exceeded lower contemporaneous rates on clothing restricted as to value. Reparation awarded. Crown Overall Mfg. Co. v. Director General, 100 I. C. C. 471.

(k) A great volume of traffic moves between official and southern territories. Railroad lines in States near the border have the benefit not only of such traffic as has its origin or destination within their boundaries but also the overhead traffic moving to or from points farther south. It is a reasonable assumption, which evidence here tends to confirm, that traffic densities in these border States are on the whole higher than in more southerly States. Southern Class Rate Investigation, 100 I. C. C. 513, 616, 617.

(l) The value of a commodity is a matter which may properly receive consideration in fixing the rates thereon. Dixon Crucible Co. v. P. R. R., 101 I. C. C. 415, 417.

(m) Tariff carried rates on newsprint and wrapping paper based on value, together with higher rates on same commodities without reference to value. Shipper made no reference to value in billing. FOUND: Higher rates charged found legally assessed, and, following 100 I. C. C. 471, the rates graded according to value were not released rates but actual-value rates, and the restrictions in connection therewith were not void. San Antonio Paper Co. v. Director General, 102 I. C. C. 243.

(n) Newsprint paper is a comparatively low-grade commodity, is desirable traffic for carriers, loads about 26 tons to car, and moves regularly and in substantial volume throughout year. Worthham-Carter Publishing Co. v. Director General, 102 I. C. C. 729, 743.

ALL OTHER CITATIONS

Armour & Co. v. Director General, as Agent, 88 I. C. C. 569.

§62. Value of Service.

See Supra §45; Advanced Rates §6 (6); Reasonableness of Rates §39.

(a) In considering the reasonableness of rates the economic condition of an industry may be relevant as it bears on the value of the service to the industry, and as it may permanently or for a long period of time affect the ability of that industry to pay the rates assessed, but taken by itself it can not be accepted as controlling. Rates and charges on grain and grain products, 91 I. C. C. 105, 143.

(b) The value of through service to the shipper is the same whether such service is rendered entirely by one express company or jointly, viz, by an express company and a rail carrier or by two rail carriers, although the two classes of service are not strictly comparable from a transportation standpoint. Kirschbraun & Sons, Inc. v. G. N. Ry. Co., 100 I. C. C. 28, 35.

(c) Contention that transportation charges constitute an undue proportion of market value of deciduous fruits and comparison made with relationship of such charges to average market price on livestock and grain. FOUND: Average hauls of livestock and grain are very much less than of traffic under consideration and no refrigeration is required, It is, therefore, natural that relationship of total charges to market price should be higher on extremely long-haul traffic

moving under refrigeration. Calif. Growers' & Shippers' Protective League v. S. P. Co., 100 I. C. C. 79, 90, 91.

(d) In fixing maximum reasonable rates, value of service is one of the recognized factors which the commission may properly take into consideration. In the case of class rates, value of service is chiefly of importance in determining the classification ratings. Southern Class Rate Investigation, 100 I. C. C. 513, 611.

(e) It is not necessary to show that rates are prohibitive in order to prove unreasonableness. Cheese from Wisconsin, 101 I. C. C. 744, 749.

§63. Volume of Traffic.

See Advanced Rates §5 (1½), §18 (3); Classification §4, §5; Reasonableness of Rates §40.

(a) The Commission has never favored rates per trainload. Kingan & Co. v. Director General, as Agent, 89 I. C. C. 550, 553.

(b) It probably is true that higher rates in one territory than those in another serve to place the shippers located in such higher rated territory at some disadvantage in competition with shippers of like commodities at points in the lower rated territory, but transportation conditions must be given consideration in fixing rates, and commercial conditions alone can not properly be held to justify the same rates in territories of light population and density of traffic as in territories where more favorable conditions exist. It may also be remarked that to make density of traffic alone a controlling factor in fixing the level of rates might lead to lower rates in territories of light population and local traffic, than where the amount of traffic and population received or delivered per mile of line is materially greater. In fixing rates many factories in addition to financial condition of the carriers and traffic density must be given consideration. Important weight should be given to the general conditions in the territory traversed. Oklahoma Corporation Commission v. A. & S. Ry., 98 I. C. C. 183, 230.

(cd) Flour is a prime necessity that moves in volume everywhere, and every consideration dictates that flour should move at comparatively low rates in all sections. Cream of Wheat Co. v. A., T. & S. F. Ry. Co., 91 I. C. C. 45, 48.

(e) Higher unit cost of transportation and generally higher level of rates on all commodities in western territory as compared with c. f. a. territory is due to comparative traffic density of the two territories. Rates and Charges on Grain and Products, 91 I. C. C. 105, 131.

(fg) The history of railway construction illustrates that prospective tonnage depending for its development upon transportation facilities, rather than tonnage immediately in view, has been the main justification for railway construction. Construction of Line by W. S. Ry., 90 I. C. C. 237, 256.

(h) It is not the traffic in one commodity, but the aggregate of all traffic within a territory, which determines traffic density. Carnation Milk Products Co. v. A. & W. Ry. Co., 96 I. C. C. 208, 212.

(i) Transportation conditions must be given consideration in establishing rates, and commercial conditions alone cannot properly be held to justify the same rates in territories of light population and traffic density as in territories where more favorable conditions exist. On the other hand, to make traffic density alone a controlling factor might lead to lower rates in territories of light population and local traffic than in territories where the population and amount of traffic received or delivered per mile of line is materially greater. Many factors in addition to financial condition of carriers and traffic density must be given consideration in fixing rates, important weight being given to general conditions in territory traversed. Oklahoma Corp. Commission v. A. & S. Ry. Co. 98 I. C. C. 183, 230, 231.

(j) Levels of rates in Illinois and certain portions of western trunk-line territory are as a rule somewhat lower than in the Southwest, and particularly on short-haul traffic, the differences being justified by varying degrees of traffic density; but, where the traffic density of all Class I carriers is comparatively heavy and the hauls are as long as those to these destinations, there is ample ground for disregarding such differences in rate levels. Oklahoma Corp. Commission v. A. & S. Ry. Co., 98 I. C. C. 183, 235.

(k) Contention that the volume of a particular traffic moving northound as compared with that moving southbound between same points warrants a

difference in the southbound and northbound rates, not sustained. It is no answer to a prayer for a reasonable rate adjustment that the volume of traffic affected is light, and undue prejudice which causes injury to a smaller volume of traffic is just as unlawful as one which causes injury to a large volume. Duluth Chamber of Commerce v. C., St. P., M. & O. Ry. Co., 98 I. C. C. 352, 356.

(l) Charges resulting from rates on sheep and lambs, in double-deck cars, from Montreal, Canada, to New York, N. Y., and Somerville, Mass., and minima provided in connection therewith, found not unreasonable, based, among other things, upon the fact that this traffic between the points involved is very light in volume. Swift & Co. v. G. T. Ry Co. of Canada, 98 I. C. C. 649.

(m) Traffic density alone is by no means a reliable index to the net returns and revenue requirements of the carriers in this territory, and while the net earnings of the principal cariers operating in the higher-rated zones have in recent years generally fallen below 5.75 per cent this is also true of the central carriers as a whole. Michigan Traffic League v. A. A. R. R. Co., 98 I. C. C. 660, 666.

(n) While the commission has said that a large volume of movement is not necessary in order to justify a finding of undue prejudice, nevertheless in the case here involved there is practicallly no evidence of actual or potential competition on traffic between the points involved. Fargo Commercial Club v. A. & W. Ry. Co., 98 I. C. C. 691, 730.

(o) Volume of movement is an important and not infrequently a determinative element in the establishment of a commodity rate, and when a request for such a rate from a particular point is predicted upon the existence of a commodity rate from another point the volume of movement from both points should be made known. Greiss Pfleger Tanning Co. v. E. J. & E. Ry. 104 I. C. C. 464, 466.

(p) While volume of movement is an important element to be considered in arriving at a reasonable rate, an excessive rate cannot be justified merely on account of the fact that movements thereunder are infrequent. Orford Soap C. v B. & M. R. R. 107 I. C. C. 338, 339.

(q) It is a safe conclusion from the evidence here that traffic densities and earnings combined in the southern territory are, on the whole, somewhat more favorable in the border States than in the more southerly States and that they are, on the whole, least favorable in Florida. Southern Class Rate Investigation, 100 I. C. C. 513, 622.

(r) An isolated movement during a comparatively short period is not a proper basis for requiring the establishment of rates for the future or for an award of reparation, and inasmuch as shippers are entitled to reasonable rates, the fact of shipments having been isolated is not the sole determinative factor. See 78 I. C. C. 473; 92 I. C. C. 453. Municipal Elec. & Water Depts. v. C. C. C. & St. L., 101 I. C. C. 618, 619.

(s) While volume of movement is an important element to be considered in arriving at a reasonable rate, an excessive rate can not be justified merely on account of the fact that movements thereunder are infrequent. Hilb & Bauer v. N. Y. C., 101 I. C. C. 621, 622.

(t) The Commission upheld the right of complainant to have the reasonableness of the rate in issue passed upon, although there was no existing movement thereunder. Southern Agricultural Chemical Corp. v. C. C. C. & St. L. Ry. 109 I. C. C. 227, 229.

(u) While volume of movement is an important element to be considered in arriving at a reasonable rate, the Commission has repeatedly said that an excessive rate can not be justified merely on account of the fact that movements thereunder are infrequent. Barr & Dougherty v. G. N. Ry. 109 I. C. C. 487, 489.

(v) Volume of movement is an important and not infrequently a determinative element in the establishment of a commodity rate. Chicago Heights Mfrs Asso. v. B. & O. R. R. 109 I. C. C. 545, 547.

ALL OTHER CITATIONS

South Dakota R. R. Commissioners v. C. & N. W. Ry. Co., 85 I. C. C. 217; North Carolina Pine Association v. A. C. L. R. R. Co., 85 I. C. C. 270.

§64. Voluntary or Subsequent Reduction of Rate.

See Absorption of Charges §2; Advanced Rates §8 (2); Class Rates §2 (3c); Commodity Rates §4; Reasonableness of Rates §32½; Reparation §12, §16.

(a) Undoubtedly the fact that a rate has been voluntarily maintained by a carrier for a period of years is evidence tending to show that it is reasonably remunerative, and when such a rate is sought to be increased the burden on the carrier would seem to require stronger proof of justification than in a case where the proposed increase relates to a rate that has been in effect but a short time. Boots and shoes from New York points, 91 I. C. C. 591, 596.

(b) Complainant attacked commodity rates charged on petroleum and its products from Bayonne, N. J., to New York harbor points between Jan. 1921 and April 1922, as unreasonable. Charged on bulk oil 6.5c prior to Jan. 31, 1922 and 5c from that date to April 9, 1922. A rate of 4c was established April 10, 1922. Charged on package oil 9c, subsequently reduced to 7c. HELD, rate attacked on bulk oil of 6.5c unreasonable to extent it exceeded 5.5c, rate of 9c on package oil unreasonable to extent it exceeded 7c, reparation awarded. Tide Water Oil Co. v. E. J. R. R. & T. Co., 91 I. C. C. 725.

(c) The fact that the rate was voluntarily reduced does not of itself prove that the rate previously in effect was unreasonable. Macbeth Evans Glass Co. v. B. & O. R. R., 91 I. C. C. 758, 760.

(d) The Commission has frequently found that the existence of a lower rate to nearby points and the subsequent establishment of that rate to the point under consideration do not, of themselves, warrant a condemnation of the rate charged. Diamond Match Company v. Director General, 92 I. C. C. 373, 374.

(e) Neither the assurance that a rate will be reduced nor its actual reduction is proof that the applicable rate was unreasonable. Bush v. Director General, 95 I. C. C. 661, 663.

(f) The voluntary reduction of a rate does not of itself establish that the previous higher rate was unreasonable. Moore Lawless Grain Co. v. M. P. R. R. 100 I. C. C. 303, 306.

(g) The existence of a lower rate to nearby points and the subsequent establishment of that rate to Cleveland do not of themselves establish the unreasonableness of the rate charged. Glidden Co. v. E. R. R., 100 I. C. C. 331, 332.

(h) The subsequent establishment of a rate is insufficient to sustain a finding of unreasonableness. Armstrong Cork & Insulation Co. v. Reading R. R., 100 I. C. C. 468, 470.

(i) Voluntary reductions do not prove that rates are unreasonable. Memphis Freight Bureau v. C. & E. I. Ry., 101 I. C. C. 26, 27.

(j) The subsequent reduction in the rate charged does not necessarily demonstrate unreasonableness. Sheffield Iron Corp. v. Director General, 101 I. C. C. 31, 32.

(k) The subsequent establishment of a lower charge can not be taken as an admission that the previous charge was unreasonable. Consolidated Lumber Co. v. Director General, 101 I. C. C. 284, 286.

(l) Relatively low rates move more traffic than relatively high rates, and there is ordinarily no point in voluntary reducing a freight rate except for purpose of attracting traffic. Utah State Automobile Asso. v. A. T. & S. F. 92 I. C. C. 376, 385.

(m) Rates on cucumbers in brine, in bulk in barrels, and in tank cars, from Blytheville, Ark., to Omaha found unreasonable to extent they exceeded lower rate subsequently established which lower rate was the same as that applicable from Colorado common points to Missouri River points. Reasonable rate for future prescribed and reparation awarded. Haarmann Vinegar & Pickle Co. v. C. B. & Q., 93 I. C. C. 251.

(n) Rates charged on live poultry from points west of the Mississippi River and south of the Ohio River to eastern destinations found not unreasonable. Voluntary reduction by carriers of rates on agricultural products was authorized by special permission order, but eastern carriers did not avail themselves of the permission with respect to live poultry rates. Resulting disruption of former rate relationship not a sufficient basis for finding of unreasonableness. Risser v. A., T. & S. F. Ry. Co., 96 I. C. C. 513.

(o) Upon contention that rates, during the period defendants were not permitted to establish reduced rates, were

unreasonable to the extent they exceeded the subsequently established reduced rates, HELD: Reversal in 69 I. C. C. 345 of finding in 63 I. C. C. 74, as to propriety of proposed reduction was not tantamount to a finding that previous rate was unreasonable. What the commission may permit carriers to do and what it may require them to do are entirely different matters. Union Sulphur Co. v. T. & N. O. R. R. Co., 98 I. C. C. 76, 81.

(p) Rate on fire brick from Vandalia, Mo., to Pearson, Ark., between February 3 and July 24, 1923, found unreasonable to extent it exceeded lower rate established on latter date from and to same points and from Vandalia to El Dorado, Ark., within the switching limits of which Pearson is located. Reparation awarded. Walsh Fire Clay Products Co. v. C. & A. R. R. Co., 98 I. C. C. 458.

(q) The commission has repeatedly found that the existence of a lower rate over other routes and the subsequent reduction to that basis of the rate over a particular route of movement are not sufficient in themselves to establish the unreasonableness of the previous rate. Mauk Lumber Co. v. Director General 98 I. C. C. 599, 600.

(r) Rates on uncompressed cotton to Galveston, Tex., from Fouke, Womble, Amity, and Gurdon, Ark., following 88 I. C. C. 492, found unreasonable to extent they exceeded lower commodity rate subsequently established in the case of shipments from Fouke and contemporaneous rates from the other points of origin to New Orleans, La. Reparation awarded. Moody Cotton Co. v. Director General 98 I. C. C. 643.

(s) The fact that the rate attacked was voluntarily reduced does not of itself demonstrate unreasonableness and the other evidence of record does not warrant such a finding. Armour Fertilizer Works v. M. L. & T. Ry. 102 I. C. C. 350, 352.

(sa) Rates on paper and paper articles, in mixed carloads from New Orleans to Dallas, found unreasonable to extent they exceeded lower rates subsequently established. An analysis of revenues per car-mile under rates assailed shows such rates to be excessive. Reparation awarded. Palmer & Co. v. H. & T. C. R. R., 102 I. C. C. 372.

(t) The Commission has frequently found that voluntary reductions in rates afford no basis for condemning a previously existing adjustment. Wilson & Co. v. C. & O. Ry. 104 I. C. C. 641, 643.

(u) Voluntary reductions do not prove that rates are unreasonable. Adams & Kelly Co. v. A. T. & S. F. Ry. 109 I. C. C. 241, 244.

(v) It is true that the voluntary reduction of a rate by a carrier is not of itself sufficient to justify an award of reparation on shipments moving prior to the reduction, and the mere fact that a rate under attack appears to be out of line with a few other related rates does not necessarily prove the rate attacked unreasonable. Louisville Cooperage Co. v. L. & N. R. R. 112 I. C. C. 228, 229.

ALL OTHER CITATIONS

Germain Co. v. L. & N. R. R. Co., 85 I. C. C. 449; Crown Willamette Paper Co. v. Director General, as Agent, 85 I. C. C. 657; Gottlieb-Bertsch Co. v. Director General, as Agent, 88 I. C. C. 177.

§64½. Wages.

See Labor Board; Newlands Act; Reasonableness of Rates §40½; Wage Awards.

(a) Amount of wages largely determines cost of railroad operation. Rates and Charges on Grain and Products, 91 I. C. C. 105, 146.

(b) Director general submitted evidence to show that, due primarily to retroactive application to January 1, 1918, of increase in wages of railway employees under General Order No. 27, operating costs were as great during first six months as during second six months of 1918, and contended that no lower basis of rates should be found reasonable on shipments made prior to June 25, 1918, than on shipments made on and after that date. HELD: While operating conditions prior to June 25, 1918, including retroactive application of wage award, are important factors, they are not necessarily controlling in determining reasonableness of rates after January 1 of that year. Macbeth-Evans Glass Co. v. B. & O. R. R. Co., 91 I. C. C. 758, 762.

§65. Weight or Bulk of Shipment.

See Classification §4, §11½, §13 (c); Reasonableness of Rates §41; Weights and Weighing.

(a) Having regard for difference in structure of freight and express classifications the commission can not predicate a condemnation of the freight rate for a light and bulky article like furniture frames solely upon a showing that express rates are lower between many points. Parlor Frame Mfrs. Asso. v. A. A. R. R., 93 I. C. C. 506, 509.

(b) It is apparent that the boxed apple is the only traffic which can load with reasonable safety to a minimum of 35,000 pounds, the evidence indicating that shipments of soft fruits in bulk or in basket will not load with safety to that minimum. Kloeber v. N. P. Ry. Co., 96 I. C. C. 437, 442.

(c) Heavy loading naturally increases car mile earnings. Canned Goods from Colo., N. M., Tex., and Wyo. 102 I. C. C. 156, 160.

(d) Gross weight comparisons completely ignore differences in value of the articles compared. Differences in value and in value of the services, are important elements in determining rates on finished or manufactured articles in relation to those on the raw material or product from which they are derived. Morrell & Company v. N. Y. C. R. R. 104 I. C. C. 104, 116.

(e) The chief transportation characteristics of tin cans are the light loading, a value of about $1,500 per carload, practically complete freedom from loss and damage claims except in case of wreck, and the regularity of movement in the canning season. Tin Cans from C. F. A. Points to Michigan, Minnesota, and Wisconsin, 100 I. C. C. 208.

(f) Commission has consistently adhered to rule that car loading of a commodity is of importance in determining the rate, absolutely and relatively. North Carolina Pine Asso. v. A. C. L. R. R. Co., 85 I. C. C. 270, 281.

ALL OTHER CITATIONS

Cotton and Cotton Linters to Louisiana and Texas Ports, 85 I. C. C. 5.

§66. Widespread Rate Adjustment.

See Advanced Rates §5 (2), §5 (7¼), §19 (a); Blanket Rates VIII, §20; Canada (f); Differentials; Discrimination §13; Equalization of Rates §8; Reasonableness of Rates §2 (op), §16, §28; Relative Rates; Reparation §12.

(a) Where it is proposed radically to change within a limited area the system of rates which has been long in effect and generally recognized as essential, the evidence should be convincing of the justification for such a change. It is the commission's duty to consider, among other things, not only such benefits as might be realized by those who urgently request the change, but also what the probable effect would be upon a large body of producers who would not be in a position to avail themselves of the benefits of the change requested. Mississippi Railroad Commission v. A. & V. Ry. Co., 89 I. C. C. 47, 59.

(b) A rate structure of long standing should not be hastily condemned. Lake Dock Coal Cases, 89 I. C. C. 170, 201, 202.

(c) Fact that a general readjustment of rates may become necessary as a result of a decision pending in another proceeding before the commission, which may carry with it a further revision of rates considered in instant proceeding, is not sufficient reason for withholding from shippers the relief to which instant proceeding entitles them. Knoxville Traffic Bureau v. S. Ry. Co. 89 I. C. C. 708, 717.

(d) Complainant is entitled to a reasonable rate on its traffic, even though the maintenance of such a rate would lead to other readjustments. Chicago Heights Mfrs. Asso. v. P. R. R., 92 I. C. C. 194, 197.

(ef) That a somewhat lower rate than the rate charged was prescribed for the future does not necessarily show that the former rate was unreasonable. Especially is this so where the new rate is part of an extensive readjustment. One of the tests of the reasonableness of a rate is its relation to the whole rate structure of which it is a part. News Corporation v. M. P. R. R., 93 I. C. C. 381, 383.

(g) That the correction of rates that are unreasonable or otherwise unlawful will or may require changes in other rates would not afford justification for continuing a rate adjustment if it were found unreasonable or unduly prejudicial. Peerless White Lime Co. v. C. & E. I. Ry., 95 I. C. C. 260, 266.

(h) If the suspended schedules are proper the Commission can not withhold sanction merely because of the possibility that the readjustment may eventually extend to other commodities, or to the same commodities in other classifications. Classification of canned goods, 98 I. C. C. 166, 174.

(i) Upon complaint attacking rates on cypress lumber and lumber articles from Waycross, Hebardville, and Hopkins, Ga., to southeastern, eastern trunkline, New England, and c. f. a. territories, HELD: As widespread and far-reaching rate readjustment necessitated by decision in North Carolina Pine Asso., 85 I. C. C. 270, will materially affect measure and relationships of a large proportion of rates here attacked, no order will be entered in instant case, but carriers will be permitted to undertake to work out an adjustment which will correct inconsistencies and maladjustments. Hebard Cypress Co. v. A. & R. R. R. Co., 91 I. C. C. 343.

(jk) Proposed revision of rates involving both increases and reductions on lumber and forest products from Baltimore, Philadelphia, Jersey City, New York, and Poughkeepsie to destinations in Pennsylvania, New York, and New Jersey, for purpose of establishing a relationship between rates from the ports on the one hand and from Poughkeepsie on the other, found not justified, except as to the reductions. Proposed revision appears to be primarily an attempt of the New York Central to obtain a share of the traffic from Poughkeepsie by basing rates from that point on its own circuitous mileage through congested and expensive New York terminal district instead of on short-line mileage over the New Haven. Lumber between Points in Trunk Line Territory, 92 I. C. C. 144.

(l) Contention by carriers that establishment of a specific rate on manganese-steel scrap would disrupt entire rate structure on other scrap iron or steel, HELD: A shipper is entitled to a reasonable rate on his traffic, even though maintenance thereof would lead to other readjustments. Arizona Corp. Comm., 87 I. C. C. 271, 274. Chicago Heights Mfrs. Asso. v. P. R. R., 92 I. C. C. 194, 195.

(mn) Fact that rates prescribed by commission will result in reductions in other rates, and thus bring about a material loss of revenue to carriers, is not in itself proof that rates prescribed are unreasonably low. Utah State Automobile Asso. v. A., T. & S. F., 92 I. C. C. 376, 383.

(o) Contention that establishment of a basis of rates on canned goods from Wisconsin to Mississippi Valley territory different from that now existing would necessitate a general revision of rates on other commodities moving from and to the same points, which commodities at present enjoy rates made on same basis of the lowest combinations. HELD, the possible effect of commission's findings upon other rates should not deprive complainants of a reasonable basis for the transportation of their particular products. Carnation Milk Products Co. v. A. & W. Ry. Co., 96 I. C. C. 208, 211.

(p) Considering the rates on lump coal which the commission has prescribed, some readjustment of the rates on nut and slack will become necessary. Nut coal is used for practically the same purposes as lump and it would seem that the rates should be closely related. Colo. & N. Mex. Coal Operators Asso. v. D. & R. G. W. R. R. Co., 98 I. C C. 377.

(q) The Commission has repeatedly said that the fact that additional adjustments may be necessary is no ground for denying relief shown by the record as proper. Chicago Fire Brick Co. v. A. & W. Ry. 107 I. C. C. 399, 403.

(r) While the fact that a certain adjustment of rates has been in effect for a great many years should not stand in the way of a just and reasonable readjustment, it is a fact to be given weight in determining what is just and reasonable. In other words the readjustment may properly be tempered somewhat by the need for avoiding too sudden and serious a disturbance in carrier revenues or in commercial conditions, a disturbance which, in the final analysis, would react upon both shippers and carriers, Southern Class Rate Investigation, 100 I. C. C. 513, 671.

(s) Upon investigation by commission on its own motion, all rates on anthracite coal now in force found not excessive, unreasonable, or otherwise unlawful, and a horizontal or percentage reduction of all such rates, to an extent which could be reflected in an appreciable reduction of the retail selling prices of domestic sizes of anthracite, would reduce the income of several of

the carriers of anthracite to an extent which would impair their credit and, consequently, their ability to perform sufficient and satisfactory transportation service for the public. However, in specific instances rates on prepared pea, and smaller sizes found unreasonable and reductions ordered. Anthracite Coal Investigation 101 I. C. C. 363, 373.

(t) Upon contention by carriers that a reduction in rates would result in disrupting entire adjustment, HELD: Fact that additional readjustments may be necessary is not ground for denying relief shown by record to be proper. Northeast Miss. Traffic Bureau v. M. & O., 101 I. C. C. 451, 453.

(ta) Proposal to readjust rates on petroleum and products from St. Louis and Wood River district points to southern destinations over or in connection with B. & O. or C., C,. C. & St. L., comprising some increases but more and greater reductions, found justified. Proposed schedules will result in rates same as those now in effect over routes other than B. & O. and C., C., C. & St. L. Petroleum to Southern Points, 102 I. C. C. 756.

(u) The fact that additional readjustments may be necessary is no ground for denying relief shown by the record as proper. French Battery & Carbon Co. v. C. & N. W. Ry., 112 I. C. C. 128, 131.

(v) That the correction of rates that are unreasonable or otherwise unlawful will or may require changes in other rates would not afford justification for continuing an unlawful rate adjustment. Fifth & Ninth Districts v. C. R. I. & P. Ry., 112 I. C. C. 139, 146.

ALL OTHER CITATIONS

Decker & Sons v. Director General, as Agent, 85 I. C. C. 389; Indiana Public Service Commission v. A. T. & S. F. Ry. Co., 88 I. C. C. 720.

III. JUDICIAL NOTICE.

§67. In General.

See Loss and Damage §16; Procedure Before Commission §16.

(a) Interstate Commerce Commission, rule No. 13, requiring the Commission to take notice of items in tariffs and annual or other periodical reports of carriers properly on file, does not require the Commission to take judicial notice of all the facts contained in such documents, nor relieve Commission from introducing by specific reference such parts of the reports as it wishes to treat as evidence, but merely makes it necessary for the parties to serve copies. United States v. Abilene & S. Ry. Co., 44 Sup. Ct. 565.

(b) Papers in the files of the Interstate Commerce Commission are not always evidence in a case. United States v. Abilene & S. Ry. Co., 44 Sup. Ct. 565.

V. STARE DECISIS.

§69. In General.

See Cars and Car Supply §35; Previous Decisions of Commission; Procedure Before Commission §17; Reasonableness of Rates §26½; Reparation §13.

(a) The Commission is not governed by the doctrine of stare decisis. Rates and charges on grain and grain products. 91 I. C. C. 105, 131.

(b) Commission is not governed in its decisions by doctrine of stare decisis. Unless previous decisions were found upon error or upon conditions which have since undergone material change, commission may confine itself to new circumstances which have arisen and to new evidence presented. Rates and Charges on Grain and Products, 91 I. C. C. 105, 131, 132.

(c) When a given situation has been fully considered and deliberately passed upon, that decision ought not to be disregarded and the question kept open indefinitely unless good cause is shown for the adoption of a different course. Pacific Mutual Door Co. v. A. A. R. R. 101 I. C. C. 633, 634.

(d) Upon contention that commission is not bound by former decision and that present case should be decided on its merits, HELD: When a given situation has been fully considered and deliberately passed upon, that decision should not be disregarded and the question kept open indefinitely unless good cause is shown for adoption of a different course. Pacific Mutual Door Co. v. A. A. R. R., 101 I. C. C. 633.

EXCLUSIVE CONTRACTS

See Special Contracts; Stock Yard Companies.

EXPEDITED SERVICE

See Class Rates §2 (6a); Distance Rates §3 (4q) (4r); Evidence §12 (1) (3o); Live Stock Shipments; Special Rates and Services.

(a) Charges assessed on milk and cream in 10-gallon cans, for single-line hauls in baggage service from points in Iowa, to Omaha, Nebr., via circuitous routes, found not unreasonable, but new and more direct interline routes and reasonable maximum rates constructed upon basis of specific joint-line distance scales, with the addition of drayage charges where drayage is necessary in order to transfer shipments between separate passenger depots of connecting rail carriers, prescribed for future. Kirschbraun & Sons, Inc. v. G. N. Ry. Co., 100 I. C. C. 28, 40.

(b) Expedited service is an important consideration at times in the sale of cement and stone. Switching at Hagerstown, 102 I. C. C. 14, 18.

ALL OTHER CITATIONS

Beatrice Creamery Co. v. L. & N. R. R., Co., 85 I. C. C. 377.

EXPLOSIVES AND DANGEROUS ARTICLES

See Class Rates §2 (6f); Demurrage §2½.

(a) Practices looking toward the safe transportation of explosives and other dangerous articles should not be discouraged by rate penalties. Western Petroleum Refiners Asso. v. C. R. I. & P. Ry. Co., 89 I. C. C. 241, 243.

(b) Rate on uncompressed cotton, damaged by fire and water, from Pine Bluff, Ark., to Galveston, Tex., found not unreasonable as compared with rate on cotton to be compressed in transit. Because of the danger of spontaneous combustion the shipment could not be tiered and upon request of consignor it was handled in a manifest train. The evidence is general to the effect that if uncompressed cotton were given the same rates to Galveston as those now in effect on cotton to be compressed in transit there would be a substantial movement of uncompressed cotton. Complainants, however, do not state that they have any real need for a rate from any point on uncompressed cotton, unless they desire to ship cotton which could not be compressed in transit because of damage by fire and water. M'Fadden & Bro.'s Agency v. St. L. S. W., 96 I. C. C. 267.

(c) Refusal of defendant carrier, under appropriate tariff provisions, to accept shipments of rags (except in compressed covered bales) and waste paper at Piers 41 and 68, North River, Manhattan Borough, New York, N. Y., because of the fire hazard, endangering other and more valuable property, and even life itself, found not unreasonable, but unreasonable as to Pier 13 North River, and Pier 26, East River, to extent the restrictions preclude receipt at and shipment from such piers of carload shipments of dry rags and dry waste paper so baled as to prevent loss of pieces (sifting), from the bales, and reasonably free from loose edges, strips, pieces, fibers, or other parts protruding from the bales or surrounding them. National Asso. Waste Material Dealers v. D., L. & W. R. R. Co., 98 I. C. C. 606.

(d) The prohibition of the regulations against the transportation of wet or oily rags or wet paper, and the restrictions upon shipments which are probable sources of fires, are in effect mandatory requirements that only shipments free from such objectionable features shall be accepted by carriers for transportation. The desirability of segregating commodities which involve an exceptional fire hazard is apparent, especially at congested points. Defendant has a right and duty in which cases to prescribe such reasonable regulations as will protect it and the general public. National Asso. Waste Material Dealers v. D., L. & W. R. R. Co., 98 I. C. C. 606, 609.

(e) The protection of the public against fire requires that the receipt as freight of rags and waste paper should be limited to dry materials, so baled as to prevent loss of pieces (siftings) from the bales, and reasonably free from loose edges, strips, pieces, fibres, or other parts protruding from the bales or surrounding them. National Asso. Waste Material Dealers v. D. L. & W. R. R. Co., 98 I. C. C. 606, 612.

(f) Switching charges assessed during Federal control on carload movements of sulphuric acid, sulphur, salt, and fuel oil between various divisions of complainant's plant at Newark, N. J., found applicable and not unreason-

able, considering, among other things, the dangerous character of the commodity of which most of the shipments consisted. Reparation awarded for certain overcharges. Butterworth-Judson Corp. v. Director General, 100 I. C. C. 337.

EXPORT RATES AND FACILITIES

I. CONTROL AND REGULATION.
§1. Jurisdiction of Commission.
§2. Establishment and construction.

II. BILLS OF LADING.
§3. Provisions in general.

III. DISCRIMINATION.
§4. In general.
§4a. Port differentials.

IV. PUBLICATION AND TARIFFS.
§5. In general.

V. REASONABLENESS.
§6. In general.

VI. STORAGE, DEMURRAGE, AND SPECIAL CHARGES.
§7. In general.

VII. PAYMENT OF CHARGES.
§8. In general.

VIII. REPARATION.
§9. In general.

IX. LONG AND SHORT HAULS.
§10. In general.

CROSS REFERENCES

See Coastwise Traffic; Express Companies §4; Foreign Commerce; Port Differentials.

I. CONTROL AND REGULATION

See Control and Regulation.

§2. Establishment and Construction.

(a) Export shipments originally moved on domestic bills of lading, sailing date and space on steamer having been previously reserved. Domestic bills were exchanged for export bills, latter bearing notation "order notify" consignees at foreign ports. Due to refusal of shipments by vessel on which space reserved they were stored and subsequently exported on other vessels. HELD, following U. S. Steel Products Co., 88 I. C. C. 57, demurrage and storage charges assessed, but not paid, found illegal. Applicable tariff provided in such cases for giving of advance notice to notify party at port of exit that carrier is ready to make delivery, but there were no parties at port to be notified and no demurrage or storage could therefore accrue. American Steel Export Co. v. Director General, 93 I. C. C. 235.

(b) In 96 I. C. C. 195, the Commission found the relationship of export rates on wheat and flour from points in central, north central and southern Oklahoma to Galveston, Tex., New Orleans, La., and other Gulf ports, was not unduly prejudicial or unjustly discriminatory, and dismissed the complaint. In supplemental report in 101 I. C. C. 116 the Commission prescribed for the future a distance scale of commodity rates for application on domestic traffic from Oklahoma to Texas, under which wheat and flour are again placed on a rate parity. Export rates were not there in issue, but the Commission expressed the anticipation that realignment would follow in instances where the domestic rates prescribed were lower than the corresponding export rates. HELD, complaint dismissed, but if the carriers should fail to so re-align their export rates on wheat and flour from affected territory complainant may bring that situation to the attention of the Commission. Oklahoma Millers Asso. v. A. & V. Ry. 102 I. C. C. 1.

(c) Complainant attacked commodity rates charged on two cars of turpentine, in cases, shipped May 2 and 4, 1918 from New Orleans, La., to San Francisco, Calif., for export to Australia as unreasonable and unjustly discriminatory. Shipments were forwarded from New Orleans on domestic bills of lading bearing the notation "for export" and indicating Sydney as the final destination. At the time of movement the initial lines would accept traffic for export only upon presentation of permits issued by the terminal lines, a prerequisite to the issuance of such permits being the reservation of vessel space for the movement from the ports. These shipments were covered by the necessary permits. The tariff in effect at that time published an export rate of 55c under specified conditions. It was provided that export rates to San Francisco would apply only on freight originally

consigned through with rail, port, and ocean charges fully prepaid or guaranteed from point of origin to a specified destination beyond the port of exit, such destination being shown in the bill of lading at the time of shipment and for which throught export bills of lading was issued prior to arrival of freight at port of exit. For some reason complainant failed to exchange the original bill of lading for an export rail bill of lading, and it is not entirely clear that the ocean charges were fully prepaid or guaranteed. The domestic rate of $1.35 was assessed. The shipments were handled in the same manner as other export shipments and moved from San Francisco on the steamer in which space had been originally reserved. Complainant does not attack the reasonableness of the domestic rate and the record does not warrant that the rule relating to export shipments was unreasonable. HELD, rates attacked applicable and not unreasonable or otherwise unlawful, complaint dismissed. Dill Crossett, Inc. v. Director General 104 I. C. C. 48.

ALL OTHER CITATIONS

Lincoln Oil Refining Co. v. C. C. C. & St. L. Ry., 88 I. C. C. 271.

III. DISCRIMINATION.

See Discrimination.

§4. In General.

(a) Complainant attacked export rates charged on self propelling freight vehicles, carloads from Wichita Falls, Tex., and Oklahoma City, Okla., to Galveston, Tex., and New Orleans, La., for export, as unreasonable. In 88 I. C. C. 152, rates attacked found not unreasonable but unduly prejudicial to extent they exceeded the rates from Chicago and St. Louis to Galveston and New Orleans, for export, in so far as these defendants participate in the latter rates. HELD, upon rehearing, original report affirmed. Wichita Motors Co. v. A. & V. Ry., 93 I. C. C. 635.

(b) Complainant attacked present relationship between rates on wheat and flour from points in central, north central, and southern Oklahoma to Galveston, Tex., New Orleans, La., and other Gulf ports, for export, as compared with the relationship between rates on wheat and on flour for export from points in the remainder of Oklahoma and in other southwestern and western states, as unjustly discriminatory and unduly prejudicial; that the maintenance of higher rates on export wheat than on export flour from points within the affected territory to the Gulf ports is unjustly discriminatory and unduly prejudicial. For many years the export rates to Gulf ports were the same on wheat as on flour both from affected territory and from outside territory, and were lower than the domestic rates on wheat and on flour to the same destinations. In 69 I. C. C. 207, the Commission found prevailing from producing points in Oklahoma and Texas to destinations in Texas domestic rates higher on flour than on wheat. On shipments from Oklahoma the Commission reduced that spread in prescribing a maxima, distance scales of domestic commodity rates, lower on wheat than on flour, from Oklahoma to Texas. Effective August 5, 1922 the domestic rates on wheat from affected territory to Galveston became lower than the export rates. Shortly thereafter, August 23, 1922, most of the carriers voluntarily reduced to the level of the new domestic rates their export rates on wheat from the affected territory to Galveston and other Gulf ports. In most instances the reduced domestic rates on flour were not lower than the then existing export rates on the same commodity, and no reductions were made in the latter. Thus the long existing parity in export rates on wheat and flour to Gulf ports was disrupted in so far as the affected territory is concerned, but was still maintained from outside territory, and this complaint followed a few months later. Complainant has failed to show a similarity of transportation conditions as between export flour and export wheat which would sustain its contention that its competitors in foreign countries are unduly preferred by the maintenance of export rates on flour from the affected territory higher than those on wheat from the same points. The relationship of export rates on flour from the affected territory to those from the outside territory is not in issue. HELD, rates attacked not unduly prejudicial or unjustly discriminatory, complaint dismissed. Oklahoma Millers Asso. v. A. & V. Ry., 96 I. C. C. 195.

(c) For a number of years the export rates on cotton from Arkansas, Louisiana, Oklahoma and Texas to the Gulf ports have been higher than the domestic

rates, the difference representing the approximate average cost of transferring cotton from the back from the water warehouses or compressed at the ports. Connecting in 1921 disturbing influences were injected into the situation through the placing of high density compressed on the piers of the Galveston Wharf Company at Galveston, followed by the erection of large warehouses with compressed on the water front at Houston. The compression which takes place at the ports is high density compression. The ocean rates on cotton compressed t o high density are lower than on standard compressed cotton by an amount slightly greater than the cost of the high density compression. The tariffs vary somewhat as to the form in which the rates applicable to export shipments are published, but in one way or another the carriers hold themselves out to effect ship side deliveries under those rates. Although a rate published as applicable to export shipments should be applied to such shipments in preference to an interstate domestic rate if the service which the carrier holds itself out to perform under the export rate is actually rendered, where, as here, that completed service is not rendered, but rather a delivery of the character would be effected on a domestic shipment is made, the Commission is of the opinion that it is not illegal to apply the interstate domestic rate even though the shipment at some time subsequent to delivery may be exported. Therefore, except where shippers avail themselves of transit provisions at the ports, under which the carriers are obligated to place the cotton at ship side, the collection of the interstate domestic cotton rates delivered to the waterfront warehouses or compresses at Houston and Galveston is not illegal. Under the present adjustment the uptown facilities can secure what in substance is a second merchandising or compression in transit service free of charge. This is secured through the shipper paying the domestic rates and then having his shipments drayed from the warehouse to ship side without declaring them for export. Shipments stopped at other points for second merchandising or compressing must pay a transfer charge and the Commission sees no reason why an exception should be made in the case of the uptown warehouses or compresses at the ports. Cotton passing through these uptown facilities is, however, entitled to one free transit privilege. HELD, present adjustment unduly prejudicial to uptown and interior warehouses and rates should be so adjusted that one rate will apply for all deliveries within the usual switching limits of the ports, except that the export rates should be made higher than the domestic rates by an amount equal to the wharfage charge, reparation denied. Rates on cotton to Gulf ports, 100 I. C. C. 159.

(d) Complainant alleged if it is required to pay the additional charges which defendants are endeavoring to collect, on certain shipments of wheat from Minneapolis, Minn., to Kansas City, thence to Galveston, Tex., for exonable charges as well as undue preference of its competitors at New Orleans, La., to which point lower rates applied from Minneapolis. Shipments moved between June 14 and Dec. 8, 1921, and covered only such shipments as originated beyond Minneapolis. Joint through rates did not apply from the original points of origin to Galveston. Wheat moved from Minneapolis to Kansas City via the Milwaukee and charged local rate of 27.5c. Tariffs of the K. C. S., permitted reshipment from Kansas City at balance of the through rate applicable from points of origin when the shipments originated. All proportional rates on grain from Minneapolis to Galveston and other Gulf ports for export were canceled on June 25, 1918 by the director general. On Dec. 31, 1919 a proportional rate of 35c on grain from Minneapolis to New Orleans and Mobile was established. This rate was reduced to 34c on Feb. 28, 1920 and made applicable, except in connection with the Milwaukee, from Minneapolis to Galveston when for export, with the privilege of reshipment from Kansas City at the balance of the rate applying from the points of origin. It was in effect when the shipments here involved originated. Although the Milwaukee tariff, until Nov. 26, 1920 carried specific routing over its line to Kansas City and the K. C. S., and other lines beyond, to Galveston, the rate covering such movement had previously been canceled. The Milwaukee did not re-establish a proportional rate from Minneapolis to Galveston until Dec. 30, 1920. Present proportional rate to all three points in 35.5c. HELD, applicable rate unreasonable to extent it

exceeded 34c, undercharge waived, complaint dismissed. Fuller Grain Co. v. B. S. L. & W. Ry., 101 I. C. C. 82.

(e) Rate on wood box material from Crystal Springs, Miss., to Key West, Fla., for export, found not unreasonable, but unduly prejudicial to extent it exceeded the rate contemporaneously applicable from Memphis, New Orleans, Vicksburg, and Natchez, competing manufacturing points. Jackson Traffic Bureau v. A. & V., 95 I. C. C. 251.

(f) Maintenance of higher rates on export wheat than on export flour from certain points in Oklahoma to Gulf ports found not unjustly discriminatory or unduly prejudicial. Complainant failed to show similarity of transportation conditions as between export flour and export wheat which would sustain its contention that its competitors in foreign countries are unduly preferred. Oklahoma Millers' Asso. v. A. & V., 96 I. C. C. 195, 197, 198.

(g) Export and coastwise rates on lumber from certain points in Texas and Louisiana on Kansas City Southern system lines and Gulf, Colorado & Santa Fe Ry., to Orange, Tex., also domestic rates from points in Louisiana on Kansas City Southern to Orange, found unduly prejudicial to Orange and unduly preferential of Beaumont, Tex., to extent they exceed, by more than a differential of 2 cents, contemporaneous rates on like traffic to Beaumont; and from all other points on lines of these carriers export and coastwise rates on lumber to Orange from points in Texas, and export, coastwise, and domestic rates to Orange from points in Louisiana found unduly prejudicial to Orange and unduly preferential of Beaumont to extent they exceed contemporaneous rates on like traffic to Beaumont. Undue prejudice ordered removed and reasonable and nonprejudicial rates prescribed for future. Orange Chamber of Commerce v. A. & W. Ry. Co., 98 I. C. C. 101.

(h) Complainant attacked the reasonableness of the rates on rough rice in carloads from Arkansas producing points to New Orleans, and the propriety of the rates on clean rice from Arkansas milling points to New Orleans and Texas ports for export, the claim being made that the existing rates on clean rice from Arkansas unduly prefer the Arkansas millers to the undue prejudice and disadvantage of rice millers at New Orleans. Rice, after being threshed and while still in the hull, is known as rough rice, and in this state it is sold to the rice mills. There are mills located at Carlisle, Dewitt Indiana, Lonoke, Stuttgart, and Wheatley in the Arkansas producing district, at Memphis, at New Orleans and other points in Louisiana and at points in Texas. The Arkansas mills and the mill at Memphis draw their supply of rough rice practically entirely from the Arkansas district. The territory from which the New Orleans mills obtain their supply is much more extensive, and includes the Louisiana and Texas producing districts as well as the Arkansas district. Since July 10, 1922 a rate of 33.5c has been in effect from virtually all of the Arkansas points to New Orleans, following 63 I. C. C. 18. Owing to the long distance from all of the Arkansas points to New Orleans, and the extent of the mileage groups, the rates from practically all of the producing points are the same, whether measured by the shortest possible distance or the distance via not exceeding three lines. In most instances the resulting rate is 29.5 if a 3c reduction be made for the river crossing; when not so made the rates are generally 32.5c which is only 1c less than the rate attacked. What really prejudices the New Orleans miller is the fact that the Arkansas miller has a comparatively short haul for what may be termed its raw material, which, after milling, he transports as a finished product to the seaboard without having to pay freight on a large percentage of waste. HELD, rates attacked not unreasonable or unduly prejudicial or otherwise unlawful, complaint dismissed. New Orleans Joint Traffic Bureau v. B. S. L. & W. Ry. 102 I. C. C. 686.

ALL OTHER CITATIONS

Wichita Motors Co. v. A. & V. Ry. Co., 88 I. C. C. 152; Lincoln Oil Refining Co. v. C. C. C. & St. L. Ry., 88 I. C. C. 270.

§4a. Port Differentials.

See Port Differentials.

(a) Complainant attacked all rail, lake and rail, and rail lake and rail class and commodity rates on export and import traffic between Boston and differential territory, as unjust, unreasonable, unduly prejudicial and unduly preferential as compared with similar rates to and from the following ports: Montreal, St. John, and Halifax, Canada, Philadelphia, Pa., Baltimore, Md., Norfolk and New-

port News, Va., Wilmington, N. C., Charleston, S. C., Savannah, Ga., Jacksonville and Pensacola, Fla., Mobile, Ala., and New Orleans, La. The issue is one of relationship. Although they ask for Boston and the other New England ports rates not exceeding those applicable between differential territory and the various ports named what they in reality desire is that all differences in the import and export rates shall be abolished. They want equalization of rates, and it is immaterial to them how that equalization is accomplished. Boston and New York are on a parity with respect to export and import rates from and to differential territory. The Commission is of the opinion that for many years prior to the World War there was a generally prevailing policy, except with respect to full cargo rates on grain, which were of minor importance, to offset the inland rail differentials in whole or in part by differences in the ocean rates to and from the north Atlantic ports. On the other hand it appears that, since the World War at least, it has been and is now the generally prevailing policy to equalize these ocean rates. Apparently the change in policy was gradual rather than abrupt, and it is not possible on this record to fix the date when the change took place. The present policy is not uniformly or consistently followed, and at the time of the hearing conditions in the ocean freight business were so chaotic, owing to the surplus of tonnage and depression in business, that fluctuations in ocean rates were more than normally pronounced. Theoretically, it is the policy of the so-called conference lines to maintain minimum uniform rates on many commodities between the north Atlantic ports and foreign destinations; but upon application of a particular line or steamer to the conference such minimum rates may be further reduced when cargo is available and can only be secured by such reduction. There is nothing to indicate, however, that in the fluctuations of the ocean rates the inland rail differentials are now taken into consideration. It does not appear that Boston now gains any advantage whatever by reason of its shorter ocean route, or that Philadelphia or Baltimore suffers any disadvantage by reason of its longer route. The evidence warrants the conclusion that within the past few years Boston has not held its own in competition with the other north Atlantic ports. This is especially true of export grain and grain products, which offer Boston its chief hope of supplying bulk cargo for the outward voyages. Inbound this bulk is supplied by the wool, cotton, hides and other similar commodities which move in large quantities to New England industries, but for outbound movement New England produces little bulk freight and unless grain and grain products can be induced to move from the west to the port of Boston it will be difficult to make good the deficiency. In default of bulk cargo for export, the danger is real that shipping between Boston and foreign ports will continue to decline. The Commission has no arbitrary power to do what may seem to be in the public interest, but only such powers as conferred by statute, and here is only duty is to determine whether the rates under attack are unreasonably high or low and whether they unduly prejudice the New England ports and unduly prefer the other ports named. The railroads are monopolistic in many respects, and because of that fact are subject to public regulation. In this public regulation cost of service and hence distance are factors which must be taken into consideration. But the railroads are also subject to competition with respect to much of their traffic, and it has been and is the policy of public regulation to allow them considerable latitude in meeting this competition. This accounts for many of the apparent inconsistencies in the rate structure and also for many of the instances where distances are disregarded. The port differentials are arbitrary. They are fixed and uniform. Except on the first two classes westbound, they are not graded to correspond with the different class and commodity rates and have not fluctuated with fluctuations in those rates. It may be conceded that they are the result of compromise, arbitration, and agreement resorted to as the only means so far found of averting rate wars. They do not accurately reflect transportation conditions, first, because they are uniform, and second, because the lesser distances from differential territory to Philadelphia and Baltimore as compared with New York and Boston are reflected only in part. There is no evidence that the rates under attack are either unreasonably high or unreasonably low. The real issue is whether undue preference and prejudice exist. In view of the very

substantial advantages in distance from differential territory which Philadelphia and Baltimore enjoy, as compared with New York and Boston, and as compared with the total hauls, the Commission is unable to find that there is anything unlawful about the port differenials in favor of Philadelphia and Baltimore. Compared with the advantages in distance the present differentials in many cases are relatively small. The opinion is that no adequate reason exists for port differentials in favor of Philadelphia and Baltimore in the case of the exlake rates on grain in bulk from Buffalo for export. It does not appear that St. John and Halifax attract any substantial amount of import and export traffic to and from differential territory. In default of such evidence, the Commission is unable to make a finding that the present adjustment of rates to these Canadian ports results in undue prejudice to Boston, or that there is undue preference and prejudice with respect to the rates to the south Atlantic Gulf ports. HELD, rates attacked not unjust, unreasonable or unduly prejudicial, complaint dismissed. Maritime Asso. Boston Chamber of Commerce v. A. A. R. R., 95 I. C. C. 539.

(b) Carriers should take steps, either by publication of joint through rates or by appropriate adjustment of present combination rates, to equalize charges on grain and products moving to north Atlantic ports for export from points west of the Mississippi River, where advantage of any one of the ports, as compared with Boston, in total length of haul is 10 per cent or less. Maritime Asso. Boston Chamber of Commerce v. A. A. R. R., 95 I. C. C. 539, 569.

(c) Complainant attacked export rate charged on 882 cars of petroleum oil between July 28 and October 11, 1924 from Smackover, Algulf and El Dorado, Ark., to Texas City, Tex., as unreasonable and, as compared with lower rates to certain other Gulf ports, unduly prejudicial. These shipments moved for export, or for coastwise transportation. Rate charged 15.5c, haul via M. P., to Lake Charles, La., thence S. P., to Texas City Jct., Tex., thence Texas City Terminal Ry., average total haul of about 490 miles. Effective October 14, 1924 after these shipments had moved, the 14c rate was made applicable to Texas City and Galveston. Texas City and Galveston are south of Houston; the additional haul to Texas City being between 40 and 50 miles. That the rate charged was not unreasonable is shown by the fact that it was in substance an emergency rate established to enable an overproduction of crude oil to be used, and by the car mile revenues. The subsequent reduction of the rate to equal that to other Gulf ports does not establish that it was unreasonable prior to such reductions. HELD, complaint dismissed. Swiftsure Petroleum Co. v. M. P. R. R. 107 I. C. C. 637.

IV. PUBLICATION AND TARIFFS.

§5. In general.

See Facilities and Privileges §16¾ (a); Tariffs.

(a) Tariff provided that export rates would not apply if freight was not exported on vessel upon which space was reserved because of request of owner or other party in interest. No such request was made by complainant and due to seizure of vessels by the government, which created a scarcity of ocean space, exportation was delayed. Upon arrival at port of export, carrier unloaded shipments and placed them in open, and subsequently in private storage, in order to release equipment. Complainant exercised no control over shipments while privately stored and they were ultimately exported to destinations named in original bills of lading as soon as ocean space could be obtained. Domestic rates assessed found illegal and export rates applicable. Refund of overcharges ordered. Lindeteves-Stokvis v. Director General, as Agent, 89 I. C. C. 3.

(b) As to prepaid shipment of coal shipped to coal exchange for export, the carrier could not agree with original shipper to repay the freight, as in the event carrier could not collect freight from transshipper, it would have furnished free transportation in violation of Interstate Commerce Act (U. S. Comp. St. § 8563 et seq.) Pennsylvania R. Co. v. S. M. Hamilton Coal Co. (Md. 1923) 125 A. 405.

(c) Complainant attacked export rate charged on cypress shingles, carloads, from Garden City, Patterson and Harvey, La., to Eagle Pass, Tex., for export to Mexico as unjust, unreasonable, unjustly discriminatory, unduly prejudicial and inapplicable. Rate charged domestic basis 38.5c, export rate in ef-

fect at same time 32.5c to Eagle Pass when for export to Mexico. All of the shipments were consigned to the Eagle Pass Lumber Co, at Eagle Pass, Tex., but the bills of lading specified "for export to Mexico". The export rate are clearly applicable to the shipments in question provided the shipment moved to points in Mexico, and provided the shipment from Harvey did not move to a point coming within the excepted destinations. If they did move to Mexican points, not excepted by the tariff, they were overcharged. HELD, complaint dismissed. Louisiana Red Cypress Co. v. M. L. & T. R. R., 95 I. C. C. 159.

(d) Complainant attacked commodity rate charged on steel plates, carloads, shipped in 1922 from Gary, Ind., to Tulsa, Okla., there fabricated into knocked down steel tanks and reshipped to New Orleans, La., for export, as unreasonable, unjustly discriminatory and unduly prejudicial. All shipments moved prior to July 1, 1922. Movement to Tulsa was via I. H. B., C. & E. I., and Frisco, movement from Tulsa was Frisco L. & A., and T. & P., distance Chicago to Tulsa 715 miles, beyond 765 miles. A joint commodity rate of 46.5c was applicable to steel plates and to knocked down steel tanks from the Chicago district to New Orleans for export. The tariff permitted fabrication at any point in line of transit, which included Tulsa but provided for assessment on the weight outbound from the transit point of the highest of three rates on the finished commodity, namely, from point of origin to final destination, from point of origin to transit point, or from the transit point to final destination. From Gary to Tulsa the rate on steel plates or knocked down steel tanks was 81c and from Tulsa fifth class rate of $1.085 was applicable. Direct line route from Chicago to New Orleans is 920 miles, the 46.5c rate being established to permit the direct Chicago-New Orleans lines to compete in the handling of export traffic with the Chicago-New York lines, HELD, rate attacked not unreasonable or otherwise unlawful, complaint dismissed. Maloney Tank Mfg. Co. v. C. & E. I. R. R., 95 I. C. C. 671.

(e) Complainant attacked commodity rates on lumber, carloads, to Orange, Tex., from Louisiana intended for domestic, export or coastwise movement, and on shipments from Texas for export and coastwise movement as unreasonable, unjustly discriminatory and unduly prejudicial. The undue prejudice is based on the relatively lower rates which apply from the origin territory to Beaumont, Port Arthur, Houston and Galveston, Tex. Orange and Beaumont are competing ports on the Sabine-Neches Canal. Orange is about 21 miles east of Beaumont, and, by water, about 9 miles nearer the Gulf of Mexico than is Beaumont. Orange is served by the T. & N. O., and O. & N. W., At Mauriceville, Tex., 13 miles northwest of Orange, the O. & N. W., connects with the G. C. L.; also with the T. & Ft. S., and at Bessmay, Tex., about 32 miles northwest of Orange, it connects with the Santa Fe. Beaumont is served by the S. P., and K. C. S., by the B. S. L. & W., and the Santa Fe. Port Arthur, about 20 miles southeast of Beaumont is served by the K. C. S., and S. P. The traffic side line or tap line connections. As to originates on numerous roads and their this traffic, Orange and Beaumont are grouped for rate making purposes by the S. P., G. C. L., and by most of the other lines that serve this territory. The lines that serve Port Arthur also accord the Beaumont rates to that port. Santa Fe and K. C. S., which serve Beaumont directly, participate in the maintenance of joint rates to Orange on this traffic which are from 1 to 4c higher than to Beaumont, despite the fact that the distances to Orange from many Santa Fe producing points, and all K. C. S., points in Louisiana are slightly less than to Beaumont. The traffic to both ports from all K. C. S., points, and from a large portion of the territory served by the Santa Fe moves over the same routes as far as Bessmay and Mauriceville. The export rates under consideration are unusually lower than the corresponding domestic rates. Lumber rates in this territory are, and for many years have been generally grouped as to points of origin and, in a limited way, as to points of origin and, in a limited way, as to points of destination. Thus, in addition to the grouping generally observed in the rates to the southern ports, the rates are largely grouped from and to various points in Texas; from extensive origin territory; and to an extent on traffic destined to northern and central territory; and to an extent on traffic to western trunk line territory. More extensive grouping is observed on long

haul traffic. But the grouping has not been confined to that traffic, and has largely ignored distance and frequently the number of participating carriers. As to the general adjustment to various southern ports, regardless of the differences in distance, Houston and Galveston are almost invariably grouped by all the lines. From many points the rates to Orange are higher than the rates to those ports, despite the material differences in distance in favor of Orange. The additional haul to Port Arthur is ignored by the K. C. S., in extending the Beau Mont rates to that port. At least to a large extent, the higher rates to Orange than to Beaumont and Port Arthur appear to be prompted by the desire of these carriers to foster the ports service by them and to secure the entire revenue on the traffic. HELD, the export and coastwise rates on lumber to Orange from points on the K. C. S., southwest of De Quincy, La., and from points Kirbyville, Tex., and south on the Santa Fe extending between that point and Port Bolivar, Tex., and from Milvid, Tex., and points east on the Santa Fe extending between Somersville and Silsbee, Tex., also domestic rates to Orange from Louisiana on the K. C. S., southwest of De Quincy, La., unduly prejudicial to Orange to extent they exceed by more than 2c rates to Beaumont; from all other points on these lines export and coastwise rates to Orange from Texas and export coastwise and domestic rates to Orange from Louisiana unduly prejudicial of Orange to extent they exceed rates to Beaumont; that export rates from points on the I. & G. N., to Orange unreasonable to extent they exceed domestic rates on lumber to Orange. Orange Chamber of Commerce v. A. & W. Ry., 98 I. C. C. 101.

(f) Complainant attacked combination class and commodity rates charged on steam lard from rendering points in Illinois, Missouri, Nebraska and Iowa to Cleveland, O., and on refined lard from Cleveland to Atlantic seaboard, for export, as unreasonable and unduly prejudicial. No distinction is made in the classifications between steam and refined lard. Commodity rates apply generally west of Chicago and fifth class rates east thereof. Complainant pays a combination of commodity rates to Chicago and fifth class rates from Chicago to Cleveland on the steam lard, and fifth class rates on the refined lard from Cleveland to the ports. There is no tariff provisions for refining in transit of lard at Chicago, but the fact that Chicago is a rate breaking point enables refiners there to buy steam lard in the west, refine it, and ship it to the seaboard at the same rates as those available to the western packers. Complainant concern is with the refusal of defendants to establish refining in transit arrangements at Cleveland. The fact that the aggregates of the rates into and out of Cleveland are higher than the rates paid by competitors at Chicago and western points does not establish that the rates charged complainant are unreasonable; neither does the fact that another form of transit on lard obtains at Cleveland indicate that it is unreasonable to decline to extend the transit to refining. HELD, rates attacked not unreasonable or unduly prejudicial, complaint dismissed. Cleveland Provision Co. v. A. T. & S. F. Ry., 98 I. C. C. 421.

(g) Although a rate published as applicable to export shipments should be applied to such shipments in preference to an interstate domestic rate of the service which the carrier holds itself out to reform under the export rate is actually rendered, where, as here, that completed service is not rendered, but rather a delivery of the character which would be effected on a domestic shipment is made, the commission holds that it is not illegal to apply the interstate domestic rate even though the shipment at some time subsequent to delivery may be exported. Therefore, except where shippers avail themselves of transit provisions at the ports, under which the carriers are obligated to place the cotton at ship side, the collection of the interstate domestic rates on cotton delivered to the water-front warehouses or compresses at Houston and Galveston, Tex., is not illegal. Application of Rates on Cotton to Gulf Ports 100 I. C. C. 159, 163.

V. REASONABLENESS.

§6. In General.

See Advanced Rates §8½a (u); Import Traffic §2 (pp); Proportional Rates II (ll).

(a) Complainant attacked commodity rates charged on two shipments of plug tobacco, carloads, and on seven less carloads of premium articles, in one of the cars, shipped in May and June 1918 from

St. Louis, Mo., to San Francisco, Calif., for export to Manila, P. I., as unreasonable. Shipments moved on domestic bills of lading consigned to the collector of customs at San Francisco, Manila being shown as the final destination. The bills of lading also contained a notation that the tobacco was to be held in bond by the collector of customs for export. One car moved via M. P., and other over the Wabash to Denver, Colo., thence U. P., and S. P. At that time the initial lines would accept traffic from export only upon presentation of permits issued by the Pacific coast terminal lines, and the terminal lines would not issue permits unless reservation of vessel space was first obtained for the movement beyond the Pacific ports. Vessel space was procured and the terminal lines issued the necessary permits for the shipments. The movement from San Francisco to Manila was on ocean bills of lading executed by complainant in accordance with reservations previously made as to one carload. The other carload moved from the port on a vessel that sailed 16 days prior to the sailing of the vessel upon which space had been reserved. The rates sought are the lower contemporaneous export rates. After the movement took place, and effective July 1, 1918 that portion of the rule requiring that export bills of lading be issued prior to arrival of freight at port of exit was eliminated from the tariff. HELD, application of the tariff provision to these shipments resulted in unreasonable charges to extent they exceeded export rates, reparation awarded. Liggett & Meyers Tobacco Co. v. Director General, 93 I. C. C. 61.

(b) Complainant attacked charge on grain for export in carloads for switching from connections with the road haul carriers to the export elevators at Galveston, Tex., between March 1, 1920 and June 30, 1923 and for trackage at Texas City, Tex., between Oct. 25, 1920 and Sept. 6, 1923 in addition to the line haul rates from points in Missouri, Iowa, Minnesota, Nebraska, Kansas, Colorado and Oklahoma, as unjust and unreasonable. In 78 I. C. C. 539, the Commission found that the aggregate charges for the through transportation service, composed of the line haul rates plus the switching charges at Galveston on wheat and other grains taking the same rates, in carloads, from this territory of origin to Galveston had been since Jan. 1, 1917, and for future would be unjust and unreasonable to the extent they exceeded the line haul rates exclusive of such switching charges, and awarded reparation. HELD, following this case, rates attacked unreasonable to extent they exceeded the line haul rates exclusive of the switching charges at Galveston, reparation awarded. Armour Grain Co. v. A. T. & S. F. Ry., 93 I. C. C. 124.

(c) Complainant attacked commodity rates charged on box material from Crystal Springs, Miss., to Tampa, Miami and Key West, Fla., as unjust, unreasonable, unduly prejudicial and discriminatory. They were billed to Havana, Cuba, via Key West, Fla., at through rate of 66.5c to Havana, composed of 46.5c to Key West and 20c beyond. Crystal Springs is on the I. C., 25 miles south of Jackson, Miss., 158 miles north of New Orleans and 319 miles southwest of Birmingham over route of movement. The short line is 1,094 miles via Jackson and Meridian, Miss., Montgomery, Ala., and Palatka, Fla. Prior to July 1, 1922 there was a through export rate of 34c from Birmingham, Montgomery, Memphis, Knoxville, Chattanooga and Nashville, reduced to 30.5c on July 1, 1922. The rate of 46.5c attacked is combination of rate to Birmingham and export rate from that point to Key West. Prior to July 1, 1922 the rate from Crystal Springs to Key West via New Orleans was 45.5c, and when subsequent shipments moved the combination was 41c. The shipments were subject to the lowest combination of rates over any available route at the time they moved, which was via New Orleans. The shipments which moved via Birmingham were therefore misrouted and there was an overcharge on those that moved via New Orleans. HELD, rates charged not unreasonable but rate from Crystal Springs to Key West for export unduly prejudicial to extent it exceeded rates from Memphis, New Orleans, La. HELD, further shipments via Birmingham misrouted and those via New Orleans overcharged, reparation awarded. Jackson Traffic Bureau v. A. & V. Ry., 95 I. C. C. 251.

(d) Complainant attacked commodity rates charged on grain carloads, shipped since May 1, 1921 from various states to Galveston, for export, as unreasonable to extent of the switching charges exacted for delivery to the ex-

port elevators. In 78 I. C. C. 539, the Commission found rates attacked unreasonable to extent they exceeded the line haul rates exclusive of switching charges. HELD, following 78 I. C. C. 539, reparation awarded. Juckusch v. G. C. & S. F. Ry., 96 I. C. C. 500.

(e) Complainant attacked export rates charged on cotton, in bales, between Sept. 18, 1918 and March 10, 1919 from Keota, Stigler, Porum, Leflore, and Cameron, Okla., and Hackett, Ark., to Ft. Smith, Ark., there concentrated and reshipped to Tacoma, Wash., for export as unreasonable. HELD, in 88 I. C. C. 407, rates attacked not unreasonable but certain shipments were overcharged. HELD, reparation awarded. Japan Cotton Trading Co. v. Director General, 98 I. C. C. 409.

(f) Complainant attacked rates on export, import, and coastwise traffic, carloads, between all points in western classification territory and Illinois, on the one hand, and Galveston on the other, as unreasonable and that the relationship of the rates from this origin territory to Galveston, on the one hand, and to Texas City, Houston, Beaumont, Port Arthur and Orange, Tex., New Orleans, La., and Mobile, Ala., on the other, is unduly prejudicial to Galveston. All of the ports mentioned are on the Gulf of Mexico. Houston is 48 miles north of Galveston, Texas City is 10 miles, Beaumont 76 miles, Port Arthur 96 miles, Orange 98 miles, New Orleans 355 miles and Mobile 496 miles east of Galveston. The steamship rates from and to foreign ports are usually the same to and from all the ports mentioned. Specifically, the complaint names cottonseed and peanut cake, meal and oil, and lumber and forest products from Texas, Oklahoma, Arkansas and Louisiana west of the Mississippi river and other commodities. Galveston is served by the G. C. & S. F., Santa Fe; the M. K. & T., the I. & G. N., the G. H. & H., G. H. & S. A. With the exception of the S. P., none of these carriers reaches New Orleans. No carrier reaches Galveston with its own rails from Arkansas. New Orleans is served by the S. P., the T. & P., M. P., St. L. S. W., and Rock Island. The general basis of the complaint is relative distances to Galveston and New Orleans. There is no evidence upon this record tending to show that any of the present rates to New Orleans are so low as to throw a burden upon other traffic. New Orleans has certain natural advantages over Galveston which have affected the relationship of rates to the two ports. It is situated on the Mississippi river, at a natural division between, and terminus of, lines operating both east and west thereof. It therefore draws freight from both east and west of the river and by barge line down the river, which insures it not only a greater volume but a wider variety of freight than goes to Galveston, which is dependent upon the southwestern lines. This fact in itself warrants careful scrutiny of a rate adjustment which is alleged to be unduly prejudicial to the port least favored by natural advantages. While those natural advantages are entitled to consideration, in so far as they have been brought about by geographical location they are not entitled to much respect in so far as they have been brought about by rate advantages such as those there complained of. So far as the territory west of the Mississippi river, is concerned, the differences between the natural advantages of New Orleans and Galveston is small. Both ports are natural objectives for export and coastwise freight originating in that territory. HELD, present relationships of the attacked rates on export, import, and coastwise traffic, carloads, from or to points in Louisiana west of the Mississippi river, Arkansas, Texas, Oklahoma and Kansas south of the main line of the U. P., from Kansas City to the western boundary of the state, are unduly prejudicial to Galveston. This should be removed by establishing the same rates to or from New Orleans or Galveston, in instances where the differences in distance from and to the two ports are not greater than 100 miles and by establishing rates to or from Galveston differentials under New Orleans in instances where the differences in distance in favor of Galveston are greater than 100 miles. Galveston Commercial Asso. v. G. H. & S. A. Ry., 100 I. C. C. 110.

(g) Complainant attacked combination rates charged on 8 cars of barrel material shipped during February and January, 1920 from Lake Village, West Memphis, Helena and McGehee, Ark., and Pascola, Mo., to Key West, Fla., for export as unreasonable and unduly prejudicial. Shipments moved via Memphis,

Tenn. Applicable rates being those to Jacksonville plus a rate of 19c beyond. Except from Helena the rates to Jacksonville were arrived at under the so-called combination rule, based upon a rate of 26c from Memphis to Jacksonville. To Key West for export, a rate of 27c was in effect from certain points of origin in Alabama, Georgia and Tennessee, the nearest point to Key West being Brunswick, Ga., 613 miles, and the farthest distant point Nashville, Tenn., 1,165 miles, and rates were also in effect of 24.5c from Columbus, Ga., and Pelika, Ala., 797 and 838 miles, respectively, and 30.5c from Knoxville, Tenn., 1,050 miles. On Feb. 29, 1920 an export rate of 27c was established from Memphis. The earnings under the rates applicable to complainants shipments can not be said to have been excessive. The fact that relatively lower export rates to Key West were in effect from certain origins in the Southeast when the shipments moved and from Memphis thereafter and prior thereto, does not warrant a finding of unreasonableness. HELD, rates attacked not unreasonable, complaint dismissed. Bolz Co-operage Corp. v. Director General, 100 I. C. C. 251.

(h) In 80 I. C. C. 323 the Commission found rates on cotton, carloads, for export, from Groups E and D points in Oklahoma, Arkansas and Louisiana to Seattle and Tacoma, Wash., between June 25, 1918 and June 11, 1919 as unreasonable. The record embraced rates that included cost of compression in route and also rates that did not include such expense. When shipping under the latter rates, the cost of compression was borne by the shipper as a separate item. The findings, through an oversight, were confined to the rates in which the carriers assumed the cost of compression. HELD, rates attacked unreasonable to extent they exceeded $1.15 from Group E and $1.25 from Group D, reparation awarded. Anderson Clayton & Co. v. Director General, 101 I. C. C. 25.

(i) Complainant attacked combination rate on one car of wheat shipped Oct. 6, 1920 from Nebraska City, Neb., to Kansas City, Mo., reconsigned to New Orleans, La., for export, as unjust, unreasonable, inapplicable and in violation of the fourth section. Shipment, moved over Burlington to Kansas City and M. P., beyond. Applicable rate was 45.5c, composed of 11.5c to Nemaha City, Neb., and 34c beyond. At that time defendants maintained a joint commodity rate of 36.5c from Elberon and Dunbar, Neb., stations beyond Nebraska City and also from Minersville Neb., 6 miles south, to the same destination over the route of movement. On Nov. 10, 1920 rates were increased from these points. Complainant has failed to show that it was damaged by reason of the fact that a lower rate was in effect from more distant points. HELD, applicable rate not unreasonable, complaint dismissed. Moore Lawless Grain Co. v. C. B. & Q. R. R., 101 I. C. C. 52.

(j) Complainant attacked commodity rate charged on 73 cars of box shooks from Chattanooga, Tenn., to Laredo, Tex., for export as unreasonable. Shipments made between April 9 and Sept. 26, 1921 and applicable rate of 68.5c charged, distance moved 1,192 miles. Contemporaneous lumber rate was 59c. A check of the tariffs shows that in most instances where there is an actual lumber movement, box shooks either take the lumber rates or rates under that basis. Box shooks should be accorded rates no higher than the lumber rates. HELD, rate attacked unreasonable to extent it exceeded 59c, reparation awarded. Chattanooga Mfg. Co. v. A. G. S. Ry., 101 I. C. C. 66.

(k) In applying increases under Increased Rates, 1920, 58 I. C. C. 220, to rates on cotton from points in Texas and Oklahoma to Galveston, for export, carriers applied such increases to through shipside rates, which include charges for wharfage as separately published by Galveston Wharf Co. HELD: No increase having been authorized in the wharfage charge under decision cited, charges assessed were improper and unreasonable to extent they exceeded those based on rates reflecting proper increase without inclusion of wharfage charges. Reparation awarded. Houston Cotton Exchange v. A. & S. Ry. Co., 92 I. C. C. 363.

(l) There is nothing inherent in export traffic which entitles it, as such, to take rates lower than domestic traffic. The converse is likewise true. Riverside Portland Cement Co. v. Director General, 92 I. C. C. 667, 670.

(m) Domestic rate assessed on cement from Crestmore, Calif., to San Pedro, Calif., for export, found unreas-

onable and unjustly discriminatory to extent it exceeded lower rate applicable on domestic traffic from and to same points, destined for beyond to points in United States and Alaska, which lower rate was subsequently made applicable on export traffic. Interior movement in each case is over same rails, involves identical train switching, and handling services, and no persuasive reason appears for differentiating between these identical transportation movements of the same commodity. Reparation awarded. Riverside Portland Cement Co. v. Director General, 92 I. C. C. 667.

(n) Export shipments moved during Federal control under permits and on domestic bills of lading to San Francisco. On account of congestion, tariff publishing export rates provided for their application only on freight for which through export bills of lading were issued prior to arrival at port of exit. Complainant was unable to procure export bills at point of origin because defendant's offices had been closed without notice as to means by which, and places where, they could be procured. HELD, nonobservance of export tariff provision imposed no additional burden upon director general in handling traffic here involved; nor did this traffic contribute to congestion, which it was the purpose of the rule to relieve. Following Anderson & Co., 61 I. C. C. 64, domestic rates assessed found unreasonable to extent they exceeded lower export rates. Reparation awarded. Liggett & Myers Tobacco Co. v. Director General, 93 I. C. C. 61.

(o) Export shipments originally moved on domestic bills of lading, sailing date and space on steamer having been previously reserved. Domestic bills were exchanged for export bills, the latter bearing notation "order notify" consignees at foreign ports. Due to refusal of shipments by vessel on which space reserved they were stored and subsequently exported on other vessels. HELD, following U. S. Steel Products Co., 88 I. C. C. 57, demurrage and storage charges assessed, but not paid, found illegal. Applicable tariff provided in such cases for the giving of advance notice to notify party at port of exit that carrier is ready to make delivery, but there were no parties at the port to be notified and no demurrage or storage could therefore accrue. American Steel Export Co. v. Director General, 93 I. C. C. 235.

(p) Upon reconsideration, former report, 88 I. C. C. 152, wherein it was found that rates on self-propelling freight vehicles from Wichita Falls and Oklahoma City to Galveston and New Orleans, for export, were not unreasonable, but that they were unduly prejudicial in favor of shippers at Chicago and St. Louis, affirmed. Wichita Motors Co. v. A. & V., 93 I. C. C. 635.

(q) Domestic rate assessed on cypress shingles from Garden City and Patterson, La., to Eagle Pass, Tex., destined "for export to Mexico" found inapplicable in that carriers concurrently maintained a lower export rate on lumber and forest products. Item carrying lower rate provided that rates shown would apply on "Lumber and articles shown in Item No. 1 or reissues" and cypress shingles are shown in both. Irrespective of intentions of framers, tariffs will be construed according to their language, and if it was carrier's intention to limit export rates so as to exclude cypress shingles it should have done so in clear and unequivocal language. Moreover, any ambiguity or uncertainty in a tariff will be resolved against its makers. If shipments moved to Mexican points not accepted by the tariff, they were overcharged, and prompt refund should be made. Louisiana Red Cypress Co. v. M. L. & T. R. R. & S. S. Co., 95 I. C. C. 159.

(r) Rate on wood box material from Crystal Springs, Miss., to Key West, Fla., for export, found not unreasonable but unduly prejudicial to extent it exceeded the rate contemporaneously applicable from Memphis, New Orleans, Vicksburg and Natchez, competing manufacturing points. Jackson Traffic Bureau v. A. & V., 95 I. C. C. 251.

(s) Rates assessed on wheat moving from points in Oklahoma to Wichita, there stored in transit and later shipped to Galveston, for export, found not unreasonable as compared with rates from and to same points with privilege of storage in transit at Kansas City, or with rates from Kansas points to Galveston with privilege of storage in transit at Wichita. Shipments here involved moved via a circuitous route involving an out-of-line haul to and from transit point. Rates assessed, however, found illegal, the applicable rates being combinations based on Cherryvale, Kans. Adjustment of charges directed. Craig Grain Co. v. G., H. & S. A., 95 I. C. C. 464.

(t) Rate on steel plates from Gary, Ind., to Tulsa, Okla., there fabricated into knocked-down steel tanks and reshipped

to New Orleans for export, found not unreasonable because the Tulsa-New Orleans factor exceeded lower rate subsequently established and contemporaneously in effect from Aurora, Mo., Independence and Iola, Kans., and Okmulgee, Okla., competing fabricating points. Maloney Tank Mfg. Co. v. C. & E. I., 95 I. C. C. 671.

(u) Relationship between rates on wheat and on flour from certain points in Oklahoma to Galveston, Tex., New Orleans, La., and other Gulf ports, for export, found not unduly prejudicial or unjustly discriminatory as compared with relationship of rates on same commodities for export from other points in Oklahoma and other States. A commercial practice over which defendants have no control is source of the alleged advantage to competitors. Defendants, however, concede that the adjustment is exceptional, is different from that in contiguous territory, in which competitors are located, and apparently results in disadvantage to complainant, therefore, they should endeavor to so adjust the rates in issue as to bring them more into harmony with the general adjustment maintained on similar traffic. Oklahoma Millers' Asso. v. A. & V., 96 I. C. C. 195.

(v) Maintenance of higher rates on export wheat than on export flour from certain points in Oklahoma to Gulf ports found not unjustly discriminatory or unduly prejudicial. Complainant failed to show similarity of transportation conditions as between export flour and export wheat which would sustain its contention that its competitors in foreign countries are unduly preferred. Oklahoma Millers' Asso. v. A. & V., 96 I. C. C. 195, 197, 198.

(w) Following 78 I. C. C. 539, aggregate of line-haul rates and switching charges at Galveston, Tex., on export grain, in carloads, from central and western States found unreasonable to the extent they exceeded the respective line-haul rates exclusive of such switching charges. Reparation awarded. Jockusch v. G., C. & S. F. Ry. Co., 96 I. C. C. 500.

(x) Proposed cancellation of commodity rates on wet phosphate rock, from interior Florida points to Jacksonville, Fla., for export or to be dried and reshipped by rail or water, necessitating the movement of such traffic to the port of Fernandina, Fla., and the disruption of the business of the drying terminals at Jacksonville, found not justified. Neither is this action justified by contention that continuance of such rates is not warranted by volume of movement. Wet Phosphate Rock to Jacksonville, 96 I. C. C. 711.

(y) Objection of complainant to defendant's future to bear the cost of compression of cotton reaching Savannah, Ga., uncompressed and thence exported is without merit. See 32 I. C. C. 146. Savannah Traffic Bureau v. A. & R. R. R. Co., 96 I. C. C. 749, 757.

(z) Export rates on lumber from points on International-Great Northern to Orange, Tex., found unreasonable to extent they exceed rates from and to same points contemporaneously applicable to the movement of domestic lumber. Reasonable rates prescribed for future. Orange Chamber of Commerce v. A. & W. Ry. Co., 98 I. C. C. 101.

(aa) Rates on shipments of cottonseed and related vegetable oils, cakes, meals, foots, sediments, and inedible tallow, c. l., from Oklahoma, Arkansas, western Louisiana, and Texas, and from Loving, N. Mex., to Gulf ports, Houston and Galveston to New Orleans, inclusive, for export, found unreasonable and reasonable maximum rates and minimum weights prescribed, without prejudice to the continuance of the present equalization of rates on these commodities in revised rates pending such conclusions as may be reached in Galveston Commercial Asso. v. G., C. & S. F. Ry. Co., and Same v. A. & S. Ry. Co., now pending. Oklahoma Corp. Commission v. A. & S. Ry. Co., 98 I. C. C. 183, 247, 248.

(bb) Shipments of compressed cotton from Brownsville, Tenn., to Seattle and Tacoma, Wash., for export, found to have been overcharged to extent that rate charged exceeded that constructed on combination basis in effect on June 24, 1918, plus the authorized increase on this commodity. Tariff naming the combination from Humboldt, Tenn., via which shipments moved, carried the rule providing for application of but a single increase to through rates made on combination, while tariff naming the factor from Brownsville to Humboldt contained no similar rule nor reference to a tariff which did. See 73 I. C. C. 551. Reparation awarded. Southern Products Co. v. Director General 98 I. C. C. 462.

(bba) Upon further consideration, original report, 96 I. C. C. 195, wherein

relationship between rates on wheat and flour from certain points in Oklahoma to Galveston, New Orleans, and other Gulf ports, for export, was found not unduly prejudicial or discriminatory as compared with relationship of rates on same commodities for export from other points in Oklahoma and other States, affirmed and complaint dismissed. No reason is seen why relationship between rates on wheat and flour for export should be different from that prescribed in respect of domestic traffic, and if carriers should fail to so realign their export rates on these commodities from affected territory complainant may bring that situation to commission's attention. Oklahoma Millers' Asso. v. A. & V., 102 I. C. C. 1.

(cc) Respondents proposed an increase of 5c per 100 pounds in the rates from Georgia, Alabama, Tennessee, the Carolinas, and Virginia to Newport News and Morrison, Va., on export and coastwise tobacco received for storage or warehousing at Newport News and Morrison. As a result of the advantages of storing unmanufactured tobacco near the water front, the warehousing of this commodity at Norfolk and Newport News has developed into a large industry and there is keen competition between the warehouses located in the two cities. Newport News is served by one railroad, the C. & O. Norfolk is served by the A. C. L., S. A. L., Southern, N. & W., Norfolk Southern, Pennsylvania, Virginia. The A. C. L., Norfolk Southern, Southern and S. A. L., serve practically all of the territory from which it is proposed to increase the rates to Newport News. Branch lines of the N. & W., also serve part of the origin territory. The C. & O., does not reach Carolina territory with its own rails but participates with the lines serving Norfolk in joint rates to Newport News on tobacco. In 23 I. C. C. 345 the Commission found that Newport News was entitled to the same rates as Norfolk to and from points in Carolina territory, more than 150 miles distant from Norfolk. Since that case was decided, the rates on unmanufactured tobacco from the origin territory have been the same to Norfolk and Newport News and the proposed increase of 5c in the rate is the first attempt to change this relationship. Respondents justification of the proposed increase is based on the contention that it is necessary in order to place Norfolk on the same basis as Newport News. The conditions existing at Newport News, the granting of storage in transit, the allowance of the 25c handling charge to warehousemen, and free lighterage from Newport News to shipside at Norfolk, of tobacco in any quantity, induced respondents to proposed the suspended rate. There is no storage in transit arrangement at Norfolk and all of the handling charges assessed by the Norfolk carriers are collected and retained by them, except those applicable at the municipally owned terminals, which are paid by the Norfolk-Portsmouth Belt Line to the city of Norfolk for the service of handling from storage to piers performed by employes of the city. As the C. & O., does not participate in joint rates on tobacco from the origin territory to Norfolk that company cannot be held to discriminate against the warehousemen at Norfolk in favor of the warehousemen at Newport News. At Newport News, the shipper does not pay any charge for loading from storage to cars, but he does pay for the unloading from cars to piers, and the C. & O., elects to pay the charge so collected to the warehousemen for handling from storage to cars. That is not an unlawful practice. While it may be true that a considerable portion of the tobacco traffic has been diverted frrom Norfolk to Newport News since the establishment of transit and the allowance of the 25c handling charge by the C. & O., the evidence as a whole shows that the location of the warehousemen at Newport News away from the water front, the ability to concentrate the tobacco in one general location at Newport News and the excellent service given by the warehousemen at that point, have all been contributing causes to the diversion of part of the tobacco traffic from Norfolk to Newport News. It was generally admitted that the proposed increases to Newport News were not made because the line haul rates from the origin territory are too low, but for the purpose of attempting to equalize the warehousemen at Norfolk with the warehousemen at Newport News. Respondents proposal to increase the rates to Newport News appears to be inspired by their desire to obtain a larger share of the tobacco traffic than they now receive and by pressure of owners of interior warehouses at Norfolk, who have lost to the warehousemen at Newport News a considerable amount of the business they formerly enjoyed. The car-

riers could have met the competition of the C. & O., at Newport News by the publication of a storage in transit arrangement at Norfolk, and could, if they desired to go further, have made the same allowances to the warehousemen at Norfolk as the C. & O., makes at Newport News. HELD, proposed schedules not justified. Increased rates on tobacco 102 I. C. C. 665.

(cca) While shippers are entitled to properly adjusted rates on clean rice to New Orleans for export, such adjustment need not be based primarily on the domestic rates on rough rice with which clean rice is not in competition. New Orleans Joint Traffic Bureau v. B., S. L. & W., 102 I. C. C. 686, 691.

(dd) Complainant attacked combination rate of 48c charged on eight cars of petroleum lubricating oil, in barrels, shipped in March and April, 1921 from Coroapolis, Pa., to New York, for export as unjust and unreasonable to extent it exceeded 34.5c. Coroapolis is a local station on the P. & L. E., 11 miles west of Pittsburgh, shipments moving as routed by complainant, Pennsylvania delivery at Manhattan Piers, N. J., for export, 465 miles, the shortest route. Charged fifth class 13.5c to Homestead Transfer, Pa., commodity rate of 34.5c beyond. There was contemporaneously in effect over the route of movement a combination rate of 46.5c made up of 12c to McKees Rock, Pa., and 34.5c beyond. Overcharges exist. On Jan. 1, 1922 the through rate was reduced to 39.5c and on April 10, 1923 a joint through rate of 31c was established, this latter rate being equivalent to the 34.5c less a 20% reduction. At the time of movement the 34.5c rate was in effect over the route of movement from Coroapolis to Trenton, New Brunswick, and Rahway, N. J., points 407, 433 and 444 miles distant. The defendants made no attempt to justify the applicable rate. HELD, rate attacked inapplicable and unreasonable to extent it exceeded 34.5c, reparation awarded. Transcontinental Oil Co. v. P. R. R. Co. 104 I. C. C. 259.

(ee) Complainant attacked export commodity rate charged on gasoline and kerosene, carloads, from Gates, Tex., to Port Arthur, Tex., for export between July 17 and October 26, 1923 as unreasonable and unduly prejudicial. Gates is on the T. & P., 4.7 miles west of Dallas, Tex. Shipments moved, as routed over T. & P., to Shreveport, La., and K. C. S., beyond, charged 24.5c rate claimed 20.5c. The 24.5c rate was established on Jan. 5, 1922 over one or more routes to all the Gulf ports from all points in a large blanket extending from St. Louis, Mo., on the north, to Somerset, Tex., on the south, and embracing the oilfields of central Missouri, southeastern Kansas, Oklahoma and Texas common point territory. On Oct. 27, 1923 the rate over one or more routes from Texas points to Port Arthur, including Gates, was reduced to 20.5c. HELD, rate attacked not unreasonable, complaint dismissed. Texas Co. v. T. & P. Ry. 107 I. C. C. 147.

(ff) Respondents proposed to cancel export rates on grain and grain products, carloads, from points in western Montana to Seattle and Tacoma, Wash., and Portland and Astoria, Ore., leaving higher domestic rates to apply. Complainant sought to have reduced the domestic rates on grain from Montana to California, Oregon, Washington, Nebraska, Missouri, Iowa, Minnesota, Wisconsin and Illinois as unreasonable and discriminatory to extent they exceeded, for equal distances, westbound export rates from Montana to Pacific north coast ports. The export rates now apply from Havre, Mont., and west on the G. N., from Billings, Mont., and west on the N. P., and from Burgoyne, Mont., and west on the Milwaukee. DOMESTIC RATES. Montana wheat originates largely on the Milwaukee, N. P., and G. N., which traverse Montana in their respective routes between Minneapolis, St. Paul and Duluth on the east and Seattle and other north Pacific coast terminals on the west. The rates to Minneapolis from Main line stations grade upward from eastern to western Montana from 31.5c at Ismay to 58.5c at Bryson on the Milwaukee; from 31c at Glendive to 53.5c at Thompson Falls on the N. P., and from 30c at Snowden to 56c at Yakt on the G. N. To Seattle they grade upward from western to eastern Montana from 34c at Bryson to 52c at Ismay, from 32c at Thompson Falls to 55c at Glendive, and from 35c at Yakt to 48.5c at Snowden. This record reveals no persuasive reason for maintaining generally a different level of domestic rates, distance considered, in one direction than in the other, or for maintaining a different relationship, distance considered, in one

direction than in another. HELD, attacked domestic rates as a whole are not unreasonable or otherwise unlawful. EXPORT RATES. Respondents generally submitted little evidence in support of the cancellation of these rates. The western millers, no less than millers in other sections of the country where export rates are maintained, are required to conform to the inhibitions of the law against obtaining or attempting to obtain transportation of property at less than the regularly established rates, and upon proof are subject to prosecution for infringements of the act in that respect. From the record it is clear that the maintenance of export rates has been of great benefit to the Montana producer and that it has supplied him with an additional market and competition for his grain which has enabled him to secure a higher price for his grain. The export basis is open to the miller in western Montana as well as to the miller on the Pacific coast, so that if the transit provisions of the tariff are properly applied there can be no undue prejudice as between them. The conditions affecting the eastern miller are not similar, and the commercial and transportation reasons which actuated respondents in establishing the export rates originally have no application to a movement eastbound. They apply only from the western part of Montana which is naturally tributary to the Pacific coast, leaving to the eastern millers the remainder of the state as well as the large grain producing areas to the east thereof. HELD, proposed schedules not justified. Export rates on wheat and its products. 107 I. C. C. 276.

(gg) Equalization of wheat and flour prices in foreign markets can not be accepted as a guide for determining a proper rate adjustment for rail movements in this county, or whether the Pacific coast interests are given an unfair advantage by the maintenance of the export rates. Export rates on wheat and its products 107 I. C. C. 276, 285.

(hh) Reasonable domestic rates do not necessarily afford the exact measure for reasonable maximum export rates. Export rates on wheat and its products 107 I. C. C. 276, 289.

(ii) In 88 I. C. C. 152 the Commission found that the rates on self propelling vehicles carloads from Wichita Falls, Tex., and Oklahoma City, Okla., to Galveston, Tex., and New Orleans, La., for export, as not unreasonable but unduly prejudicial to extent they exceeded rates maintained from Chicago and St. Louis to Galveston and New Orleans for export, in so far as these defendants participate in the latter rates. Finding affirmed 93 I. C. C. 635. The order was complied with by defendants reducing the rates from Wichita Falls and Oklahoma City. Petitioners request that the order be modified so as to eliminate the requirement for maintenance of rates from Oklahoma City, as complainant has dismantled his plant at that point. HELD, orders herein modified to eliminate the requirement for maintenance of rates from Oklahoma City. Wichita Motors Co. v. A. & V. Ry. 107 I. C. C. 585.

(jj) Relationship of rates on certain commodities for export, import, or coast-wise movement via Galveston, Tex., from or to points in Texas, Oklahoma; western Louisiana, Arkansas, and Kansas found unduly prejudicial to Galveston and unduly preferential of New Orleans, La. Such undue prejudice should be removed by establishing the same rate to or from New Orleans or Galveston, as the case may be, in instances where the differences in distance from and to the two ports are not greater than 100 miles, and by establishing rates to or from Galveston, as the case may be, certain prescribed differentials, under New Orleans in intances where the differences in distance in favor of Galveston are greater than 100 miles. The record is not sufficiently complete to warrant the commission in prescribing relatonships between the rates to or from Galveston and New Orleans on other commodities or from or to points other than those embraced in the foregoing findings. Relationships herein prescribed will serve as a guide to defendants in readjusting the rate on other export, import, and coastwise traffic. Galveston Commercial Asso. v. G., H. & S. A. Ry. Co. 100 I. C. C. 110.

(kk) General investigation concerning the lawfulness and propriety of the practices of carriers of applying interstate domestic rates and export rates on cotton from Oklahoma, Arkansas, Texas, and Louisiana, to Gulf ports did not cover the reasonableness of the rates and the findings herein are not to be construed as authorizing the carriers to increase their present revenues; rather, the rates should be so readjusted as to

preserve existing revenues. Application of Rates on Cotton to Gulf Ports, 100 I. C. C. 159.

(ll) Present adjustment of rates on cotton from Oklahoma, Arkansas, Texas, and Louisiana to Texas Gulf ports found unduly prejudicial to the uptown and interior warehouses and compresses and unduly preferential of the water-front warehouses and compresses; that rates should be so adjusted that one rate will apply for all deliveries within the usual switching limits of the ports, except that the export rates should be made higher than the domestic rates by amount equal to the wharfage charge. This finding is not to be construed as condemning the practice of the carriers of absorbing drayage charges in lieu of switching. Reasonableness of the rates was not in issue and the findings herein are not to be construed as authorizing the carriers to increase their present revenues, rather, the rates should be so readjusted as to preserve existing revenues. Application of Rates on Cotton to Gulf Ports, 100 I. C. C. 159.

(mm) Although a rate published as applicable to export shipments should be applied to such shipments in preference to an interstate domestic rate if the service which the carrier holds itself out to perform under the export rate is actually rendered, where, as here, that completed service is not rendered, but rather a delivery of the character which would be effected on a domestic shipment is made, the commission holds that it is not illegal to apply the interstate domestic rate even though the shipment at some time subsequent to delivery may be exported. Therefore, except where shippers avail themselves of transit provisions at the ports, under which the carriers are obligated to place the cotton at ship side, the collection of the interstate domestic rates on cotton delivered to the water-front warehouses or compresses at Houston and Galveston, Tex., is not illegal. Application of Rates on Cotton to Gulf Ports, 100 I. C. C. 159, 163.

(nn) Rates on barrel material from Lake Village, West Memphis, Helena, and McGehee, Ark., and Pascola, Mo., to Key West, Fla., for export, found not to have been unreasonable. Earnings under applicable rates can not be said to have been excessive, and fact that relatively lower export rates to Key West were in effect from certain origins in Southeast when shipments moved and from Memphis, Tenn., thereafter and prior thereto, does not warrant a finding of unreasonableness. Prompt settlement of undercharges directed. Bolz Cooperage Corp. v. Director General, 100 I. C. C. 251.

(oo) Rates assessed on one carload of wheat from Nebraska City, Nebr., to Kansas City, Mo., reconsigned to New Orleans, La., for export, and delivered to Westwego, a New Orleans rate point, found inapplicable. Governing tariff provided for applicaton of rates from original point of shipment to final destination. No joint rates were in effect over route of movement and combination rates basing on Nemaha City, Nebr., found applicable. Moore-Lawless Grain Co. v. C., B. & Q., 101 I. C. C. 52.

(pp) Rate on box shooks from Chattanooga, Tenn., to Laredo, Tex., for export, found unreasonable to extent it exceeded contemporaneously applicable rate on lumber from and to same points. Reasonable rate prescribed for future and reparation awarded. Chattanooga Mfg. Co. v. A. G. S. R. R. 101 I. C. C. 66.

(qq) Rate applicable on wheat shipped from Minneapolis, Minn., to Kansas City, Mo., thence to Galveston, Tex., for export, found unreasonable to extent it exceeded lower proportional rate contemporaneously in effect over routes other than route of movement. Waiver of undercharges authorized. Fuller Grain Co. v. B., S. L. & W. Ry., 101 I. C. C. 82.

(rr) Domestic rates assessed on shipments of fresh frozen meat from Ogden, Utah, to New York, Brooklyn, and Boston, a majority of which were for export, found unreasonable to extent they exceeded lower contemporaneous export rate from and to same points. Reparation awarded. Ogden Packing & Provision Co. v. A., T. & S. F., 101 I. C. C. 236.

(ss) Complainant attacked commodity rates on cottonseed and vegetable cake and meal, carloads. from Texas to Galveston for export as unreasonable, unduly prejudicial and unduly preferential of Houston, Tex., and other Gulf ports, for the reason that to the extent that the rates to Galveston were from 0.5 to 3.5c higher than the

rates to Houston. All of the railroads which serve Galveston also serve Houston, but everal of those serving Houston do not reach Galveston. At the time of the hearing Houston paid the full distance scale on all shipments to that port, Galveston paid the full distance scale except in those instances, about 13 in number, where strict application of the scale would have amounted to more than 3.5c over Houston, and Port Arthur paid the full rates under the scale up to 200 miles from Galveston, beyond which it was equalized with Galveston. There is no longer any zone of equalization to Galveston and Houston. The provision which limited to 3.5c the spread of Galveston over Houston was canceled on Sept. 15, 1925. The provision equalizing Port Arthur with Galveston has been continued in effect. It is but natural that increase in the volume of exports through Houston should be accompanied and reflected to some extent by decrease in the volume which would otherwise be exported through Galveston and other ports. The Commission has not been referred to any section of the act which makes it a part of its duty to put a stop, by a leveling of the freight rates to such increases in business as they occur. HELD, rates attacked not unduly prejudicial, complaint dismissed. Galveston Commercial Asso. v. A. & S. Ry. 109 I. C. C. 114.

ALL OTHER CITATIONS

Ingram Day Lumber Co. v G. & S. I. R. R. Co., 85 I. C. C. 373; Grain from Oklahoma, 85 I. C. C. 602; Wichita Motors Co. v. A. & V. Ry. Co., 88 I. C. C. 152; Lincoln Oil Refining Co. v. C. C. C. & St. L. Ry. Co., 88 I. C. C. 269; American Maize-Products Co. v. Director General, as Agent, 88 I. C. C. 354; Gillican-Chipley Co. v. Director General, as Agent, 88 I. C. C. 441.

VI. STORAGE, DEMURRAGE, AND SPECIAL CHARGES.

§7. In General.

See Demurrage; Facilities and Privileges §10 (b) (o), §18 (p); Special Rates and Services; Storage.

(a) Complainant attacked demurrage and storage charge of $3 per car per day on 11 cars of iron and steel articles shipped from Alabama City, Ala., Lebanon, Pa., and Warren, O., to Java on through export bills of lading and held in storage at San Francisco, Calif., between Feb. 1 and July 20, 1918, as inapplicable and unreasonable. The initial bills of lading consigned the shipments to order of complaint at San Francisco with complainant or its agent at San Francisco as the notify party, and designated the shipments for export, steamer Arakan. Space for these shipments had been reserved on that steamer, which was scheduled to sail on Feb. 20. Within the tariff period these bills of lading were exchanged for trans-Pacific export bills of lading with consignment to Java. Six cars arrived at San Francisco during the latter half of February, two on March 7, two on March 8 and one on March 25. The Arakon began loading on March 5 and finished on March 15. It refused to accept these and other shipments for Java. On March 18 the Government commandeered the vessel and unloaded and stored the cargo on Mission Rock in San Francisco Harbor. Complainants shipments were not included in this cargo and were held by the rail carriers. Complainant endeavored to obtain space on other vessels and in the latter part of July the shipments were taken by the Rembrandt and Bingtang. There were no parties to be notified at the port. No demurrage or storage therefor could accrue. HELD, demurrage and storage charges inapplicable. American Steel Export Co. v. Director General, 93 I. C. C. 235.

(b) Rule governing free time for unloading freight consigned locally to Mobile, Ala., for transshipment by vessels for coastwise movement found unreasonable in that it allows less free time than that allowed on similar freight for transshipment in export movement. Rule subsequently amended to allow same free time on shipments destined for coastwise as for export movement. Both export and coastwise shipments must be placed at dock in advance of arrival of steamers and therefore, both need more free time for unloading than is allowed ordinary domestic shipments Page & Jones v. S. Ry. Co., 91 I. C. C. 684.

(c) Complainant attacked charges of 6.5c per 100 pounds plus $6.50 per car exacted from Sept. 15, 1920 to Sept. 12, 1922 of lard, carloads from Jersey City, N. J., to ship side at points within the

free lighterage limits of New York harbor, for export, which had been shipped into Jersey City by complainant over defendants lines from points of origin west of Buffalo and Black Rock, N. Y., in tank cars, and unloaded at complainants plant at Jersey City, and put into barrels, tierces, and other containers, as in violation of section 6. Defendant now has in force rates and transit arrangements that are satisfactory to complainant. Complainant does not question the reasonableness of the rate charged on the outbound movement from its plant when applied to local shipments, but insists that as applied to through shipments handled in transit, same is unreasonable. The inbound and outbound movements to and from the transit point here involved must be regarded as separate shipments to which the separately established rates are applicable except to extent that there is explicit tariff provisions which connects the inbound with the outbound movement and establishes the fiction of a continuous through movement. HELD, charges exacted from Sept. 15, 1920 to Sept. 12, 1922 on lard, carloads, from complainants plant at Jersey City to ship side at points within the free lighterage limits of New York harbor for export that was the same identical lard that moved into said plant over defendants rails from points west of Buffalo or Black Rock were illegal to extent they exceeded 3c per 100 pounds for the weights of the barrels or drums in which the lard was transported on shipments that moved prior to July 27, 1921 and to extent they exceeded 4c per 100 pounds for weights of barrels and drums subsequently. HELD, further charges exacted on lard, not the same identical lard, not illegal prior to Oct. 5, 1921 but illegal to extent they exceeded 2.5c on net weight of outbound material plus 5c for weight of barrels and drums, reparation awarded. Armour & Co. v. D. L. & W. R. R., 101 I. C. C. 337.

(ca) Shipments intended for export, but vessel in which space was reserved canceled its sailing. Diversion requested could not be effected on cars which had passed point of interception, whereupon diversion order was canceled and request made that car be allowed to proceed to destination as originally billed. Rediversion resulted and charges were collected based on combination of locals. Upon contention that charges should have been assessed on basis of lower export rate. FOUND, governing tariff permitted no diversion under export rate and only one diversion under domestic rate. The combination rate was, therefore, the only rate available. Moreover, there was no showing that diversion rules were unreasonable, or that they were not applied according to their terms. United Commercial Co. v. S. P. Co., 93 I. C. C. 417.

(cb) Proposed change in rule defining service of handling at south Atlantic and certain Gulf ports, found justified. No increases or decreases will result from the proposed new section which does not change substance of the existing rule but merely clarifies its application in so far as handling between ship side and box cars is concerned, and also makes clear that no charge will be assessed in connection with shipments transferred by ship's tackle to or from open-top cars standing on marginal tracks at ship side. Handling Charges on Cement, Fertilizer and Salt, 93 I. C. C. 640, 645.

(d) Charges for handling export cottonseed cake over docks at New Orleans, La., found applicable under tariffs containing ship-side handling charge. Tariff item containing applicable storage charges assessed included cost of handling "incidental to storage," but handling performed found not "incidental to storage" and applicable charges for ship-sde handling found not unreasonable, having been approved in 61 I. C. C. 379. New Orleans Export Co. v. I. C. R. R. Co., 96 I. C. C. 509.

(e) Refusal of defendants to establish, at Cleveland, Ohio, refining-in-transit on lard found not to result in unreasonable or prejudicial rates on steam lard from western rendering points to Cleveland and on refined lard from Cleveland to the Atlantic seaboard for export. Fact that the aggregate of the inbound and outbound rates through Cleveland are higher than rates paid by competitors at Chicago does not establish that rates charged complainant are unreasonable, and neither does the fact that another form of transit on lard obtained at Cleveland indicate that it is unreasonable to decline to extend the transit to refining. Cleveland Provision Co. v. A., T. & S. F. Ry. Co., 98 I. C. C. 421

(f) Complainant attacked commodity rates charged on nine cars of steel tank materials shipped in April and May 1920 from South Chicago, Ill., Indiana Har-

bor, Ind., and Youngstown, O., to Galveston, Tex., for export to Mexico fabricated at Iola, Kas., as unreasonable and as compared with the rates from and to the same points on the same commodity fabricated at Kansas City, Mo., Omaha, Neb., Chicago, Ill., and St. Louis, Mo., unduly prejudicial. Iola is about 110 miles south of Kansas City on the Santa Fe to Galveston. Charged 48c from Indiana Harbor and South Chicago and 70c from Youngstown, plus a transit charge of 1.5c. When the shipments moved defendants maintained export rates to Galveston of 35c from Indiana Harbor and South Chicago and 38.5c from Youngstown on steel tank material, and on steel tanks, knocked down, with fabrication at Kansas City at additional charge of 1.5c. Effective June 12, 1920 the transit circular of the Santa Fe was amended to authorize fabrication at Iola at the same through export rates, plus a transit charge of 1.5c. Prior to these shipments complainant did not have any export business and, therefore, no reason existed for fabrication in transit at Iola under the export rates. HELD, applicable rates not unreasonable and damage as result of alleged undue prejudice not shown, complaint dismissed. United Iron Works v. Director General 104 I. C. C. 449.

(g) The present adjustment of rates from Oklahoma, Arkansas, Texas and Louisiana to the Texas Gulf ports is unduly prejudicial to the uptown and interior warehouses and compresses and unduly preferential of the water-front warehouses and compresses; the rates should be so adjusted that one rate will apply for all deliveries within the usual switching limits of the ports, except that the export rates should be made higher than the domestic rates by amount equal to the wharfage charge. This finding is not to be construed as condemning the practice of the carriers of absorbing drayage charges in lieu of switching. Application of Rates on Cotton to Gulf Ports 100 I. C. C. 159.

(h) Upon contention of the uptown warehouses and compresses at the ports that under any readjustment that is made in the domestic and export rates on cotton to the Gulf ports they should continue to receive a free second merchandising or compression in transit on cotton purchased by them which has already been concentrated at the through rate. FOUND: That such a request is not reasonable, for shipments stopped at other points for second merchandising or compressing must pay a transit charge and the commission sees no reason why an exception should be made in the case of the uptown warehouses or compresses at the ports. Cotton, passing through these uptown facilities is, however, entitled to one free transit privilege. Application of Rates on Cotton to Gulf Ports, 100 I. C. C. 159, 166.

(i) Rates on cotton, for export, from points in Oklahoma, Arkansas and Louisiana to Seattle and Tacoma, Wash., under which expense of compression was not absorbed by carriers, found unreasonable. Reparation awarded. Anderson Clayton & Co. v. Director General, 101 I. C. C. 25.

ALL OTHER CITATIONS

Mutual Products Trading Co. v. O. W. R. R. & N. Co., 85 I. C. C. 1; U. S. Steel Products Co. v. Director General, as Agent, 88 I. C. C. 57.

VII. PAYMENT OF CHARGES.

§8. In general.

(a) Where freight was prepaid as carrier's tariff required, on a shipment of coal consigned to a coal exchange for account of plaintiff shipper, with a view of reshipment for export, the carrier was bound to deliver the coal without further exaction, and the return of the freight to it by the transhipper was entirely voluntary and could not have been enforced. Pennsylvania R. Co. v. S. M. Hamilton Coal Co. (Md. 1923) 125 A. 405.

(b) Proposed waiver of out-of-line charges at Kansas City on grain and products from points in Kansas and Colorado through Kansas City for reshipment under domestic and export rates to interior destinations in Texas and Louisiana and to Texas Gulf ports for export, designed to meet carrier competition, and which will result in an excessive amount of extra transportation without additional charge, found not justified, even temporarily. Transit at Kansas City, 101 I. C. C. 696.

IX. LONG AND SHORT HAULS.

See Long and Short Hauls.

§10. In General.

(a) Complainant attacked combination rate charged of $1.64 on 23 cars of cotton shipped between Nov. 11, 1918

and Feb. 1, 1919 from Brownsville, Tenn., to Seattle and Tacoma, Wash., for export to Japan, as unjust and unreasonable in that it exceeded $1.35 applicable from Humboldt, Tenn., a more distant point over the route of movement. Brownsville is a local point on the L. & N., from Memphis to Louisville. It is intermediate between Humboldt and Memphis, about 59 miles northeast of Memphis and 25 miles southwest of Humboldt. Charged 39c to Memphis and $1.25 beyond. Tariffs named a combination on Humboldt of $1.61 subject to the combination rule. HELD, shipments overcharged to extent it exceeded $1.11c, reparation awarded. Southern Products Co. v. Director General, 98 I. C. C. 462.

(b) Complainant attacked commodity rates for export on lumber, carloads, since Mar. 1, 1920 from Lyman, Miss., to Gulfport, Miss., and to Mobile and New Orleans, as unreasonable and unduly prejudicial. In 85 I. C. C. 373 the Commission found the rates attacked not unreasonable or unduly prejudicial. After July 1, 1922 rate was 4.5c to Gulfport for export, and 10.5c to Mobile and New Orleans, reparation desired on 5c and 8.5c. Lyman is on the G. & S. I., 9 miles from Gulfport, 82 miles from Mobile and 76 miles to New Orleans. All of the yellow pine producing territory in Mississippi south of the A. & V., is generally accorded the same rate treatment by the carriers. No lumber mill in this blanket territory enjoys a lower ship side freight charge to any port than does Lyman on traffic to Gulfport. The blanket method of making rates on lumber has long been satisfactorily employed in this territory. Obviously some shippers will be farther from a given point than others in the same blanket, but the record shows that whereas Lyman is the nearest shipping point to Mobile and New Orleans it is among the farthest points to destinations in other directions. A blanket rate structure in existence since the inception of the saw mill industry in this territory should not be lightly set aside for a rate adjustment in which distance would be the sole factor determining the measure of the rates. Fourth Section Application. G. & S. I., sought authority to continue rates on lumber from stations on the G. & S. I., to Gulfport, Mobile and New Orleans without observing the long and short haul provisions of the act. The G. & S. I., has maintained rates from local stations on its lines on a basis higher than from junction points with other lines since the road began operations. Distances over the routes embracing the G. & S. I., range from the same distance as those over the direct lines to 279% thereof. HELD, rates attacked not unreasonable, fourth section relief granted to extent the long line is not more than 70% over the direct line provided that this shall not include intermediate local stations on the G. & S. I., from which the distance is not greater than that over the direct lines from the junction points, and not to exceed the lowest combination. Ingram Day Lumber Co. v. G. & S. I. R. R., 101 I. C. C. 287.

(c) Following Clay Grain Co., 78 I. C. C. 539, aggregate of line-haul rates and charges for switching from connections with road-haul carriers to export elevators at Galveston, on export grain from points in Missouri, Iowa, Minnesota, Nebraska, Kansas, Colorado, and Oklahoma found unreasonable to extent they exceeded such line-haul rates exclusive of switching charges. Reparation awarded. Armour Grain Co. v. A., T. & S. F., 93 I. C. C. 124.

(d) Aggregate of line-haul rates and trackage charge for use of tracks during period cars remain in hold yards awaiting delivery to elevators at Texas City, Tex., on export grain from points in Missouri, Iowa, Minnesota, Nebraska, Kansas, Colorado, and Oklahoma found unreasonable to extent they exceeded such line-haul rates exclusive of trackage charge. Reparation awarded. Armour Grain Co. v. A. T. & S. F., 93 I. C. C. 124.

EXPRESS COMPANIES

I. CONTROL AND REGULATION.
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II. FACILITIES.
- §1¾. In general.
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CROSS REFERENCES

See Class Rates §2 (6a).

I. CONTROL AND REGULATION.

See Control and Regulation.

§1. Jurisdiction of Commission.

See Interstate Commerce Commission I; Jurisdiction of Commission.

(a) American Railway Express Company held not a "carrier by railroad," within Interstate Commerce Act, § 15, par. 3, as amended by Transportation Act 1920, § 418 (Comp. St. Ann. Supp. 1923, § 8583), prohibiting Commission from requiring carrier by railroad to embrace in a route substantially less than entire length of railroad. United States v. American Ry. Express Co., 44 Sup. Ct. 560. Southeastern Express Co. v. Same, 44 Supp. Ct. 560. Southern Traffic League v. Same, 44 Sup. Ct. 560.

(b) In cases where rail carriers under provisions of their contracts with express companies have availed themselves of their exclusive right to handle milk or cream moving over their own lines, the commission can not require express company to establish rates for the future except by voluntary agreement with rail carriers, see Express Rates on Milk and Cream, 74 I. C. C. 427. However, this does not preclude shippers from obtaining similar service at reasonable rates direct from carriers on interline shipments or jointly from rail carriers and express companies where latter are not by contract precluded from participation in joint rates. Kirschbraun & Sons, Inc. v. G. N. Ry. Co., 100 I. C. C. 28, 39.

§1½. Courts and State Regulations.

See Courts; Interstate Commerce Commission §4; State Rates and Regulation.

(a) Laws Miss. 1920, c, 104, §21 (Hemingway's Code Supp. 1921, § 6512), imposing a privilege tax on express companies, dependent on the classification of railroads over which the express is moved, fixed by the Railroad Commission for purpose of levying privilege tax on railroads under section 45 of such chapter 104, HELD not violative of due process clause, because express companies were not accorded a hearing in the matter of the classification of the railroads, since the state could require the payment of the tax as a condition to the privilege of doing business within the state, and could fix its amount directly or by reference to a standard. Southeastern Express Co. v. Miller, State Revenue Agent 44 Sup. Ct. 421.

(b) Laws Miss. 1920, c. 104, §21 (Hemingway's Code Supp. 1921, § 6512), imposing a privilege tax on express companies, dependent on the classification of railroads over which the express is moved, fixed by the Railroad Commission for purpose of levying privilege tax on railroads under section 45 of said chapter 104, held not violative of the Constitution as to due process, because indefinite and uncertain, in view of state Supreme Court's construction of statute making its meaning certain and definite. Southeastern Express Co. v. Miller, State Revenue Agent 44 Sup. Ct. 421.

(c) Assessment of double amount of tax against express company, which failed to pay privilege tax before it commenced business May 1st, under Laws Miss. 1920, c. 104, §§ 21, 73 (Heminway's Code Supp. 1921, §§ 6512, 6630), imposing a privilege tax on express companies, though other companies previously in business were allowed 30 days after taxes accrued within which to pay them, HELD not violative of equal protection clause of Const. Amend. 14. Southeastern Express Co. v. Miller State Revenue Agent, 44 Sup. Ct. 421.

(d) Laws Miss. 1920, c. 104, §21 (Hemingway's Code Supp. 1921, § 6512), imposing a privilege tax on express companies, dependent on the classification of railroads over which the express is moved, fixed by the Railroad Commission for purpose of levying privilege tax on railroads under section 45, of such chapter 104, HELD not violative of equal protection clause, because railroads and not express companies are entitled to a hearing on the classification of the railroads. Southeastern Express Co. v. Miller, State Revenue Agent, 44 Sup. Ct. 421.

II. FACILITIES.

See Facilities and Privileges.

§1¾. In General.

(a) The value of through service to the shipper is the same whether such service is rendered entirely by one express company or jointly, viz., by an express company and a rail carrier or by two rail carriers, although the two classes of service are not strictly comparable from a transportation standpoint. Kirschbraun & Sons Inc. v. G. N. Ry. Co., 100 I. C. C. 28, 35.

§2. Delivery and Receipt.

See Transportation §5, §8.

(a) Express company is not liable for mistake of its agent in violating rules of Interstate Commerce Commission, regarding special instructions concerning delivery of shipments, where to so hold would nullify rules and regulations on file, for that would work discrimination among shippers. Wall v. American Ry. Express Co. (Mo., 1925) 272 S. W. 76.

ALL OTHER CITATIONS

Section 28 of Merchant Marine Act, 88 I. C. C. 671.

§2a. C. L. and L. C. L. Rates.

See Classification §5.

(a) Complainant attacked second class rates by express on oysters, clams and scallops, in carloads, from Virginia, Maryland, New Jersey, New York and Connecticut to Cincinnati, O., Louisville, Ky., Indianapolis, Ind., Chicago, Ill., St. Louis, Mo., Duluth, Minneapolis and St. Paul, Minn., Sioux City, Iowa, Omaha, Neb., Kansas City, Mo., and Denver, Colo., as unreasonable, unjustly discriminatory and unduly prejudicial and preferential of shippers in less carload lots. At the current express rate of $2.70 from Crisfield to Chicago on 1,330 gallons carload shippers bear charges of $324 and less carload shippers $432, a difference of $108, equivalent to 8c per gallon. Carload shipments are initially iced under the supervision of experienced

oyster shippers and the cars are sealed through to destination, except at times when reicing of shipments destined beyond Chicago becomes necessary. The less carload packages must be cared for in cars that may contain other perishable commodities, and opening of the cars enroute causes increased melting of the ice and possible temperature fluctuations. They may at times also lie over at transfer points or terminals and not be promptly iced when necessary. It is urged that lower rates on carload quantities reflecting the difference in cost of service to the carrier, would result in greater economy in distribution and reduced prices to consumers. Any quantity rates probably have boarded application to express traffic, essentially a parcel business, than to freight traffic, where the shipping unit to a very large extent is the car load. It does not appear that the public is now being inadequately served or that complainants are suffering unjust discrimination or undue prejudice. In terms of carloads, very few markets consume large quantities of oysters at prevailing price levels. HELD, rates attacked not unreasonable or otherwise unlawful, complaints dismissed. Booth Fisheries Co. v. American Ry. Express Co., 92 I. C. C. 653.

(b) The offering of a carload quantity entitles the shipper to a carload rating only in case that the public interest or other valid considerations do not require the contrary. Booth Fisheries Co. v. Amer. Ry. Express, 92 I. C. C. 653, 660.

§4. Export Service.

See Export Rates and Facilities.

(a) American Railway Express Company, respondent filed schedules proposing a charge for opening, recoopering and rewrapping packages for customs examination at the border points. On practically all express shipments imported from Canada respondent or its predecessors formerly acted as broker for the importer, the brokerage service including the clerical work incident to clearing the goods through the customs and the physical work of opening, recoopering, and rewrapping packages designated by the proper officials for inspection under the United States customs regulations. In recent years, in an increasing number of instances, other concerns or individuals have acted in this capacity. They are generally referred to as outside brokers. They have performed only the clerical work incident to clearing the shipments, leaving the physical work to be performed by respondent. The latter has accorded to outside brokers and their employees access to its premises and permission to do the work themselves, but the outside brokers have not chosen to take advantage thereof. Where goods are cleared at bonded or public warehouses at interior points the work of opening, recoopering, and rewrapping of packages for customs examination is performed by employees of the Bureau of Customs. The parties are agreed that it would not be advisable to have this work done by such employees on express shipments moving directly through the border ports of entry. Such an arrangement would not result in congestion because respondent has ample storage space at the border ports, but it would derive the importer of the desired expedited service in connection with this traffic, as the work would necessarily be subordinated to the primary function of the bureau, namely, to prevent and detect violations of the law and of the customs regulations. HELD, proposed schedules not justified but respondent may make a labor charge of 12c per shipment for physical work performed. Customs Examinations, 98 I. C. C. 284.

§4a. Import Service.

See Import Traffic.

(a) Proposed charge of 25 cents per shipment for opening, recoopering, and re-wrapping packages for customs examination at the order ports on import shipments by express from Canada to points in the United States found not justified. This charge would not apply on shipments where the American Express Co. acts as the broker and attends clearance details, nor on shipments of milk or cream. The suspended schedules ordered canceled without prejudice to the filing of new schedules which will provide that a charge of 12 cents per shipment be assessed on shipments when one or more packages are actually opened by order of the Customs and will not apply on any shipments where the American Express Co. or other concern or individual acts as broker for the importer and in that capacity attends to the physical work above described. Charge for Opening, Recoopering, and Rewrapping Packages for Customs Examination 98 I. C. C. 284.

§5. Free transportation.

See Crimes III; Free Transportation.

(a) Proposal to restrict free transportation of attendants with race horses moving by express to two attendants, and to require any in excess of that number to pay full passenger fares. found not justified. Service accorded race horse attendants is not comparable with that accorded passengers transported under published passenger fares, restrictions and duties require that such attendants remain continuously with the horses; resulting in rail carriers not being called upon to provide accommodations in their passenger coaches, and such attendants assume, by contract, all risks of accident or damage to themselves. Attendants with Race Horses, 89 I. C. C. 689.

(b) American Railway Express Company and Southeastern Express Company, respondents, proposed to restrict free transportation to two attendants in charge of race horses, carloads, moving by express. If the proposed schedules should become effective attendants in excess of that number would be required to pay full passenger fares. The number now allowed varies from two to six dependent upon the section of the country in which the movement occurs. While in transit the horses ordinarily receive no feed other than hay. Except as some shippers carry a water supply in barrels, water must be procured at stations during train stops. It is unnecessary here to set forth the special duties of the attendants and the difficulties of caring for such animals with an inadequate force of men. The testimony establishes that the presence of two men in each aisle of the car is necessary for the proper care of a carload of race horses in transit; that severe risks are entailed in shipping with a less number; and that ordinarily at least six attendants are sent with a carload, even in two attendant territory, where fares for attendants in excess of that number are paid. While the present rule provides for transportation of these attendants, and under specified conditions they are permitted to ride in a second class or smoking car of the train, the service clearly is not comparable with the service accorded passengers transported under the published passenger fares. Not only the restrictions of the rule but the duties of the attendants require that they remain continuously in the car with the horses. As a result, the rail carriers are not called upon to provide accommodations for such attendants in their passenger coaches. HELD, suspended schedules not justified. Attendants with race horses, 89 I. C. C. 689.

§7½. Free Collection and Delivery.

(a) The second-class express rates cover the ordinary express service, including pick-up and delivery. This terminal service is not included in either the baggage or commodity express rates. The commission assumes that the Illinois Central will not refuse to permit defendant to establish reasonable interline milk rates, at least until adequate baggage service at reasonable rates has been provided. Kentwood Ice Mfg. & Bottling Works v. Amer. Ry. Ex. Co. 101 I. C. C. 93, 98.

III. DISCRIMINATION.

See Discrimination.

§9. In General.

(a) Interstate express rates on ice-cream mix, sold and shipped under trade name of "Kim" from Kentwood, La., to points in Mississippi, Louisiana, Alabama, Tennessee, Florida, Georgia, and Texas with exception of points located on the Illinois Central Railroad, found unjustly discriminatory to extent they exceed contemporaneous rates maintained by defendant on condensed milk from and to same points. Nondiscriminatory rates prescribed for future. Kentwood Ice Mfg. & Bottling Works v. Amer. Ry. Ex. Co. 101 I. C. C. 93.

IV. RATES.

§10. Reasonableness in general.

See Any Quantity Rates I (y); Reasonableness of Rates.

(a) Complainant attacked class express rates charged on less carloads of wooden automobile bows, unfinished between May and September 1923 from Lancaster, Pa., and Metropolis, Ill., to Lansing, Mich., as unreasonable. Charged double first class of $5.94 from Lancaster and $5.40 from Metropolis. Specific rating was not provided on wooden bows. Subsequently defendant provided specific rating of first class. HELD, rates attacked unreasonable to extent they exceeded first class, reparation awarded.

Durant Motor Co. v. A. Ry. Express, 91 I. C. C. 695.

(b) Complainant attacked express rate charged of $4.28 on three cars of cantaloupes shipped August 22, 1922 from Turlock, Calif., to New York, N. Y., and Boston, Mass., as unjust, unreasonable, unjustly discriminatory, unduly prejudicial and in violation of long and short haul clause to extent it exceeded rates of $3.59 and $3.93 on cantaloupes and melons from southern California to New York and Boston. At time of movement joint rates on cantaloupes and melons from Brawley, Calif., and practically all other points in the Imperial Valley, in southern California, to New York and Boston were $3.59 and $3.93. Shipments from this section move over S. P., to El Paso thence E. P. S. W., and Rock Island lines. Turlock is in central California, 93 miles south of Sacramento, allegation of violation of fourth section not sustained. The present rate adjustment has been in effect since cantaloupes were first shipped by express from California. The original rates established were from Imperial Valley $2.50 and from Turlock $3 to New York. A blanket rate on fruits and vegetables applies from all California producing points to certain eastern cities and Turlock and Brawley enjoy the same rates on these commodities. The parity of rates was departed from by the establishment of rates on cantaloupes and melons from the Imperial Valley lower than those from Turlock. HELD, rates attacked unreasonable and unduly prejudicial to the extent they exceed rates on cantaloupes and melons from Brawley, reparation awarded. Gentile Company v. American Railway Express Co., 93 I. C. C. 76.

(c) Complainant attacked express first class rating and rates on trees, n. o. s., and shrubs and branches thereof, for interstate transportation by express as unreasonable and unduly prejudicial. This nursery stock are known as dormant in contradistinction to growing trees or shrubs, the latter being rated first class in pots or tubs; plant and receptacle created, and double first class in pots or tubs, not crated. In 24 I. C. C. 380 and 28 I. C. C. 131 nursery stock was rated second class. Believing that the second class rating on this traffic was not in accord with the findings in that case, defendant after some delay sought to increase the rating to first class. This proposal was approved in 59 I. C. C. 265. Nursery stock is subject to elaborate and complicated quarantine regulations, compliance with which requires of defendant time and expense. HELD, classification rating and rates attacked not unreasonable or unduly prejudicial, complaint dismissed. American Asso. of Nurserymen v. American Ry. Express Co., 93 I. C. C. 166.

(d) Complainant attacked express rates and refrigeration charges on strawberries carloads, from Louisiana to Oklahoma, Kansas and Missouri as unreasonable. The basic express rates throughout the entire country resulted from 24 I. C. C. 380, 28 I. C. C. 131 and 35 I. C. C. 3. The rates attacked are specific commodity rates. Rates under attack range from 42.6 to 50.9% of the first class express rates from and to the same points. The general basis for specific commodity rates is 60% of the first class rates. HELD, rates and refrigeration charges attacked not unreasonable, complaint dismissed. Dawson Produce Co. v. American Ry. Express, 93 I. C. C. 300.

(e) Complainant attacked second class express rates on cream, in 10 gallon cans, shipped during August and Sept. 1921 from Albion and Dallas Center, Iowa, to Omaha, Neb., as unreasonable. Dallas Center is on the M. & St. L., between Grand Junction and Des Moines, Iowa, and Albion on that carrier north of Marshalltown. They moved by express over the M. & St. L., to Grand Junction and Marshalltown and thence C. & N. W., 157 and 204 miles. Effective Jan. 1, 1922 defendant established commodity distance rates plus a transfer charge of 6c on cream to Omaha of 59c from Dallas Center and 65c from Albion. The commodity rates established are based on the scale prescribed in 15 I. C. C. 109. HELD, rates charged unreasonable to extent they exceeded rates subsequently established, reparation awarded. Fairmont Creamery Co. v. American Ry. Exp. Co., 93 I. C. C. 684.

(ea) Double first-class express rates assessed on wooden automobile bows, in bundles, l. c. l., found unreasonable to extent they exceeded first-class rate contemporaneously applicable on bows for horse-drawn vehicles, which lower rate carriers subsequently established on wooden bows for automobiles. While subsequent reduction is not by itself a

basis for an award of reparation, higher rate was applicable solely because of use to which commodity was put. Reparation awarded. Durant Motor Co. of Mich. v. Am. Ry. Exp. Co., 91 I. C. C. 695.

(f) Complainant attacked combination rates from April 1, 1921 to Omaha on cream or milk and cream in cans from points on the G. N., and I. C., in Iowa and South Dakota and express rates, second class, on cream from Michigan to Green Bay, Wis., as unreasonable. In 14552 rates attacked are combination baggage or baggage and express rates charged on interline shipments of milk and cream to Omaha from Alvord, Iowa, and Nunda, Davis, Virbog, Rutland and Sinai, S. D., points of origin on the G. N. At present this traffic moves in that lines baggage service to Sioux Falls, Sioux City or Yankton, S. D., and thence to Omaha, either in the connecting lines baggage service or by express. The route generally used is that of the G. N., to Sioux Falls, and thence express via the Northwestern. Points of origin in No. 14689 are on I. C., in northwestern Iowa, shipments moving via that line and Northwestern. The bulk of the milk and cream movement in this territory is single line, generally handled in baggage service. As a general rule the interline traffic is handled by the express company. Prior to July 1, 1918, date on which express company commenced operations, milk and cream traffic over the G. N., was handled by the Great Northern Express Co., whose operations were confined to that line. It continued to move by express until April 1, 1921 when the express company canceled its local commodity rates concurrently with the establishment of baggage rates by the G. N. Since Dec. 23, 1922 the date on which the suspended proposal became effective, complainants traffic has again moved in the G. N., baggage service to the transfer point and thence by express, at combination rates. Any traffic which might be delivered to the express company for through movement by it would be subject to second class, as was true also prior to Jan. 1, 1922. The same situation is true of the I. C. A scale of rates for joint line application higher than the single line Beatrice scale by an amount sufficient to cover the terminal services at the interchange point, with provision for an additional charge for drayage where drayage is necessary in order to transfer shipments between separate passenger depots of connecting lines, would effect a reasonable adjustment of the situation having due regard for the rights both of shippers and carriers. Undoubtedly defendants are entitled to compensation for drayage, where drayage is necessary, as well as for the other terminal services rendered by them at the transfer point. In 14479 the express company is the sole defendant. In this case one point of origin is on the D. S. S. & A., and the other two on the Soo Line. Green Bay, destination, is on the Milwaukee. The shipments moved by express between July 1, 1922 and August 25, 1922 charged at second class rates. The rates now used are the subsequently established combination baggage rates of the rail carriers, each factor being based upon the Beatrice scale, plus a transfer charge. Rail carriers are not party to this case and no order can be made against them. HELD, charges paid to Green Bay in 14479 unreasonable to extent they exceeded those based upon the continuous mileage under express commodity distance scales for 10, 8, and 5 gallons in effect for that territory for single line hauls, plus the express companys published charges for car to car transfer at the junction points of the rail carriers. HELD, rates from points of origin in 14552 and 14689 not unreasonable but for future reasonable maximum rates on interline shipments of milk and cream in joint baggage service or in joint baggage and express service will be those constructed upon the basis of rates ranging from 45c for 10 gallon can, 40c for 8 gallon can, and 31c for 5 gallon can for 25 miles and under to 75c for 10 gallon can, 67c for 8 gallon can and 52c for 5 gallon can, for 250 miles, with addition of drayage charges between connecting carriers of 6c per can, minimum charge 15c, for distances of 0.5 miles and under and 8c per can, minimum charge 20c for distances over 0.5 miles, reparation awarded in 14552 and 14479. Kirschbraun & Sons, Inc. v. G. N. Ry., 100 I. C. C. 28.

(g) Complainant attacked express rates charged on corpses throughout the United States as unjust and unreasonable. Corpses are usually shipped in baggage cars, checked, at regular one way adult passenger fare, minimum $1.20, provided the remains are accompanied by an adult escort holding separ-

ate ticket, regular or commutation. On weight over 500 pounds charges are assessed at excess baggage rates. The escort may accompany one or more corpses. If an escort is not available for baggage service is inconvenient, shipment may be made by express. About 12% of the movement now is by express. Present charge by express for corpses of adults or children, is an amount equal to double the regular one way adult passenger fare, minimum $3.30 for adults and $2.20 for children under 12 years of age, if the weight does not exceed 500 pounds. Excess weight is assessed first class rates. This basis has been in effect since some time prior to 1887, when classifications were first published except for the following changes. On April 1, 1913 a provision was added which permits personal effects of the deceased up to 150 pounds in weight to be included in the shipment without additional charge. On Feb. 1, 1914 the minimum charges on the corpses of an adult were reduced by the Commission from $5 single express line, or $3 per company for joint line service, to $3 for any number of lines, and on the corpse of a child from $2.50 to $2 for single and joint line service, respectively, to $2 for hauls of either character. On May 1, 1916 the first class express rates on weight in excess of 500 pounds were made effective. All the rates were increased 10% on June 17, 1918. The situation is not free from difficulty because analogy can not be drawn between the transportation of corpses and that of ordinary commodity. Considerations apart from the elements of transportation, and respect for the dead, make it impossible to handle the traffic as ordinary merchandise is handled whether on station platforms, in express cars, or through the public streets. Certainly complainants can not expect the traffic to be treated with special consideration in the way of loading, unloading, and handling en route, and to be treated as ordinary merchandise for rate purposes. The present basis of charges is of long standing. Under it 88% of the movement is by baggage where the parties are agreed it should properly move. The proposed disruption of the present rate adjustment would not only tend to change the preponderance of movement but would also increase the charges on short haul traffic. The reasonableness of charges is to be tested not by the way in which they are arrived at but by their aggregate amount. An adjustment of this character should not be disturbed except upon clear and convincing showing that readjustment is necessary or desirable in the public interest. This record contains no such showing. HELD, charges attacked not unreasonable, complaint dismissed . Dunn v. American Railway Express, 100 I. C. C. 229.

(h) Complainant attacked express rates on ice cream mixing cans from Kentwood, La., to Mississippi, Louisiana, Alabama, Tennessee, Florida, Georgia and Texas as unreasonable, unjustly discriminatory and unduly prejudicial. Kentwood is on the I. C., 5.5. miles from the Mississippi state line, 100 miles south of Jackson, Miss., and 82 miles north of New Orleans, La. Ice cream mix is produced from milk and cream by condensation and the addition of sugar and a small quantity of gelatin. It is sold only in wholesale quantities and is shipped direct to the ice cream trade in 10 gallon cans, the same as those used for shipping milk or cream. The wholesale price per gallon is considerably less than that of cream or of most forms of condensed milk. It is handled in exactly the same manner as milk and cream. There is no greater transportation hazard. Defendants admit that the handling of ice cream mix is no more burdensome upon it than the handling of milk, cream or condensed milk. At present practically all interstate shipments move in baggage service. The I. C., maintains between points on its lines baggage rates on milk, cream, condensed milk, buttermilk, pot cheese, curd, and similar milk products. These rates are based on the so called Beatrice scale of commodity rates originally prescribed by the Commission to apply from certain territory to Chicago in 15 I. C. C. 109. The tariff does not specify ice cream mix, but the I. C., considers it the same as condensed milk, and applies the same rates. There are no commodity express rates on ice cream mix from Kentwood and second class rates apply. The second class express rates cover the ordinary express service, including pick-up and delivery. This terminal service is not included in either the baggage or commodity express rates. The record indicates that there are many varieties of ice cream mix manufactured throughout the country, some of which differ materially from complainants product.

The findings herein should be understood as relating only to ice cream mix consisting of sweetened condensed milk or cream with the addition of not more than 1% of gelatin or other stabilizer. HELD, rate attacked unreasonable to extent they exceeded rates on condensed milk and unreasonable to extent they exceeded for like distances rates on condensed milk under the socalled c. f. a. scale. Kentwood Ice Mfg. & Bottling Works v. Amer. Ry. Exp. Co., 101 I. C. C. 93.

(i) Any-quantity express rates on oysters, in cans, in iced boxes or barrels, c. l., from Atlantic seaboard points to western destinations, found not unreasonable, discriminatory, or unduly preferential of shippers in l. c. l. quantities. Under present rates small and large shippers alike have same privileges. No compensating advantages would result from lower c. l. rates, under which boxing would be done at origin instead of distributing points on traffic intended for reshipment, thus imposing an additional burden and expense on both c. l. shipper and carrier due to necessity of hauling containers for entire carloads from source of supply to distribution points, where none are now hauled in c. l. movements. Moreover, such lower rates would restrict markets of l. c. l. shippers, without apparent benefit to any one. Booth Fisheries Co. v. Am. Ry. Exp. Co., 92 I. C. C. 653.

(j) Express rate on cantaloupes from Turlock, Calif., to New York and Boston found unreasonable and unduly prejudicial to extent it exceeded rates contemporaneously applicable from Brawley, Calif., and other Imperial Valley points. A blanket rate on fruits and vegetables applies from all California producing points to certain eastern cities and no justification appears for higher rates from Turlock on cantaloupes, when Brawley and Turlock take same rates on other commodities, especially in view of slight differences in distance for long hauls here considered. Moreover, transcontinental rail carriers provide same rates from both points on cantaloupes, melons, and other commodities to New York and Boston. Reasonable rates prescribed and reparation awarded. Gentile Co. v. Am. Ry. Exp. Co., 93 I. C. C. 76.

(k) First-class express rating and rates on trees, n. o. s., and shrubs and branches thereof, found not unreasonable or unduly prejudicial as compared with second-class rating and rates on berry or vegetable plants, boxed or crated, or with materially lower l. c. l. freight rates on trees, shrubs, and vines under certain conditions of packing. No competition exists between trees and shrubs on the one hand and vegetable or berry plants on the other; no movement is shown under freight rates, nor is service rendered by express comparable with that by freight. Asso. of Nurserymen v. Am. Ry. Exp., 93 I. C. C. 166.

(l) Specific commodity express rates and refrigeration charges on strawberries from points in Louisiana to destinations in Oklahoma, Kansas, and Missouri, found not unreasonable as compared with lower rates and charges to selected destinations in different sections of the country, including large consuming centers such as Chicago, St. Louis, Kansas City, Cleveland and Philadelphia, or with rates and refrigeration charges from Alabama and Texas points to destinations here considered. Volume of movement to large markets is greatly in excess of that to points here considered and record discloses no movement of strawberries from Alabama and Texas points. Moreover, single rates selected from large groups or average of a few rates taken from groups embracing many points do not afford a fair comparison in measuring reasonableness of rates attacked. Dawson Produce Co. v. Am. Ry. Exp., 93 I. C. C. 390.

(m) There should be a higher return to railroads for carriage of express matter than they receive upon freight traffic, and while the two services are not directly comparable, it is proper to contrast charges exacted for lesser freight service with charges for transportation of same articles in superior express service. Parlor Frame Mfrs. Asso. v. A. A. R. R., 93 I. C. C. 506, 508.

(n) Having regard for difference in the structure of freight and express classifications the commission can not predicate a condemnation of the freight rate for a light and bulky article like furniture frames solely upon a showing that express rates are lower between many points. Parlor Frame Mfrs. Asso. v. A. A. R. R., 93 I. C. C. 506, 509.

(o) Second-class express rates on cream, in 10-gallon cans, from Albion and Dallas Center, Iowa, to Omaha, found unreasonable to extent they exceeded commodity distance rates subsequently established. Reparation awarded. Fairmont

Creamery Co. v. Am. Ry. Exp. Co., 93 I. C. C. 684.

(p) Complainant attacked first class rating in official express classification and rates and charges resulting therefrom on laundry in baskets or hampers as unreasonable, unjustly discriminatory and unduly preferential of other commodities rated second class in said classification. Laundry shipped in express is packed in hampers or baskets made of heavy canvas over iron frames with either wooden or canvas tops. An empty hamper weighs from 20 to 70 pounds and holds from 2 to 16 bushels of laundry. There is a regular weekly movement in uniform quantity. Loss and damage claims are comparatively few, and in proportion to the amount of business negligible. If the Commission were to prescribe second class rates, pound basis, it would be difficult to deny like classification and rates to the various articles comprised in the laundry package or hamper when shipped by express from the manufacturer to the retailer, for, ratings and rates cannot be made to depend upon the use to which an article is put. Thus the simple grouping of commodities moving by express into two general divisions, merchandise and articles of food and drink, would be disrupted. HELD, rating attacked not unreasonable, unjustly discriminatory or unduly prejudicial, complaint dismissed. Laundry Owners National Asso. v. Am. Ry. Ex. Co. 102 I. C. C. 36.

(q) Complainant attacked express rates on fresh fruits and vegetables from the Farmington, N. M., district to Colorado as unreasonable, unjustly discriminatory and unduly prejudicial as compared with rates intrastate in Colorado from points in the Western Slope district to the same destinations in violation of sections 1, 3 and 13 of the act. The only rail line serving the Farmington district is a narrow gauge branch of the Rio Grande, extending about 50 miles south from Durango, Colo., to Farmington, N. M. The only outlet by rail for the products of this district is into Colorado, where they compete with similar products of the Western Slope, California, eastern Colorado and to a lesser extent other states. The Western Slope embraces a large number of points in the western part of Colorado, Grand Junction being representative in the northwest and Durango in the southwest. The principal markets are the Colorado common points, including Denver, Colorado Springs. Pueblo, Trinidad, and Walsenburg, Colo. The record shows that the express commodity rate on fresh fruits and vegetables, any quantity, from the Farmington district to the destination territory in question was reduced from $1.40 to $1.39 on Feb. 1, 1914 in order to conform to 24 I. C. C. 380 and 28 I. C. C. 131. On July 5, 1914 the rate to most of the destinations on shipments of 1,500 pounds or over was reduced to $1.15, leaving the rate of $1.39 to apply on smaller shipments. Under subsequently authorized increases these rates became on Oct. 13, 1920, $1.71 and $2.05 respectively, which are the present rates. Defendant publishes a rate of $1.25 from the Western Slope under order of the Colorado Commission. The rates from the Farmington district compare favorably with express commodity rates on like traffic for corresponding distances between various interstate points in the same general territory. The average distances from producing points in the Farmington and Western Slope districts, respectively, to Denver, Colorado Springs and Pueblo over operating routes are shown to be about 419 and 348 miles respectively, a difference of 71 miles in favor of the Western Slope. Before the Commission can require a change in the intrastate rate established by the Colorado Commission it must appear that the intrastate rate injuriously affects interstate commerce in violation of the act. In some cases intrastate rates affect interstate commerce in ways so manifestly injurious as to make them subject to the control of the Commission. In other cases the relation of an intrastate rate to movement of interstate commerce is so remote and insignificant that it may properly be disregarded. The decisive factor is whether or not the intrastate rate affects interstate commerce injuriously to a material extent. Under present train schedule the running time from Farmington to Denver is about 33 hours. The traffic moves about 250 miles over a narrow gauge line from Farmington to Alamosa, Colo., where transfer to standard gauge cars is necessary, which involves an additional expense. From an operating standpoint the bulk of the fruit shipped by express from the Western Slope is easily handled. During the shipping season it moves in great volume in through trains from that terri-

tory to Pueblo, Colorado Springs, and Denver, and no transfer is required. The time of transit from Grand Junction to Denver is about 18 hours. The Western Slope has practically no outlet for its fruit other than the Colorado common points and the intermediate territory in Colorado. There is no evidence of record which would warrant a finding that interstate traffic from Farmington to the Colorado common points moves under substantially similar circumstances and conditions as does intrastate traffic from the Western Slope to the same destinations. HELD, rates attacked not unreasonable, intrastate rate not unduly preferential, complaint dismissed. Hunter Bros. Mercantile Co. v. American Ry. Express Co., 107 I. C. C. 313.

(r) In cases where rail carriers under provisions of their contracts with express companies have availed themselves of their exclusive right to handle milk or cream moving over their own lines, the commission can not require express company to establish rates for the future except by voluntary agreement with rail carriers, see Express Rates on Milk and Cream, 74 I. C. C. 427. However, this does not preclude shippers from obtaining similar service at reasonable rates direct from carriers on interline shipments or jointly from rail carriers and express companies where latter are not by contract precluded from participation in joint rates. Kirschbraun & Sons, Inc. v. G. N. Ry. Co. 100 I. C. C. 28, 39.

(s) Following 80 I. C. C. 29, and 88 I. C. C. 670, second-class express rates on cream, in 10, 8 or 5 gallon cans, from Humboldt, Cooks, and Trenary, Mich., to Green Bay, Wis., found unreasonable to extent they exceeded rates based upon continuous mileage under the express commodity distance scales contemporaneously in effect for single-line hauls in same territory, plus express company's published charges for car-to-car transfer at junction points of rail carriers. Reparation awarded. Kirschbraun & Sons, Inc. v. G. N. Ry. Co., 100 I. C. C. 28, 39.

(t) Combination baggage or baggage and express rates on interline shipments of milk and cream in 10-gallon cans, from points in Iowa and South Dakota, to Omaha, Nebr., found unreasonable and reasonable maximum rates constructed on basis of specific joint-line distance scales, with the addition of drayage charges where necessary, prescribed for future and reparation awarded to that basis. Kirschbraun & Sons, Inc. v. G. N. Ry. Co., 100 I. C. C. 28, 40.

(u) Rates on shipments of corpses, by express, between points in United States, found not unreasonable. Among other things, the traffic is given special and expedited treatment in loading, unloading, and in transit, and considerations apart from the elements of transportation and respect for the dead, make it impossible to handle it as ordinary merchandise. Furthermore, present basis of charges is of long standing, the proposed disruption of present rate adjustment would not only tend to change the preponderance of movement but would also increase the charges on short-haul traffic. An adjustment of this character should not be disturbed except upon clear and convincing showing that readjustment is necessary or desirable in public interest, and record here contains no such showing. Dunn v. American Ry. Express Co., 100 I. C. C. 229.

(v) Rates on shipment of corpses, by express, between points in United States; found not unreasonable. Among other things, present basis of charges is of long standing, and an adjustment of this character should not be disturbed except upon clear and convincing showing that readjustment is necessary or desirable in public interest, which record here does not contain. Dunn v. American Ry. Express Co. 100 I. C. C. 229.

(w) Interstate express rates on ice-cream mix sold and shipped under trade name of Kim from Kentwood, La., to points in Mississippi, Louisiana, Alabama, Tennessee, Florida, Georgia and Texas, with exception of points located on the Illinois Central Railroad, found unjustly discriminatory to extent they exceed contemporaneous rates maintained by defendant on condensed milk from and to same points and unreasonable to extent they exceed rates on condensed milk for like distances under so-called c. f. a. scale as published by defendant following C. F. A. Milk and Cream Rates, 46 I. C. C. 601. Non-discriminatory and reasonable rates prescribed for future. Kentwood Ice Mfg. & Bottling Works v. Amer. Ry. Ex. Co., 101 I. C. C. 93.

(x) Complainant attacked distance scale express rate of 61c per 10 gallon

can charged on less carloads of cream from Essex, N. Y., to Fair Haven, Vt., a distance of 68 miles, and the like rate of 97c charged on shipments from Essex to Springfield, Mass., distance 239 miles, as unreasonable. Complainant alleged that defendant railroads do not publish rates on milk or cream in baggage car or milk train service from Essex to Springfield and refuse to perform such service. The haul to Fair Haven is all in D. & H. trains, but there is a transfer between express cars at Whitehall, N. Y. The haul to Springfield is in a D. & H., train to Albany, N. Y., where there is a transfer between express cars at the union station, and thence in a B. & A., train. HELD, rates attacked unreasonable to extent they exceed 55c to Fair Haven and 87c to Springfield, reparation denied. The D. & H. has no baggage car rates. If its milk car rate from Essex to Albany be added to the baggage car rate of the B. &. A., it appears the through rate would be in excess of the through express rate. Baggage car rates as a rule do not apply jointly when shipments move over more than one railroad. HELD, there is no reason for the establishment of baggage car service beyond the desire of reduced rates. Complaint dismissed. State of New York v. American Ry. Express Co. 109 I. C. C. 20.

(y) Complaint attacked commodity rate of $4.28 charged on one car of cantaloupes shipped August 22, 1922 by express from Turlock, Calif., to Philadelphia, Pa., as unreasonable, unjustly discriminatory, and unduly prejudicial. The complaint was not filed within the statutory period of two years, and is barred. Shipment moved via Sacramento, Calif., Ogden, Utah, Omaha and Chicago the same lines as would be used in moving shipments from Brawley. Distance from Turlock 3,078 miles and from Brawley, 2,903 miles, a difference of 175 miles. Rate from Brawley was $3.59, and subsequently the same rates from Brawley were established from Turlock. HELD, present rate not unreasonable or otherwise unlawful, and reparation claim is barred by the statute, complaint dismissed. Gentile Co. v. Amer. Ry Exp. Co. 109 I. C. C. 171.

(z) Complainant attacked commodity rates charged since June 21, 1924 on dressed poultry and dead rabbits, in straight or mixed carloads, and/or dressed poultry, and/or dead rabbits in mixed carloads with butter and/or eggs, by express as unreasonable. Under 83 I. C. C. 606 the express companies were directed to establish and apply to the interstate transportation of articles of food to which commodity rates were applicable, within and between the several express rate zones, commodity rates which would not exceed those in effect on Oct. 12, 1920, from and to the same points. Supplemental report in 89 I. C. C. 297, required reductions in the rates to the basis stated above only upon fruits, berries, vegetables, butter and eggs carloads. Prior to the effective date of this order butter, eggs, and dressed poultry by express took the same commodity rates in practically all instances. Present record contains no evidence that express rates on dressed poultry should be higher than those on butter and eggs. Fruits, vegetables, fish, butter, eggs and dressed poultry are all shipped in refrigerator cars and dressed poultry is at least as desirable traffic from the carriers point of view as any of the other commodities. The dressed poultry movement in November and December is very desirable traffic because it provides a return movement in refrigerator cars which during those months are used as baggage cars and sent westward loaded. HELD, rates attacked unreasonable to extent they exceed rates in effect on Oct. 12, 1920. National Poultry, Butter & Egg Asso. v. Amer. Ry. Exp. 109 I. C. C. 565.

ALL OTHER CITATIONS

Kirschbraun & Sons v. Am. Ry. Co., 88 I. C. C. 670; Express Rates on Milk and Cream in Virginia, 88 I. C. C. 687.

§11. Specific Rates.

(2) Rates Based on Value.

See Comparative Rates; Released Rates.

(a) Complainant attacked defendants rates, rules, regulations and practices with respect to the transportation by express of money, coin, bullion, currency, bank notes, bills of exchange, and securities from, to, and between interstate points as unreasonable, unjustly discriminatory, unduly prejudicial and in violation of section 20 (11) of the act. The rules of the express classification here considered require that the shipper indicate the actual value. This indication by the shipper determines the applicable rate. There is no provision for a

declaration or agreement of value limiting liability. The shipper does not have the privilege of declaring a lesser value in consideration of a lower rate. In 100 I. C. C. 471, the Commission found that released rates and actual value rates could be fairly and effectively differentiated and that actual value rates are not within the prohibition of the Cummins amendment. It follows, therefore, that the rates here attacked are not violative of that amendment. The transportation of money is for the most part to or from the Federal reserve banks and their branches and within the respective Federal reserve districts. The methods of handling shipments of money and merchandise are entirely dissimilar. It is difficult to conceive that the transportation charges on packages of the same weight, in view of the precautions taken should be the same. It can not be said that the charges for handling money shipments over and above those for handling a package of merchandise of the same weight represent insurance exclusively. The express companies do not regard money, bullion, and securities as desirable traffic, and they prefer that these articles be handled by other agencies. However, such traffic as is offered, defendants with to handle according to the present methods. Defendants are strongly opposed to the establishment of released rates on these articles. They urge that if such rates were established it would still be necessary to render the same service for the protection of this traffic that is now provided, because some shipments would be made on the basis of full valuation; that taking into account the shipments that would be made at released rates, the revenue would be far less than the cost of maintaining the service; and the handling of money in this manner would tend to lessen the care now given by employees to prevent loss of the packages through negligence or robbery. HELD, express rates, rules and practices, not unlawful, complaint dismissed. New York Federal Reserve Bank v. Amer. Ry. Ex. Co. 107 I. C. C. 4.

§11. (3) Rates Based on Weight.

See Weights and Weighing.

(a) American Railway Express Company, respondent, proposed to cancel the estimated weights on asparagus by express from Arizona and California. Present estimated weight 28 lbs. per crate, containing twelve 2.5 pound bunches, and 34 pounds per crate, containing twelve 2.5 pound bunches. In the absence of estimated weights, the charges would be based upon the actual gross weight of each shipment at the time it was received for transportation, or if many shipments were made, a number of packages of the same size and containing the same commodity would be weighed and the average weight adopted as the weight of each package in the shipment. The weight of the socalled 2 pound pack has increased so that now it ranges from 32 to 39 pounds. Protestant conceded that the actual weights today are in excess of the present estimated weights. The evidence justifies the conclusion that 34 pounds on the so-called 2 pound bunch and 40 pounds on the so-called 2.5 pound bunch as estimated weights per crate more nearly approximate the average weights of present day shipments. HELD, proposed schedules not justified, but respondents have justified estimated weights of 34 pounds per crate containing twelve 2 pound bunches and 40 pounds per crate containing twelve 2.5 pound bunches of asparagus. Express weights on asparagus from Arizona and California, 92 I. C. C. 254.

(b) First-class rating on laundry in official express classification found not unreasonable, discriminatory, or unduly prejudicial. If second-class rates, pound basis, as sought by complainant, were prescribed, it would be difficult to deny like classification and rates to various articles comprised in the laundry package or hamper when shipped by express from manufacturer to retailer, for ratings and rates can not be made to depend upon use to which an article is put. Thus the simple grouping of commodities moving by express into two general divisions would be disrupted. Moreover, no similarity in transportation conditions is shown with respect to commodities used for comparisons with rates on laundry, and none of them is shown to compete with laundry. Laundry Owners' Nat'l Asso. v. Am. Ry. Ex. Co., 102 I. C. C. 36.

§11(4). Block System.

(a) Respondent, American Railway Express Company, proposed to cancel certain commodity rates on fruits and vegetables, carloads, between Mountain-Pacific and eastern and central territories. In the express tariffs now in

effect commodity rates on fruits and vegetables between the territories considered are named by block numbers which include all points of origin or destination within the blocks specified. In the reissues of these tariffs, now under suspension, respondent has published rates from those blocks in which carload shipments originated during the years 1923 and 1924 to specific points to which carload shipments moved during the same period, thus materially restricting the application of the rates, especially as to destinations. Respondent says that this change was made solely in the interest of economy in publishing and distributing the tariffs and with no desire to increase rates actually used. It expresses willingness, if the suspended tariffs should be allowed to become effective, to restore commodity rates from or to any omitted point from or to which there has been or is likely to be a carload movement, to restore any rate contained in the present tariffs on one day's notice upon the request of any shipper, and to establish carload rates where such rates are justified. The tariffs now in effect are comparatively small, one comprising 18 pages another 9 pages and the third 8 pages, as compared with 16 pages in the two tariffs which would supersede them. If it should become necessary to publish many supplements establishing additional rates on one day's notice the aggregate printing would soon exceed the present tariffs entailing even greater cost in printing and distribution than the present arrangements. HELD, proposed schedules not justified. Express rates on fruits and vegetables 104 I. C. C. 739.

VI. TARIFFS.

See Released Rates; Tariffs.

§13. Construction.

ALL CITATIONS

Kirschbraun & Sons v. Am. Ry. Exp. Co. 88 I. C. C. 670.

§16. Mixed Shipments.

See Classification §7; Mixed Carloads.

(a) In view of Interstate Commerce Act, 15, pars. 3, 8, (Comp. St. §8583), Commission's order that shippers by express may direct the routing is not unreasonable, and does not violate any of express company's constitutional rights. United States v. American Ry. Express Co., 44 Sup. Ct. 560. Southeastern Express Co. v. Same, 44 Sup. Ct. 560. Southern Traffic League v. Same, 44 Sup. Ct. 560.

VII. EVIDENCE.

See Evidence.

§17. In general.

(a) Run of stack straw contains from 5 to 30 per cent moisture and is not as valuable as so-called merchantable straw. American Box Board Co. v. Director General, as Agent, 89 I. C. C. 271, 272.

(b) Cost study submitted by Class I railroads of United States in support of petition for increased interstate express rates and charges filed by American Ry. Express Co., based upon certain expense ratios for this service developed in the Mail Pay Case, 56 I. C. C. 1, and reviewed in the prior report in this case, 83 I. C. C. 606, again reviewed and found not to have established cost of the express service. Express Rates, 1922, 89 I. C. C. 297.

(c) There should be a higher return to railroads for the carriage of express matter than they receive upon freight traffic, and while the two services are not directly comparable, it is proper to contrast charges exacted for lesser freight service with charges for transportation of the same articles in superior express service. Parlor Frame Mfrs. Asso. v. A. A. R. R., 93 I. C. C. 506, 508.

(d) To show unreasonableness complainant compared transportation charges by freight with those by express. FOUND, express rates not being made with relation to freight rates, such comparisons are not convincing. Frost v. A. & G. Ry., 96 I. C. C. 15, 17.

§20. Comparisons.

See Comparative Rates.

(a) There should be a higher return to railroads for the carriage of express matter than they receive upon freight traffic, and while the two services are not directly comparable, it is proper to contrast charges exacted for lesser freight service with charges for transportation of the same articles in superior express service. Parlor Frame Mfrs. Asso. v. A. A. R. R., 93 I. C. C. 506, 508.

(b) Comparisons made of combination baggage and express rates with various freight rates can not be regarded as of material value for the reason

that the two classes of service are not comparable. Kirschbraun & Sons, Inc. v. G. N. Ry Co., 100 I. C. C. 28, 35.

(c) Analogy can not be drawn between the transportation of corpses and that of ordinary commodities. Dunn v. American Ry. Express Co., 100 I. C. C. 229, 232.

§23. Percentage of Freight Rate.

(a) If railroads do not receive sufficient compensation out of a reasonable express rate, that is a matter to be corrected in contracts between them and the express companies, and not by establishing unreasonable express rates. Express rates on Milk and Cream in Va. 88 I. C. C. 689.

XI. THROUGH ROUTES AND JOINT RATES.

See Through Routes and Joint Rates.

§36. In General.

ALL CITATIONS

Express Rates on Milk and Cream via C. & N. W., 88 I. C. C. 696.

§37½. Minimums.

See Minimums.

ALL CITATIONS

Express Rates on Milk and Cream in Va., 88 I. C. C. 687.

XIV. RELATION TO RAILROADS.

§40. In General.

(a) It is obvious that there should be a higher return to the railroad for the carriage of express matter than it receives upon its freight traffic. Parlor Frame Mfrs. Asso. v. A. A. R. R., 93 I. C. C. 506, 508.

ALL OTHER CITATIONS

Express Rates on Milk and Cream in Virginia, 88 I. C. C. 687; Express Rates on Milk and Cream via C. & N. W., 38 I. C. C. 696.

FABRICATION IN TRANSIT

See Facilities and Privileges §15.

FACILITIES AND PRIVILEGES

I. JURISDICTION OF COMMISSION
- §1. In general.

II. CARRIER'S DUTY TO FURNISH OR PERMIT.
- §2. In general.
- §2½. Bulkheads.
- §3. Compression.
- §4. Concentration.
- §5. Cooperage and bailing.
- §5½. Disinfecting and cleaning.
- §6. Dumping and trimming.
- §6½. Extension of lines.
- §7. Back haul.
- §7½. False floors, insulation and bedding.
- §8. Free storage.
- §9. Grain doors.
- §9¼. Inspection.
- §9½. Milling, mixing and elevation.
- §10. Loading, unloading, delivering, insulating, bracing, etc.
- §10½. Protective service.
- §11. Notifying shipper or consignee.
- §11½. Reshipping rates.
- §11¾. Sacking.
- §12. Scaleage deductions and shrinkage.
- §12½. Spotting and special services.
- §13. Staking and binding.
- §14. Storing, grading and resacking.
- §14½. Store-door delivery.
- §14¾. Tailboard delivery.
- §15. Transit.
- §15½. Transshipment and transfer.
- §16. Wharfage and dockage.
- §16½. Warehousing, Storage, station and terminal facilities.

III. PUBLICATION AND TARIFFS.
- §16¾. In general.
- §17. Obligation to publish.
- §18. Reshipping under through rate.
- §19. Retroactive application.
- §20. Substitution of tonnage.

IV. DISCRIMINATION.
- §21. In general..

V. REPARATION.
- §22. In general.

VI. REASONABLENESS OF CHARGES.
- §23. In general.

CROSS REFERENCES

See Allowances; Car Ferry; Cars and Car Supply; Drayage; Elec-

tric Lines V; Evidence §22; Express Companies II; Lease; Penalty Charges; Perishable Freight; Reconsignment; Refrigeration §4¼; Special Contracts; Special Rates and Services; Stock Yard Companies; Stoppage in Transit; Tap Lines; Telephone and Telegraph Companies II; Terminal Facilities §6; Through Routes and Joint Rates; Transportation; Water Carriers §4½; Weights and Weighing.

I. JURISDICTION OF COMMISSION.

See Interstate Commerce Commission; Jurisdiction of Commission.

§1. In General.

(a) The commission has power under section 1 of the act to determine whether in a particular case a transit privilege should be granted or withdrawn. See 257 U. S. 247, 257. Limestone Into and Cement Out of Ada, Okla., 102 I. C. C. 407, 410.

(b) By section 15 the commission is authorized and required, upon a complaint to inquire and determine what would be a just and reasonable rate or rates, charge or charges. This, of course includes all charges, and the carrier is entitled to have a finding that any particular charge is unreasonable and unjust before it is required to change such charge. For services that it may render or procure to be rendered off its own line, or outside the mere matter of transportation over its line, it may charge and receive compensation. If the terminal charge be in and of itself just and reasonable it can not be condemned or the carrier required to charge it on the ground that it, taken with prior charges of tansportation over the lines of the carrier or of connecting carriers, makes the total charge to the shipper unreasonable. That which must be corrected and condemned is not the just and reasonable terminal charge, but those prior charges which must of themselves be unreasonable in order to make the aggregate of the charge from the point of shipment to that of delivery unreasonable and unjust. In order to avail itself of the benefit of this rule the carrier must separately state its terminal or other special charge complained of, for if many matters are lumped in a single charge it is impossible for either shipper or commission to determine how much of the lump charge is for the terminal or special services. National Livestock Exchange v. A. T. & S. F. Ry 107 I. C. C. 512, 520.

(c) Service of docking and undocking, running lines, and furnishing fresh water to ships in connection with the dumping and trimming of coal into vessels found not to be "transportation" within the meaning of section 1 (3) of the act, and beyond the commission's jurisdiction. Southern Transp. Co. v. N. & W. Ry., 101 I. C. C. 211, 221, 223.

(d) The Commission has power under section I f of the act to require the establishment of transit, but the Commission has exercised that power rarely, it having been its policy generally not to require the establishment of transit arrangements unless to remove unjust discrimination or undue prejudice. Montgomery Cotton Exchange v. L. & N. R. R. 112 I. C. C. 325, 332.

II. CARRIER'S DUTY TO FURNISH OR PERMIT.

See Allowances §10; Bills of Lading II; Branch Lines IV; Cars and Car Supply IV, V; Express Companies §1¾; Lighterage V; Reconsignment §3½; Refrigeration II; Terminal Facilities II, §3; Through Routes and Joint Rates VII; Transportation II.

§2. In General.

(a) The additional service involved in transporting commodities out of the direct line of movement to and from transit points is one for which carriers may properly require reasonable compensation. Grain to Pacific coast, 98 I. C. C. 158, 162.

(b) Under statutes requiring unloading of cattle for rest, and feeding while so unloading at owner's "reasonable expense," carrier, in absence of agreement, cannot recover from owner for feed placed in cars after cattle were reloaded. Pennsylvania R. Co. v. Swift & Co., 4 Fed. (2d) 61.

(c) It does not follow from fact that the commission has approved increases in handling charges at certain ports that a lower basis of charges would have been unlawful. Carriers may, subject to certain restrictions, initiate rates lower than commission may prescribe. The question is as to whether or not they are propos-

ing to go to such lengths in attempting to meet competition and attract business that resulting charges will be so low as to create a burden upon other traffic. Handling Charges on Cement, Fertilizer and Salt, 93 I. C. C. 640, 644.

(d) Proposed change in rule defining service of handling at south Atlantic and certain Gulf ports, found justified. No increases or decreases will result from the proposed new section which does not change substance of the existing rule but merely clarifies its application in so far as handling between ship side and box car is concerned, and also makes clear that no charge will be assessed in connection with shipments transferred by ship's tackle to or from open-top cars standing on marginal tracks at ship side. Handling Charges on Cement, Fertilizer and Salt, 93 I. C. C. 640, 645.

(e) The public interest is not conserved by shutting out, through denial of a necessary transportation service an important agricultural product from markets which it can reach over routes requiring less service than that over other routes primarily because one of the carriers on whose lines the traffic originates does not reach those markets over routes which would give to it a long haul. Montgomery Cotton Exchange v. S. A. L. Ry. 109 I. C. C. 579, 587.

ALL OTHER CITATIONS

Mutual Products Trading Co. v. O. W. R. R. & N. Co., 85 I. C. C. 1; Rules for Storing and Sacking Cement, 88 I. C. C. 662.

§3. Compression.

See Compress Companies and Charges.

(a) Failure of carrier to absorb out of applicable rates entire compress charges on cotton forwarded from points in Texas, Louisiana, Arkansas, and Oklahoma to interstate destinations found unreasonable. Reparation awarded. Houston Cotton Exchange v. A. & R. R. R., 92 I. C. C. 220.

(b) Rates on cotton from certain points on C. of G., S. A. L., and L. & N., concentrated at Savannah, Ga., and thence reshipped to cotton mills in North and South Carolina, and defendants' rules, regulations and practices governing transit at Savannah on cotton from points in the Southeast, Mississippi Valley, and territory west thereof, when destined to such cotton mills or for export, found not unreasonable or unduly prejudicial. Contention that combination rates on this traffic are substantially higher via Savannah than those for corresponding services from and to same points via Augusta and Atlanta, and that they exceed materially through rates, both local and joint, in effect via Savannah from other points in same general territory to same destinations, not sustained, there being combination rates materially lower in most instances than those questioned by complainant applicable on this traffic, which are in the main substantially equal via Savannah, Augusta, and Atlanta. Savannah Traffic Bureau v. A. & R. R. R. Co., 96 I. C. C. 749.

(c) Upon contention of the uptown warehouses and compresses at the ports that under any readjustment that is made in the domestic and export rates on cotton to the Gulf ports, they should continue to receive a free second merchandising or compression in transit on cotton purchased by them which has already been concentrated at the through rate, FOUND: That such a request is not reasonable, for shipments stopped at other points for second merchandising or compressing must pay a transit charge and the commission sees no reason why a exception should be made in the case of the uptown warehouses or compresses at the ports. Cotton, passing through these uptown facilities is, however, entitled to one free transit privilege. Application of Rates on Cotton to Gulf Ports, 100 I. C. C. 159, 166.

ALL OTHER CITATIONS

Locke & Co. v. Director General, as Agent, 88 I. C. C. 487.

§4. Concentration.

See Concentrating Rates and Privileges.

(a) Rates on cotton from certain points on Central of Georgia, Seaboard Air Line, and L. & N. concentrated at Savannah, Ga., and thence reshipped to cotton mills in North and South Carolina and defendants' rules, regulations, and practices governing transit at Savannah on cotton from points in the Southeast, Mississippi Valley, and territory west thereof, when destined to such cotton mills or for export, found not unreasonable or unduly prejudicial, except that the charge of Central of Georgia for concentration at Savannah of cotton which

has moved from or through compress points without compression at carriers' privilege rates and which is subsequently reshipped to Carolina mills is found unreasonable. Savannah Traffic Bureau v. A. & R. R. R. Co., 96 I. C. C. 749.

(b) Complainant attacked maintenance by defendants or participation in transit, concentration, warehousing and reshipping arrangements under which cotton originating at points in Alabama and Mississippi on and west of the L. & N., from Decatur to Mobile, Ala., may be concentrated and stored at Atlanta, Ga., and thence reshipped to south Atlantic ports and to southeastern and Carolina points and, via south Atlantic ports, to New England mill points at through rates, and refuse to establish the same arrangements on this traffic when concentrated and stored at Montgomery, thereby subjecting complainant to undue prejudice; that the sums of the rates to and from Montgomery charged on this traffic when concentrated at that point are unreasonable as compared with the through rates from initial point of shipment to final destination applicable through Montgomery and in violation of the fourth section. L. & N. and M. & O. serve Montgomery directly. Transit rules of defendants in this territory are not uniform. The L. & N. permits cotton from points on its line south of Montgomery to be concentrated at that point and reshipped at the balance of the through rate, point of origin to destination, through Ohio river gateways to the east when the movement to and from Montgomery is via the L. & N., but denies transit from the same origins on cotton destined to southeastern and Carolina mill points or south Atlantic ports, regardless of whether the cotton moves into and out of Montgomery over its line. Montgomery is the first compress point en route to the south Atlantic ports and Georgia and Carolina mill points over the lines of defendants through Montgomery from the points of origin other than those on the L. & N., north of Birmingham and those on the Southern west of Selma and the Western Ry. of Ala. The record indicates that uncompressed cotton originating west of Selma and north of Birmingham would not ordinarily be compressed at those points at the direction and expense of the carriers when destined to Montgomery and that practically all of the cotton concentrated at the latter point from the origin territory would be in the uncompressed state. The short line route from this territory to Savannah, a south Atlantic port, is through Montgomery in connection with the Seaboard. The lines of defendants from the origin territory to Montgomery and of the Western Ry. of Ala. or Seaboard and connections beyond also provide reasonably direct, and in some instances, the short line routes to the other south Atlantic ports and to Georgia and Carolina mill points. The through rates from and to these points apply over these routes. The Seaboard serves Atlanta over its line which extends through that point from Birmingham to Wilmington, N. C. Under a tariff of this defendant compressed cotton from the points of origin here considered may be concentrated at Atlanta when destined to southeastern Carolina or eastern mill points. The mere fact that these defendants participate as originating carriers in joint rates in connection with which transit is allowed at Atlanta by the Seaboard does not make them guilty of undue prejudice against Montgomery. The evidence clearly shows that direct routes, often the short routes, from the origin territory involved to the southeast and the Carolinas are through Montgomery and that in most instances joint through rates are now in effect over such routes. The record in this case, indicates clearly that it is extremely difficult and often impossible to market cotton direct from producing points to mills or other markets where it is consumed, owing to the fact that the cotton originates in small quantities of various grades at numerous points and requires assembling and grading before it is marketable. The net effect of refusing transit at Montgomery or other points similarly situated on the through routes from the origin to the destination territory here involved appears to be to requite the cotton to move through from point of origin to destination uncompressed and ungraded, or not at all. Such arrangements clearly operate to the disadvantage to the growers in that they are largely deprived of the competition of buyers at the important mill points in the southeast and Carolinas. It is the general practice throughout the cotton belt to permit or require concentration and compression at the first convenient com-

pressing point enroute to destination in the line of movement for the traffic. HELD, concentration arrangements should be provided at Montgomery similar to those applicable at Atlanta. Montgomery Cotton Exchange v. S. A. L. Ry. 109 I. C. C. 579.

(c) Concentration points are also compression points and under the so-called carriers privilege rates, on which most of the cotton traffic moves, the cotton is as a rule there compressed at the direction and expense of the carrier. Concentration and compression are of benefit to the carrier in the saving of equipment which they effect, the movement into the concentration point being largely in less carloads and from the concentration point in carloads, compressed cotton occupying substantially less space than uncompressed cotton. Montgomery Cotton Exchange v. S. A. L. Ry. 109 I. C. C. 579, 582.

(d) Concentration of cotton at the joint rates in effect to ultimate destination over reasonably direct routes, has become so common, due to the voluntary act of the carriers in recognition of the peculiar circumstances surrounding the marketing and handling of the traffic, that any shipper not accorded joint rates is at a substantial disadvantage which will confine his opportunities of sale to limited areas. Montgomery Cotton Exchange v. S. A. L. Ry. 109 I. C. C. 579, 587.

§5. Cooperage and Bailing.

See Express Companies §4 (a); Import Traffic §2 (cc).

(a) Complainant attacked defendants failure to furnish lumber for the doors of grain cars used in shipping wet spent grains between Jan. 3, 1918 and Feb. 28, 1920 as unjust, unreasonable, unjustly discriminatory and unduly prejudicial. The applicable tariff provided that boards for doors or for coopering of cars would be furnished by the carrier except over lines performing only a switch service, and defendant admits this obligation. It appears that the lumber purchased by complainant for grain doors was kept separate from that used for other purposes and was used entirely for the coopering of cars, but there is no showing that the doors received on inbound shipments were used solely on those outbound. An award of damages must be definite. The record does not afford a basis for the calculation of a definite amount of damage. There is an absolute failure to show the cars, or even the number of cars, for which boards were applied, and also a failure to show the number or disposal of boards received on incoming cars and from defendant. HELD, complaint failed to show damage, complaint dismissed. Milwaukee Vinegar Co. v. Director General, 98 I. C. C. 53.

(b) Applicable tariff provided for cooperage of cars except over lines performing switching service only, but record is inadequate to show that failure of defendant to furnish lumber for grain-car doors on shipments of wet spent grain from Cudahy, Wis., during Federal control, resulted in any damage to complainant which can be definitely fixed. Milwaukee Vinegar Co. v. Director General, 98 I. C. C. 53.

§6. Dumping and Trimming.

See Transportation §1 (c).

(a) Complainants question the legality of publishing dumping charges separately from line-haul rates on coal, but carrier's right to do so is perfectly clear. See New England Coal & Coke Co., 33 I. C. C. 276, and Lake Cargo Coal Rates, 46 I. C. C. 159. Southern Trans. Co. v. N. & W. Ry., 101 I. C. C. 211, 213.

(b) As a matter of law carriers are entitled to charges for the separate and additional service of dumping coal into vessels that will yield reasonable profit. See Southern R. Co. v. St. Louis Hay & Grain Co., 214 U. S. 297. Southern Trans. Co. v. N. & W. Ry., 101 I. C. C. 211, 215.

(c) In dumping coal it is necessary that the chutes be manipulated vertically and horizontally in order to properly load the coal in the vessel's hold. Complainants and defendants agree that the vertical manipulation is part of the dumping service, but are at odds as to whether the horizontal manipulation is dumping or trimming. From all indications it is of little importance to anyone, but, as a fair and reasonable proposition, defendants should provide in their tariffs that dumping includes the horizontal manipulation of the chutes. Southern Trans. Co. v. N. & W. Ry., 101 I. C. C. 211, 216, 217.

(d) In the interest of accuracy and

simplicity a separate charge for trimming as well as for dumping coal into vessels at Hampton Roads piers, required. Southern Trans. Co. v. N. & W. Ry., 101 I. C. C. 211, 218.

(e) Service of docking and undocking, running lines, and furnishing fresh water to ships in connection with the dumping and trimming of coal into vessels found not to be "transportation" within the meaning of section 1 (3) of the act, and beyond the commission's jurisdiction. Southern Transp. Co. v. N. & W. Ry., 101 I. C. C. 211, 221, 223.

§7. Back Haul.

See Supra §2¼.

(a) The Commission has repeatedly found that although the carriers may under certain conditions voluntarily establish a free back haul in connection with transit, it will not under ordinary circumstances require them to do so, unless to remove undue prejudice. Furthermore, a back haul is contrary to the purpose of transit and generally should be permitted only to meet unusual situations. Lake Charles Rice Milling Co. v. L. W. R. R. 109 I. C. C. 195, 196.

§7½. False Floors, Insulation and Bedding.

See Live Stock Shipments (x).

(a) Respondents proposed new rules governing the bedding of cars for livestock at points in central territory which would increase the charges therefor and limit the amount and kind of bedding to be furnished. The present rules were published as a result of 80 I. C. C. 747, and 87 I. C. C. 157. Carriers sought to retain in full the present charge but to lessen the service thereunder, to eliminate their common carrier obligation to furnish suitable bedding but substituting therefor an obligation to place in the car specified amounts of materials, and, when this is not sufficient, to force shippers to finish out the bedding themselves or secure through the carrier the completion of the bedding from private concerns under no obligation to furnish it and at charges not subject to regulation. Respondents purpose in this proceeding apparently has been to nullify, if that could be done by tariff provision, the requirement that they must furnish cars suitably bedded. They sought to do this by a provision that they will place in the car only a stated amount of material and that the shipper must determine how much more is needed and secure it where he can. HELD, schedules not justified. Bedding livestock, 98 I. C. C. 323.

(b) Proposed changes in rules governing the bedding of cars used for the transportation of livestock in central territory, resulting in increased charges and the limitation of services performed, found not justified. Proposed schedules would eliminate present common-carrier obligation, as set forth in 80 I. C. C. 747, and 87 I. C. C. 157, to furnish suitable bedding and would substitute therefor an obligation to place in cars a specific amount of material, and when that amount is insufficient, to force shippers to furnish themselves, or to secure through carriers from private concerns, at charges not subject to regulation, sufficient material to complete the bedding. Suspended schedules ordered canceled. Bedding Livestock, 98 I. C. C. 323.

(c) Complainant attacked the rule promulgated during federal control, and which has since remained in effect upon most of the railroads, pertaining to the bedding of cars to be used in the transportation of livestock as unreasonable and prayed for reparation. In 80 I. C. C. 747 the Commission stated that whatever bedding is reasonably necessary the carrier by law is required to furnish, and that for such service it could make a reasonable charge, and the Commission found the rule attacked not unreasonable except as applied by those carriers west of the Missouri river whose transportation rates have included the cost of bedding. The record did not show which if these carriers had, and which had not, included the bedding costs in their rates. Original report affirmed 87 I. C. C. 157. Attention is directed to the consideration of whether the present charges of $1 and $1.50 provided by the rule for bedding single deck and double deck cars, respectively, are reasonable charges within themselves for such services. The costs of the service of bedding cars naturally vary with conditions in different parts of the country, and the fact that the respective carriers did not present uniform testimony upon this subject tends to strengthen rather than weaken its credibility. The present charges are at least not unreasonable. HELD, present rule not unreasonable. HELD, complaint dismissed. National Livestock

Exchange v. A. T. & S. F. Ry., 107 I. C. C. 512.

§9¼. Inspection.

See Inspection.

(a) Complainant attacked charges of $3 prior to July 1, 1922 and $2.70 on and after that date, exacted at Cincinnati as inspection charges on six cars of hay originating in Indiana between June 16, 1922 and March 4, 1924 as unreasonable and inapplicable. Inspection of these cars took place on the so-called plug track which is leased by the Cincinnati Grain & Hay Exchange for the sole purpose of providing facilities for the inspection of incoming shipments of grain and hay. This plug track is served only by the Pennsylvania. Under standing orders from complainants, the defendant, through the Pennsylvania, places all incoming cars of hay consigned to them on the plug track. After inspection of the contents it is complainants practice to tender a switch ticket to the Pennsylvania ordering delivery of the car to a certain outbound carrier, if the subsequent movement is to a point beyond Cincinnati, and to furnish such outbound carrier with a new bill of lading providing for the movement to the new destination. No disposition orders are given to defendant after inspection and the shipments are sold f. o. b. the plug track. The transaction is regarded as a through movement, interrupted only by the inspection at Cincinnati. The plug track being under lease to the exchange could not be described as a public delivery track on which any or all shippers could receive or ship any or all freight. Consequently it falls into the general category of private tracks. Witnesses for both parties testify that hay is not delivered from the plug track in the sense that delivery means the actual passing of the contents of the car from the possession of the carrier to that of the consumer. Where the point of placement is admittedly selected solely for the purpose of inspection it is obvious that any unloading which there takes place is incident to the inspection and that an immediate sale of the contents to another party is not sufficient to change the character of the transaction from that of inspection to that of an actual or constructive delivery. HELD, charges applicable and not unreasonable, complaint dismissed. Brown & Co. v. E. R. R. Co. 109 I. C. C. 109.

§9½. Milling, Mixing and Elevation.

(a) Defendants' refusal to establish joint rates on grain and products from the West and South via Bangor, Pa., over certain through routes, with milling in transit at that point, found contrary to public interest and unreasonable. Because of business and transportation practices prevalent in dealing in grain and products, to compete upon an equality complainant requires joint rates with transit at Bangor equal to rates in effect over existing routes through other milling points. Moreover, if joint rates via Bangor are confined to routes involving substantial similarity in service to already existing routes with joint rates, and lawful rights of carriers are preserved, the commission is unable to see that result will be numerous unreasonable requests for extension of transit or that publication of such joint rates will result in undue multiplication of routes or diversification of traffic. Flory Milling Co. v. C. N. E. Ry., 93 I. C. C. 129.

(b) Milling in transit of grain, grain products, and commodities entering into the manufacture of mixed feeds at joint rates has become such a widely diffused and common practice, due in large extent to voluntary act of carriers, that any manufacturer not accorded transit under joint rates is at a substantial disadvantage which will confine his opportunities of sale to limited areas. Flory Milling Co. v. C. N. E. Ry., 93 I. C. C. 129, 133, 134.

ALL OTHER CITATIONS

Detroit Board of Trade v. W. Ry. Co., 88 I. C. C. 413.

§10. Loading, Unloading, Delivering, Insulating, Bracing, etc.

See Classification §13; Demurrage §10¾ (f); Evidence §65; Express Companies §2; Facilities and Privileges §2 (b), §14; Loading and Unloading; Transportation §10.

(a) Complainant alleged that rules, regulations, and practices of defendant at Piers, 10, 11, 39, 46 and 81, North River, Manhattan Island, N. Y., in connection with shipments of cast iron soil pipe, any quantity, from Somerville, N. J., to New York, N. Y., are unreasonable, unjustly discriminatory, and unduly

prejudicial in that they restrict the handling of shipments of cast iron soil pipe and do not restrict the handling of substantially similar commodities. The pipe is listed in the trade as a plumbers supply and is essential in all building operations. The center of the plumbing supply industry on Manhattan Island is in close proximity to Piers 10, 11, 39 and 46. The commodity is shipped in boxed cars and is loaded in excess of the minimum of 36,000 pounds. Rate from Somerville is 8c per 100 pounds. All railroads, except defendant, handle cast iron soil pipe at their pier stations on North river. Effective May 10, 1924, defendant has published a tariff which removes the restriction on less carload shipments of cast iron soil pipe at its North River piers, and publishes restrictions at its New York piers on carload shipments of iron and steel articles, single pieces exceeding 1,000 pounds in weight, and pieces exceeding 20 feet in length. There is nothing of record to indicate that these articles should be accorded more favorable rules respecting delivery than cast iron soil pipe. HELD, rules maintained by defendant restricting the delivery of cast iron soil pipe, carloads result in an unreasonable practice within the meaning of section 1 of the act, from which defendant will be required to cease and desist. Somerville Iron Works v. C. R. R. of N. J., 93 I. C. C. 39.

(b) Complainant attacked handling charge of 50c per ton on cottonseed cake exported from the I. C. dock at New Orleans between Oct. 1922 and April 1923 as illegal and unreasonable. The cars were unloaded on the dock and remained there in excess of the free time and storage charges as well as the handling charge. The charges assessed were under item 44 under the heading: Handling to or from shipside." Storage charges were in item 15 "import, export and coastwise storage charges including cost of handling incidental to storage". There was no published charge for any handling except that to or from shipside. On a shipment stored there would ordinarily be handling costs other than those covered by the charge for handling to or from ship side. Such costs would arise out of handling between cars and storage, handling from one storage place to another, rearrangement of the commodities, and probably other forms of handling. Any one or all might be for the benefit or convenience of the carrier, of the shipper whose commodities are so handled, or perhaps of other shippers. In those instances in which the point of storage was in fact shipside it might well be that no handling costs such as those mentioned would be incurred. The Commission is of the opinion that the cost of handling incidental to storage included in the storage charges was not the published charge for handling to or from ship side. And the fact, if it were a fact, that the point of storage and ship side did in some instances coincide would not change the situation. In those instances the charge would be applicable for the handling to or from ship side and not for that incidental to storage. HELD, storage charges applicable and not unreasonable, complaint dismissed. New Orleans Export Co. v. I. C. R. R., 96 I. C. C. 509.

(c) In 41 I. C. C. 181, 44 I. C. C. 368, the Commission had under consideration the charges for the transportation of iron ore from the lower Lake Erie ports to Ohio, and prescribed reasonable maximum rates to apply from the docks of the line haul carriers at the lake ports after the ore had been loaded into the car to the point of interchange with private industry tracks at destination. This was considered the line haul rate. This rate did not include the dock service and the service of placing carload shipments of ore at the point of unloading on private industry tracks at destination, for which service separate charges should be established. The carriers established effective May 23, 1917 a line haul rate of 50c per long ton to Youngstown, O., in lieu of the previous rate of 56c and a delivery charge at complainants plant of 2c per long ton. Under 45 I. C. C. 303 the rate increased to 65c, and in 1920 to 91c the delivery charge at the time of the latter increase becoming 3c. Effective June 15, 1922 the rate was reduced to 82c but no reduction was made in the delivery charge. Complainant attacked delivery charge made against it by defendants as being without tariff authority, and unreasonable, and unduly prejudicial. The plants alleged to be preferred are in the Youngstown district, and are those of the Youngstown Sheet & Tube Co. at Haselton, O., and other at Youngstown proper. No delivery charges are made at these plants. HELD, carriers will be expected to remove the undue prejudice found to exist in one of the alternative

methods suggested. Carnegie Steel Co. v. Director General, 96 I. C. C. 527.

(d) Complainant alleged defendants attempt to eject him from its produce house at Harlem River station and defendants threat to refuse to place cars consigned to him in the general delivery yard subject him to unjust discrimination and undue prejudice. Since 1916 complainant has been in possession, under lease, of what was known as section 14 of the Bronx Produce House at Harlem River owned by defendant. There is sufficient track space alongside for three cars. These tracks are not public delivery tracks. The produce house was constructed to divert competitive traffic, particularly potatoes originating on the B. & A., to defendants line. It is not used for any service of transportation but for the conduct of complainants produce business and the business of other lessees. The last lease was entered into with complainant on Jan. 4, 1921. It specifically provided that the premises were to be used for the sale of produce only and could be terminated in writing giving thirty day notice which was done by defendant. HELD, complainant has not proven damage by reason of any undue prejudice which may have existed by reason of defendants refusal and failure to place cars consigned to complainant on the tracks adjoining the produce house during the time when the question of the lease was in process of litigation in the courts, complaint dismissed. Gallup v. N. Y. N. H. & H. R. R., 98 I. C. C. 453.

(e) The loading of grain products is generally lighter than that of grain. It often happens that three cars are required to handle milled products from grain that moves into a transit point in two cars. Rates and Charges on Grain and Products, 91 I. C. C. 105, 130.

(f) Transit arrangements to complete loading are beneficial to carriers if means adopted are proper and nondiscriminatory. They are conducive to heavier loading and result in more economical transportation, provided a reasonable charge is made for extra service rendered. Wool Rates Investigation, 1923, 91 I. C. C. 235, 280.

(g) Service performed in setting out a car to finish loading is not comparable with switching at terminals. In former the switch must be made by train crew and two movements are involved, one in setting out car and another in picking it up, whereas in terminal switching it is done by switching crew, which handles a number of cars at same time. Wool Rates Investigation, 1923, 91 I. C. C. 235, 280, 281.

(h) Proposed rule requiring shippers on water front in Norfolk, Va., harbor to load l. c. l. freight on carriers' barges for outbound movement found not justified. Present rates on l. c. l. freight from Norfolk were made to include this service, and it would be unfair to shippers to require them to assume entire burden and still pay carriers for doing work. Loading of L. C. L. Freight, 91 I. C. C. 394.

(i) Respondents proposed to cancel their present arrangements whereby they load and unload or assist in loading and unloading carload package freight without charge in addition to the line haul rate at Chicago, Ill., Cleveland, O., Pittsburgh, Pa., Buffalo, Rochester, Troy and Green Island, N. Y., and to establish charges for certain of such services at Chicago, Pittsburgh and Buffalo when performed on request of shippers. The general rule in the United States is and long has been that shippers are required to load, and receivers to unload, carload freight. In these cases the loading and unloading services performed by the carriers vary in extent and character at these points and differ on the various roads. In general respondents aim to relieve themselves of the burden of performing these services free of charge at all of the points, which the exception of seaboard cities and Washington, D. C. Chicago. Eastern lines load and unload without charge carload package freight and make deliveries either to one consignee or to various parties presenting proper orders from the original consignee for certain portions of the carload. The provisions vary on the different lines and as between loading and unloading, freight houses and team tracks general freight, and special commodities. As an exception to the classification respondents propose a general rule uniformly applicable on all the eastern roads serving Chicago. The substitution of this rule for the present variant exceptions will bring about cancellation of the general provisions for loading carload package freight except such as are contained in the classification; a charge of 2.5c for unloading and delivering car-

load package freight at freight houses, platforms and team tracks; elimination of free car door receipt and delivery of carload shipments of fruits and vegetables; and cancellation of provisions for the handling of bonded freight through houses without charge. The western lines serving Chicago do not perform any of the free loading or unloading services herein under consideration except on carload shipments of fruits and vegetables in packages. These commodities are handled free between the car door and the inside of the car on team tracks and are received from consignors at freight platforms and loaded in the cars. The western lines also provide for the unloading, sorting, and distribution of consolidated carloads of fruits and vegetables at stations or platforms at an added charge, usually 2c but for the Wabash and I. C., 1c. They propose to eliminate entirely the services on team tracks, but provide for the handling of carloads of fruits and vegetables in packages through freight houses or over platforms including distribution of the contents of consolidated shipments, at a charge of 2.5c in addition to the line haul rate. Fruits and Vegetables. With respect to fruits and vegetables the carriers at Chicago, both eastern and western lines, are here proposing to eliminate the free assistance in loading and unloading at team tracks. The eastern lines would substitute therefor a provision for unloading upon request at a charge of 2.5c. The western lines would require the consignees to unload. For the service of loading and unloading at platforms both eastern and western lines would increase the present charges from 1 and 2c to 2.5c. The reasons for making an exception to the general rule requiring shippers to unload carloads of fruits and vegetables on team tracks no longer apply at Chicago. Fruits and vegetables usually move at estimated weights per package, which vary with the different articles and size of package. Split Delivery Cars. A split delivery car contains a carload shipments under a single bill of lading from one consignor to one consignee, made up of separate shipments to be delivered to two or more ultimate consignees. The consignors and consignees of the separate lots may be numerous, or there may be one consignor and several ultimate consignees. Where there is more than one consignor the shipments are handled by forwarders, whose office it is to combine small quantities of freight of various owners into carload quantities and ship at the lower carload rates. The nature of the traffic in split delivery cars requires the use of a platform, freight house, or warehouse where the shipments can be sorted for delivery to the different parties for whom intended. At Chicago, these cars, with the exception of granger cars of fruits and vegetables, are unloaded, sorts, and delivered by respondents at their freight houses free of charge. Cleveland. At Cleveland the tariffs provide for the free loading and unloading of carload package freight at freight houses or platforms, and for assistance in loading and unloading at team tracks, but there has been no request for such services at that point, and carriers do not handle any carload freight at the freight houses. The team tracks of the carriers at Cleveland are adequate to handle all the carload freight tendered for delivery, and there have been no complaints in the past few years charging insufficiency of team track facilities. Pittsburgh. At Pittsburgh respondents now load and unload carload package freight free of charge through the freight houses or over platforms. It is proposed to cancel all provisions for loading and to provide for unloading at freight stations at a charge of 65c per net ton and for assistance in unloading at team tracks at a charge of 50c per ton. The provision for assistance should be replaced by a provision for performing the entire service of unloading on team tracks, as is proposed at Chicago and Buffalo. Buffalo. The practice of loading and unloading carload package freight on team tracks has been followed by respondents for 30 years or more. It is not proposed to cancel or eliminate any of the services at Buffalo. The only charge will bring about the assessment of a charge for the service heretofore performed without charge in addition to the line haul rate. Very few carload shipments are handled through respondents freight houses at Buffalo. They are loaded or unloaded at the team tracks, contract warehouses or private sidings. The long established practice of warehouse deliveries at the expense of the carriers has naturally developed business at Buffalo and many arrangements have been made on the basis of existing conditions, Rochester, Troy and

Green Island New York. The present tariffs provide that when the railroad furnishes a man to tally carload package freight loaded or unloaded on station team tracks this checker will assist in the loading or unloading. It is proposed to eliminate entirely these services and to apply the classification rule requiring owners to load and unload carload freight. Reasonableness of the Proposed Charges. The proposed charge for all of the services in question is uniformly 2.5c per 100 pounds, or 50c per ton except at Pittsburgh where the proposed charges are 65c per ton for unloading package freight through freight stations, and 50c per ton for assisting in unloading on team tracks. No reason has been shown for a charge at Pittsburgh any higher than that proposed at the other points. No sufficient reason appears for requiring respondents to maintain other than a reasonable average charge, based on the average service performed. The record does not justify a charge in excess of 1.5c for unloading at team tracks, even where all of the unloading service is performed by the carriers. Conclusions. In the face of the general rule requiring consignors to load and consignees to unload carload freight, the conditions existing at the cities in question do not justify the Commission in requiring the carriers to make exceptions to the general rule. Delivery at freight houses or warehouses may be more convenient, cheaper, and more expeditious for the shipper of ordinary package freight than delivery at team tracks, but the burden of this service should be borne by the shipper making use thereof and not by the carriers or by the general shipping public. Many of the line haul rates to and from these points have been prescribed as approved by the Commission and the reports do not indicate that it has given any consideration to the cost of unloading carload freight in arriving at such rates. The same line haul rates are assessed on shipments to and from industrial sidings or outlying team tracks at these points although the loading and unloading is not performed by the carriers. These facts indicate that the general measure of the rates to and from the points in question are not unreasonable for the line haul service alone, and warrant the conclusion that if the carriers justify the charge for the loading and unloading services, they have borne their burden of proof under the law. HELD, proposed cancellation of tariff provisions for the loading and unloading of carload package freight without charge in addition to the line haul rate, applicable at Chicago, Cleveland, Pittsburgh, and Buffalo, Rochester, Troy and Green Island has been justified. HELD, further the proposed continuance of the unloading service at Chicago and at freight stations at Pittsburgh, and the loading and unloading service at Buffalo to be performed upon shippers request and subject to a charge thereof, has been justified, but that the restriction of the services at team tracks in Pittsburgh to assistance in unloading has not been justified HELD, further, the measure of the proposed charges for these services has not been justified and that reasonable charges should not exceed the following: for loading or unloading carload package freight at team tracks, 1.5c per 100 pounds, or 30c per ton; for receiving and loading or unloading and delivering carload package freight at freight houses, warehouses or platforms, 2.5c per 100 pounds, or 50c per ton. Loading and unloading carload freight, 101 I. C. C. 394.

(j) Rules, regulations and practices of C. R. R. Co. of N. J., under which it refuses to float shipments of cast-iron soil pipe from Jersey City to its North River piers, Manhattan Island, N. Y., and requiring shippers to take delivery at former point, found unreasonable. Iron pipe, due chiefly to amount of time required to unload, may be undesirable traffic at pier stations, but defendant does not similarly restrict other substantially similar commodities which are bulky and difficult to handle, and nothing of record indicates that latter should be accorded more favorable rules respecting delivery than cast-iron soil pipe. Somerville Iron Works v. C. R. R. Co. of N. J., 93 I. C. C. 39.

(k) It is duty of carrier in making "stringpiece" delivery of lumber from lighters or barges to pass lumber over the stringpiece to assigned space on the dock or to consignee. It is not required that lumber be piled symmetrically, that it be tiered, or that ends of pieces be even, but at least the various pieces must be approximately parallel lengthwise. No obligation rests upon carrier to place men upon a dock to receive lumber except to extent necessary to effect delivery thereof in a safe and orderly manner. Coastwise Lumber & Supply Co. v. P. R. R., 93 I. C. C. 288, 295.

(l) Delivery charge on ex-lake iron ore at Carnegie Steel Company's plant at Youngstown, Ohio, found applicable and not unreasonable. Contention that movement of the ore within yards of complainant to its incline tracks, where it is received and handled by an unloading mechanism operated by complainant, does not constitute spotting of cars or placing of cars for unloading within meaning of the tariffs, not sustained; the service being performed at convenience of complainant and almost wholly under its directions. Mere fact that the special service following delivery at interchange tracks may be less than that generally included in deliveries at private sidings does not prove the charge unreasonable. Carnegie Steel Co. v. Director General, 96 I. C. C. 527.

(m) Loading from warehouse to cars and between piers and cars are services which should either be performed by the shipper or paid for by him, and the carriers are not required to perform such services without charging for them. There is no provision in the laws which precludes a carrier from performing such services, without charge to the shipper. Increased rates on tobacco, 102 I. C. C. 665, 672.

(n) Complainant alleged that by reason of the refusal of defendant, Western Maryland R. R., in April 1922, to load a cargo of imported cork waste. in bales, from alongside ship docked at that carriers Port Covington piers at Baltimore, Md., to cars on such piers for shipment to complainants plant at Beaver Falls, Pa., complainant was subject to payment of handling charges contrary to defendants tariffs. At the time of docking the ship complainant gave shipping instructions to the W. M., to forward the entire consignment over its line and the P. & L. E., to Beaver Falls, charged fifth class rate of 35c. Rule 10 of the tariff provided "freight in carloads, other than bulk freight, carried at carload rates, received or delivered at stations in Baltimore, through carriers warehouse or sheds or over platforms, will be loaded into and unloaded from cars by carriers." Contemporaneous tariff provided: when property is received from or delivered to vessels docked at the piers of the B. & O., Pennsylvania, Canton R. R., or W. M., or from or to ships side in stream, within lighterage limits, when said ship is awaiting docking at any of the piers, the rates will apply from or to ships side." This provision was one of a number under the heading, "Handling of freight by lighter or float within the lighterage limits." The Commission is of the opinion that the operation of the rule was not restricted by the heading to traffic involving lighterage or floatage, and that such paragraph was applicable to complainants shipments. HELD, refusal of defendant to handle such shipments from ship side to cars at their own expense, in accordance with tariffs, was unlawful, reparation awarded. Armstrong Cork Co. v. W. M. Ry., 102 I. C. C. 713.

(o) Complainant attacked charges made by defendants for the loading and unloading at Philadelphia of export, import, and intercoastal traffic, and the rules and regulations in connection with the absorption of such charges, as unreasonable unjustly discriminatory and unduly prejudicial. Prior to May 19, 1924 defendants rates on export and import freight to and from Philadelphia included loading into or unloading from the cars in all cases where the transportation rate was not less than 5c per 100 pounds or $1 per ton. Where the rate was less than those amounts a loading and unloading charge of 10c per ton became applicable, subject to a proviso that the total charge should not exceed 5c per 100 pounds. On that date, pursuant to negotiations with the Ocean Traffic Bureau defendants provided that the loading and unloading of export, import and intercoastal traffic moving to and from Philadelphia would be included in the rail rate where such rate was not less than 9c per 100 pounds, or $1.80 per ton, and that where the rate was less than the amounts specified a loading or unloading charge of 50c per ton would become applicable, subject to the proviso that the total charge should not exceed 9c. Complainant is a shipper and receiver of freight whose rates from and to Philadelphia are less than 9c. The revision of handling charges on export, import and intercoastal traffic was for the purpose of placing Philadelphia on a parity with Baltimore and a substantial parity with New York. At the present time traffic may move through the various ports mentioned under substantially similar terms, with the result that the port situation is in harmony in-

sofar as the loading and unloading charges are concerned. HELD, rates, rules and regulations attacked not unreasonable or otherwise unlawful, complaint dismissed. Philadelphia Commercial Traffic Managers v. B. & O. R. R., 104 I. C. C. 173.

(p) Carriers parties to supplement 92 to Lelands southwestern lines tariff I. C. C. No. 1645 proposed to increase the charges on nitrate of soda, in carloads, from ship side at New Orleans, La., and subports to points in Arkansas and Oklahoma. The present rates on nitrate of soda from New Orleans and subports to points in Arkansas were prescribed in 89 I. C. S. 223. The rates under consideration in that case applied from ship side and the handling charge of 2.5c per 100 pounds was absorbed in the line haul rates under proper tariff authority. Respondents now propose to discontinue absorbing this handling charge on traffic destined to points on the class A lines, which would have the effect of increasing the total charges 2.5c per 100 pounds from ship side, and further proposed to apply the same basis to points in Oklahoma on class A lines. HELD, proposed schedules not justified. Nitrate of soda from New Orleans, 104 I. C. C. 761.

(q) Upon further hearing, former report 58 I. C. C. 164, collection of separate charges for loading and unloading of livestock at the Chicago stockyards, in addition to the line-haul rates, found unlawful and unreasonable, and amount of reparation due and parties entitled thereto determined. Chicago Live Stock Exchange v. A. T. & S. F. Ry. Co., 100 I. C. C. 266.

(r) Proposed cancellation of present arrangements whereby carriers load and unload or assist in loading and unloading c. l. package freight without charge in addition to line-haul rates at Chicago, Cleveland, Pittsburgh, Buffalo, Rochester, Troy, and Green Island, found justified. In the face of the general rule the country over requiring consignors to load and consigees to unload c. l. freight, the conditions existing at the above-named cities do not justify the commission requiring carriers to make exceptions to the general rule. Moreover, the burden of this service should be borne by shippers making use thereof and not by carriers or the general shipping public, and in 18 I. C. C., 234 and 18 I. C. C. 271, the commission approved the action of carriers in refusing to load and unload c. l. freight free of charge. Loading and Unloading C. L. Freight, 101 I. C. C. 394.

(s) With certain exceptions, the general rule in the United States is and long has been that shippers are required to load, and receivers to unload, c. l. freight. Loading and Unloading C. L. Freight 101 I. C. C. 394, 396.

(t) Contention that in C. F. A. Class Scale case, 45 I. C. C. 254, 272, the commission fixed the c. l. class rates high enough to cover cost of loading and unloading, found untenable. Loading and Unloading C. L. Freight, 101 I. C. C. 394, 401.

(u) It is impractical to assess varying charges for loading and unloading different commodities based on the relative difficulty of handling. Carriers should not be required to maintain other than a reasonable average charge, based on the average service performed. Loading and Unloading C. L. Freight, 101 I. C. C. 394, 411.

(v) Cost of handling all freight through freight houses is not an accurate measure of the cost of handling straight c. l. shipments of package freight. Loading and Unloading C. L. freight, 101 I. C. C. 394, 412.

(w) Upon contention by protestants that rule requiring shippers to load and unload c. l. freight presupposes the furnishing by carriers of adequate facilities and that at Chicago and Buffalo the facilities are wholly inadequate, due to congestion at team tracks and narrow and poorly paved driveways, HELD: While team tracks at Chicago and Buffalo are not ideal in many respects and are frequently congested, the record does not warrant conclusion that under reasonable regulations and proper supervision they are not reasonably adequate. Loading and Unloading C. L. Freight, 101 I. C. C. 394, 413.

(x) Shippers urge that line-haul rates include loading and unloading services, and under the law carriers not only must justify charges for such services, but burden is upon them to show that line-haul rates heretofore contemplating loading and unloading services are reasonable when demanded for road-haul alone. FOUND: Same line-haul rates are assessed on shipments to and

from industrial sidings and outlying team track, also to or from other points in the same group or for a similar distance, under which rates no loading or unloading is included. Such facts indicate that the general measure of rates is not reasonable for line-haul service alone and warrant conclusion that if carriers justify charges for loading and unloading, they have borne their burden of proof under the law. Loading and Unloading C. L. Freight, 101 I. C. C. 394, 413.

(y) Proposal of carriers to continue certain unloading services at Chicago and at freight stations in Pittsburgh and certain loading and unloading services at Buffalo, to be performed upon request by consignee and subject to a charge therefor in addition to line-haul rates, found justified. Restriction of services at team tracks in Pittsburgh to assistance in unloading found not justified. Measure of charges for these services suggested. Loading and Unloading C. L. Freight, 101 I. C. C. 394, 414.

ALL OTHER CITATIONS

Hershman & Co. v. Director General, as Agent, 85 I. C. C. 695.

§10½. Protective service.

See Heater Service; Protective Service.

(a) A superheater is an arrangement of pipes through which wet steam is passed for purpose of adding thereto heat units and increasing its efficiency. Power Specialty Co. v. D. & M. M. R. R. Co., 89 I. C. C. 251.

§12½. Spotting and special services.

See Allowances §8 (5); Special Rates and Services; Spotting; Storage.

(a) Complainant attacked a charge by defendants of $7.50 per hour, minimum eight hours, in addition to the rates to the lake ports, during 1918, 1919, 1920 and 1921, for the use of a locomotive and crew when ordered by the shipper, for spotting cars in the loading of iron ore from stock piles or shafts or for other service required by mining companies on the Masabi Range in Minnesota and the Marquette and Menominee ranges in Michigan as unjust and unreasonable, unjustly discriminatory and unduly prejudicial. In consequence of negotiations between the interested carriers and complainants the separate charge was discontinued on March 15 and July 1, 1921. In a number of instances the mining companies, having their own locomotives and crews available, chose to use them instead of railway equipment for stock pile spotting, while in other instances the operators employed private contractors to do the work, in the belief that it could thus be done at less expense than the published charge of the carriers. These companies seek reimbursement for the expense thereby incurred. The first consideration here is whether the service is such that it should have been performed by the carriers under their road haul rates. The record supports the conclusion that stock pile spotting is service in excess of what may be required of the carriers on the iron ore ranges in connection with their road hauls and that a reasonable separate charge therefor during the period under consideration was not inappropriate. Its exaction did not unduly prejudicial interveners or prefer shippers from shaft or open pit mines. There seems to be no basis on the record for finding that the spotting charge was unreasonable for the service required. HELD, rates attacked not unreasonable or otherwise unlawful, complaint dismissed. Jones & Laughlin Ore Co. v. Director General, 92 I. C. C. 683.

(b) Whenever a particular delivery service-spotting at some place of unloading within a plant—properly may be construed as the equivalent of either of these two services (typical team track delivery or typical shunting of a car upon a shippers siding clear of a main track) and the rendition of such service practical, the commission may compel a carrier to perform such a service with its own equipment as part of its legal obligation as to delivery of carload traffic. As the magnitude of the service becomes greater than the equivalent of track team delivery or single switching delivery, the demand on the carrier for its performance tends to exceed what may be regarded as a proper delivery service under transportation rates. Carnegie Steel Co. v. Director General, 96 I. C. C. 527, 532.

(c) Upon rehearing, prior report, 77 I. C. C. 110, failure or refusal of defendants to perform spotting service at complainant's plant at Jackson, Ohio, or to make complainant an allowance for its own performance of service, while performing such services at Wellston, Law-

rence, and Ironton, Ohio, competing points, without charge therefor in addition to line-haul rates, found not unreasonable but unduly prejudicial to complainant and unduly preferential of complainant's competitors. Reparation denied. Jackson Iron & Steel Co. v. Director General, 91 I. C. C. 201.

(d) Tracks laid within confines of an industrial plant, placed for furtherance of industrial operations, used principally for intraplant switching and usually within exclusive control of industry, are not ordinarily to be considered as parts of line-haul carriers' terminal facilities. While a carrier may by its own practices assume a general obligation to render spotting service on such tracks, fact should satisfactorily appear, in absence of other appropriate evidence, in order to justify a finding that failure or refusal to perform service in a particular case is violative of section 1 of the act. Jackson Iron & Steel Co. v. Director General, 91 I. C. C. 201, 205.

(e) Carrier in instant case relieved of burden of proof to justify increased cost of service resulting from discontinuance of a spotting service formerly rendered by it, and converse case of Hanging Rock Iron Co., 87 I. C. C. 373, distinguished. Jackson Iron & Steel Co. v. Director General, 91 I. C. C. 201, 205, 206.

(f) Carriers are not obligated to perform spotting service after delivery has been made by placing cars within a plant, although carrier may not perform such extra service for one shipper and refuse it to another competing shipper where conditions are similar. Jackson Iron & Steel Co. v. Director General, 91 I. C. C. 201, 209.

(g) There is no burden upon carrier to absorb cost of spotting service when performed by shipper if for own convenience latter excludes carrier from performing final placement by a single movement, but service performed for competing shippers where conditions are substantially similar must be approximately equal. Jackson Iron & Steel Co. v. Director General, 91 I. C. C. 201, 209.

(h) While a carrier may not be required to perform spotting service at convenience of shipper, service that it does perform must be adequate, reasonable, and nonprejudicial. This does not require placing of cars more than once or include respotting or reswitching, unless carrier performs reswitching or respotting services for competitors under substantially similar conditions. Jackson Iron & Steel Co. v. Director General, 91 I. C. C. 201, 210.

(i) Service performed in setting out a car to finish loading is not comparable with switching at terminals. In former the switch must be made by train crew and two movements are involved, one in setting out car and another in picking it up, whereas in terminal switching it is done by switching crew, which handles a number of cars at same time. Wool Rates Investigation, 1923, 91 I. C. 235, 280, 281.

(j) Charge for spotting cars in loading of iron ore from stock piles on iron-ore ranges in Minnesota, Michigan, and Wisconsin, and rates thence to vessels at the lake ports, found not unreasonable or otherwise unlawful. In stock-pile spotting operating conditions are unfavorable, delays frequent, and service in connection therewith is in excess of what may be required of carriers in connection with road hauls. Moreover, a reasonable charge for the service is not inappropriate, and it was not shown that those assessed unduly preferred shippers from shaft or open-pit mines, or that they were included in line-haul rates. Jones & Laughlin Ore Co. v. Director General, 92 I. C. C. 683.

(k) Contention that admissions on part of carriers, by their offer to perform spotting service, their subsequent absorption of charge for that service, and payment of reparation, and admission on part of director general, by offer of settlement, establishes fact that line-haul rates included spotting service at points of loading and unloading, or at point of final placement within plants. HELD, these admissions, although entitled to consideration, are not conclusive. Director general is not chargeable with concessions which may have been made by corporations which succeeded him. His offer was in nature of a compromise, and in accordance with familiar rules of law is not to be held against him. Pressed Steel Car Co. v. Director General, 93 I. C. C. 224, 232.

(l) Service performed by the Pittsburgh & Ohio Valley Ry., a common carrier subject to the act, which consists of movements between points of loading and unloading and the interchange yards at complainant's plant, is

essentially a spotting service even though service, from points of interchange is over the right of way of the Valley. The gravity tracks leading to the car dumper must be considered for all practical purposes as the point of unloading. Carnegie Steel Co., 96 I. C. C. 527. Carnegie Steel Co. v. Director General 101 I. C. C. 638, 644.

§14. Storing, Grading and Resacking.

See Supra §10; Storage.

(a) Request for establishment of transit at St. Louis, Mo., on shipments of wool from points on A. T. & S. F. and C., M. & St. P. west of Mississippi River when destined to north Atlantic ports, denied. Before transit can be required at any point through rates must apply via that point. There are no through routes in effect via St. Louis gateway in connection with these carriers, and a compliance with request would require such carriers to short-haul themselves Moreover, existing through routes were found reasonable and adequate in Boston Wool Trade Asso., 62 I. C. C. 228, and St. Louis has not shown that it is unduly prejudiced by refusal of these carriers to provide joint rates and transit arrangements via that gateway. Wool Rates Investigation, 1923, 91 I. C. C. 235, 278, 279.

(b) Proposed rules and regulations of the St. L. S. F. Ry., under which Hayti, Malden, and Steele, Mo., will be added to list of points from which East St. Louis may receive compressed cotton for storage in transit, when destined for beyond, and establishment of storage in transit at Jonesboro and West Memphis, Ark., equal to those applicable at East St. Louis, found not unreasonable or otherwise unlawful. Storage in transit at primary and intermediate markets on various products is quite generally practiced and storage in transit of compressed cotton at these points is to interest of cotton growers and shippers alike. Compression, Concentration, and Storage of Cotton, 91 I. C. C. 472.

(c) Complainant attacked defendants failure to permit at Marshall, Tex., the storage in transit of flour and other grain products and the reshipment thereof to Arkansas, Louisiana and Texas, subjects it to undue prejudice and unduly prefers distributors at Shreveport, La., and Texarkana, Tex. Marshall is a local point on the T. & P., 42 miles west of Shreveport and 67 miles southwest of Texarkana, both of which points are reached by the rails of this carrier. Shreveport is served also by the K. C. S., and other lines and Texarkana by the K. C. S., M. P., and St. L. S. W. The T. & P., K. C. S., and M. P., accord transit on grain and grain products at the points named. The T. & P., also accords transit at Marshall, among other Texas points, on numerous grains and seeds, and on middlings, shorts, wheat bran or shorts, corn bran, and hominy feed. The applicable tariff does not permit the storing of flour and other grain products at Marshall, this arrangement being limited to shipments stored in transit at T. & P., stations Shreveport to Boyd, Ark., Shreveport to Alexandria, La., and to stations Shreveport to Cypress, La. The K. C. S., and M. P., do not reach Marshall with their own rails, and the T. & P., has no control over the arrangements established by those carriers at Texarkana and Shreveport. The latter carrier, however, does have control of the transit situation at Marshall. The circumstances which, it is contended, differentiates the situation at Marshall from that at Shreveport and Texarkana is the competition of the M. P., and K. C. S., found at the latter points. Otherwise no dissimilarity of circumstances and conditions surrounding this traffic is made to appear. The competitive situation stressed is not adequate justification for the disadvantage to which Marshall and shippers there located are subjected by the present transit arrangements in this territory. HELD, granting by T. & P., of transit on products of grain, including flour, at Texarkana and Shreveport while contemporaneously denying like transit at Marshall subjects complainant to undue prejudice. Marshall Mill & Elevator Co. v. K. C. S. Ry., 101 I. C. C. 270.

(d) Rates assessed on shipments of wheat from St. Joseph, Mo., to Cannon Falls and Lake City, Minn., accorded transit at Leavenworth, Kans., found not to have been unreasonable, unjustly discriminatory, or unduly prejudicial, as compared with lower contemporaneous rate on like traffic from Kansas City over various lines other than route of movement, with transit at Leavenworth. Moore Lawless Grain Co. v. M. P. R. R. Co., 100 I. C. C. 303.

ALL OTHER CITATIONS

Rules for Storing and Sacking Cement, 88 I. C. C. 662.

§15. Transit.

See Infra §18, §19, §20; Supra §10; Advanced Rates §7 (6) (f) (h); Bills of Lading §4; Blanket Rates §10½ (f); Cars and Car Supply §11; Class Rates §2 (3z); Compress Companies and Charges; Concentrating Rates and Privileges; Dressing in Transit; Live Stock Shipments (u); Long and Short Hauls §2½ (b); Panama Canal Act; Penalty Charges; Routing and Misrouting §8½; Stoppage in Transit; Storage; Through Routes and Joint Rates §8 (a), §18, §19, §20. §24 (b); Transfer; Transit; Yardage.

(a) Complainant attacked rules, regulations and practices of defendants in connection with carload shipments of butter from Minnesota points to eastern destinations, when stopped in transit to finish loading, and in connection with the distribution of butter tubs and salt to its creameries as unjust and unreasonable. The tariffs provide that a car partially loaded with butter may be stopped in transit to complete loading at a charge of $6.30 per car. This charge is assessed whether the car is spotted in order to receive the additional load, or "loaded in passing" without being removed from the train. The applicable carload rate from point of origin to the eastern destination is assessed on the total weight of the shipment. Defendants are entitled to make a charge for the transit privilege of "loading in passing." The $6.30 charge is applicable for similar privileges on other commodities. HELD, rules attacked not unreasonable, complaint dismissed. Minnesota Creameries Asso. v. C. M. & St. P. Ry., 91 I. C. C. 21.

(bc) Respondents A. C. L., N. S., S. A. L., and Southern proposed to establish certain rules for application in connection with refining of vegetable oil in transit at Portsmouth, Va., providing for payment by the refiner of switching charges on outbound shipments. For more than 20 years protestant has had the benefit of a transit arrangement enabling them to ship crude cottonseed and other vegetable oils from southern points to Portsmouth and to reship the refined oil to destinations in northern states and Canada at the rate applicable from original point of shipment to final destination. Protestant is served by the Belt Line, whose charge is $4.95 per car. On incoming shipments this charge is absorbed by respondents. The charge on outgoing shipments for many years has been borne by the carriers securing the road haul on the refined oil. Shortly prior to Feb. 1, 1924 the Pennsylvania, which appears to be the carrier principally interested in the outbound movement, notified respondents that on and after that date it would not absorb this charge, stating that it was not required to do so by its absorption tariff. HELD, the record contained no evidence supporting the reasonableness of the increased charges which would be exacted from protestant, and as the proposed rules would conflict with the provisions of the Pennsylvania absorption tariff the Commission finds that the schedules under suspension have not been justified. Absorption of switching charges at Portsmouth, 91 I. C. C. 296.

(d) M. K. & T., respondent, proposed to cancel transit privileges at points on its lines on interstate shipments of grain originating on or moving via the C. R. I. & P., and C. R. I. & G. If permitted to become effective the proposed cancellation will result in substantial increases in interstate rates on grain to Texas destinations on the line of respondent or its connections beyond. Transit privileges, free of charge except where additional service or out of line hauls are involved, are accorded by respondent at 50 pounds on its line to interstate shipments of grain and grain products in connection with through rates via its line. Joint through rates and divisions are in effect on grain and grain products originating on or moving via the Rock Island, the Santa Fe, the M. K. T., and Frisco, and moving to Texas destinations via respondents line and the G. S. & S. F., T. G. N., or H. & T. C. Similar transit privileges, under protection of joint through rates, are now accorded this traffic at Kansas and Oklahoma points on the originating lines and also at points on all the Texas lines named. The proposed schedules would subject complainant to combination of local rates to and from the transit point on Rock Island grain to Texas destinations. The suspended schedules were published after respondent had been notified by the Rock Island that the divisional arrangement in effect between the two lines entitled the Rock Island to its proportion of the rate from point of

origin to the transit station, and that interline business must be adjusted on such basis. This proportion is often materially greater than the division which the Rock Island would have received of the joint rate from point of origin of the grain to point of destination of the product. This is respondents sole justification of the suspended schedules. Respondent states that it does not desire to work a hardship on dealers and millers located on its line, and it does not question the reasonableness of the joint through rates now in effect on this traffic HELD, suspended schedules not justified. Transit privileges on grain, 92 I. C. C. 161.

(e) Transit privileges are local to the carrier according them. Transit privileges on grain, 92 I. C. C. 161, 163.

(f) Respondent proposed to restrict the territory of origin in the rules governing stop off in transit of lumber westbound at Black Rock, Buffalo and North Tonawanda, N. Y. The proposal is to restrict this transit arrangement to lumber originating at points on the Erie east of Corning, and on the N. J. & N. Y., N. Y. S. & W., and W. B. & E. The present transit arrangement was established by respondent, the Erie, on March 31 1924. Respondent claimed the proposed restriction only carries out its original intention. There is no warrant for extending to Buffalo, Black Rock and North Tonawanda on the one hand, different treatment from that accorded Falconer, Jamestown and Corry, on the other, in respect of the territory from which lumber may be drawn and accorded transit. HELD, suspended schedules not justified. Transit on lumber at Buffalo, 92 I. C. C. 181.

(g) Complainant attacked rates on wire bound box material carloads applying via Clarksburg, W. Va., from origin on defendants line in West Virginia to intermediate destinations on its line as unduly prejudicial to that commodity and unduly preferential to box shooks and that defendants failure to accord said commodity dressing in transit arrangements at Clarksburg is unduly prejudicial to complainant and unduly preferential of complainants competitors at Cincinnati, O., and other named points. The only difference between wire bound box material and box shooks is that the latter are nailed together. The through rates on lumber, including box shooks from points in West Virginia to interstate destinations on defendants line do not apply on wire bound box material. In 52 I. C. C. 598, the Commission found that the carriers should provide rates on wire bound box material not in excess of the rates on lumber maintained between the same points. HELD, rates attacked unduly prejudicial and defendant ordered to accord same privileges on wire bound box material as on box shooks. Lange & Crist Box & Lumber Co. v. B. & O. R. R., 93 I. C. C. 207.

(h) Transit arrangements are treated as matters local to the line on which the transit points is situated. Lange & Crist Box & Lumber Co. v. B. & O. R. R., 93 I. C. C. 207, 208.

(i) Complainant attacked rates of $1.255 and $1.335 charged on steel plates, sheet iron, and tank material, knocked down, carloads from Niles O., to Mexia, Tex., in October and Nov. 1921 as unjust and unreasonable to extent they exceeded 93c. Niles is on the Erie the Pennsylvania and B. & O., 9 miles west of Youngstown, O. Mexia is on the S. P., and T. & B. V., 78 miles south of Fort Worth, Tex. Proof developed that all of the shipments on which reparation is asked originated at Youngstown, Pittscated in transit at Niles. Complainants practice has been to ship its products under transit arrangement wherever possible. The transit arrangement provides for the stopping in transit of iron and steel articles for the purpose of binding, bolting, boring, cutting, drilling, etc. The rate applied is the through rate on the material in its inbound or outbound form, whichever is higher, from point of origin to final destination in effect at the time of shipment from such point of origin, plus a transit charge of 3.5c, and that was the basis applied on these shipments. The attacked rates from Niles were not charged or applicable and their lawfulness will therefore be considered only as of the present and future. The rates from Niles to Mexia were and are the same as from Pittsburgh, the rates from Johnstown being 2c higher than those from Pittsburg. HELD, rate attacked not unreasonable, complaint dismissed. Standard Boiler & Plate Iron Co. v. P. R. R. Co., 93 I. C. C. 285.

(j) B. & O., proposed new regulations and practices affecting the storage of apples and pears in transit at named

points in c. f. a. territory. At present time shipments which move on through rates may be stopped in transit for the privilege of storage in c. f. a. territory regardless of point of origin, provided same is on direct line and the storage point is directly intermediate between point of origin and final destination. The restriction desired is that the shipments may be stored in transit at points where the shipments are handled into and out of the transit point by the B. & O. It is true that much of this traffic, perhaps the greater part of it, could still move on the joint rates for the respondent has many joint routes to points east of those here considered; but that does not justify the instances where rates would be increased. HELD, schedules not justified. Storage in transit on apples and pears, 95 I. C. C. 101.

(k) Respondents proposed (a) exceptions to certain transit privileges on lumber, shingles, and other forest products, including wooden piles, posts, ties, and paving blocks, at Minneapolis and St. Paul, Minn., on traffic destined to those points from the Pacific northwest; (b) changes in the intermediate rule restricting the application thereof. Prior to June 25, 1918 forest products from the Pacific northwest moved to destinations east of the Twin Cities under joint rates which were practically the same as the combinations of local rates to the Twin Cities and proportional rates beyond. On that date the lumber rates were increased 25% with a maximum increase of 5c. This increased the rates on lumber to the Twin Cities and Minnesota Transfer 5c and from the Twin Cities and Minnesota Transfer to Chicago and St. Louis 2.5c, whereas the joint rates were increased only 5c making the combination on Twin Cities 2.5c higher than the joint rates. This disadvantage to the Twin City dealers was accentuated by the general increases of August 26, 1920 and was not materially changed by the reduction of July 1, 1922. The principal objection to the proposed exceptions is that joint rates are now and will continue in effect to points beyond the Twin Cities on the same basis as those to the Twin Cities under which dealers at Twin Cities may reship to those destinations without any additional charge except for transit. The additional service necessary, on movement from Minneapolis to Mankato or to Duluth is obviously greater than on a movement from Minneapolis to Minnesota Transfer and thence to another point in Minneapolis. HELD, suspended schedules not justified. Transit privileges on lumber, 95 I. C. C. 154.

(l) It is held that a transfer arrangement provided by one carrier party to a joint rate and refused by another did not result in undue preference. Demurrage rules on coke, 96 I. C. C. 731, 734.

(m) Complainant attacked defendants rules, regulations and practices governing transit at Savannah, Ga., on cotton from points in the southeast, Mississippi Valley, and territory west of the Mississippi river when destined to cotton mills in North Carolina and South Carolina or for export, and rates on this traffic from certain points on the C. of Ga., and its short line connections, the S. A. L., and L. & N., to cotton mills in North and South Carolina as unreasonable and unduly prejudicial to Savannah and unduly preferential of Atlanta and Augusta, Ga. **The Rates.** Through routes and local or joint rates on cotton are generally maintained via Savannah from stations on the lines of these defendants and their connections to cotton mills in North and South Carolina. There are, however, no joint rates to Carolina mill points from local stations on the C. of Ga., east of Dawson and Columbus, Ga., from stations on certain short line connections of the C. of Ga., from stations on the S. A. L., south of Savannah and west of Omaha, Ga., or from stations on the L. & N., south of Montgomery, Ala. The combination rates on (1) cotton, in bales, uncompressed, with privilege to carrier of compressing at origin or in transit, carriers privilege rates; (2) cotton, in bales, uncompressed to go through to destination uncompressed; and (3) cotton, in bales moving into concentration point uncompressed and for concentration point to destination compressed from these points via Savannah to the Carolina mill points are attacked on the ground that they are substantially higher via Savannah than the combination rates for corresponding service from and to the same points in effect by way of Augusta and Atlanta, and that these rates exceed materially the through rates, both local and joint, in effect via Savannah from other points in the same general territory to the same destinations. Defendants are willing to establish through rates on this commodity from these points if production

should develop. HELD, through combination rates are not unreasonable or otherwise unlawful. **Transit.** Under the tariffs of C. of G., S. A. L., and A. C. L., cotton originating at points on their lines, within certain exceptions not here in question, may be concentrated at Savannah for reshipment to Carolina mills on the basis of the through local or joint rate or lowest available combination rate from original shipping points to final destination. An additional charge of 3c is, also provided by the C. of Ga., on uncompressed cotton handled from a concentration point or through compress points to a compress point for compression. The rates on cotton from most of the points on the C. of Ga., to Savannah apparently are carriers privileged rates under which as shown that carrier may, if it so elects, compress the cotton destined to Savannah at point of origin or enroute, when it originates at or beyond a compress point on its line. If, therefore, it elected to compress such cotton at the first compress point the relative hauls of a given shipment uncompressed and compressed would be substantially the same whether concentrated at that compress point or at Savannah and the extra cost of moving the cotton uncompressed to Savannah would not be incurred. It would appear to be within the discretion of this defendant whether cotton going to Savannah moves uncompressed from or through a compress point. Cotton concentrated at Savannah for reshipment to the Carolina mills or for export generally moves on carriers privilege rates and complaint is made that certain of defendants fail to compress such cotton at their own expense when it reaches that point uncompressed. Complainant attacked as unreasonable the failure of defendants other than the S. A. L., to provide for the concentration at Savannah of cotton originating at points on the lines of their connections. HELD, rates attacked not unreasonable or unduly prejudicial. Rates for the future will be unreasonable for C. of Ga., to exact any charge for the concentration at Savannah on cotton originating on and moving over its line uncompressed at its election at carriers privilege rates from a compress point or through compress points to Savannah and reshipped to cotton mill points in North and South Carolina. That the attacked charges, rules, regulations, and practices here considered, except as above stated, not unreasonable or otherwise unlawful. Savannah Traffic Bureau v. A. & R. R. R., 96 I. C. C. 749.

(n) M. & St. L. R. R., proposed changes in its rules governing transit on hogs at Watertown, S. D. Protestant is interested in that portion of the transit provision which authorizes the concentration of shipments of hogs from country stations in South Dakota to Watertown in single deck cars and their movement outbound in double deck cars at through rates from points of origin. Rates on hogs in single deck cars from points in South Dakota are 115% of the rate on hogs in double deck cars. Under the present rules the through double deck rate applies on shipments moving inbound to Watertown in single deck cars and outbound in double deck cars. The proposed rules remedy the situation in respect of tonnage originating at Watertown and there added to through shipments by providing for application of the local rate from Watertown instead of the through rate from point of origin of the initial shipment. Moreover the weight of this added tonnage may be combined with the weight of the inbound movement to make up the required minimum. HELD, suspended schedules justified. Transit on hogs, 98 I. C. C. 153.

(o) Transit is a thing of value to the shipper, involving additional service on the part of the carrier, for which a reasonable charge may properly be made. It is something offered to the shipper in addition to the transportation service. Transit rules on grain, 98 I. C. C. 679, 684.

(p) Charges assessed on wheat from Kansas City, Mo., to Memphis, Tenn., Hot Springs, Ark., and Deport, Tex., with transit accorded to Leavenworth, Kans., and Marshall, Mo., found applicable and not unreasonable or discriminatory. While grain moving into Kansas City moves out to destinations here considered under proportional rates which are protected when transit is accorded at points in direct line of shipment and at points where specifically authorized. Marshall is not in direct line of shipment and complainant's shipments were backhauled through Kansas City. Moreover, at time complainant's shipments moved, defendant's tariffs did not authorize transit at Leavenworth and Marshall on basis of proportional rates from Kansas

City. Victor Milling Co. v. M. P. R. R. Co., 91 I. C. C. 58.

(q) Transit often involves out-of-line hauls and more terminal service than is involved in direct movements. Extra charges are, however, often assessed for out-of-line service. Rates and Charges on Grain and Products, 91 I. C. C. 105, 147.

(r) Before transit can be required at any point through rates must apply via that point. Wool Investigation, 1923, 91 I. C. C. 235, 278.

(s) Request for establishment of transit at St. Louis, Mo., on shipments of wool from points on the A., T. & S. F. and C., M. & St. P. west of Mississippi River, when destined to north Atlantic ports, denied. Before transit can be required at any point through rates must apply via that point. There are no through routes in effect via St. Louis gateway in connection with these carriers, and a compliance with request would require such carriers to short-haul themselves. Wool Rates Investigation, 1923, 91 I. C. C. 235, 278.

(t) Transit arrangements to complete loading are beneficial to carriers if means adopted are proper and nondiscriminatory. They are conducive to heavier loading and result in more economical transportation provided a reasonable charge is made for extra service rendered. Wool Rates Investigation, 1923, 91 I. C. C. 235, 280.

(u) Failure of carriers to publish either concentration rates, or stopping in transit to complete loading arrangements, in connection with wool and mohair shipments found unjust and unreasonable Such arrangements are desirable, as they are conducive to heavier loading and result in more economical transportation. Moreover, small growers will be able to secure benefit of c. l. rates by being permitted to consolidate their l. c. l. shipments into carloads. Reasonable charge per car for each stop prescribed. Wool Rates Investigation, 91 I. C. C. 235, 281.

(v) Fact that one carrier as a matter of policy voluntarily provides for transit at points on its lines, but at a charge adequate to cover additional service rendered, is not sufficient to require other carriers serving other points, and which do not control policy of aforementioned carrier, to grant transit at points on their lines. Wool Rates Investigation, 1923, 91 I. C. C. 235, 284.

(w) Theory of transit is service at some point between origin and destination and in direction of movement of traffic to point of final destinations, and transit involving back-haul service should not be required to be established except where it is clearly shown that failure to do so results in unjust discrimination or other violations of law. Stock & Sons, 31 I. C. C. 150. Wool Rates Investigation, 1923, 91 I. C. C. 235, 284.

(x) Finding to effect that transportation act, 1920, contemplates that railroads of the country should be considered as one national system of transportation, and that eastern carriers, forming a part of such national system and participating in joint rates, are unduly discriminating against eastern points, in refusing to grant transit on wool at such points while permitting it at western points, would be contrary to conclusion of Supreme Court in Central R. R. Co. v. United States, 257 U. S. 247. Wool Rates Investigation, 1923 91 I. C. C. 235, 284, 285.

(y) No compelling competition found to exist between wool and cotton, and fact that New England carriers provide for transit on commodities which are not in competition with wool does not prove any unjust discrimination or undue prejudice against wool shippers. Wool Rates Investigation, 1923, 91 I. C. C. 235, 286.

(z) Failure or refusal of carriers serving Boston, Mass., to establish transit arrangements at that point on shipments of wool and mohair from western territory to eastern destinations which would require out-of-line or back-haul movements, while participating in joint rates under which transit at points on direct line of movement is authorized on lines of other carriers parties to joint rates, found not unreasonable or unduly preferential of other transit points or unduly prejudicial to Boston. Wool Rates Investigation, 1923, 91 I. C. C. 235, 287.

(aa) Failure of Pennsylvania and B. & O., to accord transit in Philadelphia district on wool and mohair, while contemporaneously maintaining transit on same commodities at other competitive points on their respective lines, found unduly prejudicial in favor of dealers at such competitive points. Philadelphia

dealers buy in same western markets and compete in sale thereof at same destinations as their competitors at other competitive transit points. Wool Rates Investigation, 1923, 91 I. C. C. 235, 288.

(bb) Maintenance of milling-in-transit arrangements providing for manufacture and reshipment of wooden tanks at certain Pacific coast points, while no such arrangements are accorded complainants at Milwaukee, Wis., Chicago and Batavia, Ill., and Cincinnati, Ohio, on lumber originating at Pacific coast points, found not unduly prejudicial to complainants. Complainants are at a disadvantage due to geographical location and such arrangements, if accorded complainants, would entail a wasted haul of 20 per cent for a distance of more than 2,000 miles to manufacturing point. Tank & Tower Council v. A. & R. R. R. Co., 91 I. C. C. 309.

(cc) Rules and regulations of St. L. S. F. Ry. Co. governing concentration and compression of cotton at Jonesboro, Ark., and at Hayti, Steele, Caruthersville, and Malden, Mo., whereby such points are denied right to draw or "float" uncompressed cotton from points at which compresses are located, while granting such privilege to Blytheville and West Memphis, Ark., and Memphis, Tenn., found unduly prejudicial to former points and preferential of latter. Compression, Concentration, and Storage of Cotton, 91 I. C. C. 472.

(dd) Complainant attacked failure of defendants to provide transit privileges on scrap brass and copper, carloads, from points generally in official territory to Pittsburgh and the rates on brass and copper ingots outbound from Pittsburgh to destinations in that territory as unjust and unreasonable, and unduly prejudicial. Complainants plant is local to the Pennsylvania. It buys scrap copper and brass at points in official territory which it ships to Pittsburgh refines and reduces to copper and brass ingots, and ships to points throughout official territory. Complainant is asking the establishment of a transit arrangement whereby scrap copper or brass may be shipped to Pittsburgh, refined into ingots and reshipped from its plants at the through rates from points of origin of the scrap copper or brass to the final destination of the copper or brass ingots. Pennsylvania provides that copper brass, blister, bullion, cakes, cathodes, ingots, matte, ore, and slabs, originating south and west of Baltimore may be refined in transit at Baltimore, when reshipped over that line to Brooklyn, Jersey City and New York stations on its lines and those of participating carriers named in its tariff and to points on the New Haven. The B. & O., provides a similar transit arrangement. A transit charge of 4.5c applies except in connection with rail ocean and rail traffic reshipped over the B. & O. The rates on scrap copper and brass to Pittsburgh are generally on the sixth class basis. Outbound the rates on the ingots are generally commodity rates, but in some instances fifth class rates apply. Baltimore is the only point at which the Pennsylvania provides for refining copper in transit. At no point in official territory is transit accorded on scrap material of any kind. Complainants plant is served only by the Pennsylvania. The refinery at Baltimore is served by the Pennsylvania and also by the B. & O. Both roads grant transit, but the Pennsylvania alone can be charged with prejudicing complainant by its failure to grant transit at West Liberty while contemporaneously providing such an arrangement at Baltimore. If the transit on the Pennsylvania at Baltimore were to be canceled, the plant at that point would still be able, under transit accorded by the B. & O., to refine copper originating at western points and ship the refined product over that line to New York and New England points at through rates. HELD, failure to establish the transit arrangements sought not unreasonable or otherwise unlawful, complaint dismissed. Duquesne Reduction Co. v. P. R. R., 101 I. C. C. 625.

(ee) Where a carrier is a party to joint through rates under which transit privileges are accorded by connecting lines, the former is not concerned with transit privileges accorded by latter, as transit privileges are local to carrier according them. Transit Privileges on Grain, 92 I. C. C. 161.

(ff) Proposed cancellation of transit privileges by M.-K.-T. R. R. of Texas on grain originating on or moving via C., R. I. & P. and C., R. I. & G. found not justified. Sole justification offered by respondent is demand of Rock Island for a proportion of the rate from origin to transit station, instead of division from origin to ultimate destination, but a dispute among carriers over divisions is not justification for increased rates.

The Rock Island is a party to joint through rates under which transit is accorded and is not concerned with transit privileges accorded by respondent, as transit privileges are local to carrier according them. Transit Privileges on Grain, 92 I. C. C. 161.

(gg) Failure of B. & O. to accord wire-bound box material dressing-in-transit arrangements at Clarksburg, W. Va., on traffic originating on its line in West Virginia to interstate destinations on its line, while according such arrangements at Cincinnati, at which competitors are located, found to result in undue prejudice. Lange & Crist Box & Lbr. Co. v. B. & O., 93 I. C. C. 207.

(hh) Complaint sought establishment of transit arrangements on line of a certain carrier. Contention of such carrier that commission can not make any order in such cases affecting traffic moving from origins or to destinations on other lines, found without merit, since transit arrangements are treated as matters local to line on which transit point is situated. C. R. R. Co. v. U. S., 257 U. S. 247. Lange & Crist Box & Lbr. Co. v. B. & O., 93 I. C. C 207, 208.

(ii) Shipments of apples and pears moving on through rates may be stopped in transit at points in c. f. a. territory for privilege of storage, regardless of point of origin, provided storage point is on a direct line and directly intermediate between point of orgin and final destination. Proposal of the B. & O. to restrict application of joint rates on such commodities stored in transit at c. f. a. points to shipments moving into and out of transit points over its own rails, found not justified. Numerous increases and an abnormal rate situation would result, which carrier made no attempt to justify. Storage in Transit of Apples and Pears, 95 I. C. C. 101.

(jj) Proposed changes in rules covering transit on forest products at Minneapolis, St. Paul, Minnesota Transfer, St. Louis Park, and other points in Minnesota and Wisconsin, and proposed changes in intermediate rule restricting application thereof, found not justified. Under existing tariff forest products moving under through rates may be stopped in transit for creosoting or treating. Under proposed rules transit will not apply when both transit point and final destination are within same switching district, such shipments being treated as switching movements subject to switching charges. Proposed modification of intermediate rule to restrict its application to stations "on the same line of railway" would result in elimination of intermediate application of joint rates in many instances. Moreover, both changes would create departures from the fourth section. Transit Privileges on Lumber, 95 I. C. C. 154.

(kk) Governing tariff provided no routing restrictions and allowed fabricating in transit at points in direct line to final destination. Shipments here involved moved via circuitous routes over one of which a back haul to and from the transit point was required. FOUND, there being no routing restrictions in connection with the transit arrangement joint rates applicable in connection therewith applied over all routes of carriers parties to tariff naming the rates where no back haul was involved, and combinations were applicable in connection with such routes where back hauls necessitate. Refund of overcharges directed. Maloney Tank Mfg. Co. v. B. & O., 95 I. C. C. 725.

(ll) Rates between any given points, where no restriction is made as to routing, apply over all routes of carriers parties to tariff naming the rates, whether such routes are circuitous or not, if there be no back haul. Likewise transit arrangements applicable in connection with such rates, where no special restriction is contained in the tariff, are coextensive with the routes over which the rates apply, provided routes are not employed which necessitate a back haul. Maloney Tank Mfg. Co. v. B. & O., 95 I. C. C. 725, 726.

(mm) Stop-in-transit and reconsignment charges assessed under applicable tariff on hay stopped and held for reconsignment at Cincinnati and Chattanooga found not unreasonable or otherwise unlawful. Shipper contended that charges were illegal and unlawful to extent they exceeded the stop-in-transit charges applicable on grain and hay "held for inspection and disposition incident thereto." However, there is a clear distinction between ordinary diversion or reconsignment service and that performed in connection with grain and hay held for inspection. Furthermore, in 47 I. C. C. 590, commission approved charges for reconsignment in addition to charges for service of stopping in transit. Toberman, Mackey & Co. v. C., N. O. & T. P., 93 I. C. C. 237.

(nn) Defendant carriers' rules, regulations, and practices governing transit

at Savannah, Ga., on cotton from points in the Southeast, Mississippi Valley, and territory west thereof, when destined to cotton mills in North and South Carolina, or for export, found not unreasonable or unduly prejudicial, except that the charge of the Central of Georgia for concentration at Savannah of cotton which has moved from or through compress points without compression at carriers' privilege rates and which is subsequently reshipped to Carolina mills is found unreasonable. Savannah Traffic Bureau v. A. & R. R. R. Co., 96 I. C. C. 749.

(oo) The real purposes of compression of cotton in transit at the expense of the carrier are conservation of equipment and economy of transportation. Savannah Traffic Bureau v. A. & R. R. R. Co., 96 I. C. C. 749, 755.

(pp) Proposed changes in rules governing transit on hogs at Watertown, S. Dak., resulting in increased through charges on shipments moving inbound in single-deck cars and outbound in double-deck cars, found justified. Proposed rules remedy the existing situation in respect of tonnage originating at Watertown and there added to through shipments by providing for application of local rate from Watertown instead of through rate from point of origin of initial shipment. Moreover, the weight of this added tonnage may be combined with the weight of the inbound movement to make up the required minimum. Transit on Hogs, 98 I. C. C. 153.

(qq) There is a commercial necessity for permitting grain produced in Group G to move eastward to the Missouri River cities for transit before being shipped to California. Indeed, this necessity appears to extend to points more than 150 miles west of the Missouri River cities. Provided reasonable charges are assessed for the total transportation, the commission is of the opinion that grain should be permitted to move from all of Group G via the Missouri River cities to California, and that carriers should not be permitted to increase their charges to an unreasonable basis which will prohibit, or nearly prohibit, that movement. Grain to Pacific Coast, 98 I. C. C. 158.

(rr) Following 60 I. C. C. 579, rate on refined sulphur from Bryanmound and Freeport, Tex., to New Orleans, La., and points taking same rates found not unreasonable, unjustly discriminatory or unduly prejudicial as compared with rates from Sulphur Mine and Mossville, La., via Texarkana, Ark.-Tex., to same destinations, with privileges of transit at Texarkana. Rate from same points of origin to certain points in Louisiana intermediate to New Orleans found unreasonable to extent it exceeded rate to that point. Reasonable basis prescribed for future. Stauffer Chemical Co. v. H. & B. V. Ry. Co., 98 I. C. C. 326.

(ss) Refusal of defendants to establish, at Cleveland, Ohio, refining-in-transit on lard found not to result in unreasonable or prejudicial rates on steam lard from western rendering points to Cleveland and on refined lard from Cleveland to the Atlantic seaboard for export. Fact that the aggregate of the inbound and outbound rates through Cleveland are higher than rates paid by competitors at Chicago does not establish that rates charged complainant are unreasonable, and neither does the fact that another form of transit on lard obtains at Cleveland indicate that it is unreasonable to decline to extend the transit to refining. Cleveland Provision Co. v. A., T. & S. F. Ry. Co., 98 I. C. C. 421.

(tt) Combination of local rates found applicable on shipment stopped in transit to finish loading, no tariff authority existing for such a stop. Mississippi Pearl Button Co. v. A., T. & S. F. Ry. Co., 98 I. C. C. 560, 563.

(uu) Proposal to reestablish a charge for transit services in connection with and in addition to joint through rail-and-water rates on carload shipments of grain originating in western half of Montana and coarse grains originating in transcontinental Groups F, G, and J, milled in transit at intermediate points, but not including tidewater mills; and the products thereof forwarded through north Pacific ports to California ports, found justified. Through charges will still remain somewhat less than the combinations on the ports and a separate charge for transit is now in effect on similar traffic from certain other points of origin to destination territory. Transit Rules on Grain, 98 I. C. C. 679.

(vv) Proposal to reestablish a charge for transit services in connection with and in addition to joint through rail-and-water rates on carload shipments of grain originating in western half of Montana and coarse grains

originating in transcontinental Groups F, G, and J, milled in transit at intermediate points, but not including tidewater mills, and the products thereof forwarded through north Pacific ports to California ports, found justified. This added charge will not result in undue prejudice to millers of grain from origin territory under consideration and undue preference to millers of grain from points in other localities where free transit is permitted, as contended, nor will interior grain millers be subjected to any undue prejudice and disadvantage by reason of the continuation of free transit at tidewater mills. Transit Rules on Grain, 98 I. C. C. 679.

(ww) Proposal to reestablish a charge for transit services in connection with and in addition to joint through rail-and-water rates on carload shipments of grain originating in western half of Montana and coarse grains originating in transcontinental Groups F, G, and J, milled in transit at intermediate points, but not including tidewater mills, and the products thereof forwarded through north Pacific ports to California ports, found justified. This added charge, among other things, will conform with the principle announced in numerous decisions that transit is a thing of value to the shipper, involving additional service on the part of the carrier, for which a reasonable charge may properly be made. Transit Rules on Grain, 98 I. C. C. 679.

(xx) Respondent lines do not serve the millers of Kansas grain which moves all rail to Los Angeles and San Francisco, and do not participate in such transportation. No prejudice can therefore result by reestablishment of transit charge on shipments of grain from western Montana while none is assessed under the wheat rate from Kansas, Central R. R. Co. v. U. S. 257, U. S. 247. Transit Rules on Grain, 98 I. C. C. 679, 685.

(yy) Assessment of a transit charge in addition to the through rate at an intermediate point while no charge is assessed from a farther distant point, resulting in higher aggregate charges from the intermediate point, would be in violation of the long-and-short-haul clause. Transit Rules on Grain, 90 I. C. C. 679, 686.

(zz) Complainant attacked combination rate charged on a car of wheat in October, 1922, from Chappell, Neb., to Wichita, Kas., stored at that point in their elevator on the Rock Island and afterwards reshipped to San Diego, Calif., as unreasonable and unduly prejudicial. Shipment moved U. P., to Topeka, Kas., Rock Island to Wichita, K. C. M. & O., to Alpine, Tex., and S. P., beyond, 2,401 miles, charged 31 to Topeka, 17.5c Topeka to Wichita and 74.5c beyond. Reparation is sought to basis of 74.5c applicable at time of movement from both Chappell and Wichita to San Diego. The tariff which carried the rate claimed did not restrict its application east of El Paso, Tex., and the other socalled western gateways, and it was therefore applicable over the circuitous route of movement. The transit tariff of the Rock Island, which authorized storage at Wichita of grain originating at Chappell under the rate claimed, plus an amount of line charge, did not authorize such storage on shipments moving from Wichita via other lines. HELD, rate not unreasonable, complaint dismissed. Wallingford Bros. v. C. R. I. & P. Ry., 102 I. C. C. 239.

(3a) Complainant alleged that the rates rules and regulations for the transportation of grain, grain products and feed from Jackson, Miss., to certain stations on the G. M. & N., south of Laurel, Miss., as unjust, unreasonable, unjustly discriminatory unduly prejudicial to its members, and unduly preferential of their competitors at Memphis, Tenn., Meridian, Miss., and Laurel. Its real interest is in the establishment at Jackson of transit arrangements on shipments from St. Louis, Mo., Cairo, Ill., and Memphis. When its complaint was filed joint rates applied from St. Louis, Cairo and Memphis to all stations on the G. M. & N., in case the movement was via designated points of junction with the G. M. & N., north of Laurel, and also via Laurel when the shipments moved into Laurel over the I. C., to Jackson and G. & S. I., beyond, or over the N. & O. M. E., were there accorded transit and were forwarded to destinations south of Laurel. Prior to the hearing, the available routing under the joint rates was still further restricted by canceling that via Laurel when the inbound movement was over the I. C. and G. & S. I. The I. C. serves Jackson but not Laurel. It apparently is willing to accord transit at Jackson, but is unable to

do so because the G. M. & N., is unwilling to concur in joint rates via Laurel when the shipments are accorded transit at Jackson. The short line distance from Memphis to Laurel in connection with the G. M. & N., is 295 miles over the Frisco to New Albany, Miss., and G. M. & N., beyond. HELD, rates rules and regulations attacked not unjust, unreasonable unjustly discriminatory or unduly prejudicial, complaint dismissed. Jackson Traffic Bureau v. G. & S. I. R. R., 102 I. C. C. 259.

(3b) The Commission has said several times that it is more desirable to operate under a rate break than under transit, but it has also found that rate breaks do not necessarily constitute undue preference of the market enjoying such an adjustment nor subject transit points to undue prejudice. Kansas City Board of Trade v. A. & W. Ry., 102 I. C. C. 285, 301.

(3c) Respondents proposed to establish a transit charge of 3c at Pensacola, Fla., Louisville, Central Covington, Latonia, Erlanger, and Ludlow, Ky., and Cincinnati, O., on rosin and turpentine originating at points in the southeast when reforwarded to destinations on or beyond the Ohio river, in addition to the through rate from point of origin to final destination. L. & N., in an effort to assist dealers at Pensacola in building up their business in the territory naturally tributary thereto established a transit arrangement there to protect the through rate from point of origin to destination. Later transit arrangements were established at other points. Respondents state that requests for the extension of these transit service to other points forcibly brought to their attention the fact that these extra services were being performed without compensation. Their desire to correct this situation and to make this transit arangement conform to all similar transit arrangements in so far as the assessment of a charge is concerned led to the proposed charge. HELD, proposed schedules have not been justified in so far as they provide for the application of a charge in conflict with charges under the diversion and reconsignment tariffs. Transit privilege on rosin, 104 I. C. C. 437.

(3d) Transit privileges rest upon the fiction that the incoming and outgoing transportation services, which are in fact distinct, constitute a continuous shipment of the identical article from point of origin to final destination. North Packing & Provision Co. v. Director General, 104 I. C. C. 607, 613.

(3e) Respondents proposed to modify the rules providing for storage in transit so as to reduce the time limit on tea and matting at various western points and on grass, matting and grass articles, and rattan furniture at Minnesota Transfer, Minneapolis, St. Paul, and Duluth, Minn., from 18 months to 12 months. The facts in this case indicate that respondents, as well as protestant, would be at a disadvantage if the proposed schedules should go into effect. Apparently the greater disadvantage would fall upon respondents, inasmuch as protestant might adjust itself to some extent by the use of Atlantic coast ports. It is not suggested that the 18 month transit limit on tea has been or will be abused, and no reason appears for depriving the transcontinental carriers of the opportunity to compete for this traffic. HELD, proposed schedules not justified as to tea but are on the other commodities. Storage in transit on import traffic 104 I. C. C. 755..

(3f) Following 91 I. C. C. 58, rates assessed on shipments of wheat from Kansas City, Mo,. to various interstate destinations accorded transit at Leavenworth, Kans., Sweet Springs and Marshall, Mo., found applicable and not unreasonable, unjustly discriminatory, or unduly prejudicial. While grain shipped to Kansas City moves out to destinations here considered under proportional rates which are protected when transit is accorded at points in direct line of shipment and at other poiints where specified, shipments involved were reshipped from Leavenworth through Kansas City to Sweet Springs or Marshall, thus constituting an out-of-line haul through Kansas City. Moreover, at time shipments moved, defendants' tariffs did not authorize transit both at Leavenworth, and at Sweet Springs or Marshall from Kansas City. Moore Lawless Grain Co. v. M. P. R. R. Co., 100 I. C. C. 303.

(3g) Rates assessed on shipments of wheat from St. Joseph, Mo., to Cannon Falls and Lake City, Minn., accorded transit at Leavenworth, Kans., found not to have been unreasonable, unjustly discriminatory, or unduly prejudicial, as compared with lower contemporaneous rate on like traffic from Kansas City

over various lines other than route of movement, with transit at Leavenworth. Moore Lawless Grain Co. v. M. P. R. R. Co. 100 I. C. C. 303, 306.

(3h) Combination rates on lumber from Roach and Springdale, Fla., and Scott, Ga., to Harrison and Jersey City, N. J., and Great Works, Me., stopped in transit at Portsmouth, Va., found applicable but found unreasonable to extent they exceeded lower contemporaneous combination rates based on Live Oak, Fla., and Savannah, Ga., plus a transit charge. Reparation awarded. M'Clave & Son v. A. C. L. R. R. Co., 100 I. C. C. 405.

(3i) So-called normal or commercial rate on coal from East Birmingham to Jasper, Ala., assessed on shipments coked at Jasper and reshipped to Sheffield, Ala., found not unreasonable or unjustly discriminatory and no damage found to have been proven as result of any prejudice which may have existed. Coking-in-transit was subsequently established but this fact does not necessarily demonstrate unreasonableness. Sheffield Iron Corp. v. Director General, 101 I. C. C. 31.

(3j) There seems to be merit in the contention that the intrastate traffic in grain and grain products within Texas should have no more favorable transit arrangements than like traffic from Oklahoma to Texas points and it is suggested that carriers immediately survey the situation with the object of equalizing the transit practices. Oklahoma Corp. Comm. v. A. & S. Ry., 101 I. C. C. 116, 125.

(3k) Failure of Texas & Pacific to permit storage in transit on flour and other grain products at Marshall, Texas and reshipment thereof in straight or mixed carloads on basis of through rates to points in Arkansas, Louisiana, and Texas, while contemporaneously granting such transit arrangements at Shreveport, La., and Texarkana, Ark.-Tex., found unduly prejudicial to shippers at Marshall and unduly preferential of competitors located at Shreveport and Texarkana. Marshall Mill & Elevator Co. v. K. C. S., 101 I. C. C. 270.

(3l) The K. C. S. and M. P. railroads do not reach Marshall, Tex., with their own rails and the T. & P. has no control over storage in transit arrangements established by those carriers at Texarkana and Shreveport, but does have control of the transit situation at Marshall. The circumstances which differentiates the situation at Marshall from that at Shreveport and Texarkana is the competition of the M. P. and K. C. S. found at the latter points. HELD: Competitive situation stressed is not adequate justification for the disadvantage to which Marshall and shippers there located are subjected by the present transit arrangements in this territory. See 263 U. S. 515. Marshall Mills & Elevator Co. v. K. C. S., 101 I. C. C. 270, 272.

(3m) The utility of a transit arrangement is primarily a question for the shipper, to be determined by ascertaining whether or not it can profitably be availed of under a reasonable charge for the service rendered. See 31 I. C. C. 678. Armour & Co. v. D. L. & W., 101 I. C. C. 337, 341.

(3n) Failure of defendant to afford transit on scrap brass and copper refined at East Liberty (Pittsburgh), and reshipped to points in official territory in form of ingots, while according such transit arrangements at Baltimore, found not unreasonable or unduly prejudicial. Baltimore is the only point on line of defendant at which transit is accorded, and such transit was established to meet competition. Furthermore, if defendant should cancel all its transit arrangements, the plant located at Baltimore would still be able to refine scrap brass and copper under transit accorded it by the B. & O., and complainant would still meet such competition. Du Quesne Reduction Co. v. P. R. R., 101 I. C. C. 625.

(3na) Following American Creosoting case, 257 U. S. 247, no undue prejudice results where a carrier participates in joint rates with connecting lines upon whose rails transit arrangements are permitted while denying similar arrangements at points on its own rails. San Diego Chamber of Commerce v. A. & V., 102 I. C. C. 27, 30.

(3nb) Combination rate charged on shipments moving into transit point via one carrier, the outbound movement being performed by a different line, found not unreasonable or unduly prejudicial. Governing tariff at time of movement restricted transit privilege to shipments moving outbound from transit point over rails of carrier performing the inbound

haul, and fact that such tariff has since been amended so as to allow transit at joint rates when outbound movement is performed by a connecting line is not sufficient to warrant a finding that higher combination formerly in effect was unreasonable. Wichita Terminal Elevator Co. v. C., R. I. & P., 102 I. C. C. 115.

(3nc) Rates, rules, and regulations for the transportation of grain, grain products, and feed from Jackson to certain destinations on lines of Gulf, Mobile & Northern south of Laurel, Miss., found not unreasonable, discriminatory, or unduly prejudicial. As the Gulf, Mobile & Northern does not serve Jackson, it does not unduly prejudice shippers at that point by according transit at Laurel, and to establish joint rates via Laurel, with transit at Jackson, would short haul that carrier. Jackson Traffic Bureau v. G. & S. I., 102 I. C. C. 259.

(3nd) Upon investigation by commission on its own motion into tariffs of the St. L.-S. F. Ry., purporting to accord transit at Ada, Okla., and under which limestone and shale shipped into that point can be manufactured into cement and shipped beyond over that carrier's line to interstate points at lower through charges than when moving beyond over competitive lines, FOUND: Such tariffs are vague, indefinite, contradictory, and therefore unreasonable and unlawful. They attempt to restore in tariff form the provisions of a contract between the Frisco and a cement company; no justification appears for charging a rate lower than inbound local upon theory that shipments may be given transit, and, if shipments are not connected up with an outbound movement policing and subsequent collection of local rate will be impossible. Furthermore, all local inbound shipments should in first instance be subject to same rates. Limestone Into and Cement Out of Ada, Okla., 102 I. C. C. 407.

(3ne) Rates assessed on wheat from Kansas City, Mo., to Pine Bluff, Ark., with transit at Leavenworth, Kans., and Sweet Springs and Charleston, Mo., found not unreasonable or unduly prejudicial. A lower proportional rate applied for factor from Kansas City to Pine Bluff, but complainant was denied its use because applicable tariff permitted only two stops for transit. While present tariff permits three transit services, tariff assailed may not be condemned on this account. Moreover, in Victor Milling Co., 91 I. C. C. 58, commission considered a somewhat similar situation and found rates not unreasonable or discriminatory, and in view of conclusions reached therein it is doubtful whether lower proportional from Kansas City could have been applied to complainant's shipments if three stops had then been authorized. Moore-Lawless Grain Co. v. M. P., 102 I. C. C. 465.

(3o) Connecting lines can not dictate to the road that alone serves the transit point the manner in which joint rates through that point shall be applied in conjunction with the transit arrangements as long as they are not deprived of their long haul. They perform no greater service on shipments fabricated in transit than they do on shipments not so handled. Parkersburg Rig & Reel Co. v. B. & O. R. R. 109 I. C. C. 569, 575.

(3p) Transit arrangements represent a departure from the ordinary transportation service, under which shippers are accorded a more favorable basis of rates than would be obtained if the inbound and outbound movements were treated as separate shipments. Montgomery Cotton Exchange v. L. & N. R. R. 112 I. C. C. 325, 329.

(3q) Transit is a departure from ordinary transportation service. It is necessarily founded on the asssumption that two separate and distinct local movements to and from the transit point constitute an interrupted through movement. Notwithstanding the assumption of which it is based, the fact remains that it involves two distinct movements and two separate and complete terminal services at the transit point with all the accompanying physical handling and the keeping of necessary records in connection therewith. The fact that transit on cotton has been so long in effect and so widely accorded as to become practically an inherent incident in the transportation of that commodity does not less the application to it of the general observations above made. Also, while the compression of cotton is an advantage to the carrier in that it permits more efficient and economical use of equipment, it must be borne in mind that under the carriers privilege rates the cost of compression is absorbed out of the carriers revenue. Montgomery Cotton Exchange v. L. & N. R. R. 112 I. C. C. 325, 332.

(3r) The theory of transit is service at some point between the point of ori-

gin and destination of the traffic, and in the direction of the movement of the traffic to the point of final destination. A back haul is contrary to the purpose of transit and should generally be permitted only to meet unusual situations, and when to do so does not result in unjust discrimination or other violation of law. Montgomery Cotton Exchange v. L. & N. R. R. 112 I. C. C. 325, 333.

ALL OTHER CITATIONS

Transit Privileges on Transcontinental Grain, 85 I. C. C. 43; Parkersburg Rig & Reel Co. v. B. & O. R. R. Co., 88 I. C. C. 49; Portland Flouring Mills Co. v. S. P. & S. Ry. Co., 88 I. C. C. 99; Tuscaloosa Cotton Seed Co. v. A. G. S. Ry. Co., 88 I. C. C. 258; Michigan Silo Co. v. C. & N. W. Ry. Co., 88 I. C. C. 467; Rules for Storing and Sacking Cement, 88 I. C. C. 662.

§15½. Transshipment and transfer.

(a) Respondents proposed to increase their charges for handling shingles at South Atlantic and Gulf ports east of New Orleans, La., and to increase their charges for handling shingles at New Orleans and certain other Louisiana ports. The term handling used herein means the physical handling or movement of traffic between cars and shipside (including carriers barges), or between cars at ship side (including carriers barges) and storage, and between storage and ship side (including carriers barges) or cars and does not include marking services. Respondents proposed to take shingles out of the box and barrel material item and to increase the handling charges on this commodity to 3c. The present handling charge on shingles at the Louisiana ports is 2c. It is proposed to increase this charge to 4c. There is no separately established wharfage charge at the Louisiana ports. If the proposed charges become effective the combined charge for wharfage and handling of shingles will be 4c at all ports. Shingles arriving at Mobile are taken from the hold of the vessel by the ship sling or tackle, lowered to the dock and piled under a shed by the stevedore force. This service is performed by the water carrier. The handling service performed by respondents at Mobile is from the shed into the cars in which the shingles are transported from that port. HELD, proposed schedules justified. Handling charges on shingles, 89 I. C. C. 641.

(b) Complainant attacked defendants charges for terminal services incident to the transfer of the coal from cars to vessels as unlawful and unreasonable. Charges for Dumping and Dumping and Trimming Combined. The transfer of the coal is effected at the piers of the defendant rail carriers, the C. & O., N. & W., and Virginian Rys. The piers used for most of this traffic are of the most modern and approved type and are very efficient in their operation. Defendants publish a charge of 5c per long ton for dumping, and charges ranging from 9c to 30c per long ton for dumping and trimming combined, dependent generally upon the amount and nature of the trimming necessary. There is no stated charge for trimming only, because there could be no trimming without dumping. These charges apply to the entire amount of coal taken, for practical reasons it being desirable to so apply them rather than on the basis of the amount trimmed. No question is raised as to this matter. All the terminal charges referred to are in addition to the line haul rates to Hampton Roads port on coal destined beyond the Virginia capes, the tariffs providing that these line haul rates do not include the dumping and trimming charges. The rates on coal to Hampton Roads proper, which include the placing of the cars on sidings or team tracks, are higher than the transshipment rates. The Dumping Charge. If allowance is made for interest, the dumping costs of all three carriers greatly exceed the revenue derived from the dumping charges. As a matter of law defendants are entitled to charges for this separate and additional service that will yield reasonable profit. Bills for Dumping Charges. The operaters of vessels plying from Hampton Roads may be either the consignees of the coal or merely carriers of the coal under charter parties with the consignees. In either event, the rail lines, as a matter of practice, bill against the vessels for the dumping and trimming charges. The tariffs provide that these charges will constitute a part of the total charges to be collected by the carriers on the property. The charter parties between the vessel operators and the owners of the cargo coal provide that the vessels will bear the trimming charge, but not the dumping charge. Bunker coal is bought delivered into the ship, the vendor agreeing to bear the dumping charge. Com-

plainants are willing that the trimming charge be billed against them, but they contend that the rail lines should be required to bill against the consignees for the dumping charges. The interstate commerce act does not affect the common law rights and obligations of the parties in this matter. The parties responsible for the trimming charges may not be responsible for the dumping charges. If complainants are not liable at common law for the dumping charges, they are not liable under the act. The mere fact that defendants render them bills does not make complainants responsible for payment thereof. It is not clear from the record and briefs why the practice referred to is followed. In the interest of accuracy and simplicity, therefore, a charge for trimming only should be published as well as the charge for dumping. Trimming Charges. Defendants tariffs provide combined dumping and trimming charges, because there can be no trimming without dumping. The trimming charges are obtained, at least approximately, by deducting the separately published dumping charge from the combined and trimming charge. The Bunker Trimming Charge. When ships or tugs take coal into their bunker holds at defendants piers, the dumping and trimming charge is 30c per gross ton. This is much in excess of the charge made when the coal is loaded into cargo holds. The reason for the difference lies in the fact that defendants must pay much higher wages to get men to descend into the cramped and more or less inaccessible bunker holds and shovel coal at high temperatures and unfavorable atmospheric conditions. The dumping and trimming charge of 30c approximates the dumping charge of 5c, plus the 24.5c paid the trimmers. Apparently in the interest of simplicity and because the bunker trimming wages are the same for all kinds of vessels, the charges to the public are the same for all kinds. Greater refinement in the classification of vessels for the purpose of assessing trimming charges would probably involve both increases and reductions, and upon this record it would be difficult to determine what the charges should be if a change were to be made. It might also lead to frequent disputes as to whether a given vessel was in one class or another. Moreover, the record is silent as to what the shipping interests in general would say about the proposition. Docking and Undocking. Vessels that are to receive coal generally lie at anchor a few hundred yards from defendants piers. They register with the pier authorities and await their turn at a pier. When space for loading is available tugs go out and tow them or assist them in reaching and getting alongside the pier, and, when loaded, tugs tow them or assist them in getting back into the channel. This service constitutes what is called docking and undocking. Under very unusual circumstances steamers have been known to come to and depart from the piers under their own power. The pier authorities control the time and place of docking; they say when a certain vessel shall be brought to the pier and at what berth it shall dock. They notify the vessel by sending out a tugboat to tow the vessel in. This method of doing business is necessary to the proper operation of the piers and the delivery and receipt of the coal. The C. & O., performs the docking and undocking with its own tugs. The N. & W., and Virginian do not but allow local tugboat companies to do it. The charges for these services are not published in tariffs filed with this commission. The fact that these services are performed or not performed by the defendants is not material. If docking or undocking are transportation, within the meaning of the act, defendants may be required to perform them or arrange for their performance by an agent. If they are not such services defendants are not responsible for them and are not bound by any requirements that do not apply to other parties doing the same thing. The service is not service given the property transported, but is a service performed for, or assitance given, the vessel of the consignee or the connecting water line which receives the coal at defendants piers. Defendants must deliver the coal but the vessel must do its part and put itself in position to receive it. It is just as much the vessels duty to get itself promptly to the designated berth at the coal pier as it is for any ship to get itself to the allotted space at any other pier where it desires to stop. The fact that it is to receive coal at a rail carriers pier does not alter the situation. The rail carriers initial duty in respect of delivery is fulfilled when it communicates to the vessel through the tugboat authorities or otherwise that a designated berth is available at the pier. It is

the vessels duty to go there with reasonable dispatch, otherwise the coal would be held for or by consignee thereby entailing demurrage and storage charges until the vessel has put itself in position to take delivery. This does not make it a transportation service in connection with the delivery of the coal and does not subject the independent tugboat company to the jurisidiction of the commission. Defendant rail lines have the same right to do this work with their own tugs and without bringing the service under the jurisdiction of the commission as they have to operate restaurants at their depots. The tugboat service is a marine service performed for the vessel and is not a service in connection with the delivery of the coal. The towing is done before and after delivery and can not reasonably be said to be in connection with it. Clearly, the service is not within the law. Running Lines. When the vessels come alongside the piers it is necessary that men be on hand to receive the lines, or ropes, as they are thrown out and to make them fast; also to release the lines when the vessel is ready to leave. This work is necessarily incident to the docking and undocking of the vessel and the delivery of the coal ,and can not be done by the vessels crew. This service is beyond the jurisdiction of the Commission. Furnishing Fresh Water to Ships. Defendant C. & O., furnishes fresh water to steamships at its piers, for which it makes a charge. The Virginian and the N. & W., do not furnish water, but permit an independent concern to do so from city pipe lines laid on their piers. The interstate commerce act furnishes no jurisdiction. Port or Wharfage Charges. Vessels taking bunker coal at defendants piers are required to pay port or wharfage charges, not on file with the Commission, which is in addition to the other charges connected with the delivery of the coal. This charge is based on the idea that defendants are entitled to special compensation for the use of their pier facilities because a vessel taking bunker coal may have to remain at the pier longer than one taking cargo coal, which is generally delivered in much greater volume. A vessel taking bunker coal may displace or interfere with a vessel taking cargo coal which brings defendants greater revenue. The charge is not made against vessels taking cargo coal if they do not also take bunker coal. About 75% of the vessels stopping at defendants piers take only bunker coal. The charge under consideration is for the use of the same transportation facilities as are employed for cargo coal, the only difference being in the extent of the use, and these facilities are of the kind that carriers are expected to provide in order to make deliveries. The charge is clearly one in connection with the transportation and delivery of the coal and subject to the act, although it is not supported by tariff authority or by contract for special or rate services. Defendants should publish their charge in the future, but what, if any, charge may reasonably be made must be left for consideration after further hearing limited to this subject. Southern Transportation Co. v. N. & W. Ry., 101 I. C. C. 211.

(c) Rates on bituminous coal from mining districts in Pennsylvania, Ohio, Maryland, the Virginias, Kentucky, and Tennessee to Lake Erie ports, for transshipment by vessel to destinations beyond found not in excess of the maximum of reasonableness. Such rates found to be just and reasonable and not unduly prejudicial as compared with rates from other districts in the Appalachian region. Lake Cargo Coal Rates, 1925, 101 I. C. C. 513.

§16. Wharfage and Dockage.

See Dockage; Facilities and Privileges §1 (c); Transportation §1 (c); Wharfage.

(a) Proposed rule requiring shippers on water front in Norfolk, Va., harbor to load l. c. l. freight on carriers' barges for outbound movement, found not justified. Present rates on l. c. l. freight from Norfolk were made to include this service of loading freight on barges and it would be unfair to shippers to require them to assume entire burden and still pay carriers for doing work. Loading of L. C. L. Freight, 91 I. C. C. 394.

(b) Carriers applied advances authorized under Increased Rates, 1920, 58 I. C. C. 220, to through ship-side rates, which included separately published wharfage charges. HELD: Such through rates found unreasonable since decision cited did not authorize increases in wharfage charges. Houston Cotton Exchange v. A. & S. Ry., 92 I. C. C. 363.

(c) Congestion existing at piers on

Manhattan Island has been referred to by commission in various cases, and reasonable rules and regulations designed for its relief and to facilitate handling increasing tonnage of merchandise freight at the piers will not be condemned. Somerville Iron Works v. C. R. R. Co. of N. J., 93 I. C. C. 36, 42.

(d) Upon consideration of matters involved in the investigation instituted by commission on its own motion into reasonableness of wharfage, handling, storage, and other accessorial services at south Atlantic and Gulf ports. FOUND, in view of numerous instances of overlapping of competitive conditions affecting traffic handled through north and south Atlantic ports raising questions that can not be satisfactorily disposed of by limiting the proceeding to south Atlantic and Gulf ports, such proceedings reopened and its scope broadened to include all Atlantic and Gulf ports. Wharfage Charges at South Atlantic and Gulf Ports, 93 I. C. C. 609.

(e) Following Handling Charges at Louisiana Ports, 61 I. C. C. 379, combined wharfage and handling charges on kerosene in cases, at New Orleans, found unreasonable for future to extent it exceeds 3.5 cents per 100 pounds. Wharfage Charges at South Atlantic and Gulf Ports, 93 I. C. C. 609, 613.

(f) Service of docking and undocking, running lines, and furnishing fresh water to ships in connection with the dumping and trimming of coal into vessels found not to be "transportation" within the meaning of section 1 (3) of the act, and beyond the commission's jurisdiction. Southern Trans. Co. v. N. & W. Ry., 101 I. C. C. 211, 221, 223.

(g) Port or wharfage charge at Hampton Roads piers assessed vessels taking bunker coal found to be one in connection with the transportation and delivery of such coal and subject to the act, although not supported by tariff authority or by contract for special or separate services. Defendants required to publish such charge in the future. Southern Trans. Co. v. N. & W., 101 I. C. C. 211, 224, 225.

ALL OTHER CITATIONS

Dockage, Handling, and Storage Charges, 88 I. C. C. 24.

§16½. Warehousing, Storage, Station and Terminal Facilities.

See Storage; Terminal Facilities; Warehousing.

(a) Under Rev. Gen. St. Fla. 1920, §4618, subds. 5, 12, as amended by Acts 1921, c. 8469, and federal Transportation Act of 1920, Railroad Commissioners may, in proper case, require railroad companies to construct sheds along tracks in connection with station for protection, comfort, and convenience of passengers. State v. Seaboard Air Line Ry. Co. (Fla., 1925) 104 So. 602.

(b) There being no joint duty to erect train sheds for two railroads maintaining joint station, order of railroad commissioners should impose duty on each railroad separately to erect and maintain shed along its particular road. State v. Seaboard Air Line Ry. Co. (Fla., 1925) 104 So. 602.

(c) Fifth-class rates assessed on sisal from Indianapolis to certain points in c. f. a. territory, western New York, and Ontario, Canada, found not unreasonable. Shipments here involved represented the reshipment of sisal imported via Gulf ports and held in storage at Indianapolis beyond the transit period. Had they been shipped out from transit point within transit period they would have been entitled to joint rates from the ports to ultimate destination, plus transit charge. Complainant did not attack the rating or class rates as such but in effect sought extension in some degree of benefit of the storage-in-transit arrangement to shipments made after expiration of the transit period. Similar proposals, however, were found not justified in 73 I. C. C. 455 and 78 I. C. C. 575. Sisal Sales Corp. v. B. & O., 93 I. C. C. 297.

(d) Present adjustment of rates on cotton from Oklahoma, Arkansas, Texas, and Louisiana to Texas Gulf ports found unduly prejudicial to the uptown and interior warehouses and compresses and unduly preferential of the water-front warehouses and compresses; the rates should be so adjusted that one rate will apply for all deliveries within the usual switching limits of the ports, except that the export rates should be made higher than the domestic rates by amount equal to the wharfage charge. This finding is not to be construed as condemning the practice of the carriers of absorbing drayage charges in lieu of switching. Reasonableness of the rates

was not in issue and the findings herein are not to be construed as authorizing the carriers to increase their present revenues, rather, the rates should be so readjusted as to preserve existing revenues. Application of Rates on Cotton to Gulf Ports 100 I. C. C. 159.

(e) Respondents proposed to reduce the charges for handling, storage and wharfage of imported fertilizer and fertilizer materials at Pensacola, Fla., and Mobile, Ala., when stored at the port from 4 to 12 months, from $1.60 to 60c per ton. The facilities at Pensacola are operated by the L. &. N., and those at Mobile by the M. & O., and Southern. The charges are substantially the same as those maintained at other south Atlantic and Gulf ports, except on potash salts at Pensacola, and on all fertilizer materials at Gulfport, Miss. At the latter, which is served by the I. C., a charge of 60c per ton is maintained. The Mobile interests are no doubt injuriously affected by the maintenance of the 60c charge on potash salts at Pensacola. If the interested carriers do not take proper steps to correct the maladjustment resulting from the maintenance of this charge, as well as the 60c charge on all fertilizer material at Gulfport, within 60 days of the service of this report, the matter may again be called to the attention of the Commission. The Commission cannot permit this maladjustment to be partially corrected even for a temporary period by the establishment of a charge which the record clearly shows to be below a reasonable minimum. HELD, suspended schedules not justified. Handling Storage and Wharfage of Fertilizer 109 I. C. C. 609.

III. PUBLICATION AND TARIFFS.

§16¾. In General.

See Tariffs.

(a) Although a rate published as applicable to export shipments should be applied to such shipments in preference to an interstate domestic rate if the service which the carrier holds itself out to perform under the export rate is actually rendered, where, as here, that completed service is not rendered, but rather a delivery of the character which be effected on a domestic shipment is made, the commission holds that it is not illegal to apply the interstate domestic rate even though the shipment at some time subsequent to delivery may be exported. Therefore, except where shippers avail themselves of transit provisions at the ports, under which the carriers are obligated to place the cotton at ship side, the collection of the interstate domestic rates on cotton delivered to the waterfront warehouses or compresses at Houston and Galveston, Tex., is not illegal. Application of Rates on Cotton to Gulf Ports, 100 I. C. C. 159, 163.

(b) Practice of applying interstate domestic rates on shipments of cotton delivered to warehouses and compresses at the Gulf ports, where delivery is effected at a point other than ship side, found not illegal, but found unduly prejudicial to uptown and interior warehouses and compresses and unduly preferential of water-front warehouses and compresses. Complainant has failed to prove damages and prayer for reparation is denied. Application of Rates on Cotton to Gulf Ports, 100 I. C. C. 159, 167.

§17. Obligation to publish.

See Import Traffic §2 (a).

(a) Complainant attacked commodity rates charged on cotton shipped during October 1918 from Tryon and Carney, Okla., to Guthrie, Okla., for concentration and reforwarded from Guthrie on Dec. 20, 1918 to Columbia, S. C., as illegal and unreasonable. The cotton moved into Guthrie over the M. K. & T., but while being held there service on that line between Guthrie and Fallis, Okla., was discontinued under an arrangement whereby the Ft. S. & W., a line not under federal control, handled the traffic of both roads between those points. The arrangement between these roads, which, according to the written agreement, was to have become effective on Oct. 1, 1918, but which appears actually not to have been operative at the time of the inbound movement to Guthrie, was not one of joint operation, and the M. K. & T., received no revenue for the service rendered by the Ft. S. & W. Complainants tendered the shipments to the Ft. S. & W. but neither directed that they be routed over the M. K. & T., from Fallis, nor apprised the Ft. S. & W., that they have moved into Guthrie over the M. K. & T. and would be made the subject of claims for refund of the inbound charges. The shipments moved from Guthrie to Columbia via the Ft. S. & W., and connections other than the M. K. & T. The tariffs of both the M. K. & T., and Ft. S. & W., permitted concentration of cotton at

Guthrie and reshipment under joint rates from point of original shipment to final destination, provided the outbound movement was over the line bringing the cotton into Guthrie. A joint rate of $1.14 was in effect from Tryon, Carney and Guthrie to Columbia, and charges from Guthrie appear to have been collected at that rate. HELD, although the situation is unfortunate there does not seem to have been any disregard of the tariffs by the carriers, and it can not be held that the shipments were overcharged. Neither can relief be granted on the ground that the charges collected were unreasonable, inasmuch as complaint was not presented until the period of limitations governing such actions had expired. HELD, complaint dismissed. Anderson Clayton & Company v. Director General. 91 I. C. C. 233.

(b) The Commission may not read into the rule something that would be favorable to complainants contention. Transit rights must be specifically authorized by tariff provision; they can not be inferred. See 50 I. C. C. 233. Armour & Co. v. D. L. & W. R. R., 101 I. C. C. 337, 339.

(c) There is no warrant that the Commission acceded to the suggestion that substitution of one kind of lumber for another may lawfully be made unless it is authorized by tariff, or that it has receded in any degree from the opinions hitherto expressed touching the lawfulness of any practice or device not authorized by the tariff by which the integrity of a through rate is impaired; unjust discrimination or undue preference is given or secured; or the requirements of the law or the tariff are in any wise evaded. Armour & Co. v. D. L. & W. R. R., 101 I. C. C. 337, 342.

§18. Reshipping under through rate.

See Local Rates and Combinations (vv); Proportional Rates; Reshipping Rates; Storage in Transit (a); Through Routes and Joint Rates §18, §19, §20.

(a) Complainant attacked combination rates on cottonseed cake and meal, carloads, from Texas common points to points in eastern trunk line and New England territories as unreasonable, unjustly discriminatory and unduly prejudicial. Complainant receives under transit arrangements at Rossford, O., large quantities of cottonseed cake and meal from Texas, and forwards its manufactured products to eastern trunk line and New England markets at the through rates. Defendants maintain joint rates on cake and meal, carloads, from Texas to about 75 points in the destination territory described, including the so-called eastern basing points. No provision is made for applying the joint rates at the majority of places intermediate to the basing points and usually grouped therewith in constructing rates from beyond trunk line territory. The combination rates applicable to the intermediate points exceed the joint rates to the farther distant basing points, in contravention of the fourth section. Defendants introduced no evidence, filed no brief and were not represented at argument. HELD, rates attacked unreasonable to extent they exceeded rates to farther distant points, reparation awarded. Larrowe Milling Co. v. A. T. & S. F. Ry., 89 I. C. C. 439.

(b) Complainant attacked commodity rates charged on wheat, car loads, from Kansas City, Mo., to Memphis, Tenn., Hot Springs, Ark., Deport, Tex. and Omaha, Neb., with transit at Leavenworth, Kans., and Marshall, Mo., as unjust, unreasonable and unjustly discriminatory to extent they exceeded rates from Kansas City to the respective destinations. The sole issue appears to be whether or not defendants tariffs authorize the protection of the proportional rate from Kansas City to destinations on shipments moving from Kansas City to Memphis, Hot Springs and Deport, with transit accorded at Leavenworth and Marshall. Effective August 15, 1922 rates were published providing transit at Leavenworth on grain from Kansas City to Marshall on basis of Kansas-St. Louis proportional rates. HELD, defendants tariffs did not authorize transit at Leavenworth and Marshall on grain from Kansas City to destinations named, rates attacked not unreasonable or unjustly discriminatory, complaint dismissed. Victor Milling Company v. M. P. R. R., 91 I. C. C. 58.

(c) Complainant attacked commodity rates charged on four cars of wheat shipped in July and August, 1921 from Oklahoma to Wichita, Kas., there stored in transit and later reshipped to Galveston, Tex., for export, as unreasonable, unduly prejudicial and inapplicable. Shipments originated, one at Avard, Okla., one at Lucien and Carleton and

two at Carrier, Okla., stations on the Frisco, from 184 to 232 miles south and southwest of Wichita, and moved over that line through Enid, Okal., northward to Beaumont Junction, thence westward to Wichita. From Wichita the shipments were unrouted, but according to distances shown they moved over Frisco eastward through Beaumont Junction and Cherryvalle, Kas., to Baxter, Kas., thence south through West Tulsa, Okla. Except for the handling at Wichita this grain might have moved from points of origin east to West Tulsa, thence to destination, at a saving of transportation of from 330 to 381 miles. At time shipments moved, rates of 27c from Avard, Carrier and Lucien and 32.5c from Carleton, to Cherryvalle, with the privilege of storage in transit at Wichita without extra charge for the back haul and a rate of 38c from Cherryvalle to Galveston were in effect. There was also a provision that when the final destination was on a connecting line and through rates were based on combination rates the basing point would be considered the final destination within the meaning of the tariff. Having surrendered inbound billing on the shipments from Wichita, complainants, under these tariff provisions, are entitled to the Cherryvalle combinations of 65c from Avard, Carrier and Lucien and 70.5c from Carleton, HELD, shipments overcharged, not unreasonable in themselves, overcharges ordered refunded. Craig Grain Co. v. G. H. & S. A. Ry., 95 I. C. C. 464.

(d) Complainant attacked transportation charges assessed on three cars of steel plates shipped from Gary, Ind., to Tulsa, Okla., fabricated there in transit and reshipped to Casper, Wyo., and Sunburst, Mont., as unreasonable and illegal. Shipment to Casper was eliminated. One shipment was routed E. J. & E., to Joliet, Ill., C. & A., to Kansas City, Mo., Frisco to Tulsa; the other moved C. & E. I., to St. Louis, Mo., Frisco to Tulsa. After fabrication both shipments moved Frisco to Kansas City and Burlington and G. N., beyond, charged on each car at 81c to Tulsa and $2.145 beyond. Complainant contended proper rate was joint rate of $1.785 Gary to destination, plus charge of 2c per 100 pounds for fabrication in transit. Complainant showed on bill of lading routing via Frisco but gave no other routing instructions. The tariff naming the rates from Gary to Sunburst carried no limitation with respect to routes. Complainant was entitled to fabrication arrangement at Tulsa on the shipment which moved through St. Louis at applicable rate of $2.185 from Tulsa to Sunburst, plus 2c transit charge. That rate is applicable because it is the highest of the alternative rates, origin to final destination, origin to transit point, or transit point to final destination, named in the tariffs. Complainant was not entitled to transit on the shipment which moved through Kansas City to Tulsa and thence back to Kansas City as the through rate did not apply via that route, necessitating as it did a straight back haul. Applicable combination was 81c from Gary to Tulsa and $2.145 beyond. HELD, overcharge should be refunded, complaint dismissed. Maloney Tank Mfg. Co. v. B. & O. R. R., 95 I. C. C. 725.

(e) Proposed rules in connection with refining of vegetable oil receiving transit at Portsmouth, Va., under which refiners would be required to pay switching charges on outbound movements, found not justified. For many years switching charges on inbound and outbound movements have been absorbed by road-haul carriers and respondents made no attempt to justify increased charges which would result from the proposed schedules, which, if allowed to become effective, would also conflict with provisions of Pennsylvania's absorption tariff under which switching charges are absorbed by that carrier where it receives a road haul. Absorption of switching charges at Portsmouth, 91 I. C. C. 296.

(f) Complainant attacked rates charged on wheat, carloads, from Kansas City and St. Joseph, Mo., to Judsonia, Ark., New Orleans, La., Birmingham, Ala., Houston, Tex., and Cannon Falls and Lake City, Minn., accorded transit at Leavenworth, and at Marshall and Sweet Springs, Mo., as unjust, unreasonable, unjustly discriminatory unduly prejudicial and in violation of the fourth section to extent they exceeded contemporaneous rates from Kansas City or St. Joseph to the respective destinations. Grain shipped to Kansas City and St. Joseph moves out to the destinations here considered under proportional rates. The points at which transit was accorded are on the M. P., and in certain instances under that carriers transit tariff the proportional rates apply with

transit at points in direct line of shipment and also at other points where specified. The applicable tariffs allowed two stops for transit, including blending, storage and milling. Shipments originated at various points west of Kansas City during January 1920 and October 1922; moved from the latter point over the M. P., to Leavenworth for blending or storage, and were reshipped through Kansas City to Marshall or Sweet Springs, there milled into flour, and the product forwarded to destinations in Arkansas, Louisiana, Texas and Alabama. Leavenworth is 26 miles northwest of Kansas City and there was an out of line haul through the latter point of 52 miles. Charged on basis of proportional rates of either 4 or 4.5c from Kansas City to Leavenworth plus the proportional rates from Leavenworth to final destinations with transit at Marshall or Sweet Springs. An out of line haul charge of 2c was also collected on the shipment accorded transit at Sweet Springs for which there was no tariff authority. This overcharge should be promptly refunded. The alleged undue prejudice has been removed. Sub. 2 relates to 19 cars of wheat from St. Joseph of which 6 were shipped to Lake City and the remaining 13 to Cannon Falls. These shipments originated at points west of St. Joseph during September and Oct., 1919, moved from that point over the M. P., to Leavenworth, were there stored, and were reshipped thence to destination over the M. P., to Kansas City and the Milwaukee beyond. No joint rates under which transit was permitted at Leavenworth were in effect, and charged at combination of 19c, composed of proportional rates of 4c to Leavenworth and 15c beyond. During this period a joint rate of 15c applied from St. Joseph to these destinations via Leavenworth and Kansas City and Milwaukee beyond, but transit at Leavenworth was not authorized under that rate. Since April 28, 1924 the transit tariff has authorized transit at Leavenworth under the 15c rate from St. Joseph. HELD, applicable rates not unreasonable or otherwise unlawful, complaint dismissed. Moore Lawless Grain Co. v. M. P. R. R., 100 I. C. C. 303.

(g) Complainant attacked commodity rates charged on 6 cars of lumber during April, May and June 1920 from Roach and Springdale, Fla., and Scott, Ga., to Harrison and Jersey City, N. J., and Great Works, Me., as unreasonable and in violation of section 6. Roach and Springdale are on the L. O. P. & G., and Scott is on the C. of Ga. Shipments were accorded transit at Portsmouth by the A. C. L., and the material reshipped at the joint rates from points of origin to final destinations, plus a transit charge. Subsequently defendant discovered that the transit tariff under which transit had been accorded was applicable only to shipments originating at points of origin on the A. C. L., and additional charges were collected at rates which were intended to be based on Norfolk, Va., combination, but overcharges and undercharges resulted. The record warrants the conclusion that reasonable rates on these shipments should not have exceeded the combinations on Live Oak and Savannah, plus a transit charge. HELD, shipments unreasonable to extent they exceeded Live Oak and Savannah combinations, plus a transit charge, undercharges waived, reparation awarded. McClave & Son v. A. C. L. R. R., 100 I. C. C. 405.

(ga) Maintenance of reshipping rates on grain and products to and from Memphis without contemporaneously maintaining similar rates to and from Mississippi points found not unduly prejudicial, but in so far as rules, regulations and practices under which grain or its products may be stopped at Memphis for milling, storing, or other transit service and later reforwarded at less than sums of local rates to and from Memphis are more favorable than rules, regulations, and practices under which transit service is accorded at Mississippi points, they are unduly prejudicial. Mississippi R. R. Commission v. A. & V., 93 I. C. C. 435.

(gb) Rates on grain and products from interior points in Texas, Oklahoma, Kansas, Nebraska, Colorado, Iowa, Minnesota, Indiana, Illinois, and Missouri, and reshipping rates on the same commodities from reshipping points in States named to points in Mississippi found not unreasonable. Mississippi R. R. Commission v. A. & V. Ry., 93 I. C. C. 435.

(gc) Rates assessed on wheat moving from points in Oklahoma to Wichita, Kans., there stored in transit and later shipped to Galveston, Tex., for export, found not unreasonable as compared with rates from and to same points with privilege of storage in transit at Kansas

City, Mo., or with rates from Kansas points to Galveston with privilege of storage at Wichita. Shipments here involved moved via a circuitous route involving an out-of-line haul to and from the transit point. Rates assessed, however, found illegal, applicable rates being combinations based on Cherryvale, Kans. Adjustment of charges directed. Craig Grain Co. v. G., H. & S. A., 95 I. C. C. 464.

(h) Combination rates charged on wheat shipped during Federal control from various points in Colorado to Antonito, Colo., there milled, and the flour reshipped via Memphis to Nashville, Tenn., found not unreasonable, as compared with lower joint rates, with milling in transit privileges, subsequently established from Durango, Colo., and other intermediate points of origin to Memphis and lower joint rates contemporaneously in effect from Utah common points, with like privileges, to Cairo and Memphis, Tenn., except to extent that the aggregate of the factors assessed from Antonito to Nashville exceeded a rate herein prescribed as reasonable. Reparation awarded. Conejos Cooperative Mills & Mfg. Co. v. Director General, 98 I. C. C. 515.

(i) Contention that during period of Federal control the lines, both inbound and outbound, were being operated as a unified system by reason of which the forwarding of commodities over any line was same as forwarding them over the particular line having the inbound movement into transit point, not sustained from standpoint of tariff interpretation, since the lines were still distinguished in the tariffs by their corporate names. Haas & Co. v. Director General, 98 I. C. C. 619, 621.

(j) Complainant attacked combination rate of 44.5c charged on a car of bulk corn Dec. 10, 1922 from Alvo, Neb., to Wichita, Kas., stored and reshipped on Dec. 30, 1922 to Custer City, Okla., as unjust and unreasonable and unduly prejudicial to extent it exceeded joint rate of 34c between the same points. Alvo is in the eastern part of Nebraska on the Rock Island. Custer City is in the western part of Oklahoma on the Orient and Frisco. Shipment moved over Rock Island to Wichita and Orient beyond. The shipment was unloaded into complainants elevator for the purpose of obtaining official weights, charged 24c to Wichita and 20.5c beyond. A joint rate of 34c applied between Alvo and Custer City over the Rock Island in connection with either the Frisco or Orient. The transit tariffs of the Frisco and Orient allowed storing in transit at Wichita on the basis of the through rate. The transit tariff of the Rock Island accorded transit privileges only on shipments forwarded from the transit station over the Rock Island. Effective April 29, 1923 the latter tariff was amended so as to permit storing in transit at Wichita on the basis of the through rate on shipments moving out of Wichita over a connecting line. The only exception was at Kansas City. The fact that the tariff has been amended since the movement so as to allow transit when delivery is made to a connecting line at Wichita is not sufficient to warrant a finding that the exaction of the combination rate was unreasonable. HELD, rate attacked not unreasonable or unduly prejudicial, complaint dismissed. Wichita Terminal Elevator Co. v. C. R. I. & P. Ry., 102 I. C. C. 115.

(ja) Combination rate charged on shipments moving into transit point via one carrier, the outbound movement being performed by different line, found not unreasonable or unduly prejudicial. Governing tariff at time of movement restricted transit privilege to shipments moving outbound from transit point over rails of carrier performing the inbound haul, and fact that such tariff has since been amended so as to allow transit at joint rates when outbound movement is performed by a connecting line is not sufficient to warrant a finding that higher combination formerly in effect was unreasonable. Wichita Terminal Elevator Co. v. C., R. I. & P., 102 I. C. C. 115.

(jb) Proportional rates on grain generally apply without regard to the territory in which the grain is produced. Such an adjustment differs from a transit arrangement in that it furnishes a constant balance. Under ordinary transit arrangements the traffic must move outbound over the same line at the balance of the through rate from point of origin to final destination, and varying inbound local rates produce varying outbound balances. As grain must be accumulated in elevators when it is moving in abundance and held until there is a demand for it, the dealer who stores his grain at a rate-breaking market has an advantage over one who stores at a transit

market. Des Moines Board of Trade v. D. M. & C. I., 102 I. C. C. 186, 192.

(jc) Rate assessed on wheat moving from Chappell, Nebr., to Wichita, Kans., there stored and later reshipped to San Diego, Calif., found not unreasonable. While tariff carrying rate claimed was applicable over circuitous route of movement because unrestricted in its application, on other hand, tariff of carrier moving the shipment into transit point did not authorize storage at that point where outbound movement is made over other lines, as was the case here. Moreover, shipment here moved out of direct route to such extent as to entail wasteful transportation of the nature objected to by commission in 73 I. C. C. 116. Wallingford Bros. v. C., R. I. & P., 102 I. C. C. 239.

(jd) Upon investigation by commission on its own motion into tariffs of the St. L.-S. F. Rv., purporting to accord transit at Ada, Okla., and under which limestone and shale shipped into that point can be manufactured into cement and shipped beyond over that carrier's line to interstate points at lower through charges than when moving beyond over competitive lines, FOUND: Such tariffs are vague, indefinite, contradictory, and therefore unreasonable and unlawful. They attempt to restore in tariff form the provisions of a contract between the Frisco and a cement company; no justification appears for charging a rate lower than inbound local upon theory that shipments may be given transit, and, if shipments are not connected up with an outbound movement policing and subsequent collection of local rate will be impossible. Furthermore, all local inbound shipments should in first instance be subject to same rates. Limestone Into and Cement Out of Ada, Okla., 102 I. C. C. 407.

(k) No. 16640 is an investigation instituted by the Commission into and concerning the lawfulness and propriety of Frisco tariff I. C. C. 8410 which names, rates, rules and regulations governing the transportation of crushed limestone or shale from Lantry and Lawrence, Okla., to Ada, Okla., in connection with the movement of cement manufactured from such limestone and shale and subsequently reshipped to interstate destinations. Lawrence and Lantry are local stations on the Frisco about 6 miles south of Ada, a point served by the Atoka and by the Santa Fe, as well as the Frisco. The cement company discovered the stone deposit at Lawrence in 1906. Lawrence was then only a railroad station, and the nearest town was Ada. This fact, and the further fact that the Frisco was agreeable to entering into a contract relating to the movement of the rock from Lawrence to Ada, had a direct bearing upon the selection of Ada instead of Lawrence as the site for the cement company's plant. Under the terms of the contract entered in 1906 the Frisco agreed to haul the rock from Lawrence to Ada at a rate of 8c when loaded in cars of the cement company and 10c when loaded in carrier cars; and the cement company agreed to ship the products of its plant over the Frisco, provided the rates were no higher than over competitive lines. The present tariff provides that the charge will be $6.60 per car of 80,000 pounds capacity and $8.25 per car of 100,000 pounds capacity and that the arrangement herein authorized provides that charges will be assessed and collected on basis of rates shown in item 20 and upon reshipment via Frisco rails of the product (cement in carloads) the inbound charges on the raw material will be revised to basis of a charge of 10c per ton. Both tariffs are vague, indefinite, contradictory and appear impossible of execution. It is plain that they are intended to restore in tariff form the substantial provisions of the contract of 1906 between the Frisco and the cement company. Assuming the lawfulness of the respondents purpose to control the outbound movement of the cement from Ada by means of a transit arrangement, there appears no justification for charging a rate lower than the local inbound rate upon the theory that the shipments may be given transit. If the shipments were not connected up with an outbound movement, it would be impossible for the carrier to police the shipments and subsequently collect the local rate. Further, all local inbound shipments in the first instance should be subject to the same rates. HELD, provisions of existing tariff here under consideration unreasonable and unlawful. Limestone into and cement out of Ada, Okla., 102 I. C. C. 407.

(l) Transit is sometimes beneficial in its results; but it is open to grave abuses. To police it adequately is difficult and expensive. Unless adequately policed, it is an avenue to illegal rebates and seriously depletes the carriers revenues. Railroad managers differ

widely as to the policy of granting such privileges. The Commission clearly has power under section 1 of the act as amended to determine whether in a particular case a transit privilege should be granted or should be withdrawn. Limestone in and cement out of Ada, Okla. 102 I. C. C. 407, 410.

(m) In 91 I. C. C. 3, the Commission found that the application of penalty charges for detention at Pawtucket and Providence, R. I., in June and July 1921 of three cars of lumber shipped from Stockbridge Mass., and reforwarded to South Providence, R. I., was not illegal and dismissed the complaint. If the movement were reconsignments the penalty charges were applicable; if reshipments, the application of penalty charges was illegal. If a shipper is to avail himself of the advantages of reshipment instead of reconsignment there must be two shipments without the carrier or his agent acting for the shipper. Shipments were reconsigned therefore rates applicable were the through rates plus reconsignment charges, shipments overcharged, complaint dismissed. Stetson Cutler & Co. v. N. Y. N. H. & H. R. R., 102 I. C. C. 471.

(ma) Upon reconsideration, finding in original report, 91 I. C. C. 3, that application of penalty charges for detention at originally billed destinations of shipments of lumber which were subsequently reforwarded to new destinations were not illegal, affirmed. Cars were placed for delivery on defendant's team tracks, but they had not been unloaded or accepted by consignee or owner, and, under the terms of the governing tariff rule, must be considered reconsignments and not reshipments, as contended by complainants. Stetson, Cutler & Co. v. N. Y., N. H. & H., 102 I. C. C. 471.

(n) Complainant attacked rates charged on 7 cars of apples shipped in Oct. 1921 from Delta and Montrose, Colo., to Lincoln, Neb., there stored in transit and reshipped in Jan. 1922 to St. Louis, Mo., Coffeyville, Kas., Guthrie, Okla., and Austin and La Grange, Tex., as unreasonable. Six cars were shipped from Delta and one from Montrose. They were routed and moved to Lincoln over the D. & R. G. W., and Burlington. Six of the shipments were consigned to consignors' order at Lincoln. Before the cars reached Lincoln the respective consignors instructed the Rio Grande to deliver to Beatrice Creamery Co., on storing in transit privilege. The agent of that carrier placed upon the bills of lading the following: Diverted to Beatrice Creamery Co., Lincoln, Neb., C. B. & Q., for storage in transit. One shipment was consigned to the Beatrice Creamery Co., at Lincoln and the bill of lading, issued at Delta read: for storage in transit. On the movement into Lincoln charged $1, applicable rate, and on reshipments the rates applicable from Lincoln were collected, namely, 38.5c to St. Louis, 64c to Coffeyville,, 73c to Guthrie, and $1.335 to Austin and La Grange. Contemporaneously, through rates were in effect on apples, carloads, from Delta and Montrose to final destinations over the routes of movement through Lincoln, as follows: $1 to Coffeyville, $1.165 to St. Louis and $1.255 to Guthrie, Austin and La Grange, and tariffs provided, subject to certain conditions, that apples would be stored in transit at Lincoln at the through rates plus a 7c transit charge. For many years complainant had operated under the storage in transit arrangements applicable on butter and eggs, and understood that apples could be handled in the same manner. It paid the inbound freight charges to Lincoln, but failed to have the freight bills recorded. It retained these documents and submitted them to the carrier when the apples were reshipped. Due to the failure of complainant to comply with the transit rules the rates to and from Lincoln were applicable on the shipments. The mere comparison of the through rates with the combination of rates to and from Lincoln does not prove that the rates to and from Lincoln charged on the shipments were unreasonable. The record does not show, nor is it claimed, that the transit rules are unreasonable per se. While the shipper is not presumed to know with what representative of the carrier he is to record the freight bills, if he desires transit it is his duty to make inquiry of the carrier and thus inform himself. HELD, rates attacked not unreasonable, complaint dismissed. Beatrice Creamery Co. v. C. B. & Q. R. R., 107 I. C. C. 568.

(o) Knowledge on the part of carriers agent of complainants intention to store apples in transit does not relieve complainant from a strict compliance with the transit rules. Ignorance of tariff provisions does not excuse a shipper from noncompliance with such provisions. Beatrice Creamery Co. v. C. B. & Q. R. R., 107 I. C. C. 568, 570.

(p) Upon contention of the uptown warehouses and compresses at the ports that under any readjustment that is made in the domestic and export rates on cotton to the Gulf ports, they should continue to receive a free second merchandising or compression in transit on cotton purchased by them which has already been concentrated at the through rate, FOUND: That such a request is not reasonable, for shipments stopped at other points for second merchandising or compressing must pay a transit charge and the commission sees no reason why an exception should be made in the case of the uptown warehouses or compresses at the ports. Cotton passing through these uptown facilities is, however, entitled to one free transit privilege. Application of Rates on Cotton to Gulf Ports, 100 I. C. C. 159, 166.

(q) Following 91 I. C. C. 58, rates assessed on shipments of wheat from Kansas City, Mo., to various interstate destinations accorded transit at Leavenworth, Kans., Sweet Springs and Marshall, Mo., found applicable and not unreasonable, unjustly discriminatory, or unduly prejudicial. While grain shipped to Kansas City moves out to destinations here considered under proportional rates which are protected when transit accorded at points in direct line of shipment and at other specified points, shipments involved were reshipped from Leavenworth through Kansas City to Sweet Springs or Marshall, this constituting an out-of-line haul through Kansas City. Moreover, at time shipments moved, defendants' tariffs did not authorize transit both at Leavenworth, and at Sweet Springs or Marshall on shipments from Kansas City. Moore Lawless Grain Co. v. M. P. R. R. Co., 100 I. C. C. 303.

(r) Complainant attacked aggregate of inbound and outbound rates on carloads of rough rice from Louisiana to Lake Charles, La., and reshipped as clean rice and rice products to various destinations over interstate routes between May 20, 1921 and August 6, 1922 as unjust, unreasonable, unjustly discriminatory, and as compared with the rates and privileges accorded competitors at Orange and other Texas milling points, unduly prejudicial. When the shipments moved a transit arrangement was in effect at Lake Charles which permitted the milling of rough rice into clean rice and reshipment under joint through rates applicable on clean rice from point of origin to final destinations at a charge of 2.5c per 100 pounds. At that time this transit arrangement was not in effect on shipments that received a back haul. HELD, rates rules and regulations with respect to milling in transit or rice at Lake Charles during the period of movement not unreasonable, or unjustly discriminatory to any greater extent than indicated in 77 I. C. C. 631. The establishment of the same transit arrangements at Lake Charles as at the Texas milling points had the effect of removing departures, complaint dismissed. Lake Charles Rice Milling Co. v. L. W. R. R. 109 I. C. C. 195.

ALL OTHER CITATIONS

Eshelman & Sons v. Director General, as Agent, 85 I. C. C. 578; Kneeland-Bigelow Co. v. Director General, as Agent, 85 I. C. C. 659; Locke & Co. v. Director General, as Agent, 88 I. C. C. 487.

§19. Retroactive Application.

See Reconsignment.

(a) The Commission has repeatedly refused to sanction the retroactive application of a transit service in the absence of unjust discrimination or undue prejudicial and damage thereunder. Capital Warehouse Co. v. Director General, 96 I. C. C. 293, 296.

ALL OTHER CITATIONS

Parkersburg Rig & Reel Co. v. B. & O. R. R. Co., 88 I. C. C. 49; Locke & Co. v. Director General, as Agent, 88 I. C. C. 487.

§20. Substitution of tonnage.

See Substitution of Tonnage.

(a) Grain products usually move from transit point on remainder of through rates. Transit arrangements are of value to the farmer as well as to the miller and the market, in that the farmer is thus afforded wider marketing opportunities. Rates and Charges on Grain and Products, 91 I. C. C. 105, 125.

(b) The Commission has consistently held it would be unlawful for a carrier to allow the substitution of one commodity for another of like quantity from a different rate point without clearly and comprehensively specifying in the published tariffs the right to lost identity or

to make substitution. The utility of a transit arrangement is primarily a question for the shipper, to determine by ascertaining whether or not it can profitably be availed of under a reasonable charge for the service rendered. Armour & Co. v. D. L. & W. R. R., 101 I. C. C. 337, 341.

(c) It is not practicable that the identity of each carload of grain, lumber, salt, etc., be preserved, but it is not possible to lawfully substitute at the transit point any commodity of a different kind from that which moved into such transit point under a transit rate or rule. Armour & Co. v. D. L. & W. R. R., 101 I. C. C. 337, 342.

(d) It is the duty of the carriers to initiate and properly police their transit arrangements. It is the duty of the shipper to conform his operations to the requirements of the law and of all reasonable rules and regulations of the carriers designed to insure the observance of the law. Property treated or stored in transit necessarily passes temporarily out of the possession of the carrier and into the custody of the shipper. Armour & Co. v. D. L. & W. R. R., 101 I. C. C. 337, 343.

IV. DISCRIMINATION.

See Supra §15; Discrimination; Passenger Fares and Facilities III, §9.

§21. In General.

(a) Complainant attacked charges exacted on and rules governing the transportation of grain and grain products from various points in the west and south to Bangor, Pa., for milling, mixing or malting, and on the manufactured product thence to destinations in trunk line and New England territories as unreasonable and unduly prejudicial. This is a proceeding to require of defendants the establishment of through routes via Bangor from the west and south to eastern territory and the granting of milling in transit arrangements at that point at joint rates equal to those now applicable over other routes from and to the same districts. Bangor is on the Bangor & Portland branch of the Lackawanna, 8 miles south of Portland, Pa. It is a main line point on the L. & N. E., which operates from Nesquehoning, Pa., through Tamaqua and Portland to junction with New England roads at Campbell Hall, N. Y., 139.5 miles. This road would be an intermediate carrier by all the desired routes. Milling in transit is already authorized on both of these lines, hence the chief question at issue is the propriety of requiring the establishment of the through routes and joint rates sought. Transit practice is common in this industry. It is now accorded complainant by the Lackawanna when the inbound and outbound movements are over that road and certain connectings forming through routes over which current joint rates from origin or intermediate basing points are applicable. To destinations on other than the specified roads combination rates apply. Because of the business and transportation practices prevalent in dealing in grain and grain products, to compete upon an equality complainant requires joint rates with transit at Bangor equal to the rates in effect over existing routes through other milling points. HELD, to extent indicated joint rates over the routes described are necessary and desirable in the public interest. Flora Milling Co. v. C. N. E. Ry., 93 I. C. C. 129.

(b) An individual miller is a shipper and entitled to reasonable rates, rules and regulations measured in the light of the business and transportation practices in the industry in which he is engaged. Milling in transit of grain, grain products, and commodities entered into the manufacture of mixed feeds at the joint rates in effect to ultimate destination has become such a widely diffused and common practice, due in large extent to the voluntary act of the carriers, that it is undoubtedly true that any manufacturer not accorded transit under joint rates is at a substantial disadvantage which will confine his opportunities of sale to limited areas. It is the province of the carriers to conduct commerce in the channels demanded by shippers. Flora Milling Co. v. C. N. E. Ry., 93 I. C. C. 129, 133.

(c) Complainant attacked combination rates charged on wheat, carloads, shipped between August 2, 1921 and Sept. 16, 1922 from Kansas and Colorado to Atchison, Leavenworth and Fort Leavenworth, Kas., and St. Joseph, Mo., as inapplicable, unreasonable, unduly prejudicial and in violation of the fourth section. Wheat moved to Kansas City, Mo., where it was milled into flour and feed, which was forwarded to these destinations. Local rates to Kansas City,

plus a proportional rate beyond a 5.5c prior to the reduction of Jan. 1, 1922 and 4.5c thereafter, was charged. During this period wheat could be moved from the same shipping points to mills on defendants lines west of Kansas City, milled in transit, and then shipped through Kansas City to Atchison and the other destinations on the local rate from point of origin to destination. As the local rates to Atchison and the other destinations were the same as the local rate to Kansas City complainants were forced to pay rates higher than their competitors at the intermediate milling points by the amount of the proportional rates beyond Kansas City. No reason appears why higher rates should be assessed from and to the points here under consideration on shipments milled at Kansas City than on shipments moving over the same route which have been milled at competitive stations, west of Kansas City or on shipments milled at Kansas City and thence shipped to points in Missouri, Minnesota and Iowa. HELD, rates attacked unreasonable and unduly prejudicial to extent they exceed the rates from the points named to the same ultimate destinations upon which milling in transit is allowed at points in Kansas west of Kansas City, Mo., reparation awarded. Rodney Milling Co. v. M. P. R. R., 93 I. C. C. 200.

(de) Finding to effect that transportation act, 1920, contemplates that railroads of the country should be considered as one national system of transportation, and that eastern carriers, forming a part of such national system and participating in joint rates, are unduly discriminating against eastern points, in refusing to grant transit on wool at such points while permitting it at western points, would be contrary to conclusion of Supreme Court in Central R. R. Co. v. United States, 257 U. S. 247. Wool Rates Investigation, 1923, 91 I. C. C. 235, 284, 285.

(f) Santa Fe sought to amend its transit rules in respect of the movement of grain and grain products, from Kansas and Colorado through Kansas City, Mo., for reshipment under domestic and export rates to Texas and Louisiana and to Texas Gulf ports. Respondents present tariff provide that grain moving into Kansas City for reshipment to the Texas Gulf ports for export or to destinations in interior Texas and Louisiana shall be subject to stated charges for out of line hauls up to 150 miles. When the out of line service exceeds 150 miles, such shipments are subject to the combination of rates to and beyond Kansas City. The effect of the proposed schedules would be to wipe out all out of line charges on grain originating at any point in Kansas on respondents line, moving to Kansas City and reshipped in accordance with the transit rules to the Texas gulf ports, for export. On domestic traffic, transited at Kansas City and reshipped to destinations in Texas and Louisiana the waiver of out of line charges covers only that territory on and north of respondents main line through Kansas to Colorado. The suspended schedules would not result in any increased transportation charges. Under the circumstances, therefore, their lawfulness depends entirely upon whether their application would result in undue prejudice to Wichita or other interior Kansas points, or whether the out of line hauls proposed should be regarded as constituting wasteful transportation. There is no reason why grain should not be permitted to move through Kansas City to interior points in Texas and Louisiana or to Texas gulf ports. But if it does so move, there is also no reason why the same rate should apply as for a direct movement. It is appreciated that the M. P., and possibly some of the other lines serving Kansas wheat fields are now doing what the Commission is here condemning. Respondents request that the Commission should allow it to meet this competition until such time as the formal complaint attacking similar practices by other lines shall have been decided, can not be granted. The Commission is convinced on this record that there is no justification for performing such an excessive amount of extra transportation without additional charge and being so convinced it is not prepared to allow the arrangement to become effective even temporarily. HELD, proposed schedules not justified, but carrier may provide for a charge for the out of line haul lower than the present combinations but sufficiently higher than the direct haul rates to compensate for the extra service. Transit at Kansas City, 101 I. C. C. 696.

(g) Mere fact of participation by carrier in joint rates in connection with which transit is allowed at points on other lines does not make it guilty of

undue prejudice against shippers or localities on its own line. C. R. R. Co. v. U. S., 257 U. S. 247. Lange & Crist Box & Lbr. Co. v. B. & O., 93 I. C. C. 207, 208.

(h) It does not follow from fact that the commission has approved increases in handling charges at certain ports that a lower basis of charges would have been unlawful. Carriers may, subject to certain restrictions, initiate rates lower than the commission may prescribe. The question is as to whether or not they are proposing to go to such lengths in attempting to meet competition and attract business that resulting charges will be so low as to create a burden upon other traffic. Handling Charges on Cement, Fertilizer, and Salt, 93 I. C. C. 640, 644.

(i) Practice of charging complainant for a service in excess of the line-haul service rendered in transporting iron ore from the lower Lake Erie ports to points in Ohio and other States, while furnishing an excess service free in making delivery at competing plants, constitutes undue prejudice to complainant and undue preference of such competitors. Carnegie Steel Co. v. Director General, 96 I. C. C. 527, 535.

(j) The K. C. S. and M. P. railroads do not reach Marshall, Tex., with their own rails and the T. & P. has no control over storage in transit arrangements established by those carriers at Texarkana and Shreveport, but does have control of the transit situation at Marshall. The circumstance which differentiates the situation at Marshall from that at Shreveport and Texarkana is the competition of the M. P. and K. C. S. found at the latter points. HELD: Competitive situation stressed is not adequate justification for the disadvantage to which Marshall and shippers there located are subjected by the present transit arrangements in this territory. See 263 U. S. 515. Marshall Mill & Elevator Co. v. K. C. S., 101 I. C. C. 270, 272.

(ja) It is more desirable to operate under a rate break than under transit; but the rate breaks do not necessarily constitute undue preference of the market enjoying such an adjustment nor subject transit points to undue prejudice. See 78 I. C. C. 209 and cases cited at page 213 thereof. Kansas City Board of Trade v. A. & W. Ry., 102 I. C. C. 285, 301.

(k) It is one thing for carriers to grant a privilege if based upon proper considerations, and quite another for the commission to order it; but the carriers themselves may not lawfully discriminate in this respect. Western Paper Makers Chem. Co. v. A. A. R. R. 109 I. C. C. 133, 137.

ALL OTHER CITATIONS

Parkersburg Rig & Reel Co. v. B. & O. R. R. Co., 88 I. C. C. 49; Portland Flouring Mills Co. v. S. P. & S. Ry. Co., 88 I. C. C. 99.

V. REPARATION.

See Reparation.

§22. In General.

ALL CITATIONS

Parkersburg Rig & Reel Co. v B. & O. R. R. Co., 88 I. C. C. 49.

VI. REASONABLENESS OF CHARGES.

See Reasonableness of Rates.

§23. In General.

(a) On further consideration, original report 77 I. C. C. 317, relating to division of joint rates in which Warrior River Barge Line and lines of L. & N. participate, FOUND: That the just and reasonable amount which the L. & N. should receive for its transit service on shipments of cotton should not exceed 3 cents per 100 pounds, minimum $3 per car; and that just, reasonable, and equitable divisions will result to the two carriers on such traffic if from the gross barge-and-rail rates there are first deducted 15 cents to cover compress charge and 3 cents to cover transit charge of L. & N., the balance then to be divided upon the general basis herein approved, subject to a minimum division to L. & N. of 50 per cent of net rate after deduction of compress charge. U. S. War Dept. v. A. & S. Ry. Co., 100 I. C. C. 491.

FEDERAL TRADE COMMISSION

(a) While the Trade Commission may prohibit agreements between dealers for the fixing of prices for goods to be sold in interstate commerce, it is without authority to forbid discussion of uniform terms, discounts, and prices by associations of dealers, in the absence of evidence that such discussions result in agreements fixing interstate prices. Pa-

cific States Paper Trade Ass'n. v. Federal Trade Commission, 4 Fed (2d) 457.

FERRY CHARGES

See Car Ferry.

(a) Carriers compare barge service on water front in Norfolk, Va., harbor with trap-car service on belt line at that point and insist that the two services are similar. In trap-car service shippers are required to perform initial loading and it is carriers contention that there is no reason why shippers on water front should be accorded special privilege of having their freight loaded for them onto carriers' barges. HELD: This contention is not convincing. Shippers accorded trap-car service can not use barge service and those accorded barge service can not use trap cars. There can be no discrimination since service rendered is dissimilar. Loading of L. C. L. Freight, 91 I. C. C. 394, 396.

(b) While municipal corporations may adopt and enforce reasonable regulations for the safety and convenience of the public using ferries, and may fix reasonable rates to be charged in carrying passengers, vehicles, and freight from their own shores, they cannot prohibit the operation of interstate ferry, nor exact a license fee for the privilege of landing or taking on passengers, vehicles, etc. McNeely v. Mayor and Board of Aldermen of City of Natchez, 4 Fed. (2d) 899.

(c) Though a ferry be an interstate transportation facility, till Congress and the Interstate Commerce Commission see fit to act, the state can prescribe rates. McNeely v. Town of Vidalia (La., 1924) 102 So. 422.

FINANCE DOCKETS

I. CONTROL AND REGULATION.
- §1. In general.
- §1a. Constitutionality or construction of act.

II. LOANS AND GUARANTIES.
- §2. In general.

III. EXTENSION, ACQUISITION, OR CONSOLIDATION.
- §3. In general.

IV. ABANDONMENT OF SERVICE.
- §4. In general.

V. STOCKS AND CAPITAL ISSUES.
- §5. In general.

VI. GOVERNMENT GUARANTY.
- §6. In general.
- §7. Return on investment.

VII. PHYSICAL VALUATION.
- §8. In general.

CROSS REFERENCES

See Common Carrier §5; Consolidation of Carriers; Evidence §7, §17; Express Companies §27; Panama Canal Act.

I. CONTROL AND REGULATION.

See Control and Regulation.

§1. In general.

(a) Indefiniteness of terms of a decree of foreclosure and sale of a line of railroad is a matter properly to be brought before a court having jurisdiction in the premises, and has no bearing upon an application for certificate of convenience and necessity for abandonment of a line of railroad. Abandonment of M., B. & S. R. R., 90 I. C. C. 31, 34.

(b) Under the provisions of section 5 (2) of the act the commission has authority to authorize two or more carriers to acquire joint control of another carrier. Clinchfield Ry. Lease, 90 I. C. C. 113, 134.

(c) Provisions of section 5 (8) of the act deemed sufficient to relieve carriers from restraints imposed by State constitutions prohibiting the leasing, operation, or purchase by foreign corporations or associations of railways within the State, or any interest therein. Clinchfield Ry. Lease, 90 I. C. C. 113, 134.

(d) Under the provisions of section 5 (2) of the act the commission is given broad powers to consider questions of public interest involved in the acquisition of control of one carrier by another, and is given authority by order to approve and authorize such acquisition under such rules and regulations and for such consideration and on such terms and conditions as shall be found to be just and reasonable. Clinchfield Ry. Lease, 90 I. C. C. 113, 120.

(e) Under the provisions of section 5 (2) of the act the commission is not in a position to consider whether a proposed acquisition of control in some manner other than that proposed, or by some

carrier other than applicant, would better serve the public interest. The commission must determine whether an acquisition of control as proposed is in the public interest. Clinchfield Ry. Lease, 90 I. C. C. 113, 132.

(f) Whatever may be the commission's action on underlying land, engineering, and accounting reports of its Bureau of Valuation when making a determination of final value it is obvious that in dealing with the financial structure of a carrier the commission must consider and give proper effect to the existing financial structure with its attendant vested and contingent rights and obligations. D. & R. G. W. Reorganization, 90 I. C. C. 141, 148.

(g) When it is established that a project will render important public service, and its sponsors are willing to assume the risk of loss in the expectation of ultimate gain either directly through the property or indirectly through benefits to themselves and to the shipping community, requirements as to the public interest may be fully satisfied, although losses to investors seem more probable than gain. Construction of Line by W. S. Ry. 90 I. C. C. 237, 255.

(h) The commission is to consider what is best in order to foster, build, and make efficient transportation facilities as a whole in interest of the greatest number. Where only the private aspect is involved, individuals are at liberty to take risks. So far as the public is concerned, advantages of new or better service may be so great as to justify increasing the burden upon shippers generally by amount necessary to sustain the facility. If it should prove later, however, that the line, because of competitive conditions, lack of business, or other circumstances, can not be operated profitably under fair divisions and fair rates, the burden of loss would properly fall upon investors and not upon the shipping public. Construction of Line by W. S. Ry., 90 I. C. C. 237, 255, 256.

(i) Section 5 (2) of the act confers jurisdiction upon the commission to authorize one carrier to acquire control of another carrier by purchase of capital stock or in any other manner not amounting to a consolidation, thus recognizing that the acquisition of a controlling stock interest does not effect a consolidation of the companies. Control of I.G. N. R. R. 90 I. C. C. 262, 267.

(j) Constitution and statutes of State of Texas prohibit a railroad company organized under laws of that State from consolidating with a railroad company organized under laws of any other State or of the United States, and provide that no railroad corporation shall acquire control of another railroad corporation which owns or controls a parallel or competing line. However, with few exceptions, the controlling stock interest of all railroads operating in Texas is owned by railroad corporations foreign to that State, a fact of evidentiary value in illustrating the construction that the State has placed upon such constitutional provisions. If two railroads are to some extent, parallel and competing, that fact should not control the commission's action in a proceeding involving the acquisition of control of one carrier by another, by purchase of capital stock. Control of I. G. N. R. R., 90 I. C. C. 262, 267.

(k) In certifying payments to carriers under section 209 of the transportation act, 1920, the commission has consistently dealt with each operating company individually and without reference to corporate control, so far as the determination of railway operating income or deficit is concerned. A contrary course would have been impracticable as well as illegal. Deficit Settlement with C. C. & C. S. R. R., 90 I. C. C. 271, 274.

(l) Section 210 of the transportation act, 1920, as amended, neither authorizes nor restricts the commission's authority to make extension of loans, nor grants the right of carriers to apply therefor. The broad general purpose of the act as well as the loans authorized thereby, in consonance with the purpose of the whole transportation act, is to promote the public interest by aiding carriers in furnishing to the public the maximum transportation service of which they are capable without hindrance by conditions as to credit or capacity resulting from Federal control in the adjustment period following its termination. Loan to Receiver of G. & F. Ry., 90 I. C. C. 407, 409.

(m) The commission has held in a number of cases that it was without jurisdiction under section 1 (18) of the act where a carrier was seeking to acquire and operate a line of railroad which was in operation in interstate commerce prior to effective date of the transportation act, 1920. While these cases have not been overruled the com-

mission's conference ruling in conformity with which they were decided has been withdrawn and the commission has taken jurisdiction and issued certificates in a number of cases where the line to be acquired and operated has been employed in interstate commerce previous to effective date of the transportation act. Acquisition of Line by B. & H. S. R. R., 90 I. C. C. 448, 453.

(n) Where carrier represented that it had been advised that an application for a certificate of public convenience and necessity to acquire and operate a line of railroad which was in operation in interstate commerce prior to effective date of the transportation act, 1920, was requisite, and it voluntarily sought a certificate, perhaps as a protection against a possible injunction suit under the provisions of section 1 (20) of the interstate commerce act, it is unnecessary for the commission to decide whether it has jurisdiction, granting that the question of jurisdiction is debatable, and it is entirely proper for the commission to afford the protection sought. Acquisition of Line by B. & H. S. R. R., 90 I. C. C. 448, 453, 454.

§1a. Constitutionality or Construction of Act.

(a) The existence of the varying needs of the several lines and of their widely varying earning power was fully recognized. It was necessary to avoid unduly burdensome rate increases and yet secure revenues adequate to satisfy the needs of the weak carriers. To accomplish this two new devices were adopted; the group system of rate making and the divisions of joint rates in the public interest. Through the former, weak roads were to be helped by recapture from prosperous competitors of surplus revenues. Through the latter, the weak were to be helped by preventing needed revenue from passing to prosperous connections. Thus, by marshalling the revenues, partly through capital account, it was planned to distribute augmented earnings, largely in proportion to the carriers needs. This, it was hoped, would enable the whole transportation system to be maintained, without raising unduly any rate on any line. The provision concerning divisions was, therefore, an integral part of the machinery for distributing the funds expected to be raised by the new rate fixing sections. It was, indeed, indispensable. Divisions of joint rates and fares of M. & N. A. Ry., 98 I. C. C. 119, 121.

(b) Interstate Commerce Act, §20a, subsec. 7, as added by Transportation Act Feb. 28, 1920, §439 (U. S. Comp. St. Ann. Supp. 1923, §8592a), giving Interstate Commerce Commission power to regulate and control issuance of securities by interstate carriers, is not an invasion of sovereign power of state because interstate carrier was organized in such state. Whitman v. Northern Cent. Ry. Co. (Md., 1924) 127 Atl. 112.

(c) Interstate Commerce Act, §20a, subsec. 7, as added by Transportation Act Feb. 28, 1920, §439 (U. S. Comp. St. Ann. Supp. 1923, §8592a), giving Interstate Commerce Commission power to regulate and control issuance of securities by interstate carriers, is within power of Congress to regulate interstate commerce and is valid. Whitman v. Northern Cent. Ry. Co., (Md., 1924) 127 Atl. 112.

(d) Salary allowed receiver or appointment of new receiver are matters properly to be brought before a court having jurisdiction in the premises, and have no bearing upon an application for certificate of convenience and necessity for abandonment of line of railroad. Abandonment of M. B. & S. R. R., 90 I. C. C. 31, 34.

(e) Under provisions of section 5 (2) of the act the commission is given broad powers to consider questions of public interest involved in the acquisition of control of one carrier by another, and is given authority by order to approve and authorize such acquisition under such rules and regulations and for such consideration and on such terms and conditions as shall be found to be just and reasonable. Clinchfield Ry. Lease, 90 I. C. C. 113, 120.

(f) The primary consideration in all cases arising under section 5 (2) of the act must be whether the proposed acquisition of control is in the public interest. Clinchfield Ry. Lease, 90 I. C. C. 113, 121.

(g) Carriers affected by any order made by the commission pursuant to section 5 (2) of the act are under provisions of paragraph (8) of that section relieved from operation of antitrust laws, and of other State or Federal laws, in so far as may be necessary to enable them to do anything authorized or re-

quired by such order. The relief is not granted for the benefit of any railroad, particular industry, or community, and benefits to be derived or injury which may be suffered because of a proposed acquisition of control of one carrier by another, may be considered only in so far as it relates to general public interest. Clinchfield Ry. Lease, 90 I. C. C. 113, 120, 121.

(h) Public interest is the aggregate of many individual and community interests, and where there is conflict as to results which would follow approval of a proposed acquisition of control by one carrier or another, it becomes necessary to examine claims of conflicting interests in order to determine the ultimate public interest. Clinchfield Ry. Lease, 90 I. C. C. 113, 121.

(i) Loss of competitive service to territory reached by a carrier would hardly be in interest of such territory, and relation of that carrier's loss of revenue to the public interest would depend, of course, upon extent of the loss. Diminution to a point where it could not earn its fixed charges, or even to a point where its credit would be impaired, would certainly not be in the public interest. Clinchfield Ry. Lease, 90 I. C. C. 113, 130.

(j) One purpose of the transportation act, 1920, is to foster the weak carriers. Clinchfield Ry. Lease, 90 I. C. C. 113, 131.

(k) Under the provisions of section 5 (2) of the act the commission has authority to authorize two or more carriers to acquire joint control of another carrier. Clinchfield Ry. Lease, 90 I. C. C. 113, 134.

(l) Provisions of section 5 (8) of the act deemed sufficient to relieve carriers from restraints imposed by State constitutions prohibiting the leasing, operation, or purchase by foreign corporations or associations of railways within the State, or any interest therein. Clinchfield Ry. Lease, 90 I. C. C. 113, 134.

(m) Under the provisions of section 5 (2) of the act the commission is not in a position to consider whether a proposed acquisition of control in some manner other than that proposed, or by some carrier other than applicant, would better serve the public interest. The commission must determine whether an acquisition of control as proposed is in the public interest. Clinchfield Ry. Lease, 90 I. C. C. 113, 132.

(n) The public interest requires that before an issue of securities by a carrier is authorized, the probability of earnings sufficient to pay costs of operation and of fixed charges be reasonably established, with some surplus for dividends and other purposes. D. & R. G. W. Reorganization, 90 I. C. C. 141, 148.

(o) In exercising authority conferred upon the commission by section 5 (2) of the act relative to the acquisition of control by one carrier of another by purchase of stock, not involving consolidation into a single system for ownership and operation, the commission must be of opinion that the proposed acquisition is in the public interest before its approval and authorization can be given. Acquisition of D. & R. G. W. Common Stock, 90 I. C. C. 161, 163, 164.

(p) In considering whether or not a proposed acquisition of control of one carrier by another is in the public interest, the commission must consider not only interests of people of the State in which an applicant is located but also interests of people of other States, including those States served by railroads connecting with lines of carrier to be controlled. Acquisition of D. & R. G. W. Common Stock, 90 I. C. C. 161, 165.

(q) Under section 20a (9) of the act carriers may, without having first obtained the commission's authority, issue notes maturing not more than two years after date and aggregating, together with all other then outstanding notes of a maturity of two years or less, not more than 5 per centum of the par value of their then outstanding securities. Bonds of I.-G. N. R. R., 90 I. C. C. 197, 198.

(r) When it is established that a project will render important public service, and its sponsors are willing to assume the risk of loss in the expectation of ultimate gain, either directly through the property or indirectly through benefits to themselves and to the shipping community, requirements as to the public interest may be fully satisfied, although losses to investors seem more probable than gains. Construction of Line by W. S. Ry., 90 I. C. C. 237, 255.

(s) The problems in convenience and necessity cases have been intensified by uncertainty as to how the law should be interpreted. Ability to earn is not the sole test of public convenience and necessity, although always a factor to be given consideration. When such ability is shown to exist a strong presumption may

arise that public need for a new facility exists. When not shown to exist it may frequently be concluded that such need is too slight to warrant expenditure necessary for a proposed construction of a new line of railroad. Construction of Line by W. S. Ry., 90 I. C. C. 237, 255.

(t) Prospective earnings or losses may properly be considered as one of the factors evidencing the public interest, but, taken alone, does not determine whether a particular enterprise is or is not required by public convenience and necessity. Construction of Line by W. S. Ry., 90 I. C. C. 237, 256.

(u) The significance of the financial aspect may vary in different cases. Certainty of failure to earn may have effect different from uncertainty of earnings or as to time when they are to be realized. A prospect for earnings not free from uncertainty may justify the granting of a certificate permitting construction of a line, subsequent abandonment of which may be authorized on demonstration of futility of the prospect. Cases must be determined by particular facts presented regarding them, and it is not possible to state a rule applicable alike to all. Circumstances may warrant the drawing of final conclusions regarding the financial aspect before the issuance of a certificate authorizing construction, or, conversely, may justify deferring such consideration. Construction of Line by W. S. Ry., 90 I. C. C. 237, 256.

(v) It is not to be presumed that Congress contemplated discarding, as insufficient, conditions which in the past have furnished the warrant for a constructive policy in upbuilding the system of transportation. It is rather to be presumed that Congress did not contemplate an interpretation of its enactment which, applied as a policy in the past, would have prevented the construction of many railway properties now serving the public interest in an important way. Construction of Line by W. S. Ry., 90 I. C. C. 237, 256.

(w) The commission is to consider what is best in order to foster, build, and make efficient transportation facilities as a whole in the interest of the greatest number. Where only the private aspect is involved, individuals are at liberty to take risks. So far as the public is concerned, the advantages of new or better service may be so great as to justify increasing the burden upon shipper generally by amount necessary to sustain the facility. If it should prove later, however, that the line, because of competitive conditions, lack of business, or other circumstances, can not be operated profitably under fair divisions and fair rates, the burden of loss would properly fall upon investors and not upon the shipping public. Construction of Line by W. S. Ry., 90 I. C. C. 237, 255, 256.

(x) The history of railway construction illustrates that prospective tonnage depending for its development upon transportation facilities, rather than tonnage immediately in view, has been the main justification for railway construction. Construction of Line by W. S. Ry., 90 I. C. C. 237, 256.

(y) The commission's approval of a new enterprise neither constitutes nor requires a finding that such enterprise will prove successful. The commission's responsibility is to determine the public interest involved in a proposed construction of a new line. Construction of Line by W. S. Ry., 90 I. C. C. 237, 256.

(z) Competition, within reason, rather than monopoly, is in the public interest. Construction of Line by W. S. Ry., 90 I. C. C. 237, 257.

(aa) Section 5 (2) of the act confers jurisdiction upon the commission to authorize one carrier to acquire control of another carrier by purchase of capital stock or in any other manner not amounting to a consolidation thus recognizing that the acquisition of a controlling stock interest does not effect a consolidation of the companies. Control of I. G. N. R. R., 90 I. C. C. 262, 267.

(bb) Contention that the commission is required by section 204 of the transportation act, 1920, to make necessary adjustments in its computation of railway operating income in order to bring about a proper comparison between operations of the Federal control period and the test period, HELD: In the requirements of section 204 (b) and 209 of the transportation act, or in section 1 of the Federal control act, there is no suggestion that Congress had in mind a complete, or substantially complete, change in the road operated by a carrier. Where operation on a short line was not entirely discontinued in the Federal control period, but was of such small importance in the latter period as to be practically negligible, a comparison of the results of the negligible operations in the Federal control period with the

results of operations of the same line in the test period would be manifestly improper. Deficit Settlement with C. C. & C. S. R. R., 90 I. C. C. 271, 273.

(cc) Whether commission considers accounts of carrier separately, or combines them with accounts of other roads in the system, the result is a showing of railway operating income in Federal-control period; therefore, a claim, if allowed, would fall within class given status by decision in Construction of the Word "Deficit," 66 I. C. C. 765. Deficit Settlement with C. C. & C. S. R. R., 90 I. C. C. 271, 274.

(dd) Contention that inasmuch as different companies which operated in the Federal-control period were under the same corporate and financial control they constituted a "system of transportation" within meaning of the law and that comparisons should be made of the results of their combined operations in determining deficits under section 204 of the transportation act, 1920. HELD: In no instance in the laws in which the term "system of transportation" is employed is there evidence that such phrase was intended to refer to groups of companies under common control; on the contrary, it is clearly intended to refer only to facilities used in the performance of a carrier's service. Deficit Settlement with C. C. & C. S. R. R., 90 I. C. C. 271, 274.

(ee) Contention that operation of two separate portions of a system during a portion of the Federal-control period were exclusive and that combination of the results of operation of the two lines for that period is both practicable and legally necessary overlooks the duty of finding a basis for comparison in the operations of the same lines in the test period. During that period one portion of the line was operated by another carrier as part of its system, and since no segregation of income for that portion of the system is practicable it would be manifestly improper to use for purposes of accounting comparison the test-period experience of the short line. Deficit Settlement with C. C. & C. S. R. R. 90 I. C. C. 271, 274.

(ff) Following opinions of the Attorney General of the United States in Transportation Act—Extension or Renewal of Loans, 34 Op. Atty. Gen. 107, wherein it was held that the renewing or extending of an obligation evidencing a loan, where a loan already exists, is not the making of a loan, but is the modification of an existing loan, HELD: That upon application of a carrier for extension of the maturity date of a loan heretofore granted, the commission is confined only by the general limitations of the statute that the period of loans under section 210 of the transportation act, 1920, as amended, together with extensions thereof, may not exceed 15 years in duration. Loan to Receiver of G. & F. Ry., 90 I. C. C. 407, 409.

(gg) Section 210 of the transportation act, 1920, as amended, neither authorizes nor restricts the commission's authority to make extension of loans, nor grants the right of carriers to apply therefor. The broad general purpose of the act as well as the loans authorized thereby, in consonance with the purpose of the whole transportation act, is to promote the public interest by aiding carriers in furnishing to the public the maximum transportation service of which they are capable without hindrance by conditions as to credit or capacity resulting from Federal control in the adjustment period following its termination. Loan to Receiver of G. & F. Ry., 90 I. C. C. 407, 409.

(hh) The public convenience and necessity to be subserved would hardly justify the building of railroads to serve oil fields the production of which are limited or uncertain, or to anticipate exploitation of fields, the location and yield of which have not been determined by exploration. A railroad is, of course, very useful for hauling materials and supplies for exploration work and may earn good returns therefrom, but the life of such traffic is of necessity extremely uncertain. Construction of Lines by S. A. & M. Ry., 90 I. C. C. 597, 605, 606.

III. EXTENSION, ACQUISITION, OR CONSOLIDATION.

§3. In General.

See Consolidation of Carriers; Passenger Fares and Facilities §13 (t).

(a) Complainant alleged extension to Bijou Hills, Brule County, S. D., of the branch line of the Milwaukee, terminating at Platte, Charles Mix County, is reasonably required in the interest of public convenience and necessity and prayed that defendant be required to construct and operate such an extension. A line of the Milwaukee through Sioux City

Iowa and Yankton, S. D., connects its Chicago-Omaha and Minneapolis-Seattle lines. The branch sought to be extended reaches 82.4 miles north westward from a junction with this connecting line at Napa, S. D., 5.6 miles northwest of Yankton. The extension would be about 19 miles in length. This section is served only by the branch of the Milwaukee terminating at Platte and by that carriers line about 20 miles north of Bijou Hills extending from Canton to Rapid City, S. D. The chief market for its produce is Sioux City, to which the haul from Platte is about 150 miles. Distances by wagon road from points which would be served by the extension to Platte or to the nearest stations on the Canton-Rapid City line range from about 10 to 30 miles. Bijou Hills is about 20 miles by wagon road from Platte and from the nearest station on the Canton-Rapid City line. It is evident that the extension would be of benefit to the inhabitants of the region described. On complainants showing the return on investment at the outset would be but 1.57%. The record shows that the proposed extension would not at the outset earn a fair return on the investment, and the prospects for the future would be highly uncertain. HELD, proposed extension not reasonably required in the interest of public convenience and necessity, complaint dismissed. Peter Gunderson v. C. M. & St. P. Ry., 91 I. C. C. 702.

(b) The controlling part of Transportation Act, §402, pars. 18-22 (Comp. St. Ann. Supp. 1923, §8563), is paragraph 18, which prohibits an extension of a railroad line without authority of the Interstate Commerce Commission, based on a finding that public necessity or convenience requires it, and par. 22, providing that the authority of the Commission shall not extend to spur or industrial tracks, is a limitation to be strictly construed, and in a suit to enjoin a construction as in violation of the act the burden should rest on defendant to show that the proposed track is clearly within the exception. Lancaster v. Gulf C. & S. F. Ry. Co. (Tex. 1924) 298 F. 488.

(c) Under Interstate Commerce Act, §1, pars. 18, 20, 22, as added by Transportation Act, §400-403 (Comp. St. Ann. Supp. 1923, §8563), providing that no interstate carrier shall undertake an extension of its line of railroad without first obtaining from the Interstate Commerce Commission a certificate authorizing it, that any construction in violation of such provision may be enjoined by the courts, and that the authority of the Commission thereunder shall not extend to spur or industrial tracks, it is the province of the court in a suit for an injunction to determine whether the proposed construction is an extension or an industrial track, and that question need not first be determined by the Commission. Lancaster v. Gulf C. & S. F. Ry. Co. (Tex. 1924) 298 F. 488.

(d) A proposed track to be built from a station on an interstate railroad, 7½ miles long and to cost about $500,000, with long side tracks, though designed solely for the purpose of securing carload shipments from large industrial plants now tributary to another line, HELD not an "industrial track," but an "extension" of the line of road, within the meaning of Transportation Act, § 402, par. 18 (Comp. St. Ann. Supp. 1923, § 8563), requiring a certificate of authority from the Interstate Commerce Commission. Lancaster v. Gulf C. & S. F. Ry. Co. (Tex. 1924) 298 F. 488.

(e) Under Interstate Commerce Act, §1, pars. 18-21, as amended by Transportation Act 1920, §402 (Comp. St. Ann. Supp. 1923, §8563), providing that no interstate carrier shall extend its line, or construct new line, or acquire or operate any line or extension, or engage in transportation over such additional or extended line, or abandon any portion of its line, unless the Interstate Commerce Commission shall grant a certificate and in view of paragraph 17, as amended by section 402, paragraph 3, as amended by Transportation Act 1920, §400 (Comp. St. Ann. Supp. 1923, § 8563), section 3 as amended by Transportation Act 1920, § 405 (Comp. St. Ann. Supp. 1923, § 8565), and section 20a, added by Transportation Act 1920, § 439 (Comp. St. Ann. Supp. 1923, § 8592a), the Railroad Commission of California had no power to require interstate railroads to build an interstate union station and make incidental additions, extensions, improvements, and changes, where compliance with order would require the joint use of land, tracks, and terminal facilities valued at more than $28,000,000, the abandonment of three existing passenger stations, and the ultimate capital expenditure of from $25,000,000 to $45,000,000, since construction of such an interstate union station required certificate of ap-

proval of Interstate Commerce Commission. Railroad Commission of California v. Southern Pac. Co., 44 Sup. Ct. 376; Same v. Atchison, T. & S. F. Ry. Co., 44 Sup. Ct. 376; Same v. Los Angeles & S. L. R. Co., 44 Sup. Ct. 376.

(f) Complaint praying for issuance of an order under paragraph (21) of section 1 of the act requiring C., M. & St. P. Ry. Co. to extend its lines from Platte, to Bijou Hills, S. Dak.; HELD: Proposed extension is not reasonably required in interest of public convenience and necessity and, while extension would benefit inhabitants of region, it would not at outset earn a fair return on investment, and prospects for the future would be highly uncertain. Gunderson v. C., M. & St. P. Ry. Co., 91 I. C. C. 702.

(g) Section 1 (21) of the act, empowering commission to require railroads to extend their lines, provides "That no * * * order shall be made unless the commission finds, as to such extension, that it is reasonably required in the interest of public convenience and necessity, or as to such extension * * * that expense involved therein would not impair ability of the carrier to perform its duty to the public." First condition contains second, and of necessity an order could not be made under second condition unless first is also satisfied. Cooke case, 66 I. C. C. 452. Gunderson v. C., M. & St. P. Ry. Co., 91 I. C. C. 702, 705.

(h) Public interest is the aggregate of many individual and community interests, and where there is conflict as to results which would follow approval of a proposed acquisition of control by one carrier of another, it becomes necessary to examine claims of conflicting interests in order to determine the ultimate public interest. Clinchfield Ry. Lease, 90 I. C. C. 113, 121.

(i) Where carrier represented that it had been advised that an application for a certificate of public convenience and necessity to acquire and operate a line of railroad which was in operation in interstate commerce prior to effective date of the transportation act, 1920, was requisite, and it voluntarily sought a certificate, perhaps as a protection against a possible injunction suit under the provisions of section 1 (20) of the interstate commerce act, it is unnecessary for the commission to decide whether it has jurisdiction, granting that the question of jurisdiction is debatable, and it is entirely proper for the commission to afford protection sought. Acquisition of Line by B. & H. R. R., 90 I. C. C. 448, 453, 454.

(j) The public convenience and necessity to be subserved would hardly justify the building of railroads to serve oil fields the production of which are limited or uncertain, or to anticipate the exploitation of fields, the location and yields of which have not been determined by exploration. A railroad is, of course, very useful for hauling materials and supplies for exploration work and may earn good returns therefrom, but the life of such traffic is of necessity extremely uncertain. Construction of Lines by S. A. & M. Ry., 90 I. C. C. 597, 605, 606.

(k) Morgan's Louisiana & Texas R. R. & S. S. Co., acquisition of control of Franklin & Abbeville Ry. Co., by purchase of capital stock, approved and authorized. The Abbeville serves an agricultural community engaged chiefly in raising sugar cane. Planters are unable, because of the local rates, to market their products on other lines and must depend entirely on refineries located on the Abbeville, and this has retarded development of the territory it serves. The proposed acquisition will remove this handicap, making possible a substantial reduction in rates on sugar cane and other commodities. It will also result in better service to those now dependent upon the Abbeville for transportation facilities and in substantial economics in operation. Control of F. & A. Ry. Co., 90 I. C. C. 815.

(l) Extension by defendants of their main lines of steam railroad so as to reach and serve such union passenger stations and terminals as they may construct and establish in described portion of city of Los Angeles, Calif., and extention of such main lines to provide for rearrangement of their passenger and freight routes incidental to the convenient and proper operation of such union station and terminal, found reasonably required in the interest of public convenience and necessity, and expense involved therein found not to impair the ability of defendants to perform their respective duties to the public. Los Angeles Passenger Terminal Cases, 100 I. C. C. 421, 460.

(m) Public convenience and necessity found not to require the construction of new or extension of existing lines

of railroad in city of Los Angeles, Calif., by Southern Pacific and Los Angeles & Salt Lake as described. Application denied. Los Angeles Passenger Terminal Cases, 100 I. C. C. 421, 459, 460.

(n) Paragraph 18 of section 1 of the act relating to a certificate of convenience and necessity respecting the construction and operation of new and additional lines is specifically limited to line of railroad. Nelson S. S. Co. v. B. A. & P. Ry., 109 I. C. C. 529, 537.

IV. ABANDONMENT OF SERVICE.

§4. In general.

(a) Court order appointing receiver authorized him to exercise all powers and to perform all duties theretofore conferred upon former receiver, HELD: Such former receiver is not a necessary party to a proceeding involving an application for certificate of convenience and necessity for abandonment of line of railroad. Abandonment of M., B. & S. R. R., 90 I. C. C. 31, 34.

(b) State commission is recommending that application for abandonment of line be granted, requested that when question of sale of the road is finally considered the order of sale be in alternative form, both as a going concern and as junk, in order to give people along the line an opportunity to buy and operate the road. HELD: Question is one properly to be brought before court having jurisdiction in the premises. Abandonment of P. & H. R. R., 90 I. C. C. 51, 52.

(c) Public convenience and necessity found to permit abandonment of operation of all passenger and freight train service, except industrial freight-switching service, on main line of Southern Pacific on Alameda Street from College Street to East Fifteenth Street, inclusive, in city of Los Angeles, Calif. Los Angeles Passenger Terminal Cases, 100 I. C. C. 421, 459.

(d) Public convenience and necessity found to permit abandonment by defendants of such portions of their lines of steam railroad, or of all or any portion of the interstate service thereon, as may be incidental to the rearrangement of routes, tracks, and terminal facilities necessitated by the establishment of a union passenger station and terminal in city of Los Angeles, Calif. Los Angeles Passenger Terminal Cases, 100 I. C. C. 421, 460.

(e) Contention that under section 1, paragraphs (18) to (22) of the act, the commission has no jurisdiction in matter of proposed abandonment of mine sidings, relying largely on paragraph (22) which provides that authority conferred by paragraphs (18) to (21) shall not extend to sidetracks located wholly within one state, or to street, suburban, or interurban electric railways not operated as part of general steam-railroad system, not sustained. Provisions of foregoing paragraph limit commission's jurisdiction only with respect to specified paragraphs and do not come into conflict with the provisions of paragraph (9) under which commission may authorize the construction, maintenance, and operation of switch connections with private sidetracks of shippers when such connection is, in opinion of commission, reasonably practicable, can be safely put in, and will furnish sufficient business to justify its construction and maintenance. Hood Coal Co. v. M. V. T. Co., 101 I. C. C. 719, 720, 721.

(f) Proposal of Monongahela West Penn Public Service Co. to cancel interstate rates on coal from mines on its line and to eliminate mine sidings from its list of stations, found justified. Sidetracks concerned have not been used for approximately two years, with little likelihood of future operation except under abnormal market conditions, and in justice to carrier it should not be compelled to maintain switch connections and continue present rates because of a remote possibility of a return of favorable market conditions under which mines previously operated. Moreover, contracts between shippers and the Monongahela provided, among other things, that carrier should have the right, at any time after 30 days' written notice, to discontinue use of siding, terminate the contract, and remove tracks, and such written notice had been duly served. Hood Coal Co. v. M. V. T. Co., 101 I. C. C. 719, 723.

(fa) Upon allegation of an intermediate carrier that unless it can obtain additional revenues from traffic to be secured by establishment of through routes and joint rates in connection with its line it will be compelled to cease operations and deprive territory now served by it, and dependent upon it, of services essential to people living therein, FOUND: While net revenues of this line are insufficient to meet all expenses and interest on obligations, such line is earn-

ing a surplus over all operating expenses and taxes, and on such a showing there would be no possible ground for abandonment of line. Fort Smith, S. & R. I. R. R. v. A. & V. Ry., 102 I. C. C. 708, 711, 712.

(g) This is an investigation instituted on motion of the Commission into and concerning the justness, reasonableness, and lawfulness of the proposal of the Nor. Pac. to discontinue daily train service on its line extending between Beach, N. D., and Ollie, Mont., and to establish in lieu thereof a triweekly service, and into and concerning the adequacy of the restricted service. Respondent owns and operates a branch line 26 miles in length, extending from Beach, about 2.5 miles east of the North Dakota-Montana state line to Ollie, a short distance west thereof. Three open stations are maintained on this branch, Golva, Carlyle and Ollie. For some time past respondent has maintained daily mixed train service on this branch in both directions. Because of the decreased revenues from the line and in order to curtail expenses, respondent proposed to curtail the service to triweekly. The record shows that revenues derived from the line under consideration are not sufficient to defray the expense of the service. It is also clear that the proposed curtailment in service will result in substantial savings. HELD, proposed discontinuance of daily service and establishment of tri-weekly service not unjust or otherwise unlawful. Train service on N. P. 112 I. C. C. 191.

ALL OTHER CITATIONS

Abandonment of Chicago, Peoria & St. Louis R. R., 76 I. C. C. 801.

V. STOCKS AND CAPITAL ISSUES.

§5. In general.

(a) The commerce clause in the federal Constitution (article 1, §8, cl. 3) being broad enough to include transportation among the several states, it is broad enough to include means through which alone transportation can be furnished, such as the issuance of capital stock by railroad to pay for improvements and maintenance of its property. Whitman v. Northern Cent. Ry. Co., (Md., 1924) 127 Atl. 112.

(b) The issuance of securities by interstate carrier being interstate commerce, and states having granted federal government right to regulate inter-Act, §20a, subsec. 7, as added by Transportation Act Feb. 28, 1920, §439 (U. S. Comp. St. Ann. Supp. 1923, §8592a), giving Interstate Commerce Commission power to regulate and control issuance of securities by interstate carriers, is not an invasion of sovereign powers of the states. Whitman v. Northern Cent. Ry. Co. (Md., 1924) 127 Atl. 112.

(c) What consequences may follow Interstate Commerce Act, §20a, as added by Transportation Act Feb. 28, 1920, §439 (U. S. Comp. St. Ann. Supp. 1923, §8592a), giving Interstate Commerce Commission power to regulate and control issuance of securities by interstate carriers, must be dealt with by Legislature, and, so long as Legislature acts within its constitutional powers, wisdom of its act cannot be reviewed by the courts. Whitman v. Northern Cent. Ry. Co. (Md., 1924) 127 Atl. 112.

(d) Until Congress, by Interstate Commerce Act, §20a, as added by Transportation Act Feb. 28, 1920, §439 (U. S. Comp. St. Ann. Supp. 1923, §8592a), exercised right to regulate issuance of securities by interstate carriers, states could regulate it so long as it did not interfere with operation of service of corporations as interstate carriers; but, when Congress did exercise such power by placing control in federal agency, power of state ceased. Whitman v. Northern Cent. Ry. Co., (Md., 1924) 127 Atl. 112.

(e) Interstate Commerce Act, §20a, as added by Transportation Act Feb. 28, 1920, §439 (U. S. Comp. St. Ann. Supp, 1923, §8592a), giving Interstate Commerce Commission power to regulate and control issuance of securities by interstate carriers, is applicable to issuance of capital stock by interstate carrier to pay for improvements and maintenance of its property, and under subsections 2 and 7 an interstate carrier organized in Maryland may issue such securities without consent of Public Service Commission of Maryland. Whitman v. Northern Cent. Ry. Co., (Md., 1924) 127 Atl. 112.

(f) Under the provisions of section 5 (2) of the act the commission is not in a position to consider whether a proposed acquisition of control in some manner other than that proposed, or by some carrier other than applicant, would better serve the public interest. The commission must determine whether an

acquisition of control as proposed is in the public interest. Clinchfield Ry. Lease 90 I. C. C. 113, 132.

(g) The public interests require that before an issue of securities by a carrier is authorized, the probability of earnings sufficient to pay cost of operation and of fixed charges be reasonably established, with some surplus for dividends and other purposes. D. & R. G. W. Reorganization, 90 I. C. C. 141, 148.

(h) The commission can not upon an application for authority to issue securities give to underlying land, engineering, and accounting reports of its Bureau of Valuation the force and effect of final valuation, because they are subject to revision and correction before they become a tentative valuation of the property covered, and because such tentative valuation, when made, will be subject by express terms of section 19a, to protest and change. D. & R. G. W. Reorganization, 90 I. C. C. 141, 144.

(i) In passing upon an application for authority to issue securities such consideration and weight is given to underlying land, engineering, and accounting reports of the commission's Bureau of Valuation as the commission deems to be proper under the circumstances and conditions of their present status and future disposition. In giving these reports weight and consideration the commission is not to be understood as in any way making determinations which section 19a of the act authorizes it to make. D. & R. G. W. Reorganization, 90 I. C. C. 141, 144.

(j) In exercising authority conferred upon the commission by section 5 (2) of the act relative to the acquisition of control by one carrier of another by purchase of stock, not involving consolidation into a single system for ownership and operation, the commission must be of opinion that the proposed acquisition is in the public interest before its approval and authorization can be given. Acquisition of D. & R. G. W. Common Stock, 90 I. C. C. 161, 163, 164.

(k) Where record before the commission justifies conclusion that acquisition by one carrier of one-half of the common stock of another, with all such common stock to be placed in a voting trust is in the public interest, the commission does not regard the fact that lines of applicant acquiring the stock and lines of carrier whose stock is to be acquired are not placed in the same system in the tentative plan for consolidation of railroads into a limited number of systems as a sufficient reason for withholding approval and authorization of the proposed acquisition. Acquisition of D. & R. G. W. Common Stock, 90 I. C. C. 161, 164.

(l) Section 5 (2) of the act confers jurisdiction upon the commission to authorize one carrier to acquire control of another carrier by purchase of capital stock or in any other manner not amounting to a consolidation, thus recognizing that the acquisition of a controlling stock interest does not effect a consolidation of the companies. Control of I.-G. N. R. R., 90 I. C. C. 262, 267.

(m) The commission is without jurisdiction to authorize an issue of securities by a boat company which is not an operating company but a holding company solely and a subsidiary of a railroad company. Such companies are not "carriers by railroad" or otherwise "carriers" within meaning of section 20a of the act. Guaranty of Bonds by A. A. R. R., 90 I. C. C. 331, 332.

(n) Following opinion of Attorney General of the United States in Transportation Act—Extension of Renewal of Loans, 34 Op. Atty. Gen. 107, wherein it was held that the renewing or extending of an obligation evidencing a loan, where a loan already exists, is not the making of a loan, but is the modification of an existing loan, HELD: That upon application of a carrier for an extension of the maturity date of a loan heretofore granted, the commission is confined only by general limitations of the statute that the period of loans under section 210 of the transportation act, 1920, as amended, together with extensions thereof, may not exceed 15 years in duration. Loan to Receiver of G. & F. Ry., 90 I. C. C. 407, 409.

(o) Section 210 of the transportation act, 1920, as amended, neither authorizes commission nor restricts its authority to make extension of loans, nor grants the right of carriers to apply therefor. The board general purpose of the act as well as the loans authorized thereby, in consonance with purpose of the whole transportation act, is to promote the public interest by aiding carriers in furnishing to public the maximum transportation service of which they are capable without hindrance by conditions as to credit or capacity resulting from Federal control in the adjustment period following

its termination. Loan to Receiver of G. & F. Ry., 90 I. C. C. 407, 409.

(p) While it is within the commission's province to give its authority and consent under section 20a of the act for the issue of receiver's certificates, it is not to be understood that by giving such authority it passes upon or in anywise determines or effects the nature of rights or liens to be enjoyed under such certificates or the priority thereof in their relation to other liens. M. & St. L. Receiver's certificates, 90 I. C. C. 491, 492.

VI. GOVERNMENT GUARANTY.

See Interstate Commerce Commission §9½.

§6. In general.

(a) In adjusting transportation rates which will yield carriers the fair return contemplated in section 15a of the act, it is encumbent upon the commission to take into account all circumstances and conditions which, in its best judgment, will influence the return under any given level of rates. If the commission is persuaded that increases in rates beyond any certain point would divert traffic to other means of transport or depress its volume, and so defeat the very end the statute is meant to attain, it clearly becomes its duty to readjust or modify the rates in such manner as will, in its judgment, produce as nearly as may be the desired result. Express Rates, 1922, 89 I. C. C. 297, 310, 311.

(b) The commission is required to so adjust transportation rates that they may, under conditions named, yield carriers, as nearly as may be, the fair return contemplated in section 15a of the act. The commission's determination is to be made in the exercise of its power to prescribe just and reasonable rates, and it is within "the flexible limits of judgment" that the commission must determine what basis or bases of rates will yield "as nearly as may be," that return. Express Rates, 1922, 89 I. C. C. 297, 310, 311.

(c) Section 15a of the act does not repeal or supersede other provisions of the act. Express Rates 1922, 89 I. C. C. 297, 311, 314.

(d) Fact, that, because of a falling off in business, among other things, rates determined by the commission under section 15a of the act, did not yield carriers generally the contemplated return prescribed, confirms the soundness of the commission's statement viz., that its duty in such cases includes an appropriate consideration of all evident circumstances and conditions which, in its judgment, will affect the final result. Express Rates, 1922, 89 I. C. C. 297, 311.

(e) Hannibal Connecting R. R. Co. found to be a common carrier engaged in interstate commerce and subject to recapture provisions of section 15a of the act. Contention that such carrier was not subject to recapture provisions, upon theory that its excess earnings came from intraplant service, not sustained, following Dayton-Goose Creek case, 263 U. S. 456. Intrastate and interstate operations are so inextricably commingled as to make segregation impracticable, and to segregate would also defeat plan of Congress to control excess profits due to level of whole body of rates. Status of H. C. R. R. Co., 91 I. C. C. 744.

(f) The significance of the financial aspect may vary in different cases. Certainty or failure to earn may have effect different from uncertainty of earnings or as to the time when they are to be realized. A prospect for earnings not free from uncertainty may justify the granting of a certificate permitting the construction of a line, the subsequent abandonment of which may be authorized on demonstration of futility of the prospect. Cases must be determined by the particular facts presented regarding them, and it is not possible to state a rule applicable alike to all. Circumstances may warrant the drawing of final conclusions regarding the financial aspect before the issuance of a certificate authorizing construction, or, conversely, may justify deferring such consideration. Construction of Line by W. S. Ry., 90 I. C. C. 237, 256.

(g) Contention that the commission is required by section 204 of the transportation act, 1920, to make necessary adjustments in its computations of railway operating income in order to bring about a proper comparison between operations of the Federal control period and the test period, HELD: In the requirement of section 204 (b) and 209 of the transportation act, or in section 1 of the Federal control act, there is no suggestion that Congress had in mind a complete, or substantially complete, change in the road operated by a carrier. Where operation on a short line

was not entirely discontinued in the Federal control period, but was of such small importance in the latter period as to be practically negligible, a comparison of the results of the negligible operations in the Federal control period with the results of operations of the same line in the test period would be manifestly improper. Deficit Settlement with C. C. & C. S. R. R., 90 I. C. C. 271, 273.

(h) In certifying payments to carriers under section 204 and 209 of the transportation act, 1920, the commission has consistently dealt with each operating company individually and without reference to corporate control, so far as the determination of railway operating income or deficit is concerned. A contrary course would have been impracticable as well as illegal. Deficit Settlement with C. C. & C. S. R. R., 90 I. C. C. 271, 274.

(i) Whether commission considers accounts of a carrier separately, or combines them with accounts of other roads in the system, the result is a showing of railway operating income in Federal-control period; therefore, a claim, if allowed, would fall within class given status by decision in Construction of the Word "Deficit," 66 I. C. C. 765. Deficit Settlement with C. C. & C. S. R. R. 90 I. C. C. 271, 274.

(j) Contention that operation of two separate portions of a system during a portion of the Federal-control period were exclusive and that combination of the results of operations of the two lines for that period in both practicable and legally necessary, overlooks the duty of finding a basis for comparison in the operations of the same lines in the test period. During that period one portion of the line was operated by another carrier as part of its system and since no segregation of income for that portion of the system is practicable, it would be manifestly improper to use for purposes of accounting comparison the test period experience of the short line. Deficit Settlement with C. C. & C. S. R. R., 90 I. C. C. 271, 274.

(k) In certifying payments to carriers under section 204 of the transportation act, 1920, the commission has consistently dealt with each operating company individually and without reference to corporate control, so far as the determination of railway operating income or deficit is concerned. A contrary course would have been impracticable as well as illegal. Deficit Settlement with C. C. & C. S. R. R., 90 I. C. C. 271, 274.

(l) Section 209 does not provide for a recovery by the Government of the difference between a deficit in the test period and a smaller deficit in the guaranty period. Guaranty Status of M., I. & L. Ry., 90 I. C. C. 811, 812.

(m) Where a carrier is not earning a fair return on value of property used in service, it does not follow that any and every method advanced by it to increase its revenues must receive stamp of commission's approval merely because of its financial needs. Ft. Smith, S. & R. I. R. R. v. A. & V. Ry., 102 I. C. C. 708, 712.

VII. PHYSICAL VALUATION.

See Physical Valuation.

§8. In general.

(a) In the valuation of street railway property for the purpose of rate-making, opinions of experts who have given the subject long study and reflection, and whose continuous practical experience for many years have informed them on every phase of the inquiry, ought not to be lightly weighed though they need not be literally followed. Westinghouse Electric & Mfg. Co. v. Denver Tramway Co., 3 Fed. (2d) 285. Stenger v. City and County of Denver, 3 Fed. (2d) 285.

(b) Where a so-called expert on public utility matters was not qualified as an expert on valuation of street railways, his nonexpert testimony as to facts shown by tramway company's books should be rejected, where so modified enlarged, or restricted by his personal opinion as to be inseparable from his opinion testimony. Westinghouse Electric & Mfg. Co. v. Denver Tramway Co., 3 Fed. (2d) 285. Stenger v. City and County of Denver, 3 Fed. (2d) 285.

(c) In inquiry as to valuation of street railway system for the purpose of rate-making, ordinarily reproduction cost new, less depreciation, is the dominant factor, and of necessity must be the rule, where there are no other sufficient data on the subject. Westinghouse Electric & Mfg. Co. v. Denver Tramway Co., 3 Fed. (2d) 285. Stenger v. City and County of Denver, 3 Fed. (2d) 285.

(d) A writer and student of econogy, holding degrees of Bachelor of mics, public law, government, and sociol-

Arts, Master of Arts, and Doctor of Philosophy, who was not an engineer, having never been employed by any street railway in any capacity, and having little experience in valuation of properties, held not shown to be qualified to testify as an expert as to valuation of a street tramway system for rate-making purposes. Westinghouse Electric & Mfg. Co. v. Denver Tramway Co., 3 Fed. (2d) 285. Stenger v. City and County of Denver, 3 Fed. (2d) 285.

(e) In computing the valuation of a street railroad for the purpose of rate making, the federal income tax should be included in "operating expenses." Duluth St. Ry. Co. v. Railroad and Warehouse Commission, 4 Fed. (2d) 543.

(f) New evidence introduced in a suit to set aside the final valuation of railroad property by the Interstate Commerce Commission, certified to the Commission under Interstate Commerce Act, §19a, as amended (Comp. St. Ann. Supp. 1923, §8591). Los Angeles & S. L. R. Co. v. United States 4 Fed. (2d) 736.

(g) Equity will not cancel Interstate Commerce Commission's tentative valuation of railroad's property under Interstate Commerce Act, §19a, as amended by Act March 1, 1913, Act Feb. 28, 1920, and Act June 7, 1922 (Comp. St. Ann. Supp. 1923, §8591), in proceeding involving same issues as were raised by protest filed by railroad under such statute, prior to Commission's ruling on protest, in absence of showing that Commission has willfully disregarded the law as honestly interpreted, or has failed to proceed in an orderly manner, or that it will not consider any pass on all matters set up in protest. Delaware & H. Co. v. United States, 45 Sup. Ct. 153.

(h) Interstate Commerce Commission's tentative valuation of railroad's property, under Interstate Commerce Act, §19a, as amended by Act March 1, 1913, Act Feb. 28, 1920, and Act June 7, 1922 (Comp. St. Ann. Supp. 1923, §8591), is merely an ex parte appraisement, without probative effect, and does not become final, on protest by railroad until Commission has ruled thereon. Delaware & H. Co. v. United States, 45 Sup. Ct. 153.

FIRE

See Demurrage §4¾ (f).

FLOATAGE

See Car Ferry; Lighterage; Towage.

(a) Rules, regulations, and practices of C. R. R. Co. of N. J., under which it refuses to float shipments of cast-iron soil pipe from Jersey City to its North River piers, Manhattan Island, N. Y., and requiring shippers to take delivery at former point, found unreasonable. Iron pipe, due chiefly to amount of time required to unload, may be undesirable traffic at pier stations, but defendant does not similarly restrict other substantially similar commodities which are bulky and difficult to handle, and nothing of record indicates that latter should be accorded more favorable rules respecting delivery than cast-iron soil pipe. Somerville Iron Works v. C. R. R. Co. of N. J., 93 I. C. C. 39.

FOLLOW LOT SHIPMENTS

See Classification §21.

FOREIGN COMMERCE

I. CONTROL AND REGULATION.
§1½. In general.
§1. Jurisdiction of Commission.
§2. Determination of status.

II. LIABILITY OF CARRIER.
§3. In general.

CROSS REFERENCES

See Adjacent Foreign Country; Alaska; Canada; Export Rates and Facilities; Mexico.

I. CONTROL AND REGULATION.

See Act to Regulate Commerce I (j); Control and Regulation.

§½. In General.

(a) The Commission has no jurisdiction to require the establishment of joint rates for the future from or to a point in the United States to or from a point in a foreign country or from a point in the United States through a foreign country to a point in the United States. San Diego Chamber of Commerce v. A. & V. Ry., 102 I. C. C. 27, 29.

ALL OTHER CITATIONS

New England Divisions, 85 I. C. C. 482.

§1. Jurisdiction of Commission.

(a) The commission has no jurisdiction to require the establishment of joint rates for future from or to a point in United States to or from a point in a foreign country or from a point in United States through a foreign country to a point in the United States. See 69 I. C. C. 337, 343. San Diego Chamber of Commerce v. A. & V., 102 I. C. C. 27, 29.

§2. Determination of Status.

See Common Carrier.

(a) Transportation of passenger HELD not "foreign commerce" as to transportation on urban line.—Borelli v. International Ry. Co., 240 N. Y. 54, 147 N. E. 356.

II. LIABILITY OF CARRIER.

See Common Carrier.

§3. In General.

(a) Where shipments move under unreasonable joint rates from points in adjacent foreign countries to points in the United States, the American lines participating in the transportation are tort feasors and the full amount of reparation may be awarded against them. Lewis-Simas-Jones Co. v. S. P., 102 I. C. C. 245, 246.

FREE TIME

See Demurrage §12, §15; Export Rates and Facilities §7 (b).

FREE TRANSPORTATION

See Caretakers; Crimes III; Express Companies §5; Passenger Fares and Facilities §12; Personal Injuries; Reduced Rates; Transportation §5½.

FREIGHT CHARGES

See Credit Account; Currency; Demurrage VI; Export Rates and Facilities; Overcharges; Transportation §4; Undercharges.

(a) Carriers are obliged to collect and shippers to pay the legally published charges. It is not within the purview of the Commission to pass upon the question of the liability of consignors or consignees thereunder. Wuille & Company v. M. H. R. R. 92 I. C. C. 299, 301.

(b) Where wheat, which had been reconsigned several times, was sold to defendant f. o. b. cars in defendant's city, and carrier erroneously told defendant that the freight had been paid to a certain point, and defendant paid the freight charges from that point, and paid seller the balance of the purchase price after deducting the freight paid, HELD, that carrier is estopped from demanding further payment of freight by defendant. Davis v. Akron Feed & Milling Co., 296 F. 675.

(c) An interstate carrier is not estopped from recovering balance of freight due by unauthorized act of its agent in quoting an illegal freight rate. Davis, Director General of Railroads v. Gulley (N. C. 1924) 123 S. E. 318.

(d) Representations or claims made by carrier as to the correct amount of the freight charges will not relieve a consignee from payment of the scheduled rate, as a shipper or consignee has equal opportunity with a carrier to know the published rate. Davis v. Akron Feed & Milling Co. 296 F. 675.

(e) As to prepaid shipments of coal consigned to a coal exchange for account of shipper and under regulations of exchange, loaded on ship for account of other members, course of dealing between shipper and carrier HELD not to show an implied contract by carrier to collect, from those for whose account the coal was so reshipped, the freight prepaid by the original shipper. Pennsylvania R. Co. v. S. M. Hamilton Coal Co. (Md. 1923) 125 A. 405.

(f) The shipper, though he directs that the shipment be carried "freight collect," cannot escape liability for the freight and other lawful charges, unless he stipulates by signature in the space provided on the bill of lading that the carrier shall not make delivery without requiring payment of such charges. Western Maryland Ry. Co. v. Cross (W. Va. 1924) 123 S. E. 572.

(g) The fact that in a particular case no bill of lading is issued, and that federal statute, Barnes' Federal Code 1922 Supp. § 7886 (U. S. Comp. St. Ann. Supp. 1923, § 8565), forbids a carrier from relinquishing the possession of freight at destination without payment of transportation charges, does not save the consignor from his liability, unless he stipulates therefor in the manner provided in the uniform bill of lading.

Western Maryland Rv. Co. v. Cross (W. Va. (1924) 123 S. E. 572.

(h) It is no defense to an action for the recovery of demurrage that the defendant, after shipment was made, obtained the bill of lading, and is the owner of the freight, and had no notice of the arrival of the freight, where due notice was given to the original consignee as provided by the terms of the bill of lading. By obtaining the bill of lading and accepting the freight thereunder, the defendant assumed the liabilities as well as acquiring the rights of the consignee under the bill of lading. Atchison T. & S. F. Ry. Co. v. Johnson (Okla. 1924) 225 Pac. 939 (State Shipment.)

(i) Foreign bill of lading specified freight charges in pounds, shillings, and pence, and providing that, if freight paid at destination, normal rate of exchange was to be used, HELD not to give option to pay either in American currency or that mentioned in the bill. Pennsylvania R. Co. v. Cameron (Pa., 1924) 124 Atl. 638.

(j) Where a bill of lading on a foreign shipment of wool to a western port, and from there by rail east, specified freight charges in pounds, shillings, and pence, and provided "freight, if payable at destination, to be at the rate of $4.866 exchange," rather than at sterling current rates, held such provisions controlled and precluded payment at a lower current rate of exchange. Pennsylvania R. Co. v. Cameron (Pa., 1924) 124 Atl. 638.

(k) A check given in full settlement of all claims and demands, and accepted as such, should indicate to the person receiving it that it intends to close all accounts in order to entitle it to that effect. Pennsylvania R. Co. v. Cameron (Pa., 1924) 124 Atl. 638.

(l) Freight on an import shipment, though specified in foreign currency, if payable at destination, is payable in American currency. Pennsylvania R. Co. v. Cameron (Pa., 1924) 124 Atl. 638.

(m) Person designated in straight bill of lading as one to be notified, who directed carrier to deliver goods to third person on payment of freight charges, held not liable on any implied promise to pay balance of published rates which carrier through mistake failed to collect. New York Cent. R. Co. v. Sharp, 206 N. Y. S. 755.

(n) Where it was custom of express company to return empty milk cans to defendant owner in Boston without charge, and consignee of full cans, in violation of custom, delivered empty cans back to carrier to be taken to point in New Hampshire, where defendant had a place of business, and defendant refused to accept them, defendant was not liable for transportation charges to point in New Hampshire. American Ry. Express Co. v. Mohawk Dairy Co. (Mass., 1924) 144 N. E. 721.

(o) Tag on empty milk cans HELD not to be regarded as matter of law as shipping direction on the part of the owner shipper, when returned to express company by consignee after emptying them. American Ry. Express Co. v. Mohawk Dairy Co. (Mass., 1924) 144 N. E. 721.

(p) Interstate Commerce Act (U. S. Comp. St. §8563 et seq.) imposes no obligation on particular party to pay transportation charges, and tariff not providing by whom charges for interstate shipment must be borne, carrier and shipper are free to contract subject to rule against discrimination. American Ry. Express Co. v. Mohawk Dairy Co. (Mass, 1924) 144 N. E. 721.

(q) Express receipt, by word "collect" on its face, indicated that shipper and carrier intended consignee should pay transportation charges. American Ry. Express Co. v. Mohawk Dairy Co. (Mass., 1924) 144 N. E. 721.

(r) In absence of definite stipulation on point, it is implied that carrier agrees to carry goods and shipper agrees to pay transportation charges, and this applies to interstate shipments. American Ry. Express Co. v. Mohawk Dairy Co. (Mass., 1924) 144 N. E. 721.

(s) Ownership is important in connection with other factors in determining liability for transportation charges, but apart from other considerations is not decisive. American Ry. Express Co. v. Mohawk Dairy Co. (Mass., 1924) 144 N. E. 721.

(t) In absence of express contract binding him, or necessary implication to that effect, consignee is not liable for transportation charges; his obligation to pay commonly resting on acceptance of goods when transportation has ended, which obligation is coextensive which charge legally due. American Ry. Ex-

press Co. v. Mohawk Dairy Co. (Mass. 1924) 144 N. E. 721.

(u) Action by interstate carrier to recover difference between published schedule of rates filed with interstate commerce commission and rates provided for in contract of shipment, such scheduled rates forming part of contract of shipment by operation of law, is an action founded on contract in writing, governed by five-year statute of limitations. (Crawford & Moses' Dig. §6955), and not by three-year statute of limitations (section 6950). Missouri Pac. R. Co. v. Pfieffer Stone Co. (Ark., 1924) 266 S. W. 82.

(v) Stipulations in bill of lading that goods are to be delivered to consignee "he paying freight," or any similar provision, are for benefit of carrier, and delivery to consignee without collection of freight will not release consignor from liability therefor, in absence of special stipulation to contrary. Missouri Pac. R. Co. v. Pfieffer Stone Co. (Ark., 1924) 266 S. W. 82.

(w) Carrier, contracting with shipper to transport goods, has right to look to consignor for payment of freight, and may waive its lien on goods by delivering them to consignee, and still hold consignor liable on contract of shipment. Missouri Pac. R. Co. v. Pfieffer Stone Co. (Ark., 1924) 266 S. W. 82.

(x) Act of consignee of interstate shipment, in taking up bills of lading and reshipping to consignor, HELD to constitute receipt of shipment, making original consignee liable for freight charges on first shipment regardless of whether its clerk had authority to sign receipt for original shipment. Central R. Co. of New Jersey v. National Asbestos Mfg. Co., (N. J., 1925) 127 Atl. 184.

(y) The federal law is controlling as to liability for freight charges on interstate shipments. Central R. Co. of New Jersey v. National Asbestos Mfg. Co. (N. J., 1925) 127 Atl. 184 .

(z) Under uniform bill of lading, consignee, by accepting an interstate shipment, becomes liable for lawful freight charges accrued thereon. Central R. Co. of New Jersey v. National Asbestos Mfg. Co. (N. J., 1925) 127 Atl. 184.

(aa) Where, if there was agreement by interstate carrier to collect freight at pier, it was void under Interstate Commerce Act as contravening terms of published tariff, carrier was not required to notify original consignee of discontinuance of practice of collecting freight in such manner. Monongahela Ry. Co. v. Read (Md., 1925) 127 Atl. 739.

(bb) Transportation Act, Feb. 28, 1920, §424 (Comp. St. Ann. Supp. U. S. 1923, §8584), fixing time limits of three years for carriers to sue for charges, abrogates state six-year statute, and if applicable retrospectively to cause of action accruing more than three years before act was passed, without giving right to sue, would violate due process clause of federal Constitution (Const. U. S. Amend. 14, §1). Philadelphia, B. & W. R. Co. v. Quaker City Flour Mills Co., (Pa., 1925) 127 Atl. 845.

(cc) As Transportation Act, Feb. 28, 1920, §424 (Comp. St. Ann. Supp. U. S. 1923, §8584), requiring that "all actions" for carriers' charges be prosecuted within three years "from the time the cause of action accrues," specifies no time in future when it is to be operative, it affects all causes of action from date of enactment and gives causes already accrued full three years from passage, if not barred in less time by state statute in effect when cause accrued, though cause arose more than three years before passage of federal act. Philadelphia B. & W. R. Co. v. Quaker City Flour Mills Co., (Pa., 1925) 127 Atl. 845.

(dd) Delivering carrier may collect all charges from consignees, including those of its connections. Granger v. Davis, 2 Fed. (2d) 695.

(ee) The freight charges on a through shipment from a foreign country into the United States are payable at the rate fixed by the tariff schedules published and filed with the Interstate Commerce Commission in money of the United States, regardless of its exchange value in money of the foreign country. New York & Pennsylvania Co. v. Davis, 2 Fed. (2d) 858.

(ff) Under Interstate Commerce Act (U. S. Comp. St. §8563 et seq.), providing that freight rates are immutable by agreement, mistake, or artifice of parties, consignee's assignee of bill of lading, who accepted delivery of goods, was liable for demurrage charges arising prior to assignment. New York Cent. R. Co. v. Hendel, 207 N. Y. S. 234.

(gg) Generally, a consignee who ac-

cepts a shipment becomes liable as a matter of law for the full amount of freight charges. Louisville & N. R. Co. v. United States, 45 Sup. Ct. 233.

(hh) Carriers are obliged to collect and shippers to pay the legally published charges, and it is not within the commission's purview to pass upon question of liability of consignors or consignees therefor. See Conf. Ruling 314; Wilson case, 50 I. C. C. 571 and American Smelting & Refining Co., 62 I. C. C. 583, 589. Wuille & Co. v. M. H. R. R., 92 I. C. C. 299.

(ii) Failure of carriers to have a provision in bill of lading whereby all freight and other charges were to be collected from consignee without recourse to consignor, found not to have resulted in an unreasonable practice, in violation of section 1 of the act. Carriers are obliged to collect and shippers to pay the legally published charges, and it is not within commission's purview to pass upon question of liability of consignors or consignees therefor. See Conf. Ruling 314, Wilson case, 50 I. C. C. 571, and American Smelting & Refining Co., 62 I. C. C. 583, 589. Wuille & Co. v. M. H. R. R., 92 I. C. C. 299.

(jj) Carrier has lien on goods transported, for freight charges, while it retains dominion and control over goods. Mays v. Missouri & N. A. Ry. Co., (Ark. 1925) 271 S. W. 977.

(kk) Ordinarily person from whom goods are received for shipment assumes obligation to pay freight charges, and his obligation is ordinarily a primary one, though bill of lading imposes liability on consignee, but it may be shown that parties intended, not only that consignee should assume the obligations to pay the charges, but that shipper should not assume any liability whatsoever therefor, or he should assume only a secondary liability. Louisville & N. R. Co. v. Central Iron & Coal Co. 44 Sup. Ct. 441.

(ll) Where shipment is accepted, consignee is liable for the full amount of freight charges, whether they are demanded at time of delivery or not until later. Louisville & N. R. Co. v. Central Iron & Coal Co. 44 Sup. Ct. 441.

(mm) Where payment of freight charges is deferred until goods reach end of transportation, carrier may require it to be made before delivery, concurrently with delivery, or permit it to be made later. Louisville & N. R. Co. v. Central Iron & Coal Co., 44 Sup. Ct. 441.

(nn) Carrier and shipper are free to contract as to when or by whom payments of freight charges will be made. Louisville & N. R. Co. v. Central Iron & Coal Co., 44 Sup. Ct. 441.

(oo) No contract of carrier can reduce amount of freight on an interstate shipment legally payable, or release from liability a shipper who has assumed an obligation to pay such charges, and no act or omission of carrier, except allowing statute of limitations to run, will estop or preclude it from enforcing payment of full amount. Louisville & N. R. Co. v. Central Iron & Coal Co., 44 Sup. Ct. 441.

(pp) Delivering of goods to a carrier for shipment does not under the Interstate Commerce Act impose upon a shipper an absolute obligation to pay the freight charges. As to these matters carrier and shipper are free to contract subject to the rule which prohibits discrimination. The carrier is at liberty to require prepayment of freight charges or permit that payment be deferred until the goods reached the end of the transportation. Where payment is so deferred, the carrier may require that it be made before delivery of the goods, or concurrently with the delivery, or may permit it to be made later. Where the payment is deferred, the contract may provide that the shipper agrees absolutely to pay the charges, or it may provide merely that he shall pay if the consignee does not pay the charges demanded upon delivery of the goods, or the carrier may accept the goods for shipment solely on account of the consignee, and, knowing that the shipper is acting merely as agent for the consignee. may contract that only the latter shall be liable for the freight charges, or both the shipper and the consignee may be made liable. Nor does delivery of goods to a carrier necessarily import, under the general law, an absolute promise by the shipper to pay the freight charges. To ascertain what contract was entered into we look primarily to the bills of lading, bearing in mind that the instrument serves both as a receipt and as a contract. Ordinarily, the person from whom the goods are received for shipment assumes the obligation to pay the freight charges, and his obligation is ordinarily a primary one. This is true, even where the bill of lading contains,

as here, a provision imposing liability upon the consignee; for the shipper is presumably the consignor, the transportation ordered by him is presumably on his own behalf, and a promise by him to pay therefor is inferred (that is, implied in fact), as a promise to pay for goods is implied, when one orders them from a dealer. But this inference may be rebutted, as in the case of other contracts. It may be shown, by the bill of lading or otherwise, that the shipper of the goods was not acting on his own behalf; that this fact was known by the carrier; that the parties intended not only that the consignee should assume an obligation to pay the freight charges, but that the shipper should not assume any liability whatsoever therefore; or that he should assume only a secondary liability. In this case, the bills of lading acknowledge receipt of the coke from the central company. But it did not sign them. Nor was it described therein as the consignor. There was no clause by which the shipper agrees expressly either to pay the freight charges or to guarantee their payment. The goods received were not declared to be deliverable to the Central Company's order. On the contrary, the form of the bills of lading indicated that it was neither the owner nor the person on whose behalf the shipment was being made, and that Tutwiler & Brooks were either the owners or the persons in whose behalf the shipment was being made. On these facts, the trial court was justified in finding that the Central Company did not assume the primary obligation to pay the freight charges. Louisville & N. R. Co. v. Central Iron & Coal Co., 44 Sup. Ct. 441, 442.

(qq) A railroad common carrier HELD without legal authority to purchase coal and pay for the same by releasing a claim for freight and demurrage. Lake & Export Coal Corporation v. Chesapeake & O. Ry. Co., 1 Fed. (2d) 968.

(rr) In action by carrier against shipper of coal for freight charges and demurrage, a defense that plaintiff bought the coal, and that the freight and demurrage due were to be a part of the price, HELD not sustained, in that it was not shown that employee of plaintiff alleged to have made the contract had authority to make it, or was held out as having such authority. Lake & Export Coal Corporation v. Chesapeake & O. Ry. Co. 1 Fed. (2d) 968.

(ss) The general rule is that the consignor, who makes the contract with the carrier, is primarily liable for tariff charges. The question is one of contract to be determined from the facts of the case. An interstate shipment was made, with a milling in transit privilege, the consignor making the contract with the carrier, retaining control, and changing the consignee in the course of the transportation. Delivery, as permitted by the rule of the Commission, was made by the carrier to the consignee without payment of freight. The bill of lading provided that the consignee should pay charges. A finding that the consignor remained liable is sustained. Chicago Junction Ry. Co. v. Duluth Log Co. (Minn. 1925) 202 N. W. 24.

(tt) Transportation Act 1920, prohibiting the delivery of freight at the point of destination without the payment of tariff charges, except under such rules and regulations as the Interstate Commerce Commission may prescribe, does not of itself operate to release the consignor from liability when the carrier delivers freight to the consignee without payment, or make the consignor's liability secondary to that of the consignee. Chicago Junction Ry. Co. v. Duluth Log Co. (Minn., 1925) 202 N. W. 24.

(uu) In interstate shipments of merchandise under the interstate commerce act, where the contract between the carrier and consignee requires merchandise to be delivered f. o. b. at the place of delivery, the primary liability for transportation charges rests upon the consignor, and, while a secondary liability rests upon the consignee who accepts and unloads the merchandise, and where no actual discrimination or preference is attempted, no considerations of public policy require that the consignee should insure the carrier against loss of transportation charges. Cleveland C. C. & St. L. Ry. Co. v. McKenzie Lumber Co. (O., 1925) 147 N. E. 8.

(vv) Where a purchaser of merchandise which at the time of purchase is located at a place in a state other than that of the place of delivery, and by the terms of purchase such merchandise is to be delivered f. o. b. at the place of delivery, and the merchandise has prior to the time of purchase been shipped from place to place by common carrier, and demurrage charges have accrued, none of which has been paid, and all of which have been made to follow the mer-

chandise in the hands of successive carriers, none of which facts is known to the purchaser, and nothing has occurred to put such purchase upon inquiry, and without notice or knowledge thereof the purchaser, being at the time upon the credit list of the final carrier, receives and unloads the merchandise before being presented with a bill of freight and demurrage charges, and where such purchaser thereupon tenders the full value of the merchandise to the final carrier in either full or partial payment of such freight and demurrage charges, and such payment is refused, and the purchaser and consignee of the merchandise is instructed to pay the value of the merchandise to the person from whom he had purchased it, and where such consignee thereupon actually pays the value of the merchandise to the vendor and consignor, and where the carrier thereafter seeks by legal process to recover such freight and demurrage charges from the vendors and consignors, and makes no further claim against the consignee until a period of five years and four months thereafter, the carrier will be estopped from demanding and collecting any part of such freight and demurrage charges from such consignee. Cleveland C. C. & St. L. Ry. Co. v. McKenzie Lumber Co. (O., 1925) 147 N. E. 8.

(ww) Where contract of shipment of cut stone provided for rate less than published schedule filed with interstate commerce commission, carrier could recover difference, since scheduled rate formed part of contract of shipment by operation of law, and parties could not contract for less rate than schedule filed with commission. Missouri Pac. R. Co. v. Pfeiffer Stone Co. (Ark., 1924) 266 S. W. 82.

(xx) On interstate shipments carrier can compel shipper to pay difference between legally established interstate rate and lower rate quoted or collected by mistake or otherwise. Missouri Pac. R. Co. v. Pfeiffer Stone Co., (Ark., 1924) 266 S. W. 82.

(yy) Stipulations in bill of lading that goods are to be delivered to consignee, "he paying freight," or any similar provision, are for benefit of carrier, and delivery to consignee without collection of freight will not release consignor from liability therefor, in absence of special stipulation to contrary. Missouri Pac. R. Co. v. Pfeiffer Stone Co. (Ark., 1924) 266 S. W. 82.

(zz) Action by interstate carrier to recover difference between published schedule of rates filed with interstate commerce commission and rates provided for in contract of shipment, such scheduled rates forming part of contract of shipment by operation of law, is an action founded on contract in writing, governed by five-year statute of limitations (Crawford & Moses' Dig. §6955), and not by three-year statute of limitations (section 6950). Missouri Pac. R. Co. v. Pfeiffer Stone Co. (Ark., 1924) 266 S. W. 82.

(3a) Carrier, contracting with shipper to transport goods, has right to look to consignor for payment of freight, and may waive its lien on goods by delivering them to consignee, and still hold consignor liable on contract of shipment. Missouri Pac. R. Co. v. Pfeiffer Stone Co. (Ark., 1924) 266 S. W. 82.

(3b) Where coal, consigned to named consignee at Toledo for lake and export shipment, after its arrival in Toledo, came under control of consignee, on reconsignment by consignee and shipment for port designated, carrier was warranted in collecting from consignee freight and demurrage charges thereon. Pennsylvania R. Co. v. Rice Coal Co. (Ohio, 1925) 148 N. E. 349.

(3ba) The commission does not determine who is liable for the payment of tariff charges, that being a matter for the courts. Conf. Ruling 314. Kansas City Structural Steel Co. v. A., T. & S. F., 102 I. C. C. 113, 114.

(3c) It is the duty of the delivering carrier to collect the applicable rates on prepaid shipments and to correct any errors that may have been made by the agent of the initial carrier in the billing or in the collection by it of the prepaid charges. It is not for the Commission to determine in any case which party is legally liable for an undercharge; that question is determinable only by a court of competent jurisdiction. Continental File Corp. v. Director General 109 I. C. C. 403, 404.

FROZEN SHIPMENTS

See Demurrage §19.

GAS AND ELECTRIC COMPANIES

See Interstate Commerce.

(a) With delivery of gas by one transporting it in interstate commerce to distributing companies, interstate movement ends, and its subsequent sale and delivery by these companies to their customers at retail is intrastate business, subject to state regulation. State of Missouri ex rel. Barrett, v. Kansas Natural Gas Co., 44 Sup. Ct. 544. Kansas Natural Gas Co. v. Kansas. Helm, 44 Sup. Ct. 544. State of Kansas ex rel. Jackson v. Central Trust Co. of New York, 44 Sup. Ct. 544.

(b) State Public Utilities Commission cannot regulate wholesale prices chargeable to local distributing companies, operating under state franchises for gas, by one transporting gas in interstate commerce by pipe line and exercising no state franchise right, though Congress has not acted. State of Missouri ex rel. Barrett, v. Kansas Natural Gas Co., 44 Sup. Ct. 544. Kansas Natural Gas Co. v. State of Kansas ex rel. Helm, 44 Sup. Ct. 544. State of Kansas ex rel. Jackson v. Central Trust Co. of New York, 44 Sup. Ct. 544.

(c) Transportation from one state to another is "interstate commerce," and sale and delivery of it to local distributing companies is a part of such commerce. State of Missouri ex. rel. Barrett, v. Kansas Natural Gas Co., 44 Sup. Ct. 544. Kansas Natural Gas Co. v. State of Kansas ex. rel. Helm, 44 Sup. Ct. 544. State of Kansas ex. rel. Jackson v. Central Trust Co. of New York, 44 Sup. Ct. 544.

GOVERNMENT CONTROL

See Advanced Rates §7 (9); Evidence §25.

GOVERNMENT GUARANTY

See Finance Dockets VI, §6; Interstate Commerce Commission §9½.

GOVERNMENT MATERIAL

See Reduced Rates §4.

GRADE CROSSINGS

(a) Interstate Commerce Act, §20a (as added by Transportation Act (U. S. Comp. St. Ann. Supp. 1923, §8592a), preventing interstate carriers from issuing securities or extending their lines without approval of the Interstate Commerce Commission, HELD inapplicable in proceedings to compel railroad separation of grade crossing where it was not alleged nor did evidence show that expense thereof was so great as to require an issue of securities by railroads affected, or that their main lines would be required to be extended. State v. Public Service Commission (Mo., 1924) 267 S. W. 102.

(b) Transportation Act (U. S. Comp. St. Ann. Supp. 1923, §10071¼ et seq.) does not expressly or by implication give Interstate Commerce Commission power to eliminate grade crossings nor prohibit state authorities from so doing. State v. Public Service Commission (Mo., 1924) 267 S. W. 102.

(c) The commission has no jurisdiction to require the elimination of grade crossings. Oklahoma Corp. Comm. v. A., T. & S. F., 101 I. C. C. 647, 651.

GRADED RATES

See Blanket Rates §9; Distance Rates.

HEATER CAR SERVICE

See Cars and Car Supply §9½; Demurrage §5½; Facilities and Privileges §9⅛; Special Rates and Services.

(a) Complainant attacked commodity rate charged on two cars of grapefruit in December, 1919, and Jan., 1920, from Largo, Fla., to Seattle, Wash., as unreasonable, unjustly discriminatory and unduly prejudicial to extent it exceeded rates previously and subsequently in effect, and that a heater service charge of $30 on one of the car was illegal and in violation of section 6 of the act to the extent it exceeded $12. Shipments moved as routed by shipper over A. C. L., to Montgomery, Ala., L. & N., to New Orleans, La., S. P., to Portland, Ore., and O. W. R. & N., to Seattle. When these shipments moved a rate of $2.095 applied from Jacksonville, Fla., and other basing points to Seattle on traffic originating beyond. On Nov. 5, 1919 the routing in connection with this rate through the California gateways had been cancelled, thereby making applicable over that route the third class

rate of $3.315 from Group A, including Largo. The rate from Largo to Jacksonville was 24c per box, and it is not attacked. Effective Sept. 15, 1920, the rate of $2.095 was again made applicable via the California gateways. The transcontinental rate of grapefruit in effect from California to New York city was $1.44. HELD, rate attacked unreasonable to extent it exceeded 24c per box to Jacksonville and $2.095 beyond, reparation awarded. Ryan Fruit Co. v. Director General 100 I. C. C. 237.

(b) Under the heater protection tariffs the shipper must either assume the responsibility for protection againt freezing or request carrier to do so. In absence of any request the carrier becomes responsible and the heater charges apply. Ryan Fruit Co. v. Director General, 100 I. C. C. 237, 239.

HOCH-SMITH RESOLUTION

(a) In conformity with S. J. Res. 107, the so-called Hoch-Smith resolution, respondents offered opportunity to obviate undue preference to Omaha, Nebr., which proposed schedules on grain would create, contemporaneously with the taking effect of the rates under suspension, thus making the rates effective with the "least practical delay." Grain to Texas, 96 I. C. C. 727, 729.

(b) By the terms of S. J. Res. 107, effective January 30, 1925, the commission is directed to investigate the rate structure of the country and to consider certain factors in rate making therein set forth, with the provision that any resulting investigation shall not be permitted to delay the decision of pending cases in volving rates on products of agriculture, and that such cases shall be decided in accordance with the resolution. The conclusions herein reached are without prejudice to any further changes which may result from such broader investigation. Oklahoma Corp. Commission v. A. & S. Ry. Co., 98 I. C. C. 183, 189.

ICING CHARGES

See Demurrage §4½ (b).

IMPORT TRAFFIC

I. DETERMINATION OF STATUS.
§1. In general.
II. REASONABLENESS OF RATES AND DISCRIMINATION.
§2. In general.
III. CONTROL AND REGULATION.
§3. In general.
IV. TARIFFS AND CONSTRUCTION.
§4. In general.
V. FACILITIES AND PRIVILEGES.
§5. In General.

CROSS REFERENCES

See Advanced Rates §3 (j); Class Rates §2 (wc); Coastwise Traffic; Crimes §34 (g); Export Rates and Facilities §6 (f); Merchant Marine Act; Percentage Rates (ff); Port Differentials.

I. DETERMINATION OF STATUS.

See Interstate Commerce I.

§1. In General.

(a) Shipments originating at foreign points moving by water to United States, and thence by rail from port of entry to intrastate destinations in same State, are import traffic and subject to commission's jurisdiction. Goldsboro Chamber of Commerce v. A. C. L. R. R. Co., 91 I. C. C. 315, 321.

(b) Imported shipments of fertilizer and fertilizer materials delivered and stored in warehouses at Wilmington, N. C., and subsequently shipped under new bills of lading to North Carolina destinations, found to be intrastate traffic and not within commission's jurisdiction. At time shipments were stored there was no original or continuing intention to ship goods to any particular inland destination, but they were to be sold wherever a sale might be found, otherwise they were stored and transportation ceased. Shipments here involved fall within class of shipments "where a local shipment follows quickly upon an interstate shipment and yet is not to be deemed part of it, even though some further shipment was contemplated when original movement began." See Settle case, 260 U. S. 166. Goldsboro Chamber of Commerce v. A. C. L. R. R. 91 I. C. C. 315, 321.

ALL OTHER CITATIONS

Express Publishing Co. v. G. H. & S. A. Ry. Co., 85 I. C. C. 203.

II. REASONABLENESS OF RATES AND DISCRIMINATION.

See Discrimination; Evidence §13 (4); Percentage Rates (d); Proportional Rates II (kk); Reasonableness of Rates.

§2. In general.

(a) Complainant attacked import rates charged on fertilizer and fertilizer materials from Wilmington, N. C., to Goldsboro, Mount Olive, Fremont and other destinations in North Carolina, as unreasonable, unjustly discriminatory and unduly prejudicial. Prior to Oct. 13, 1914 a distance scale of rates on fertilizer prescribed by the North Carolina Commission applied on both intrastate and interstate shipments from Wilmington to North Carolina points. Effective on that date lower rates on intrastate traffic were prescribed, leaving the existing rates in effect on interstate traffic. On June 25, 1918 all import commodity rates were cancelled and on Dec. 31, 1918 the director general established specific interstate commodity rates the same as the intrastate distance rates, but within minimum of 40,000 pounds instead of 30,000 pounds. The intrastate distance rates were charged on shipments which were considered to be in intrastate commerce, and the specific commodity rates upon shipments covered by the commodity tariffs. Nitrate of soda is imported in large quantities. In assessing freight charges the carriers exacted the interstate rates on shipments from shipside; also on shipments from storage warehouses without change of ownership and where the imported was consignor and consignee or where the shipment was made by the agent at Wilmington of the importer; in fact, in all cases where change of ownership was not indicated on the bill of lading, and where the bill of lading indicated change of ownership and the shipment was made from the ship side or handling and wharfage charges were included in the freight bill against the consignee. Where such shipments were made to points to which the specific commodity rates applied, the charges were assessed thereunder. Where the bill of lading indicated that the shipment was from a shipper other than the importer, the intrastate rate was applied. HELD, shipments from ship side at Wilmington to North Carolina destinations were import traffic and subject to jurisdiction of the Commission; and that shipments made from warehouses under the circumstances of this case were intrastate traffic and not within the scope of the jurisdiction of the Commission. In this case there was no original or continuing intention to ship the goods to any particular inland destination; the goods were to be sold wherever sale for them might be found, but if there was no immediate sale the goods were placed in warehouses and transportation ceased. Defendants had no tariffs on file with the Commission authorizing storage in transit of this traffic at Wilmington. The shipments which were stored at the port fall within the class of shipments "where a local shipment follows quickly upon an interstate shipment and yet is not to be deemed part of it, even though some further shipment was contemplated when the original movement began." HELD, rates interstate attacked unduly prejudicial to extent they exceed rates based upon minimum of 30,000 pounds in effect, distance considered, from Norfolk, Va., to North Carolina and for the future unreasonable to the extent they exceeded rates ranging from $1.58 single line for 35 miles, $1.91 joint line for 35 miles to $5.52 single line and $5.74 joint line for 500 miles, reparation awarded. Goldsboro Chamber of Commerce v. A. C L. R. R., 91 I. C. C. 315.

(b) Complainant attacked import commodity rates charged on fluorspar, carloads, from Mobile, Ala., and Pensacola, Fla., to East St. Louis, Ill., as unreasonably low, unjustly discriminatory and unduly prejudicial to complainant. Fluorspar moves in open top equipment and does not require expedited service. Prior to April 5, 1923 there was no commodity rate, domestic or export, from Mobile to East St. Louis, on fluorspar imported from Europe and Africa the sixth class rate of 45.5c was applicable. Effective on that date the defendant published a rate of $4.50 from Mobile to East St. Louis on traffic imported. HELD, rate attacked is less than a maximum reasonable rate, but the evidence is not convincing that it is less than a minimum reasonable rate, or that it has resulted or will result in undue prejudice or is otherwise unlawful, complaint dismissed. Rosiclare Lead & Fluorspar Mining Co. v. M. & O. R. R., 91 I. C. C. 577.

(c) Complainant attacked import

rates charged since January 1, 1922 on flaxseed, carloads from New York harbor points to Buffalo, N. Y., 425 miles, as unreasonable. The flaxseed was imported from Argentina. It was unloaded from the vessel into defendants barges, lightered to its terminal on the New Jersey shore and there transferred into cars, charged sixth class rates of 26.5c. A rate of 21.79c was in effect in the reverse direction. The rate to Buffalo from New York made with relation to the Chicago rate would be 60% of the New York-Chicago rate less 2c. The import rate to Chicago was 40c which would give a rate of 22c to Buffalo. HELD, rate attacked unreasonable to extent it exceeded 22c, reparation awarded. American Linseed Co. v. Erie R. R., 91 I. C. C. 663.

(d) Complainant attacked class rates on green coffee, carloads shipped since March 1, 1920, from New York, New Orleans and Galveston and Houston to Denison, Fort Worth and Dallas, Tex., and from the Gulf ports named to Waco, Tex., as unjust and unreasonable. Rates charged from March 1, 1920 to spring of 1922 were fifth class rates from Galveston and Houston and commodity rates from New Orleans. The rate changes of April and June 1922 were made in order to comply with the decision in 58 I. C. C. 716 and 64 I. C. C. 26. This adjustment resulted on the whole in a lower level of rates and was made primarily to eliminate violations of section four and to harmonize rates to competing points. However, Denison, Fort Worth, Dallas and Waco are the principal coffee roasting points in Texas common point territory and were clearly entitled to rates lower than the class basis from the Texas ports as well as from New Orleans during the entire period in which these shipments moved. Charged from New York 79c prior to August 26, 1920 and 105.5c thereafter, for average distance of 2,400 miles. Rates in effect to Ardmore, Durant, Enid and Oklahoma City, Okla., were 75c prior to August 26, 1920 and 100c thereafter, to Muskogee and McAlester, Okla., 69 and 92c, to Little Rock 51.5 and 68.5c. Since the hearing the rate from New York to Denison, Fort Worth and Dallas, has been reduced to 80.5c and has subsequently been still further reduced to 70c. HELD, rates charged to points shown unreasonable to extent they exceeded prior to August 26, 1920, 64c from New York, 49c from New Orleans and 44c from Galveston and Houston; subsequent thereto, 86.5c from New York, 66c from New Orleans and 59.5c from Galveston and Houston, Tex., reparation awarded. National Coffee Company v. G. C. & S. F. Ry., 92 I. C. C. 14 .

(e) Respondents proposed certain changes in their interstate rates on fertilizers, carloads, from New Orleans, La., to Louisiana destinations. Rates proposed are to apply on these commodities which have moved coastwise, or from beyond, or were imported. Carriers at the hearing agreed to withdraw the rates on coastwise and beyond traffic, leaving only for consideration import rates. The rates proposed apply from shipside and include handling charges. Rates now in effect do not include such charges which range in total amount to about 3.5c per 100 pounds. So far as the mere level of rates is concerned the rates proposed generally carry forward present rates with 3.5c added. The record indicates that both domestic and import rates are in need of adjustment. Respondents have not satisfactorily explained the reasons for changes in commodity lists applying to import traffic and in minimum weights. HELD, schedules not justified. Fertilizer from New Orleans to Louisiana, 92 I. C. C. 151.

(f) Respondents sought to cancel the carload rates from Boston and Lowell, Mass., New London, Conn., and New York, N. Y., to LaPorte and Mishawaka, Ind., applicable exclusively to wool in the grease, in machine pressed bales, imported from South America and Australia. At present there are three carload rates on wool in the grease from Boston and New York to LaPorte, viz., the third class rate of 90.5c, minimum 16,000 pounds, applicable to all wool in the grease, irrespective of the place of production or the character of the package, the rate of 72.5c, equal to rule 26, minimum 32,000 pounds, subject to rule 34, applicable to all wool in the grease, irrespective of the place of production when in bales compressed to a density of not less than 19 pounds per cubic foot, and the commodity rate of 63.5c, equal to the fourth class rate, minimum 32,000 pounds, applicable exclusively to baled South American and Australian wool in the grease and carrying no density requirements. The last named rate

was published following 49 I. C. C. 656. Respondent proposed to apply on wool in the grease, imported from South America and Australia, from the points of origin involved, rates of 72.5c to La-Porte and 71c to Mishawaka, equal to rule 26 rates, minimum 32,000 pounds, which rates now apply on wool in the grease generally, whether of domestic or of foreign origin, when in bales compressed to a density of not less than 19 pounds per cubic foot. HELD, suspended schedules justified. Imported wool from Boston and New York, 93 I. C. C. 26.

(g) Complainant attacked domestic rates of $1.75 charged on three cars of imported Indian shelled peanuts shipped Oct. 10 and 15, 1918, from San Francisco, Calif., to Wilmington, N. C., as unreasonable to extent it exceeded the subsequently established import rate of $1.50, effective May 29, 1919. During federal control a complete line of class and commodity rates was established to the southeastern territory by putting it into what is known as Group A transcontinental territory, thus making applicable a rate of $1.50 on imported peanuts from the Pacific coast to southeastern territory, including Wilmington, the same as the rate applicable from the north Pacific coast points. HELD, rates attacked not unreasonable, complaint dismissed. Universal Oil Co. v. Director General, 93 I. C. C. 237.

(h) Complainant attacked fifth class rates charged on carload shipments of sisal from Indianapolis, Ind., to central territory, western New York, and Ontario, Can., during a period of one year beginning July 1, 1922, as unreasonable. These shipments represented the reshipment of sisal which had been imported via Gulf ports and held in storage at Indianapolis for about two years. If it had been shipped out from Indianapolis within a year, it would have been entitled, under tariffs applicable, to transit on the basis of the joint rates from the Gulf ports to ultimate destination plus a 2.5c transit charge. Complainant sought establishment of reshipping rates from Indianapolis at 60% of fifth class. There is no domestic production of sisal. Most of it comes from Mexico, and relatively low Atlantic and Gulf ports to the destinations here considered. There is apparently no movement at class rates except under circumstances such as those surrounding these shipments. HELD, rates attacked not unreasonable, complaint dismissed. Sisal Sales Corp. v. B. & O. R. R., 93 I. C. C. 297.

(i) Complainant attacked import rate of 55c which included absorption of part of the tollage charges at New Orleans, La., on 10 cars of imported flint pebbles shipped from New Orleans to Dewey, Okla., during 1920, as unreasonable to extent it exceeded a rate of 28c, including absorption of all tollage charges. Shipments were imported from France and moved from New Orleans via L. R. & N., to Shreveport, La., K. C. S., to Panama, Okla., M. V., to Ulsa, Okla., and Santa Fe to Dewey 734 miles. Defendants absorbed 5c out of the tollage charges of 15c. For many years pebbles have been rated class D in western classification, but, prior to Dec. 31, 1919 import commodity rates applied. The rate charged came about through the cancellation on that date of the import commodity rate of 33c and an increase of 6c on Feb. 16, 1920, in the class D domestic rate of 49c which became applicable upon cancellation of the import rate. Effective June 10, 1922, an import commodity rate of 40c was established, the class D import rate to Kansas City through Dewey being 40c. The rates to Dewey and Kansas City prior to Dec. 31 1919 and at the present time included the absorption of all tollage charges. As a general rule the import rates of the carriers serving New Orleans include absorption of all of such charges. HELD, rate attacked unreasonable to extent it exceeded 30c including absorption of tollage charge of 15c per ton, reparation awarded. Dewey Portland Cement Co. v. A. T. & S. F. Ry., 93 I. C. C. 311.

(j) Complainant attacked import rate charged on six cars of ferromanganese from Seattle, Wash., to Minnequa, Colo., between Dec. 9 and 29, 1919, as unjust and unreasonable. In July 1919 application was made to the Director General for a lower rate to Minnequa. On Dec. 31, 1919 a rate of 65c was established. The normal movement of this commodity is through Atlantic and Gulf ports and the rates from New Orleans were on a competitive basis. HELD, rates attacked not unreasonable, complaint dismissed. Bush v. Director General, 95 I. C. C. 661.

(k) It is a matter of common knowl-

edge that import rates lower than domestic rates are frequently, if not generally influenced by considerations which are unrelated to, and have little if any, bearing upon the reasonableness per se of the domestic rates. Capital Warehouse Co. v. Director General, 96 I. C. C. 293, 299.

(l) Complainant attacked import fifth class rate charged on carloads of imported linseed oil from New York harbor to Black Rock, Buffalo and Bridgeburg, N. Y., as unreasonable, unjustly discriminatory and unduly prejudicial to extent they exceeded rates on cottonseed and other vegetable oils. Commodity rates were in effect on cotton seed oil approximating sixth class. HELD, rates attacked unreasonable to extent they exceeded rates on cottonseed oil, reparation awarded. Pratt & Lambert v. N. Y. C. R. R., 96 I. C. C. 460.

(m) Complainant attacked import commodity rate of 49c charged on green coffee, carloads, from New Orleans, La., to Chattanooga, Tenn., as unjust and unreasonable. Shipments moved over the Southern, 498 miles. Contemporaneously there was in effect import rate of 49c from New Orleans to Louisville, Ky., Cincinnati, O., and other destinations more distant than Chattanooga. The rate attacked is the same as to Atlanta, Ga., and the circumstances and conditions affecting the movement of traffic as well as the distances are substantially the same in respect of the two destinations. HELD, rate attacked not unreasonable or otherwise unlawful, complaint dismissed. Chattanooga Mfrs. Asso. v. N. O. & N. E. Ry., 96 I. C. C. 481.

(n) Complainant attacked import rate of 49c on green coffee carloads, from New Orleans, La., Jacksonville, Fla., Brunswick and Savannah, Ga., and Charleston, S. C., to Nashville, Tenn., as unjust, unreasonable and unduly prejudicial in that it is higher than the rate from New Orleans to Cairo, Ill., and as high as those from New Orleans to St. Louis, Mo., Louisville, Ky., and Cincinnati, O. The 49c rate also applies from New Orleans to Cincinnati, 836 miles and Louisville, 747 miles, and from South Atlantic ports to Nashville, Louisville and Cincinnati. The average short line distance from these latter points to Nashville is 586 miles, to Louisville 751 miles and to Cincinnati 773 miles. The same rate also applies from New Orleans to St. Louis 698 miles, and 47c to Cairo, 554 miles. HELD, rate attacked not unreasonable or unduly prejudicial, complaint dismissed. Nashville Traffic Bureau v. I. C. R. R., 96 I. C. C. 519.

(o) Complainant attacked import rates on wool in the grease, in machine pressed bales, from Boston, Mass., and New York to Cleveland, O., as unjust, unreasonable and unduly prejudicial as compared with rates from some points to La Porte, Ind. The rate on South American and Australian wool from Boston and New York to La Porte was established in 49 I. C. C. 656, and 80 I. C. C. 309. The carriers voluntarily established, effective March 1, 1923, rates equal to the rule 26 rates on wool in the grease, in bales. HELD, rates attacked between Feb. 2, 1922 and March 1, 1923 unreasonable to extent they exceeded rule 26 rate reparation awarded. Cleveland Worsted Mills Co. v. B. & O. R. R., 98 I. C. C. 427.

(p) Import rate on fluorspar from Mobile, Ala., and Pensacola, Fla., to East St. Louis, Ill., found not unreasonably low, unjustly discriminatory, or unduly prejudicial to complainants' mines in southern Illinois and western Kentucky. While rate assailed is less than a maximum reasonable rate, evidence is not convincing that it is less than a minimum reasonable rate, or that it is out of line with rates from complainants' mines to East St. Louis. Rosiclare Lead & Fluorspar Mining Co. v. M. & O. R. R. Co., 91 I. C. C. 577.

(q) Sixth-class rate on imported flaxseed from New York Harbor points to Buffalo, N. Y., found unreasonable as compared with rate on flaxseed between same points in opposite direction, and to extent it exceeded 60 per cent of New York-Chicago rate less 2 cents. Reasonable rate prescribed and reparation awarded. American Linseed Co. v. E. R. R. Co., 91 I. C. C. 663.

(r) Respondents proposed to increase their import, coastwise and proportional rates on fertilizer and fertilizer materials carloads from New Orleans, La., and subports to points in Louisiana. The proposed rates, with the exception of the rate on crude phosphate are based upon the rates prescribed in 77 I. C. C. 473. The present rates do not include handling charges from ship side to cars,

whereas the proposed rates apply from shipside. This charge at the time of hearing was 3.5c but has since been reduced to 2.5c. It will be absorbed by respondents. HELD, suspended schedules justified. Fertilizers to Louisiana points, 100 I. C. C. 64.

(s) Complainant attacked import commodity rates charged on 11 cars of chinawood oil from Pacific coast points to Cleveland, O., between Oct. 3, 1921 and Oct. 17, 1922 as unreasonable, unduly prejudicial and in excess of aggregate of intermediates. Charged import commodity rates of 1.05. Prior to Oct. 3, 1921 the rates to Cleveland and to Toledo and Cincinnati, O., Detroit, Mich., and Louisville, Ky., where competitive plants were located, were the same. On that date the rates to the competitive points were reduced to 75c and subsequent to these movements the rates to Cleveland were reduced to 75c. HELD, rate attacked not unreasonable and no damage has been shown as the result of any undue prejudice which may have existed, complaint dismissed. Glidden Co. v. E. R. R., 100 I. C. C. 331.

(t) Complainant attacked import rate charged on rapeseed, carloads, from San Francisco, Calif., to Sioux City, Iowa, on Dec. 5, 1922 as unreasonable. Shipment moved over S. P., to Ogden, Utah, U. P., to Council Bluffs, and Northwestern beyond, charged import rate of $1.50. The import and domestic rates on rapeseed were the same. Effective Dec. 10, 1922 a rate of $1 minimum 60,000 pounds was established. Rapeseed is rated class A in the western classification. In 1923 after the reduced rate was published, the S. P., and its connections transported 2,124 tons of rapeseed to eastern destinations. That was an increase of more than 100% over the volume transported in 1922. HELD, rate attacked unreasonable to extent it exceeds $1, reparation awarded. Sioux City Seed Co. v. C. & N W. Ry., 101 I. C. C. 447.

(u) Complainant attacked import commodity rate charged on four cars of newsprint paper from Houston, Tex., to Oklahoma City, Okla., April 25, 1923 as unreasonable and in violation of the fourth section. Shipments moved Santa Fe., distance 557 miles, charged 57.5c. Import rate from Houston to Kansas City, Mo., was 45.5c, carried a note that it would be established on one days notice to any point intermediate via the short route. Oklahoma City is intermediate to Kansas City over the Santa, but the Santa Fe is not the short route. On Sept. 1, 1923 the rate of 45.5c was established to Oklahoma City. The short line distance from Houston to Oklahoma City is 465 miles via T. & B. V., to Fort Worth and Santa Fe beyond. HELD, rate attacked unreasonable to extent it exceeded 46.5c, reparation awarded. Oklahoma Publishing Co. v. A. T. & S. F. Ry., 101 I. C. C. 635.

(v) Proposal to increase rates on imported fertilizer and fertilizer materials from New Orleans and related points to points in Louisiana, by raising the rate level by amount of handling charges at the ports, by eliminating certain commodities, and by increasing the minimum weight, found not justified. Respondents failed to satisfactorily explain reasons for changes in commodity lists and minimum weights, and were under impression that import rates applied mainly to fertilizer factories. However, many items listed in proposed schedules move directly from ship side to farms. Fertilizer from New Orleans, 92 I. C. C. 151.

(w) Proposed increased rates on South American and Australian imported wool in the grease, in machine-compressed bales, from Boston, Lowell, New London and New York, to La Porte and Mishawaka, Ind., found justified. Wool in the grease, in bales of the same density as South American and Australian wool, move under higher rates from Boston and New York to all points of consumption in official territory. Present rate to LaPorte, although fixed by commission, is low and gives undue preference to South American and Australian wool as against wool imported from other foreign countries, and as against domestic wool, and unduly prefers La Porte as against other consuming points in official territory. Imported Wool from Boston and New York, 93 I. C. C. 26.

(x) Domestic rate on imported shelled peanuts from San Francisco to Wilmington, N. C., found not unreasonable as compared with lower import rate subsequently established. Complainant relies exclusively on cases in which reparation was awarded on import shipments to basis of subsequently established rates, but earnings on shipments here involved are substantially lower than on those in cases referred to. Moreover, the subsequent reduction does not in itself warrant a finding that former rate was unreason-

able. Universal Oil Co. v. Director General, 93 I. C. C. 237.

(y) Domestic class rate, which included absorption of part of tollage charges at New Orleans, on imported flint pebbles shipped to Dewey, Okla., assessed as a result of cancellation of import commodity rate on account of no movement, under general policy of director general with respect to unused rates, found unreasonable as compared with import rate to Kansas City, a farther distant point, which rate included absorption of all tollage charges and was subsequently established to Dewey. Reparation awarded. Dewey Portland Cement Co. v. A., T. & S. F., 93 I. C. C. 311.

(z) Fourth-class rate assessed on shipments of sisal from New Orleans, La., to Mounds, Ill., during Federal control found unreasonable as compared with import commodity rate contemporaneously in effect from New Orleans to Indianapolis, Ind., and to extent it exceeded lower import commodity rates subsequently established over route of movement. Reparation awarded. Capital Warehouse Co. v. Director General, 96 I. C. C. 293, 297, 298.

(aa) Import rate on green coffee, in carloads, from New Orleans, La., to Chattanooga, Tenn., found not unreasonable or otherwise unlawful, comparing favorably with rates from the same port and the Port of New York to other destinations, as well as with the rate found not unreasonable in 93 I. C. C. 555. Chattanooga Mfrs. Asso. v. N. O. & N. E. R. R. Co., 96 I. C. C. 481.

(bb) Import rate on green coffee from New Orleans, La., and south Atlantic ports to Nashville, Tenn., found not unreasonable or unduly prejudicial as compared with rates on like traffic from same ports to other farther distant destinations, as well as from other ports to same and other farther distant distant destinations. Nashville Traffic Bureau v. I. C. R. R. Co., 96 I. C. C. 519.

(cc) Proposed charge of 25 cents per shipment for opening, recoopering, and rewrapping packages for customs examination at the border ports on import shipments by express from Canada to points in the United States found not justified. This charge would not apply on shipments where the American Express Co. acts as the broker and attends clearance details, nor on shipments of milk or cream. The suspended schedules ordered cancelled without prejudice to the filing of new schedules which will provide that a charge of 12 cents per shipment be assessed on shipments when one or more packages are actually opened by order of the Customs and will not apply on any shipments where the American Express Co. or other concern or individual acts as broker for the importer and in that capacity attends to the physical work above described. Charge for Opening, Recoopering, and Rewrapping Packages for Customs Examination, 98 I. C. C. 284.

(dd) Domestic rates on imported wool in the grease, in machine-pressed bales, in carloads, from Boston, Mass., and New York, N. Y., to Cleveland, Ohio, between February 2, 1922, and March 1, 1923, found unreasonable to extent they exceeded contemporaneous rule 26 rate applicable from same ports to La Porte, Ind. Reparation awarded. Cleveland Worsted Mills Co. v. B. & O. R. R. Co., 98 I. C. C. 427.

(ee) Complainant attacked rates charged on imported wood pulp carloads from Boston, Mass., to Ondawa, N. Y., since July 1922 as unreasonable, and, as compared with the rates to Niagara Falls, Watertown and North Bennington, Vt., unduly prejudicial. Ondawa is local on the G. & J., 17 miles north of Johnsonville and 191 miles from Boston. Shipments moved B. & M., to Johnsonville and G. & J., beyond, charged commodity rate of 24c, applicable on both domestic and imported wood pulp. Effective August 30, 1924 the rate on imported wood pulp was reduced to 20 cents and the commodity rate on domestic wood pulp was canceled, leaving in effect sixth class rate of 28.5 cents. HELD, present rate not unreasonable but rate of 24c unreasonable to extent it exceeded 22.5c, reparation awarded. Stevens & Thompson Paper Co. v. B. & M. R. R., 102 I. C. C. 109.

(eea) Present commodity rate on imported wood pulp from Boston, Mass., to Ondawa, N. Y. found not unreasonable as compared with similar rates on like traffic from Boston to other points in New York for comparable distances, but rate charged on shipments here involved was unreasonable to extent it exceeded lower contemporaneous rate on like traffic from Boston to certain other points on the D. & H. R. R. Reparation awarded. Stevens & Thompson Paper Co. v. B. & M., 102 I. C. C. 109.

(eeb) Proposed increased import rates on ferromanganese, spiegeleisen, and pig

iron from south Atlantic and Gulf ports to various points in Alabama and Tennessee and Atlanta, Ga., found justified, contingent upon such rates being also made applicable from ship side. These rates are on a very low basis as compared with similar rates from north Atlantic ports to consuming centers, and with rates applying for similar distances between points in trunkline and c. f. a. territories. Furthermore, rates on pig iron in the South were made many years ago on the old competitive basepoint system, whereby rates to junction points were depressed and those to intermediate points made higher, with a view to developing furnaces in Alabama and Tennessee and have never been revised for purpose of curing fourth section departures. Under proposed schedules higher rates to the common or base points will be made effective with somewhat lower rates to intermediate points. Protestants furnished no convincing proof that proposed increases will result in unreasonable rates. Ferromanganese, etc., to Southern Points, 102 I. C. C. 150.

(ff) Respondents proposed to increase the import commodity rates on ferromanganese, spiegeleisen and pig iron, carloads, from south Atlantic and Gulf ports to Alabama City, Anniston, Attalla, Birmingham, and Gadsden, Ala., Alcoa, Chattanooga, Knoxville, and Lenoir City, Tenn., and Atlanta, Ga. In the suspended schedules respondents seek to establish import commodity rates from south Atlantic and Gulf port to interior southern destinations where only domestic rates or class rates now apply, and to increase the present import commodity rates to points where such rates are now published. They propose a higher level of rates on ferromanganese and spiegeleisen than on pig iron. The effect will be to reduce the rates to points where only domestic rates now apply and to increase them to points where import rates are in effect. Respondents stated at the hearing that in filing their proposed schedules they inadvertently failed to provide that the proposed rates apply from ship side. The handling charge from ship side to car is 56c per ton. With the provision that the rates apply from ship side the Commission feels that the proposed schedules have been justified. Ferromanganese, etc., to southern points, 102 I. C. C. 150.

(gg) Complainant attacked import rates on wood pulp from Canada to Thomson, N. Y., as unreasonable and unduly prejudicial to it and preferential of its competitors at Glens Falls, Fort Edward, Corinth and Warrensburg, N. Y. Traffic from all points of origin is received by D. & H., at Rouses Point, N. Y. From that gateway the D. & H., has a line south through Whitehall, Fort Edward and Saratoga Springs, N. Y., to Albany, N. Y. Fort Edward is 135 miles south of Rouses Point, and Glens Falls is 5 miles from Fort Edward. Thomson is on the G. & J., about 180 miles from Rouses Point; it is 39 miles more distant than Glens Falls, 10 miles more distant than Corinth, and 13 mile less distant than Warrensburg. Defendants admit that the transportation conditions to all of these points are not substantially different. HELD, rate attacked not unreasonable but unduly prejudicial to extent they exceeded rate to Warrensburg, reparation denied. Iroquois Pulp & Paper Co. v. G. & J. Ry., 102 I. C. C. 121.

(gga) Proposed cancellation of import class rates on clay from Portland, Me., to Charlotte, Rome, Rochester, Syracuse and Utica, N. Y., leaving applicable higher domestic rates, found justified. The rates resulting from proposed cancellation are equal to the domestic class rates in effect over a more direct route, and compare favorably with domestic class rates from Portland to other points on respondent's lines in the vicinity of destinations involved. Import Clay and Class Rates to New York Points, 102 I. C. C. 217.

(ggb) Proposed cancellation of import commodity rate on clay from Montreal, Canada, to Syracuse and Solvay, N. Y., leaving applicable higher domestic rates, found not justified. No justification whatever was offered for the increased rate which would result. Moreover, import rate proposed to be cancelled is same as the import rate on like traffic in effect from and to same points over other routes. Import Clay and Class Rates to New York Points, 102 I. C. C. 217.

(ggc) Class rates assessed on imported soya-bean oil and coconut oil, in tank-car loads from Wilmington, Calif., to Los Angeles, found unreasonable to extent they exceeded lower commodity rates subsequently established from and to same points. Reparation awarded. Los Angeles Soap Co. v. P. E. Ry., 102 I. C. C. 235.

(hh) Respondents proposed to cancel the import commodity rate on clay, car-

loads, from Montreal, Que., to Syracuse and Solvay, N. Y., and the import class rates from Portland, Me., to Charlotte, Rome, Rochester, Syracuse and Utica, N. Y., over routes composed of the Grand Trunk and C. N., to Massena, N. Y., and the N. Y. C., beyond, leaving applicable higher domestic rates. The import class rates from Portland to the New York destinations named were first published effective Nov. 4, 1924 in a tariff filed with the Commission by the Canadian National and Grand Trunk. Respondent New York Central states that they were published without specific authority from it and proposed that their cancellation in order to avoid disruption of the class rate structure to these and other destinations on its lines. The lines of respondents form the circuitous route from Portland to these destinations. The distance from Portland to Syracuse over this route is 554 miles, as compared with 400 miles the distance over the direct route, composed of B. & M., and N. Y. C. Import class rates are not maintained over the direct route from and to these points. The rates which would result from the proposed cancellation are the same as the domestic class rates in effect over the direct route, and compare favorably with the domestic class rates from Portland to other points on the lines of respondent in the vicinity of these destinations. Clay, n. o. i. b. n. carloads is rated sixth class in official classification. The record indicates that imported clay is shipped from Portland to Syracuse but not to the other destinations. The present import sixth class rate is 25c. N. Y. C., expressed willingness to join with the G. T., and C. N., in the publication of a commodity rate the same as the present import class rate thereon. No justification was offered for the increased rate on imported clay from Montreal to Solvay and Syracuse which would result from cancellation of the existing import commodity rate. This import rate is 25c, and is the same as the import rate on like traffic in effect from and to the same points over the N. Y. C., and C. P., and N. Y. C. HELD, proposed cancellation of import rates on clay from Montreal to Syracuse and Solvay and from Portland to Syracuse not justified, but that with the latter exception, the proposed cancellation of import class rates is justified. Import clay from Montreal, 102 I. C. C. 217.

(ii) Complainant attacked import rate on imported soya bean oil and coconut oil, in tank cars, from Wilmington, Calif., to Los Angeles, Calif., as not applicable and unreasonable and unduly prejudicial. The oil is unloaded from vessels and stored in tanks at Wilmington. Shipments of imported soya bean oil and coconut oil were delivered to the defendants within two years of the date of filing the complaint and transported them from Wilmington to Los Angeles, 19 miles. Soya bean oil and coconut oil, carloads, are rated fifth class in the western classification and the minimum fifth class rate of 11c was assessed on both commodities prior to Oct. 11, 1922 when a commodity rate of 7c became applicable on coconut oil, and on March 21, 1924 on soya bean oil. Defendants maintained fifth class rates of 8c prior to July 1, 1922 and 7c thereafter on traffic transported on the high seas to or from points beyond the port of Wilmington, and receive from or delivered to ocean carriers at Wilmington. Defendants admit that the rates attacked were unreasonable to extent they exceeded 8 and 7c respectively. HELD, rates attacked unreasonable to extent they exceeded 8c prior to July 1, 1922 and 7c thereafter, reparation awarded. Los Angeles Soap Co. v. P. E. Ry., 102 I. C. C. 235.

(jj) Complainant attacked commodity rate of 31c charged on 26 cars of imported wood pulp from New York to Big Island, Va., in March 1923 as unjust and unreasonable. The shipments were imported from Norway and moved from ship side through Greenville piers over the Pennsylvania and C. & O., to Big Island. The rate on wood pulp in the opposite direction was and is 27c. HELD, rate attacked unreasonable to extent it exceeded 27c, reparation awarded. Bulkley Dunton & Co. v. P. R. R., 102 I. C. C. 347.

(jja) Big Island, Va.: Rate on imported wood pulp from New York to, found unreasonable as compared with contemporaneous rates on like traffic from and to other points for comparable distances. Bulkley, Dunton & Co. v. P. R. R., 102 I. C. C. 347.

(kk) Complainant attacked import rates charged on rattan furniture, in bundles, shipped in June and Nov. 1922 from Seattle, Wash., to Cleveland, O., as illegal. Charged any quantity rate of $7.20 and $8. Rates published in tariffs are governed by the provisions contained in those tariffs. The special rule is ap-

plicable only in connection with rates published in the tariffs in which the special rule appears. The rates of $4.65 and $5.165 to which bases complainant is seeking reparation, are applicable only in connection with the minimum weights published in the tariffs naming such rates . HELD, rates charged not illegal, complaint dismissed. Bailey Company v. I. C. R. R. 104 I. C. C. 255.

(ll) Complainant attacked rates on import shipments of wood pulp, carloads, from Boston, Mass, to Hudson Falls, N. Y., as unreasonable, unduly prejudicial to complainant and unduly preferential of paper mills at Niagara Falls, Phoenix and Watertown, N. Y. The commodity is shipped in bales, wired and wrapped, and in the transshipment over the docks at Boston is handled and loaded into the cars by the railroad employees. The present rate on imported wood pulp from Boston to Hudson Falls is 21.5c This rate has been in effect since July 17, 1924. Prior to that date the applicable rate on the shipments was 22.5c. The route is over the B. & M., to Mechanicville, N. Y., and D. & H., beyond 225 miles. The traffic in issue is in the direction of the principal empty movement. The distance from Boston to the Hudson river is 13 miles less over this line than over the B. & A. Its traffic density compares favorably with that of the B. & A., and N. Y. C. The rate from Boston to Hudson Falls is not out of line with the single line and joint line rates from New York or with the single line rates from Boston. HELD, rates attacked not unreasonable or unduly prejudicial, complaint dismissed. Union Bag & Paper Corp. v. B. & M. R. R., 104 I. C. C. 327.

(mm) Complainant attacked rates charged on imported marble blocks, carloads, from New York, N. Y., to Chicago as unjustly, discriminatory, unduly prejudicial and in violation of the fourth section. Shipments consisted of rough quarried marble blocks 8 ft. long, 4 ft. wide and 4 ft. high, moving between Dec. 8, 1921 and Dec. 28, 1922, as routed by shipper over the standard all rail lines. charged sixth class rate of 52.5c prior to July 1, 1922 and 47.5c thereafter. A commodity rate was in effect canceled Jan. 31, 1924 applicable over a socalled differential route through Canada, of which the New Haven, not a defendant, was the initial carrier, and was not participated in by the defendant carriers maintaining the rate attacked. HELD, rate attacked not unjust, discriminatory, unduly prejudicial or in violation of the fourth section, complaint dismissed. Liquid Carbonic Co. v. C. & E. R. R., 104 I. C. C. 446.

(nn) Complainant attacked charges assessed on four cars of imported portland cement shipped in Nov. 1923 from San Pedro, Calif., to Los Angeles based on track scale weights and at a rate of 7.5c per 100 pounds as unreasonable. These shipments were part of a total of 40,000 bags of imported cement which complainant purchased c. i. f. ex ships slings under an order placed before the arrival of the cement at the port. The ship in which the cement was transported arrived Sept. 15, 1923 at East San Pedro where the cement was unloaded. Complainant was unable to handle the cement as rapidly as it was discharged from the ship and some 8,900 bags were moved from East San Pedro over the Salt Lake and defendant to San Pedro and there stored in the Union Terminal Warehouse. In Nov. 1923, 3,754 bags of this cement were shipped from the warehouse to complainant at Los Angeles over the line of defendant. The remainder of the cement in storage apparently was shipped to complainant at Wingfoot, within the corporate limits of Los Angeles. Complainant had no place of business at either San Pedro or East San Pedro and did not sell any of the cement at these points or use these points for the purpose of distributing the cement to consumers at other points. All of the cement was intended to be shipped to complainant at Los Angeles. In other words, the intention was that its transportation should not end at San Pedro but that a further movement to a particular point beyond San Pedro would follow the water transportation. That intention was carried out as to these shipments and also, apparently as to the remainder of the consignment. It would appear that the foreign character of this commerce was not destroyed by the temporary of the shipments at San Pedro. Charged class C rate of 7.5c. No evidence was adduced by complainant to show that the rate attacked was unreasonable per se. The record fails to indicate wherein the track scale weights on these shipments were in error. HELD, rate charged applicable and not unreasonable, complaint dismissed. Woodhead Lumber Co. v. P. E. Ry.104 I. C. C. 751.

(oo) Proposal to increase import,

coastwise, and proportional rates on fertilizer and fertilizer materials from New Orleans, La., and subports to points in Louisiana, effecting an adjustment of both domestic and import rates to the basis of rates prescribed in Memphis-Southwestern Investigation, 77 I. C. C. 473, found justified. Proposed schedules will correct the present lack of uniformity in minimum-weight provisions and in tariff descriptions of commodities accorded fertilizer rates and provide rates applicable from shipside to cars, handling charges being absorbed by carriers. Suspended schedules vacated and proceeding discontinued. Fertilizer to Louisiana Points, 100 I. C. C. 64.

(pp) Relationship of rates on certain commodities for export, import, or coastwise movement via Galveston, Tex., from or to points in Texas, Oklahoma, western Louisiana, Arkansas, and Kansas found unduly prejudicial to Galveston and unduly preferential of New Orleans, La. Such undue prejudice should be removed by establishing the same rates to or from New Orleans or Galveston, as the case may be, in instances where the differences in distance from and to the two ports are not greater than 100 miles, and by establishing rates to or from Galveston, as the case may be, certain prescribed differentials herein prescribed, under New Orleans in instances where the differences in distance in favor of Galveston are greater than 100 miles. The record is not sufficiently complete to warrant the commission in prescribing relationships between the rates to or from Galveston and New Orleans on other commodities or from or to points other than those embraced in the foregoing findings. Relationships herein prescribed will serve as a guide to defendants in readjusting the rates on other export, import, and coastwise traffic. Galveston Commercial Asso. v. G., H. & S. A. Ry. Co., 100 I. C. C. 110.

(qq) Rates on China-wood oil from Pacific coast points to Cleveland, Ohio, found not unreasonable nor in violation of the aggregate-of-intermediates clause of section 4 of the act. Applicable import tariff provided for alternative application of domestic tariff if lower, and domestic tariff, in turn, provided for aggregate-of-intermediate rates wherever found lower than joint rates. Under these double alternatives no fourth-section violation existed, but lower combinations applied on two of the shipments involved, resulting in overcharges. Refund of such overcharges directed and complaint dismissed. Glidden Co. v. E. R. R. Co., 100 I. C. C. 331.

(rr) Applicable import rate assessed on rapeseed moving from San Francisco to Sioux City found unreasonable as compared with rates on various analogous commodities of higher value, and to extent it exceeded lower rate established subsequent to movement. Reparation awarded. Sioux City Seed Co. v. C. & N. W., 101 I. C. C. 447.

(ss) Rate on imported newsprint paper from Houston, Tex., to Oklahoma City, Okla. found unreasonable as compared with lower rate contemporaneously in effect from Kansas City, Mo., a farther distant point, with rates prescribed in Minnesota & Ontario Paper Co., 66 I. C. C. 571, and with rates from Houston to various points in Texas common-point territory. Reparation awarded. Oklahoma Publishing Co. v. A., T. & S. F., 101 I. C. C. 635.

(tt) Rate on imported newsprint paper from Houston, Tex., to Oklahoma City, Okla., higher than to Kansas City, Mo., a farther distant point, found in violation of the long-and-short haul provision of section 4 of the act. Oklahoma Publishing Co. v. A., T. & S. F., 101 I. C. C. 635.

(uu) Rate on imported newsprint paper from Houston, Tex., to Oklahoma City, Okla., found unreasonable to extent it exceeded rates based upon the distance scale prescribed in Memphis-Southwestern Investigation, 77 I. C. C. 473, 564, and the percentage relationship found reasonable in Minnesota & Ontario Paper Co., 66 I. C. C. 571. Reparation awarded. Oklahoma Publishing Co. v. A., T. & S. F., 101 I. C. C. 635.

(vv) Respondents proposed to revise the rates on bananas, carloads and less carloads from New Orleans, La., Mobile, Ala., and Pensacola, Fla., to points in southeastern and Carolina territories. The suspended schedules constitute a general revision of rates on bananas from the Gulf ports named to destinations generally in Alabama, Georgia, Florida, North Carolina, South Carolina, Tennessee and to a few points in Kentucky, Virginia and West Virginia. It is proposed to cancel less carload commodity rates and apply class rates from New Orleans and Mobile; to

cancel both carload and less carload commodity rates from Pensacola, Fla., on account of absence of movement through that port; to cancel all carload commodity rates from the various Gulf ports to points to which no movement has developed; to adjust rates at intermediate points with relation to present rates at Ohio river crossings and Virginia gateways; and to provide rates from Mobile 5c less than from New Orleans to such destinations as now have rates differentially less from Mobile than from New Orleans. The proposed tariffs will result in lowering the carload rates to certain points to which in most instances, there have been and probably will be no carload shipments. To the larger cities where bananas are usually shipped in carloads, the rates are increased. Present rates on bananas from Gulf ports to southeastern territory have, except for general changes in recent years, been in effect for a long period of time. The I. C., declines to make any increases in its rates to the Ohio river crossings or intermediate points in the Mississippi valley. The southeastern carriers could not expect to compete at the Ohio river with the I. C., at rates higher than it maintains and therefore they are not here proposing any increases in those rates. The proposal to cancel less carload commodity rates would leave second class rates to apply and would result in considerable increases. HELD, rates on bananas from Gulf ports to the Ohio river in so far as they apply over lines which are here proposing increases in their rates to the southeast and Carolina territory are upon less than a maximum reasonable basis. HELD, schedule of reasonable maximum rates would be rates ranging from 32c for 100 miles to 95c for 1,000 miles, Mobile to be given the full benefit of its shorter distance than New Orleans on the basis of the scale rates. Bananas from Gulf ports 109 I. C. C. 211.

(ww) Complainant attacked rate of 38c charged prior to July 1, 1922 and 34c thereafter, on 74 cars of plumbago and graphite carloads, between April 1922 and June 1923, inclusive, from New York Harbor, free lighterage limits to Delano Junction, N. Y., and destined to Ticonderoga, N. Y., over interstate routes, as unjust and unreasonable. This crude graphite was imported from various foreign countries, packed in barrels and bags. It was transported by lighter to the Jersey Central shipments moving via that line to Wilkesbarre, Pa., D. & H., and Ticonderoga R. R. via Delano Junction. Short line route is over N. Y. C., 235 to Delano Junction, over the route of movement the distance is about 463 miles to the same point. The rates charged are higher than the rates from Jersey City to the same destination. HELD, rates attacked unreasonable to extent they exceed 34.5 prior to July 1. 1922 and 31.5c thereafter, and for future unreasonable to extent they exceed by more than 3c the rate from Jersey City, reparation awarded. Dixon Crucible Co. v. D. & H. Co. 109 I. C. C. 380.

(xx) Complainant attacked import rate on wood pulp from Baltimore, Md., to Baltimore, O., since 1923 as unreasonable and unduly prejudicial. Baltimore, O., is 25 miles southeast of Columbus, O., served by the New York Central. Import rate in effect prior to June 24, 1918 were canceled as of that date, leaving the domestic rates for application from the eastern seaboard to c. f. a. territory. On May 1, 1922 because of the competition of the Gulf lines at Chicago, it became necessary for the eastern trunk lines to publish an import rate which was scaled back to the 87% group including Cincinnati at which points the competition of the Gulf lines was encountered. The rate from New York to Chicago became 42c, which was the old import rate of 20c with the general increases applied. After July 1, 1922 the carriers did not apply their import base rate east of the 82% group or Cincinnati. The fact that the present rate from Baltimore, Md., to Baltimore, O., is not 78% of the New York-Chicago rate, less the differential of 3c from Baltimore, is not evidence that the rate in effect is unreasonable or unduly prejudicial. The percentage formula is not a hard and fast rule, but is merely a guide. HELD, rate attacked not unreasonable or unduly prejudicial, complaint dismissed. Fairfield Paper Co. v. B. &. O. R. R., 109 I. C. C. 514.

(yy) Complainant attacked rates charged on one car of imported nitrate of soda, shipped Jan. 28 1921 from New Orleans, La., to Houston, Tex., as unreasonable. Shipment moved over N. O. T. & M., to Sabine River, La., and B. S. L. & W., beyond, 367.8 miles, charged commodity rate of 44c. Prior

to June 25, 1918 nitrate of soda was grouped with muriate of potash, sulphate of potash and other fertilizer materials taking an import commodity rate of 11.25c on that date import rates were cancelled, thereby making applicable domestic rates the latter being so restricted as not to cover nitrate of soda, the rate applicable thereon being 32.5. On August 26, 1920 the 32.5c rate became 44c and fertilizer rate 24.5c. On Dec. 5, 1921 nitrate of soda was added to the list of materials accorded the 24.5c fertilizer rate. HELD, rate attacked unreasonable to extent it exceeded 24.5c, reparation awarded. Armour Fertilizer Works v. N. O. T. & M. Ry., 109 I. C. C. 549.

(zz) Complainant attacked import commodity rates of $2.665 charged prior to Feb. 15, 1922 and $2.40 on and after that date on eleven cars pyretheum flowers from Seattle and Tacoma, Wash., and San Francisco, Calif., to Minneapolis, Minn., there ground and product shipped to Winona, Minn., as unreasonable, unjustly discriminatory and unduly prejudicial. Shipments moved Dec. 17, 1921 and Dec. 6, 1922. On Jan. 20, 1923 an import commodity rate of $1.75 was established. On June 25, 1918 import rate was cancelled of $1, on July 7, 1919 the import rate was reestablished at $2 subsequently changed to $1.75. HELD, rates charged unreasonable to extent they exceeded $1.945 prior to July 1, 1922 and $1.75 thereafter, reparation awarded. Winona Asso. of Commerce v. C. R. I. & P. Ry., 109 I. C. C. 648.

(3a) Complainant attacked rates charged on imported fertilizer materials, carloads, shipped from March 1, 1922 and April 24, 1924 from Savannah, Ga., and Charleston, S. C., to Knoxville, Tenn., as unreasonable unduly prejudicial and in violation of the fourth section. Shipments consisted of manure salts, muriate of potash and nitrate of soda, charged domestic fertilizer rate of $4.95, no import rate being published to Knoxville. The rate sought was established to Knoxville on April 24, 1924. HELD, rate charged not unreasonable but unduly prejudicial to extent it exceeded the rate to Chattanooga, reparation denied, complaint dismissed. Knoxville Traffic Bureau v. A. C. L. R. R., 109 I. C. C. 705.

(3b) There is nothing inherent in import traffic, as such, that entitles it to lower rates than domestic traffic, and the Commission may not require a difference in the rates on the two classes of traffic unless there is a substantial difference in the services performed. Neither can the Commission consider the needs of the shipper as a basis for reasonable rates, nor the fact that a rate has been reduced, as establishing the unreasonableness of the former rate. Knoxville Traffic Bureau v. A. C. L. R. R., 109 I. C. C. 705, 709.

(3c) Complainant attacked sixth class carload rate of 77c charged on imported mahogany logs from Greenville Piers, N. J., a New York city rate point, to Knoxville, Tenn., as unreasonable to extent it exceeded commodity rate of 49c contemporaneously in effect via the Virginia gateways. Shipments, covered by one bill of lading, moved as routed via Pennsylvania to Cincinnati, O., thence L. & N., 1,042 miles. The distance to Knoxville via the Virginia cities gateways, over which route, composed in part of the Pennsylvania, the 49c rate applied, is much shorter than via Cincinnati; but the rates, both class and commodity, are with few exceptions the same over both routes. It is the usual practice of carriers to publish the same rates via Cincinnati as via the Virginia gateways. This is true not only as to Knoxville but to the surrounding territory as well; and while the distance to Knoxville via Cincinnati is greater than that over the short route by about 41%, the record shows even wider disparities in distances to points taking the same rates via both gateways. HELD, rate attacked unreasonable to extent it exceeded 49c, reparation awarded. Foreign & Domestic Veneer Co. v. L. & N. R. R., 112 I. C. C. 46.

ALL OTHER CITATIONS

Express Publishing Co. v. G. H. & S. A. Ry. Co., 85 I. C. C. 203; Nitrate of Soda from Gulf Ports, 85 I. C. C. 586; Halliday Milling Co. v. Director General, as Agent, 85 I. C. C. 687; Sisal from Gulf Ports, 88 I. C. C. 704; Albers Bros. Milling Co. v. Director General, as Agent, 85 I. C. C. 747; Murray Nickell Mfr. Co. v. Director General, as Agent, 88 I. C. C. 455.

III. CONTROL AND REGULATION.

See Control and Regulation.

§3. In General.

(a) Shipments originating at foreign points moving by water to United States, and thence by rail from port of entry to interstate destinations in same State, are import traffic and subject to commission's jurisdiction. Goldsboro Chamber of Commerce v. A. C. L. R. R. Co., 91 I. C. C. 315, 321.

ALL OTHER CITATIONS

Express Publishing Co. v. G. H. & S. A. Ry. Co., 85 I. C. C. 203.

IV. TARIFFS AND CONSTRUCTION.

§1. In General.

See State Rates and Regulations (3e); Tariffs.

(a) In 78 I. C. C. 387, the Commission found that a commodity rate on dry hides was not applicable on kangaroo or rabbit skins in the absence of the specific inclusion of the latter in the commodity item; that the rates of $4.625 on imported rabbit skins, dry, carloads, from San Francisco, Calif., Tacoma and Seattle, Wash., and Vancouver, B. C., to New York, N. Y., and Danbury, Conn., and on imported kangaroo skins, dry, carloads, from San Francisco to North Philadelphia, Pa., were unreasonable to extent they exceeded $2, minimum 20,000 pounds, and awarded reparation. Since the original report the parties have stipulated that reparation may be made on basis of a rate of $2.62 on the informal docket. The original report herein need not stand in the way of such disposition and the case will be so handled by the Commission on the special docket. American Trading Co. v. Director General, 92 I. C. C. 461.

(b) Complainant attacked import rate charged on hog bristles from Pacific coast ports to New York between July 9, 1918 and August 1919 as unreasonable and illegal. The bristles were substantially straight, but prior to shipment they were washed, sorted, bunched and packed in wooden boxes. Western classification provided an any quantity rating of first class on bristles, other than crude, in boxes. Effective Jan. 15, 1919 a less carload import commodity rate of $3 was established on bristles in packages and on May 29, 1919, it was reduced to $2.50. During the entire period of movement domestic commodity rates of $2.75 less carload and $1.065 carload, applied on hair, not curled, including crude hog bristles, in machine pressed bales. These domestic rates were applicable on import traffic in the absence of import rates. The western classification governing the shipments contained an item covering "washed" crude hog bristles, indicating that defendants do not consider washing sufficient to change crude bristles into bristles other than crude. Imported bristles, which are sorted, bunched or prepared, are subject to a customs duty, while crude bristles, not sorted, bunched, or prepared are admitted free. The courts have held that bristles such as those shipped by complainant are not included in the latter description. HELD, complaint dismissed. Cone & Company v. Director General, 96 I. C. C. 629.

V. FACILITIES AND PRIVILEGES.

See Facilities and Privileges.

§5. In General.

(a) Refusal of rail carriers to handle, at their own expense, import shipments of cork waste, in bales, from side of ships docked at Baltimore, Port Covington piers to cars on such piers, for transportation to Beaver Falls, Pa, found unlawful. Tariff specifically provided that rates will apply from ship's side when property is received from vessels docked at piers or from ship's side in stream, within lighterage limits, when ship is awaiting docking at piers. Fact that such provision was carried under heading "Handling of freight by lighter or float within lighterage limits" did not operate to restrict it to traffic involving floatage or lighterage, but was also applicable to traffic handled from ship to car in transfer of which no lighterage or floatage is involved. Reparation awarded. Armstrong Cork Co. v. W. M. Ry., 102 I. C. C. 713.

INDUSTRIAL RAILROADS

See Common Carrier; Divisions; Tap Lines.

(a) For many years defendants trunk lines, published tariffs providing for absorption of the switching charges of defendants Monongahela Connecting R. R., the South Buffalo Ry., the Union R. R., and the Newburgh & South Shore Ry. and shippers located on the industrial roads were thereby accorded the same basis of rates as shippers located on th

trunk lines in the same rate districts. In 29 I. C. C. 212, the Commission found that these industrial roads were plant facilities rather than common carriers, and effective April 1, 1914, the trunk lines discontinued their absorption of the industrial roads switching charges on interstate shipments. Subsequently following 32 I. C. C. 129, trunk lines filed with the Commission a stipulation and on April 15, 1915, resumed absorption of switching charges in the amounts specified in the stipulation, thereby restoring to plants located on the industrial roads the rate adjustment existing prior to April 1, 1914. Throughout that period shippers to and from points on the industrial roads were compelled to pay the switching charges of those roads on interstate shipments in addition to the district rates, and were thus at a disadvantage to the extent of the switching charges as compared with competitors shipping to or from points in the same rate districts which were located on the trunk lines HELD, defendant industrial roads are common carriers and lawfully entitled to receive from their trunk line connections divisions of joint rates or absorption of switching charges, such divisions or absorptions to be reasonable, reparation awarded to extent of switching charges of industrial roads. Jones & Laughlin Steel Co. v. P. & L. E. R. R., 91 I. C. C. 300.

ALL OTHER CITATIONS

Terminal Allowances to St. Louis Coke & Iron Co., 85 I. C. C. 591.

INJUNCTIONS

See Advanced Rates §20; Courts §14.

INSPECTION

See Bills of Lading §9½; Cars and Car Supply §7½.; Classification §12¾; Express Companies §31; Facilities and Privileges §9¼; Loss and Damage §7½; Weights and Weighing §12.

(a) Inspection of some commodity is a necessary and valuable commercial incident in process of marketing them, and stoppage and detention of shipments for this purpose is reasonable and proper, but carriers can not be required to perform service without adequate compensation therefor. Toberman, Mackey & Co. v. C., B. & Q. R. R. Co., 91 I. C. C. 40, 41.

INSULATED CARS

See Cars and Car Supply §9⅝; Facilities and Privileges §7½.

INSURANCE

See Claims §1 (w).

INTERCHANGE OF CARS

See Allowances; Cars and Car Supply §30; Switch Tracks and Switching; Tap Lines; Through Route and Joint Rates.

INTERMEDIATE POINTS

See Long and Short Hauls §5, §6; Loss and Damage §6, §7.

INTERSTATE COMMERCE

I. DETERMINATION OF STATUS.

- §½. In general.
- §1. Beginning and end of transit.
- §2. State shipment through another state.
- §3. Participation in interstate movement.

II. CONTROL AND REGULATION.

- §4. State.
- §5. United States.

CROSS REFERENCES

See Common Carrier; Crimes; Foreign Commerce §2; Gas and Electric Companies; Panama Canal Act; Pipe Lines; State Rates and Regulations (3e); Through Routes and Joint Rates §19, §22; Transportation §11.

I. DETERMINATION OF STATUS.

§½. In General.

See Foreign Commerce §2; Import Traffic I.

(a) Whether the interstate or the intrastate tariff is applicable depends upon the essential character of the movement. That the contract between shipper and carrier does not necessarily determine the character is well settled. Goldsboro Chamber of Commerce v. A. C. L. R. R., 91 I. C. C. 315, 320.

(b) It is well settled that whether a shipment is interstate or intrastate must be determined by the essential

character of the commerce, which is to be ascertained from all the pertinent facts, circumstances and conditions of each particular case. Givens v. Director General, 92 I. C. C. 63, 65.

(c) Shipment of carload of oats from West Nashville, Tenn., to Fayetteville, N. C., constitutes interstate commerce. Norfolk S. R. Co., v. Armfield., (N. C., 1925) 127 S. E. 557.

(d) The question as to whether or not a shipment is interstate must be determined by the essential character of the commerce, taking into consideration, among other things, the intention of the party controlling the movement of the traffic; and this must be ascertained from all the pertinent facts, circumstances, and conditions and not by mere billing or forms of contract. Hines Yellow Pine Trustees v. A. C. & Y. Ry., 109 I. C. C. 453, 456.

ALL OTHER CITATIONS

Muse Lumber Co. v. Director General, as Agent, 85 I. C. C. 267.

§1. Beginning and End of Transit.

See Through Routes and Joint Rates §19; Transportation §11.

(a) The fact that commodities received on interstate shipments are reshipped by the consignees, in the cars in which they are received, to other points of destination, does not necessarily establish a continuity of movement or prevent the reshipment to a point within the same state from having an independent and intrastate character. Goldsboro Chamber of Commerce v. A. C. L. R. R., 91 I. C. C. 315, 318.

(b) Complainant attacked as overcharges rates on carloads of steel tank and tower materials from Pittsburgh, Pa., through Kansas City, Kans., for fabrication to Shreveport thence to Harmon and Emmett Spur, La.; between June and December, 1919. Charged 62.5c plus transit charge at Kansas City of 1.5c, or total of 64c. Shipments arrived at Shreveport during November, 1919, and the legal title to them there passed to complainant. Within a few days he shipped them to Harmon and Emmett Spur on the T. & P., about 40 miles distant. When complainant ordered the 10 tanks neither he nor the steel company knew what disposition would be made of any of them. Their contract was complete upon arrival of the tanks at Shreveport and the payment of the purchase price. Shipments moved to destinations without having been delivered at complainants yard or unloaded by them. HELD, interstate character of the shipments terminated at Shreveport, shipment beyond that point being intrastate in character, and should be charged on intrastate basis, reparation awarded. Givens v. Director General, 92 I. C. C. 63.

(c) The mere fact that cars received on interstate movement are reshipped by the consignee, after a brief interval, to another point, does not, of course, establish an essential continuity of movement to the latter point. The reshipment, although immediate, may be an independent intrastate movement. The instances are many where a local shipment follows quickly upon an interstate shipment and yet is not to be deemed a part of it, even though some further shipment was contemplated when the movement began. Givens v. Director General, 92 I. C. C. 63, 65.

§2. State Shipment Through Another State.

(a) Transportation between two points in same state over route partly within and partly outside of state is "interstate commerce." Missouri Pac. R. Co. v. Stroud, 45 Sup. Ct. 243.

§3. Participation in Interstate Movement.

See Through Routes and Joint Rates §3½, §6½.

(a) Shipments moved interstate to Shreveport. Complainant did not know whether he would ultimately assign them to orders calling for deliveries at local or near-by points and consequently was unable to give any destination other than Shreveport. Finding it impossible to take actual possession within reasonable periods after arrival complainant located his shipments throughout the terminals and directed their reshipment to Harmon and Emmett Spur, La. FOUND: Fact that shipments were received on an interstate movement and were reshipped after a brief interval to other points in the same State did not establish a continuity of movement to the latter points. The reshipment, under facts of this case, although immediate, was intrastate in character. Iowa case, 233 U. S. 334, and Settle case, 260 U. S. 403, distinguished. Givens v. Director General, 92 I. C. C. 63.

ALL OTHER CITATIONS

Muse Lumber Co. v. Director General, as Agent, 85 I. C. C. 267; Trojan Powder Co. v. Director General, as Agent, 88 I. C. C. 447.

II. CONTROL AND REGULATION.

See Control and Regulation.

§4. State.

See Courts V; Crimes XI; Discrimination §11; Evidence §35; Express Companies §1½; Loss and Damage §9; State Rates and Regulation; Transportation §9, §11.

(a) Where a shipment was stored in carrier's warehouse at destination, because of disputes between buyer and seller, its character as shipment in interstate commerce ceased, and Laws Ill. 1921, p. 754, regulating warehouses, was applicable thereto without interfering with interstate commerce, in violation of Const. U. S. art. 1, §8. Rudin v. King-Richardson Co. (Ill., 1924), 143 N. E. 198.

§5. United States.

See Constitutional Law.

(a) Where shipments move interstate by water to a port of entry, thence by rail to interior intrastate destinations, the commission has jurisdiction over the intrastate rail factor since it is part of the through interstate movement. Du Pont de Nemours & Co., 74 I. C. C. 191. Schloss & Kahn Grocery Co. v. L. & N., 95 I. C. C. 618.

ALL OTHER CITATIONS

Germain Co. v. L. & N. R. R. Co., 85 I. C. C. 449.

INTERSTATE COMMERCE COMMISSION

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CROSS REFERENCES

See Adjacent Foreign Country; Advanced Rates §21; Control and Regulation; Government Control; Jurisdiction of Commission; Procedure Before Commission.

I. JURISDICTION.

See Accounting §1; Adjacent Foreign Country; Advanced Rates §1, §2, §9, §20; Alaska; Allowances I; Bills of Lading I; Blanket Rates §1; Branch Lines §6; Bridges and Tolls; Classification §2; Control and Regulation; Courts; Demurrage §1, §1½; Differentials §½; Discrimination §2; Divisions §1; Electric Lines I; Equalization of Rates §1; Export Rates and Facilities §1; Express Companies §1; Facilities and Privileges §1; Foreign Commerce §1; Government Control; Interstate Commerce §2; Lighterage §1; Long and Short Hauls §2; Loss and Damage §4; Overcharges; Passenger Fares and Facilities; Precooling; Procedure Before Commission; Proportional Rates

§1; Reconsignment §9; Reduced Rates §1; Refrigeration §1; Released Rates §1; Reparation §1; Routing and Misrouting §1; Storage §1; Substitution of Tonnage; Switch Tracks and Switching §2; Tap Lines §2; Tariffs §1; Terminal Facilities §1; Through Routes and Joint Rates §1; Transportation §1½; Undercharges §1; Water Carriers §2; Weights and Weighing §2.

§1. In General.

(a) The sole function of the Commission is to administer the act, in conformity with the standard given it by Congress as interpreted by the courts. The shippers safeguard against the exaction of exorbitant charges is found in section 1 of the act, which provides that all charges made for any service rendered or to be rendered in the transportation of passengers or property shall be just and reasonable. The determination of whether rates on particular commodities are reasonable or unreasonable involves many considerations and is affected by many circumstances and conditions. In testing the reasonableness of rates certain prescribed criteria have received authoritative acceptance by the Commission, have been sanctioned by the courts, and are taken as correct expositions of the principles which Congress has intended to be applied. If those advocating reductions in the instant proceedings have met the usual tests of the reasonableness of rates approved by experience and valid in law, and the rates on grain and grain products and hay are unreasonable it is the duty of the Commission under the act to prescribe the just and reasonable rates hereafter to be observed. Rates and charges on grain and grain products, 91 I. C. C. 105, 153.

(b) The act prescribes no different tests or standards for the determination of just and reasonable minimum rates than by just and reasonable maximum rates. And there is nothing in the act which either directs or implies that the Commission should use tests of different general character in the determination of reasonable minimum rates than those which it has consistently and uniformly applied for many years, with the tacit consent and sanction of Congress and the express approval of the courts, in fixing reasonable maximum rates. These standards are too well known to require a summary of them here, but when the Commission has been called upon to adjust maximum reasonable rates on a specified commodity from different points of origin to a common destination, it has always given special consideration to comparisons of going rates on the same commodity in the same or similar territories, in relation to distances, revenue per car, car mile, and ton mile, variations in traffic density, and peculiarities in transportation which affect transportation costs in general. No practical reasons are advanced why these same standards should not be applied in the fixing of reasonable minimum rates. Salt cases of 1923, 92 I. C. C. 388, 410.

(c) In the absence of proof that a promise by a railroad to collect freight from consignee and to refund it to shipper was not an established practice, the question of the reasonableness of the practice was solely for the Interstate Commerce Commission and not for the courts, since it is only when there is some variation from a published regulation or practice, established by the rule and not contrary to law, that a court has power to intervene. Pennsylvania R. Co. v. Chesapeake & Ohio Coal & Coke Co. (New York, 1923) 297 Fed. 249.

(d) What the Commission may permit the carriers to do and what it may require them to do are entirely different matters. Union Sulphur Co. v. T. & N. O. R. R., 98 I. C. C. 76, 81.

(e) The Commission has repeatedly condemned the action of carriers in adjusting rates so as to impede or stifle the movement of commodities in any given direction. Wyoming Coal Co. v. Virginian, 98 I. C. C. 488, 491.

(fg) No doubt the power to fix minimum rates can in some instances be employed to advantage and with propriety, for the purpose of averting rate wars, which are always injurious to the carriers and ordinarily, in the long run, to the public interest, or for the purpose of preventing an unjust burden upon other forms of traffic or upon other parts of the country. The Commission believes that this power should be sparingly exercised and only in cases where it clearly appears that its exercise is necessary in order that substantial public injury may

be avoided. Lake Cargo coal rates, 1925, 101 I. C. C. 513, 545.

(h) Under section 1, paragraph 2 of the act, jurisdiction of the Commission over transportation applies only to such transportation as takes place within the United States. Natl. Amer. Wholesale Lumber Asso. v. B. & O. R. R., 101 I. C. C. 741, 743.

(i) By the Transportation Act there is a vast power declared to exist in the Interstate Commerce Commission, and there is also a power reserved to the states. The intent of Congress to supersede the exercise by the states of their police power will not be inferred, unless the act of Congress, fairly interpreted, is in actual conflict with the law of the state. State v. Seaboard Air Line Ry. Co. (Fla., 1925) 104 So. 602.

(j) Under the Transportation Act, the dictum of the Commission is the last word in such matters as through route and rate regulation, just division of joint rates, car and terminal service in the interchange of interstate freight and passengers between railroads, construction of new and extension of old lines, purchasing of equipment, safety devices, issuance of securities, safety and adequate facilities, and such others as tend to prompt and continuous service in interstate commerce. State v. Seaboard Air Line Ry. Co. (Fla., 1925) 104 So. 602.

(k) Fixing of rates by Interstate Commerce Commission is not unconstitutional interference with liberty to contract nor deprivation of property without due process of law, but it is proper exercise of police power for prevention of unreasonable extortion and discriminatory rates, service, and preference. Davis, v. Keystone Steel & Wire Co., (Ill., 1925) 148 N. E. 47.

(l) Counsel for defendants questioned right of opposing counsel to represent many shippers named as complainants, and also contended that many claims presented are barred by the statute of limitations. But as they admit that at least some shippers named are bona fide complainants and that some claims are not barred by the statute the commission may proceed to consider issues without passing upon jurisdictional question as to individual complainants and claims. Dickerson v. Director General, 93 I. C. C. 304, 305.

(m) The commission has no arbitrary power to do what may seem to be in the public interest, but only such powers as are conferred by statute. Maritime Asso., Boston Chamber of Commerce v. A. A. R. R., 95 I. C. C. 539, 565.

(n) Commission doubted its jurisdiction to pass upon an issue raised, but in order that further litigation may, if possible, be avoided, an opinion was rendered thereon in so far as covered by evidence of record. Maritime Asso., Boston Chamber of Commerce v. A. A. R. R., 95 I. C. C. 539, 568.

(o) What the commission may permit carriers to do and what it may require them to do are entirely different matters. Union Sulphur Co. v. T. & N. O. R. R. Co., 98 I. C. C. 76, 81.

(p) The commission does not determine who is liable for the payment of tariff charges, that being a matter for the courts. Kansas City Structural Steel Co. v. A. T. & S. F. Ry., 102 I. C. C. 113, 114.

(q) There is no principle more clearly established than that it is not the province of the Commission to equalize different natural or economic conditions. New Orleans Joint Traffic Bureau v. B. S. L. & W. Ry., 102 I. C. C. 686, 691.

(r) Upon contention of complainant that no reversal of opinion by the commission or modification of a former opinion could wipe out or extinguish the vested rights of a complainant secured by contracts made in reliance upon the former opinion, FOUND: That the commission is without authority to make an award of reparation based upon such a contention, and this applies with equal force to unfulfilled promises alleged to have been made by representatives of carriers that the reduced rates would be made effective in accordance with the exception expressed in the report. The powers of the commission are not those of a court of equity. Northern Grain & Warehouse Co. v. O. S. L. R. R. Co., 100 I. C. C. 319, 322.

(s) The commission is the guardian of the general public interest, and it must have in mind not only the carriers and the larger shipping interests but also the smaller communities and the great body of consumers. One of the main reasons for the creation of the commission was the protection of those public interests which are rarely equipped for self-protection. Southern Class Rate Investigation, 100 I. C. C. 513, 603.

(t) It is elementary and well settled that there can be no divided authority over interstate commerce and that acts of Congress on that subject are supreme and exclusive. Train service on N. P., 112 I. C. C. 191, 195.

II. PRIMARY JURISDICTION.

See Actions at Law; Courts.

§2. In General.

(a) If the minimum rate making power were intended by Congress to be used only in cases where the rate attacked had been proven with arithmetical exactitude to be less than the cost of service, the grant of that power would be ineffectual, because such a test of exact cost of service is impracticable of application to specific rates on a single commodity, and this has been recognized by the Supreme Court. Salt cases of 1923, 92 I. C. C. 388, 410.

(b) Maintenance of suit to recover damages from a carrier because of the collection of an unreasonable rate, in violation of the Act to Regulate Commerce (Comp. St. §8563 et seq.), depends on prior action by the Interstate Commerce Commission as a foundation for it whereby a right to reparation has been decided. Chicago, B. & O. R. R. Co. v. Merriman & Millard Co., 297 Fed. 1.

(c) Generally the reasonableness of rates or of divisions of joint rates will not be considered by courts before application has been made to Interstate Commerce Commission, under Interstate Commerce Act, §15, subds. (1), (3), (6), as amended by Act Feb. 28, 1920, §418 (Comp. St. Ann. Supp. 1923, §8583). Terminal R. Ass'n of St. Louis v. United States, 45 Sup. Ct. 5.

§3. Finality of Findings.

See Adjacent Foreign Country; Allowances §3; Discrimination; Procedure Before Commission §11.

(a) The decisions of the Interstate Commerce Commission on questions properly before it are entitled to great weight, and as to questions of fact are conclusive. Davis, Director General of Railroads v. Prairie Pipe Line Co., 298 Fed. 393.

III. OVER PROCEDURE.

§5. Orders.

See Advanced Rates §21½; Allowances §3; Courts; Long and Short Hauls §11; Procedure Before Commission IV.

(a) The rate charged on the shipments was established and continued in effect during the period of movement under an order made by the Commission. It follows that such order can be altered or set aside only by a further order made by the Commission or by a federal court. Indiana rates, fares and charges. 92 I. C. C. 487, 492.

(b) Interstate Commerce Commission's order, under Interstate Commerce Act, §15 (6) as ammended by Transportation Act 1920, §418 (Comp. St. Ann. Supp. 1923, §8583), made after a consideration of data taken from annual reports filed with the Commission by railroads, but not introduced in evidence by specific reference thereto under Interstate Commerce Commission, rule No. 13, held void. United States et al. v. Abilene & S. Ry. Co. et al., 44 Sup. Ct. 565.

(c) By section 15 (2) of the act it is required that the orders of the commission, other than orders for the payment of money, shall take effect within such reasonable time, not less than 30 days, as may be prescribed in the order, and also authorizes the commission to modify its order whenever it deems it to be necessary. Northern Grain & Warehouse Co. v. O. S. L. R. R. Co., 100 I. C. C. 319, 321.

ALL OTHER CITATIONS

New England Divisions, 85 I. C. C. 482.

IV. OVER RAILROADS.

§6½a. In General.

(a) The Commission has held that the carriers may, subject to certain restrictions, initiate rates lower than the Commission can prescribe. Handling Charges on Cement, Fertilizer and Salt, 93 I. C. C. 640, 644.

(b) Commission can not prohibit carriers from meeting competition so long as they are not guilty of undue preference and prejudice and so long as they do not charge rates which are so unreasonably low that they burden other traffic. On the other hand, the Commission can not require carriers to meet competition. Maritime Asso. Boston Chamber

of Commerce v. A. A. R. R., 95 I. C. C. 539, 565.

V. OVER RATES.

§8½. In General.

(a) In adjusting transportation rates which will yield carriers the fair return contemplated in section 15a of the act, it is incumbent upon the commission to take into account all circumstances and conditions which, in its best judgment, will influence the return under any level of rates. If the commission is persuaded that increases in rates beyond any certain point will divert traffic to other means of transport or depress its volume, and so defeat the very end the statute is meant to attain, it clearly becomes its duty to readjust or modify the rates in such manner as will, in its judgment, produce as nearly as may be the desired result. Express Rates, 1922, 89 I. C. C. 297, 310, 311.

(b) A report and opinion of the Interstate Commerce Commission cannot annul or change an existing tariff rate, in view of Interstate Commerce Act, §15 (Comp. St. §8583), requiring any change of rates made by the Commission to be made, not by report, finding, or opinion, but by an order to carrier to cease collecting the existing rate, to take effect not less than thirty days after the date of the order. Chicago, B. & O. R. Co. v. Merriman & Millard Co., 297 Fed. 1.

(c) It should be borne in mind that it is not the province of the Commission to require carriers to maintain rates to meet competition. Rates to Southwestern Destinations, 95 I. C. C. 188, 199.

(d) It is not the province of the Commission to prescribe rates less than reasonable maxima for the purpose of overcoming disadvantages of location or cost of manufacture, and unless the proposed rates are in themselves unreasonable or otherwise in violation of law, the Commission may not require respondents to maintain lower rates, although it has recognized that carriers in order to meet competition may voluntarily establish rates lower than the Commission is in position to prescribe, provided always that no undue prejudice, unjust discrimination or other violation of law results. Glass and Glassware to Interstate Points, 98 I. C. C. 83, 86.

(e) Power to prescribe minimum rates should be sparingly exercised and only in cases where it clearly appears that its exercise is necessary in order that substantial public injury may be avoided. Salt Cases of 1923, 92 I. C. C. 388, 409.

(f) If minimum rate-making power were intended by Congress to be used only in cases where rate assailed had been proven with arithmetical exactitude to be less than cost of service, the grant of that power would be ineffectual, because such a test of exact cost of service is impracticable of application to specific rates on a single commodity, and this has been recognized by United States Supreme Court. Salt Cases of 1923, 92 I. C. C. 388, 410.

(g) The act prescribes no different tests or standards for determination of just and reasonable minimum rates than for just and reasonable maximum rates. And there is nothing in the act which either directs or implies that the commission should use tests of different general character in determining reasonable minimum rates than those which have been consistently and uniformly applied for many years, with tacit consent and sanction of Congress and express approval of the court, in fixing maximum reasonable rates. Salt Cases of 1923, 92 I. C. C. 388, 410.

(h) When the commission has been called upon to adjust maximum reasonable rates on a specific commodity from different points of origin to a common destination, the commission has always given special consideration to comparisons of going rates on same commodity in the same or similar territories, in relation to distances, revenue per car, per car-mile, and per ton-mile, variations in traffic density, and peculiarities in transportation which affect transportation costs in general. No practical reasons appear why these same standards should not be applied in fixing minimum reasonable rates. Salt Cases of 1923, 92 I. C. C. 388, 410, 411.

(i) Fixing of rates by Interstate Commerce Commission establishes that they are reasonable, and not discriminatory. Davis v. Keystone Steel & Wire Co., (Ill., 1925) 148 N. E. 47.

§10. Intrastate Rates.

See State Rates and Regulation.

(a) Ordinarily the commission does not have jurisdiction over intrastate rates in absence of a showing of substantial disparity which operates as a real discrimination against and obstruction to interstate commerce. Discretion rests

with State authorities to deal with intrastate rates on general levels found by the commission to be fair to interstate commerce. Wisconsin R. R. Commission, 257 U. S. 563. Lake Dock Coal Cases, 89 I. C. C. 170, 200, 201.

(b) Courts will not review determinations of the Interstate Commerce Commission, made within the scope of its powers, or substitute their judgment for its findings and conclusions. United States v. New River Co., et al Slab Fork Coal Co. v. Same, 44 Sup. Ct. 610.

(c) Under Act June 18, 1910, Judicial Code, §207, and Act. Oct. 22, 1913, order of Interstate Commerce Commission, reversing former findings and dismissing complaints against rule of Commission and permitting carriers to apply such rule, HELD, an affirmative order, reviewable by District Court. United States v. New River Co. et al. Slab Fork Coal Co. v. Same, 44 Sup. Ct. 610.

(d) The commission is without power to review orders of State commissions. Kneeland-Bigelow Co. v. Director General, as Agent, 85 I. C. C. 659, 661, 662.

ALL OTHER CITATIONS

Ohio State Rates on Sand, Gravel, Stone and Paving Blocks, 85 I. C. C. 66; Trojan Powder Co. v. Director General, as Agent, 88 I. C. C. 447.

§11. Suspension.

See Advanced Rates §1 (4); Suspension of Rates.

(a) An order of suspension is not an order such as is contemplated by Congress when it refers to the establishment of a rate by order of the Commission. Petroleum Oil from Arkansas to Louisiana, 95 I. C. C. 55, 65.

§13. Unpublished Rate.

See Evidence §60; Unpublished Rates.

(a) Where a transportation service has been rendered for which there was no tariff authority the commission has jurisdiction to determine what was a reasonable charge for the service and, if the carrier has collected from the shipper more than such reasonable charge, to order repayment of the excess. Southern Transportation Co. v. N. & W. Ry., 101 I. C. C. 211, 225.

VI. TO AWARD DAMAGES.

§14. In General.

See Reparation.

(a) The Commission does not exercise jurisdiction over claims for loss of freight in transit. Smith & Duckworth v. C. C. C. & St. L. Ry., 100 I. C. C. 300, 302.

VII. APPEALS TO COURT.

§15. In General.

See Courts.

(a) Regulations, which are primarily within the competency of the Commission, are not subject to judicial supervision or enforcement until the Commission has been properly afforded an opportunity to exert its administrative functions. Rules Governing Ratings of Coal Mines, 95 I. C. C. 309, 315.

§17. Validity of Orders.

See Courts §5, §16a.

(a) The mere admission by an administrative tribunal of matter which, under the rules of evidence applicable to judicial proceedings, would be deemed incompetent, does not invalidate its order, but the finding must be sustained by evidence. United States v. Abilene & S. Ry. Co., 44 Sup. Ct. 565.

(b) Railroads did not waive invalidity of Interstate Commerce Commission's order relating to division of joint rates, based on a consideration of matter not introduced in evidence, by submitting case without argument and acquiescing in suggestion that presentation of tentative report by examiner be omitted. United States v. Abilene & S. Ry. Co. 44 Sup. Ct. 565.

(c) In determining whether an order of the Interstate Commerce Commission or a regulation of a carrier shall be suspended or set aside, power to make, and not the wisdom of the order or regulation, is the test. Turner, Dennis & Lowry Lumber Co. v. Chicago, M. & St. P. Ry. Co., (Mo., 1924), 2 Fed. (2d) 291.

INTERTERRITORIAL RATES

See Basing Points and Lines §2 (h); Class Rates §1 (n), §2 (3k) (7b) (7c) (7d) (7s); Through Routes and Joint Rates §13 (w).

INTERVENERS

fore Commission §10 (3); Reparation §24.

See Claims §5¾; Procedure Be-

INTOXICATING LIQUORS

See State Rates and Regulations.

JUNCTION POINT RATES

See Branch Lines §1 (cc); Cars and Car Supply §14½, §23½; Routing and Misrouting §5½.

(a) On further hearing, rates on naval stores from points on the Alabama, Tennessee & Northern to various destinations prescribed on basis of the junction-point rates, plus varying differentials on rosin and turpentine. Naval Stores from Southern Points, 96 I. C. C. 417.

(ab) Combination rate to and from Perryville Junction, Mo., assessed on gasoline moving from Cushing, Okla., to Perryville, Mo., on the Cape Girardeau Northern Ry., found unreasonable as compared with lower rate contemporaneously in effect to the junction point and numerous other points in southeastern Missouri. Reparation awarded. Illinois Oil Co. v. C. G. N., 102 I. C. C. 154.

(b) The extension of junction points rates to points on branch lines is not unusual but generally has not been required by the Commission unless it has appeared that the carriers had adopted such practice with respect to other points similarly located and circumstanced, or that the rates to the junction points were made on the group basis and applied over a considerable territory where the conditions of operating and transportation on the main and branch lines were substantially similar. Macia v. A. T. & S. F. Ry., 102 I. C. C. 430, 432.

JURISDICTION OF COMMISSION

See Accounting §1; Adjacent Foreign Country; Advanced Rates §1, §2; Allowances §1, §2; Bills of Lading §1; Blanket Rates §1; Branch Lines §6; Bridges and Tolls §1; Cars and Car Supply I A; Classification §2; Control and Regulation; Courts; Demurrage §1; Discrimination §2; Divisions §1; Equalization of Rates §1; Export Rates and Facilities §1; Express Companies §1; Facilities and Privileges I; Foreign Commerce I; Government Control; Interstate Commerce Commission I, II; Lighterage §1; Long and Short Hauls §2; Loss and Damage §4; Panama Canal Act; Passenger Fares and Facilities §1; Proportional Rates §1; Rail and Water Rates (h) (3r); Reconsignment §9; Reduced Rates §1; Refrigeration §1; Released Rates §1, §4; Reparation I; Routing and Misrouting §1; Special Contracts §4 (1); State Rates and Regulations; Storage §1; Switch Tracks and Switching §1, §2; Tap Lines §1, §2; Tariffs §1; Telephone and Telegraph Companies §3½; Terminal Facilities §1; Through Routes and Joint Rates §1; Transportation §1½; Undercharges §1; Unpublished Rates; War Taxes; Water Carriers §2.

KNOCKED-DOWN SHIPMENTS

See Classification §4½, §5.

LACHES

See Evidence §1½ (f).

LEASE

See Cars and Car Supply §11½; Common Carriers §2; Finance Dockets §3; Railroad Yards (a); Warehousing.

(a) The Act contains no provision authorizing the Commission to prescribe or regulate the terms or conditions under which carriers may lease their lands to shippers. The authority which it has over such leases is wholly indirect, and comes into being only where the lease results in some violation of the act or other statutes administered by the Commission. Gallup v. N. Y., N. H. & H. R. R., 98 I. C. C. 453, 454.

(b) Upon complaint that attempt of N. Y., N. H. & H. R. R. Co. to eject complainant from its produce house at Harlem River Station, New York, N. Y., previously leased to him, and threat to refuse to place cars consigned to him, subjected complainant to unjust discrimination and undue prejudice; HELD: That complainant's evidence is insufficient to warrant a finding that consignees receiving shipments on team tracks are unduly prejudiced or lessees of the produce house unduly preferred, and that he has not proven damage by reason of any undue prejudice which may have existed

during the time when the question of the lease was in process of litigation in the courts. Complaint dismissed. Gallup v. N. Y., N. H. & H. R. R. Co., 98 I. C. C. 453.

(c) Whether complainant was a lessee during the periods of the stays in court proceedings is a question for the courts. If, under the laws of the state of New York, he was a tenant, he was entitled to the completion of the transportation service by delivery of the cars consigned to him. Gallup v. N. Y., N. H. & H. R. R. Co., 98 I. C. C. 453, 455.

LEGAL RATES

See Advanced Rates §5 (7½), §19¼; Classification V, §20, §22; Commodity Rates II, §3, §4; Demurrage §15½; Distance Rates §2; Evidence §13 (3); Facilities and Privileges §15, §18; Long and Short Hauls §5, §6¾; Overcharges; Proportional Rates I; Rail and Water Rates; Reconsignment §5; Tariffs §14, §18; Through Routes and Joint Rates §22.

LEGALITY OF RATES

See Absorption of Charges §5½; Advanced Rates §19¼; Allowances IV, §10; Blanket Rates II; Divisions IV; Proportional Rates III; Reconsignment I; Reduced Rates II; Released Rates III; Restricted Rates; Special Contracts II; Tap Lines §7; Tariffs §14.

LIGHTERAGE

I. CONTROL AND REGULATION.
§1. Jurisdiction of Commission.
II. CHARGES.
§2. In general.
§3. Reasonableness and discrimination.
III. ALLOWANCES.
§4. In general.
IV. THROUGH ROUTES AND JOINT RATES.
§5. In general.
V. OBLIGATION TO FURNISH.
§6. In general.
VI. TARIFFS AND CONSTRUCTION.
§7. In general.
VII. REPARATION.
§8. In general.

CROSS REFERENCES

See Allowances §8 (4); Car Ferry; Floatage; Towage.

I. CONTROL AND REGULATION.

See Control and Regulation.

§1. Jurisdiction of Commission.

See Interstate Commerce Commission I; Jurisdiction of Commission.

ALL CITATIONS

Atlas Portland Cement Co. v. C. R. R. Co. of N. J., 85 I. C. C. 614; American Woodpulp Corp. v. Director General, as Agent, 88 I. C. C. 277.

II. CHARGES.

§2. In General.

(a) Based upon return on investment in lighterage facilities, lighterage rates of East Jersey R. R. & Terminal Co., on petroleum and products from Bayonne, N. J., to interstate points in New York Harbor, found unreasonable and reparation awarded. Tide Water Oil Co. v. E. J. R. R. & T. Co., 91 I. C. C. 725.

ALL OTHER CITATIONS

Atlas Portland Cement Co. v. C. R. R. Co. of N. J., 85 I. C. C. 611; Butterworth-Judson Corp. v. Director General, as Agent, 88 I. C. C. 19.

§3. Reasonableness and Discrimination.

See Discrimination; Reasonableness of Rates.

ALL CITATIONS

Coastwise Lumber & Supply Co. v. B. & O. R. R. Co., 85 I. C. C. 441.

V. OBLIGATION TO FURNISH.

§6. In General.

ALL CITATIONS

Coastwise Lumber & Supply Co. v. B. & O. R. R. Co., 85 I. C. C. 441.

VI. TARIFFS AND CONSTRUCTION.

See Tariffs.

§7. In General.

(a) Manifestly, the maritime rule that last shipment in is first shipment out must apply to lighterage delivered in

the generality of cases notwithstanding endeavor on part of rail carriers wherever practicable to deliver shipments in sequence of arrival. In a busy terminal yard, through which many commodities are moved daily, switching and drilling which would be necessary to separate oldest car from all others would demoralize terminal operations. Coastwise Lumber & Supply Co. v. P. R. R., 93 I. C. C. 288, 294.

(b) It is the duty of carrier in making "stringpiece" delivery of lumber from lighters or barges to pass lumber over the stringpiece to assigned space on the dock to consignee. It is not required that lumber be piled symmetrically, that it be tiered, or that ends of pieces be even, but at least various pieces of lumber must be approximately parallel lengthwise. No obligation rests upon carrier to place men upon a dock to receive lumber except to extent necessary to effect delivery thereof in a safe and orderly manner. Coastville Lumber & Supply Co., 93 I. C. C. 288, 295.

ALL OTHER CITATIONS

American Woodpulp Corp. v. Director General, as Agent, 88 I. C. C. 277; Hershman & Co. v. Director General, as Agent, 85 I. C. C. 695.

VII. REPARATION.

See Reparation.

§8. In General

ALL CITATIONS

Midland Linseed Oil Products Co. v. Director General, as Agent, 88 I. C. C. 247.

LIMITATION OF LIABILITY

See Bills of Lading IV; Cars and Car Supply VII; Courts §15; Express Companies XII; Loss and Damage §9, §10 (1) (2), §11; Released Rates V; Reparation IV; Routing and Misrouting III; Special Contract III; Telephone and Telegraph Companies IV; Undercharges IV.

LIVE STOCK SHIPMENTS

See Adjacent Foreign Country (b); Advanced Rates §8½a (g) (k); Branch Lines §1 (gg); Canada (n); Caretakers; Class Rates §2 (b); Crimes §34 (e); Distance Rates §1 (b) (e), §3 (a) (ee) (ll) (nn) (3d); Evidence §20 (m); Express Companies §5 (a) (b); Facilities and Privileges §2 (b), §5½, §7½, §10 (q), §15 (pp); Limitation of Liability; Loss and Damage; Minimums §7 (a); Passenger Fares and Facilities §3a (a); Percentage Rates (bb); Personal Injuries; Reduced Rates §4½ (jj); Restricted Rates (s); Routing and Misrouting §4 (eea); State Rates and Regulations (30) (3p); Stock Yard Companies; Tariffs §18 (3k); Through Rates and Joint Rates §13 (aa), §15 (3na), §20a (j), §24 (g); Twenty-eight Hour Law; Weights and Weighing §5 (g).

(a) Adjustment of rates on ordinary livestock from Nebraska points to Missouri River cities found unduly prejudicial to interstate shippers and localities, unreasonably preferential of intrastate shippers and localities, and unjustly discriminatory against interstate commerce; and in certain instances found unreasonably preferential of interstate shippers and localities, unduly prejudicial to intrastate shippers and localities, and unjustly discriminatory against interstate commerce. Distance scale of rates suggested for correction of the situation. Nebraska Livestock Case, 89 I. C. C. 444.

(b) Commission instituted an investigation on its own motion to determine whether the proper relationship existed between the interstate or intrastate rates on ordinary live stock, carloads, from all Nebraska points to Omaha and South Omaha, on the one hand, and the interstate rates from the same points of origin to St. Joseph and Kansas City, Mo., and Sioux City, Iowa, on the other, with a view of prescribing such rates as would remove any undue prejudice, unreasonable preference, or unjust discrimination against interstate commerce, as might be found to exist. The live stock rates of the various carriers from Nebraska points to the destinations here considered are not made according to any common or uniform scheme. The present structure is largely the product of years of competition. Each carrier has from time to time published such rates as it deemed proper to meet the direct and cross country competition of

other carriers. Certain markets are kept on an equality regardless of distance St. Joseph takes the same rates as Kansas City from practically all Nebraska points and Sioux City and Omaha have common rates from much of the northern portion of the state. The policy of competitive rate making, together with a purpose to develop the country, has resulted in lower rates than would otherwise exist. In 1907 the Nebraska Legislature required a 15% reduction in the intrastate rates on certain farm products, including livestock. The relationship thus created has remained until the present day, except that the differences in favor of the intrastate rates have been made more pronounced by the general percentage increases of recent years. For distances up to 250 miles the advantage is in favor of intrastate traffic, but for greater distances the reverse is generally true. For the longer distance the intrastate rates to Omaha are higher than the interstate rates to St. Joseph and Kansas City. From Northeastern Nebraska the rates to Sioux City on the average are about twice as high per mile as those to Omaha. There are no differences in distance or transportation conditions such as would justify this situation. From points on the Northwestern north and west of Norfolk, there is a parity of rates to Sioux City and Omaha, although traffic to Omaha requires about 40 miles more haul under substantially similar circumstances. In view of the fact that rates on livestock are made over circuitous lines to meet the cross country competition of direct lines and also to keep certain markets on an equality in spite of differences in distance, numerous instances may be found in which the rates of individual lines for a given distance differ widely. Accordingly it frequently happens that higher rates apply intrastate than interstate, but upon the whole from Nebraska points the intrastate rates to Omaha are on a lower level than the interstate rates. If the intrastate rates to Omaha are less than are necessary to bear a proper relation to the interstate rates in question, a revenue burden is being case upon interstate commerce, which amounts to an unjust discrimination against it. HELD, present rates from Nebraska points to Missouri river cities, Kansas City to Sioux City, unduly prejudicial; from points on the Northwestern line extending from Schribner via Dakota junction into Wyoming and South Dakota and from other points in Nebraska north of Albion, Humphrey, Schribner, and Oakland for single line application on cattle and on calves, hogs and sheep in double deck cars rates are prescribed of 8.5c for 10 miles or less up to 50c for 600 miles; from other points in Nebraska, rates ranging from 8c for 10 miles to 50c for 600 miles; on hogs and calves in single deck cars and on horses and mules, rates 115% of rates on cattle for like hauls; and on sheep in single deck cars, 125% thereof. Differential of 3.5c to be applied for joint hauls of 500 miles and less. Nebraska Livestock case, 89 I. C. C. 444.

(c) Respondents proposed to limit to the distance rates named in Lelands tariff I. C. C. 1667 on stocker or feeder cattle, carloads, from points on the Texas Mexican Ry. to Arkansas City, Wichita, and Wichita Union Stock Yards, Kans. If the schedules under suspension are permitted to become effective, the distance rates referred to would not be applicable on shipments to Wichita moving through Coffeyville, Kas., via the M. P. From the points of origin indicated the distances to Wichita via Coffeyville are from 98 to 125 miles greater than the distance over the short line route. HELD, proposed schedules justified. Livestock between Texas and Kansas points, 89 I. C. C. 720.

(d) The Commission in 74 I. C. C. 419, authorized the establishment of rates on livestock, carloads, to, from, and between points in the southeast based upon distance scales for edible livestock and on horses and mules respectively, which had been agreed upon by the shippers and carriers as a compromise. These scales were for single line application and differentials were to be added for joint line hauls. The compromise agreements did not specifically provide whether the single or joint line rates should be applied between points on different lines under a common management and control. Informal complaints were made that certain lines of the Southern Ry system, also the Atlanta & West Point R. R., and Western Ry. of Alabama, had applied the joint line rather than the single line rates between points on different lines under a common management and control. HELD, single distance scales should be applied

over two or more lines under the same management and control and that (1) the lines comprising the Southern Ry. system, (2) the Atlanta & West Point R. R. and Western Ry. of Alabama, and (3) the Illinois Central and Y. & M. V. R. R., are under the same management and control in the sense that those words are used in this report. Livestock to, from, and between points in the southeast, 91 I. C. C. 292.

(e) Complainant attacked commodity rates charged on horses and mules, carloads, from Illinois, Indiana, Ohio, Missouri, Kansas, Nebraska, Iowa and South Dakota and Oklahoma to Atlanta, Ga., and Birmingham and Montgomery, Ala., as unreasonable, unduly prejudicial and in violation of the fourth section. There are no joint rates on horses and mules from points north of the Ohio and west of the Mississippi rivers to these points. The rates are combinations of proportional commodity or class rates to the river crossings and commodity rates of southern lines beyond. Following 63 I. C. C. 6 and 74 I. C. C. 419, rates attacked unreasonable to extent they exceeded combination of intermediate rates, reparation, awarded. Hudson Mule Co. v. Director General, 91 I. C. C. 459.

(f) Complainant attacked commodity rates charged on straight and mixed cars of livestock between Dec. 31, 1919, and March 20, 1921, as unreasonable, unjustly discriminatory and unduly prejudicial. Prior to Dec. 31, 1919, rates on livestock in the Northwest were published in amount per car, regardless of weight. Subsequent thereto during the period specified they were constructed on the basis of cents per 100 pounds. It is said that this change was not made for the purpose of increasing rates on livestock but to secure more uniformity in them and to remove the incentive for overloading. In changing from the basis per car to cents per 100 pounds the Director General used the prevailing rates in amounts per standard car of 36 feet 6 inches and divided them by 24,000, 17,000, 25,500 and 22,000 pounds at arrive at the rates in cents per 100 pounds on cattle, hogs in single deck cars, hogs in double deck cars, sheep in single deck cars and sheep in double deck cars. In February, 1920, the carriers were instructed by the Director General to revise the rates on cattle using 26,000 pounds as the basis instead of 24,000 pounds. On March 20, 1921, carriers restored the former basis of rates. HELD: Rates attacked not unreasonable or otherwise unlawful, complaint dismissed. Dickerson v. Director General, 93 I. C. C. 304.

(g) Respondents proposed to amend their tariffs carrying rates on livestock between points in central territory, which rates are now subject to the Kelly combination rule, so as to restrict the application of that rule so that it would only apply in connection with through rates where all the issues publishing the factors used in arriving at through rates from original point of shipment to ultimate destination, carry reference to Jones I. C. C. U. S. 1. It certainly was never intended that the burden of the combination rule shrinkage in both western and eastern rates should fall wholly upon one set of carriers. It is clear that the eastern lines should be responsible only for deductions properly to be made from their own separately established rates. HELD: Proposed schedules not justified but new schedules may be filed which will relieve respondents from deductions not properly applicable to the rate factors east of the gateways. Combination Rule on Livestock, 93 I. C. C. 458.

(h) Complainant attacked commodity rates charged on horses and mules in the Southwest, as unreasonable and unduly prejudicial. Although the allegations are sweeping in their extent, the evidence was confined principally to the rates between Forth Worth, Texas, and points in Louisiana, Arkansas, Oklahoma, Missouri, Kansas, Colorado and New Mexico. Class A rates are generally applicable from points in Kansas, Missouri and Arkansas to Texas points. Specific commodity rates are in effect from Kansas City, Wichita and St. Louis, to a few destinations in Texas, and also distance commodity rates between Kansas and points in western section of Texas. Class A rates obtain to Texas points from Louisiana points west of the Mississippi river, except from the Shreveport, La., group and points taking the Natchez, Miss., rate; from points in the Denver, Colo., group; and from Memphis and Vicksburg. In the reverse direction the rates from Texas points to destinations in the territories above mentioned are commodity rates. Be-

tween Texas and Oklahoma distance commodity rates are in effect. Between eastern New Mexico and Texas the rates are combinations on a Texas border point. Between points in western New Mexico and in Arizona and points in Texas the transcontinental rate applies subject to the lowest combination. Between Texas and other points in western territory, rates are made by combinations. Commodity rates substantially lower than the rates from Kansas points to Fort Worth are in effect between Kansas and points in western and southern Texas. The existence of these lower commodity rates to western and southern Texas points enables dealers at such points to receive horses and mules from the Kansas City market and distribute them throughout Texas at an advantage over the Fort Worth dealers. The class A rates which apply from Kansas thru Oklahoma to Texas destinations are much higher than the Kansas-Oklahoma rates for like distances. The applicable rates from Kansas points and from some Missouri points to Fort Worth have quite generally in the past exceeded, and in many cases still exceed, the combinations to and from Oklahoma points. The Oklahoma-Texas rates are plainly too high and the combination rates taken as entireties also appear excessive. Distance considered, the rates from Fort Worth are materially higher to points in Oklahoma, Arkansas and Louisiana south of the Shreveport-Natchez section than the rates to the same destinations from Kansas City, St. Louis or Wichita. Rates from New Mexico and Arizona to Fort Worth are combinations of local rates, while lower joint rates are in effect from New Mexico and Arizona points to Wichita, Oklahoma City and Kansas City. The carriers recognize the need for a revision of the rates. They ask that the Commission prescribe rates uniform in the southwest, but, because of their financial needs, seek a readjustment so made that their revenues will not be depleted. The Commission has found the southwestern scale to provide a reasonable basis of rates on cattle and hogs from Kansas City and South St. Joseph, Mo., to Fort Worth and Oklahoma City, 81 I. C. C. 79. In 81 I. C. C. 482 the Commission found rates on cattle, calves, hogs and sheep from Kansas City to Texas points unreasonable for the future to the extent that they might exceed rates under the southwestern scale. None of those scales appear to furnish a standard of rates that the Commission would be justified in prescribing in the entirety for general application to shipments of horses and mules from the southwest. HELD: Rates charged and applicable unreasonable to extent they exceed a distance scale ranging from 24c single line and 27c joint line for 100 miles to 78c single and joint lines for 1,000 miles. Horses and Mule rates in the Southwest, 1924, 93 I. C. C. 479.

(i) Respondents proposed to increase rates on cattle and calves, carloads, from New Mexico, western Oklahoma and northwestern and southwestern Texas to Omaha, Nebr. Most of points of origin are on the Rock Island, E. P. & S. W., and New Mexico Central. The purpose is stated to be the reestablishment of a fair and nonprejudicial relationship of rates from those points of origin to Omaha and Kansas City. Prior to the general increases of August 26, 1920, the rates on cattle and calves from a majority of the points of origin referred to were 8c higher to Omaha than to Kansas City. The general increases of 1920 increased this spread to 11c. The record is not sufficiently complete to enable the Commission to determine what would be a reasonable and nonprejudicial relationship between the rates to Kansas City and Omaha. HELD: Schedules not justified. Livestock from Southwest to Omaha, 95 I. C. C. 405.

(j) Complainant attacked rates and minimum weights on sheep and lambs in double deck cars, from Montreal, Can., to New York and Somerville, Mass. near Boston as unreasonable. Montreal is 387 miles from New York via the C. N., D. & H., and N. Y. C. Via the N. Y. C. is 502 miles. From Montreal to Somerville the short line distance is 330 miles via C. N., C. V., and B & M. The N. Y. C. has open a route to Boston by way of Rutland, over which it has trackage rights, and the B. & A., 520 miles, but there is no carload rate on sheep and lambs for application over this route. Rates to New York over short line routes was 50c minimum 22,000 pounds, over the N. Y. C., 7c minimum 18,000 pounds. To Boston over short line route 51c minimum 22,000 pounds. Rates sought are fifth class

of 41.5c to New York and 44c to Somerville, minimum 18,000 pounds. Subsequent to the hearing, on March 1, 1924, the 51c commodity rate to Boston was canceled, thereby making applicable via G. T. Ry the joint fifth class rate of 44c, minimum 22,000 pounds. While it is true that the minimum of 22,000 pounds appears to be excessive, it must not be overlooked that the minimum is a part of the rate, and in order to entitle complainants to an award of reparation it must be found that they paid unreasonable charges on their shipments. The combination rate which would become effective in the event of the lines within the United States ceasing from participating in the joint rate from Montreal would undoubtedly produce total charges in excess of those returned under the joint rate. HELD: Rates and minima attacked not unreasonable, complaint dismissed. Swift & Co. v. G. T. Ry., 98 I. C. C. 649.

(k) Proposal to establish in southern territory an estimated weight of 1,000 pounds per animal on horses and mules, when actual weights are not furnished by shipper, found justified. Purpose of proposed schedules is to provide a method for fair ascertainment of charges without delays incident to weighing and without temptation for overcrowding that a charge per car offers. Application of a reasonable estimated weight is desirable from standpoint of both shippers and carriers, as it has effect of reducing delays, such as are incident to weighing, and cost of feeding in transit, and estimated weight here proposed does not appear excessive. Estimated Weights on Horses and Mules, 91 I. C. C. 215.

(l) Upon further hearing, single-line distance rates authorized to be established on livestock to, from, and between points in Southeast in original report, 74 I. C. C. 419, should be applied over two or more carriers under same management and control. Term "carriers under same management and control" understood to refer to carriers generally controlled through ownership, lease, or otherwise, to extent of controlling traffic policy, even though separate corporate entity may be maintained. Blackshear Mfg. Co., 87 I. C. C. 654, 664. Livestock to, from, and between Points in the Southeast, 91 I. C. C. 292.

(m) Carload minima on, sheep, lambs, goats, and kids in double-deck cars, in western classification territory found so directly and intimately related to rates that propriety of minima can not be determined without considering the measure of the rates, and such minima, so considered, found not unreasonable or otherwise unlawful. Stanfield v. O. W. R. R. & N. Co. 91 I. C. C. 598.

(n) Complainant attacked as unreasonable, unjustly discriminatory, and unduly prejudicial the rates on beef and stock cattle, in carloads, calves, sheep, goats, and hogs in single deck and double deck cars, from Missouri, Oklahoma, Kansas, Colorado, Arizona, New Mexico and Texas, over interstate routes, to El Paso; on fresh meats and packing house products, carloads, and in peddler cars, from El Paso to Arizona, New Mexico and Tex.; cottonseed oil, meal, cake and hulls, carloads, from Arizona and California to El Paso, and lard substitutes and vegetable cooking oils, carloads, from El Paso to Arizona, Colorado, New Mexico, California, Texas, Oklahoma, Kansas, Missouri and other points; that defendants refuse to maintain joint through routes between El Paso, on the one hand, and points in Texas, Arizona, New Mexico, and Oklahoma, on the other hand, for the transportation of cattle and other livestock to El Paso and fresh meats and packing house products from El Paso; that rates on ice, carloads, from El Paso to Arizona and New Mexico are unreasonable. In I. & S. 2038 respondents proposed readjustments involving both increases and reductions in the carload rates on livestock in single deck and double deck cars between Arizona and New Mexico on the one hand and Deming, N. M., and El Paso on the other. El Paso is located in the extreme western portion of Texas, near the boundary line between that state and New Mexico. It is served by the T. & P., S. P., E. P. & S. W., and Santa Fe. Livestock. Generally speaking the rates on livestock to El Paso from all points in Texas and points in New Mexico on and east of the line of the Santa Fe extending northerly from El Paso through Belen, N. M., to Albuquerque, N. M., are on the basis of the 1716 scale from points in New Mexico on the Santa Fe west of this line and points in Arizona north and west of Tuscon the rates to El Paso are higher than those for equal distances under the 1716 scale. From points on the S. P., and Southwestern east of Tuscon the

rates to El Paso are generally lower than the 1716 scale. At time of hearing rates on beef cattle to El Paso from points on the Santa Fe west of Belen and Albuquerque were made by combination on Belen, but since the hearing rates have been established under 26 I. C. C. 37. In I. & S., 2038 the carriers proposed to revise the rates on livestock from Arizona and New Mexico on the S. P., and Arizona Eastern to El Paso to conform with the same scale. Generally speaking the effect of the proposed schedules would be to reduce rates from points west of Tuscon and increase them from Tuscon and stations south and east on (1) horses, mules, burros, donkeys, asses, and jacks, on feeder cattle, and on fat sheep, also goats, in single and double deck cars; to cause large increases from practically all stations on beef cattle and hogs in single deck and double deck cars; and to cause substantial reductions from nearly all stations on feeder sheep in single and double deck cars. The rates proposed are said to be graded on a basis consistent with other interstate rates on livestock now in effect between Texas on the east and California on the west. The rates here proposed on feeder cattle represent mostly reductions, with a few slight increases, from stations west of Tuscon. From Tuscon and stations south and east, the increases would be from 10 to 46%. The scale on this stock, as a whole would be from 26 to 60% higher than the southwestern rates on the same stock at a minimum of 20,000 pounds per car. On feeder sheep in single deck cars, chiefly reductions are contemplated from stations west of Tuscon and small increases from Tuscon and south and east, but the proposed basis would be considerably higher than that in effect in Texas and Oklahoma. In double deck cars, in all but three instances, reductions would result, but the basis proposed would average less than 20% over the Texas rates, at a minimum of 12,000 pounds. HELD, increases proposed not justified. Proposed reductions not protested. Rates on livestock from points on the E. P. & S. W., the Santa Fe running north from El Paso to the Colorado-Kansas state line are upon the modified 1716 scale. This scale also applies from points in Texas. As to these rates there is no complaint. From points on the Silver City branch of the Santa Fe, which connects with the main line at Deming, the rates to El Paso are on a higher basis than the rates under the 1716 scale in amounts ranging from 3.5c to 7. With very few exceptions, however, the rates on beef cattle from points in New Mexico are generally as low as or lower than the 1716 scale. The evidence in this record is not such as to warrant a finding as to whether or not the failure to publish rates based upon the short route in every instance results in unreasonable rates or is otherwise unlawful. HELD, rates attacked on livestock to El Paso not unreasonable except rates from Phoenix division of the Arizona Eastern to El Paso are unreasonable and unduly prejudicial to extent they exceed rates based on scale applicable from the same points to Los Angeles. HELD, since July 3, 1921 complainant entitled to reparation. **Fresh Meat and Packing House Products Including Vegetable Cooking Oils and Lard Substitutes.** Rates on fresh meat and packing house products, carloads, from El Paso to all points in Texas, over interstate routes, are on the basis of the 1716 scale and complainants offered no evidence to indicate that the distances used in arriving at these rates are improper. Rates on these commodities, carloads, from El Paso to some points in the eastern portion of New Mexico are predicated upon the 1716 scale but they are not those for the short line distances in all instances. Class rates, or commodity rates, materially higher than those under the 1716 scale apply on these articles from El Paso to all other points in New Mexico and all points in Arizona. Fresh meat and packing house products are rated third and fifth class, in western territory. Generally speaking, vegetable cooking oils and lard substitutes take the same rates as packing house products. The evidence in the present record indicates that for short distances the rates on some commodities from El Paso to New Mexico points are lower than rates on the same commodities between Texas points. Where this situation exists the New Mexico points apparently have a more favorable basis of rate to El Paso than exists between points in Texas differential territory for corresponding distances. Rates on fresh meats and packing house products from El Paso to points in New Mexico and Arizona are unreasonably high. Packing houses located at Fort Worth, Oklahoma City, and Wichita ship fresh meat and

packing house products to Arizona, New Mexico and western Texas in both carload and peddler car quantities in competition with complainant. To points within about 200 miles from El Paso the rates generally are lower from El Paso than from the competitive points, but to points distant more than 200 miles the rates are much lower from the competitive points than from El Paso, although El Paso from a distance standpoint is more favorably located. There are no commodity rates on fresh meats and packing house products in less than carloads or peddler car quantities, from El Paso to points in Arizona, New Mexico and Texas over interstate routes. Class rates apply on such shipments. HELD, rates on fresh meat and packing house products, including vegetable cooking oils and lard substitutes, carloads, in effect on and after July 1, 1922 from El Paso to Arizona and New Mexico are unreasonable to extent they exceed for 10 miles 17c on fresh meats carloads and 25c less carload and packing house products 14c carloads and 18c less carloads to 1000 miles rates carloads of 158c less carloads 240c on fresh meats and 131c carloads and 171c less carloads, on packing house products; that interstate rates maintained on peddler car quantities of fresh meat and packing house products from Fort Worth, Tex., Oklahoma City, Okla., and Wichita, Kans., to Arizona, New Mexico, and Texas differential territory result in undue preference of packers at Fort Worth, Oklahoma City and Wichita and defendants should remove the undue prejudice by establishing from El Paso the rates mentioned, reparation awarded. **Cottonseed Products.** Cottonseed oil is used in the manufacture of cooking oils and lard substitutes. Cottonseed cake and meal and hulls are used as feed for livestock. The evidence of record relates only to rates on these commodities from points in California and Arizona. The basis for the rate of 56.5c on cake and meal from California and Arizona to El Paso is to be found in 35 I. C. C. 215. It appears upon this record that there is no present necessity for a mileage scale of rates on cottonseed products from Arizona and California El Paso as requested, HELD, rates on cottonseed oil in tank cars from Los Angeles, Calexio, and El Centro, Calif., and from Phoenix, Ariz., to El Paso are unreasonable to extent they exceeded from Los Angeles, 67c, from Calexio, 61c, from El Centro, 61c, and from Phoenix, 50c; rates on cottonseed cake, meal and hulls from and to same points unreasonable to extent they exceeded from Los Angeles, 51c on cake and meal and 41c on hulls; from Calexio and El Centro 46c on cake and meal and 37c on hulls; and from Phoenix 40c on cake and meal and 32c on hulls. **ICE.** Ice is rated class E. Commodity rates somewhat lower than class E rates apply from El Paso to New Mexico and class E applies to other points in New Mexico and Arizona. HELD, rates on ice unreasonable to extent they exceed 10 miles and less 8c single line and 10c joint line to 500 miles at 42.5c single and 44.5c joint line. Peyton Packing Co. v. Arizona Eastern Ry., 100 I. C. C. 4.

(o) Director general cancelled "per car" rates on livestock and established rates in cents per 100 pounds. After Federal Control terminated carriers restored "per car" basis. FOUND: Charges on shipments moving during period when rates in cents per 100 pounds were in effect found not unreasonable. Complainants depended almost entirely upon showing that increases resulted from the change but they furnished no comparisons by which reasonableness may be judged. Even if it be granted that increased rates resulted, this alone would not prove them unreasonable for such increases might have been justified by increased cost of transportation and increased value of livestock during period under consideration. Dickerson v. Director General, 93 I. C. C. 304.

(p) Contention that on mixed c. l. shipments of live stock unreasonable rates were assessed because of enforcement of mixed-carload rule, which provides that highest rate and highest minimum applicable to any class of stock contained in the car shall govern, not sustained. This was the usual method of computing rates on mixed carloads throughout United States generally, its application to livestock shipments had been previously approved by commission, and while subsequently in 81 I. C. C. 305, a different rule for the future was prescribed, this finding was not intended to apply retroactively and does not establish unreasonableness in the past with respect to shipments here considered. Dickerson v. Director General, 93 I. C. C. 304, 307, 308.

(q) Proposed increased rates on cattle and calves from points in New Mexico,

Oklahoma, and Texas, to Omaha, for purpose of establishing from points of origin to Omaha and Kansas City a reasonable rate relationship, disrupted by application of the general increases and reductions, found not justified. Such increases would make permanent the highest differential brought about by the general percentage changes and would throw rates in issue out of line with rates from other points in the Southwest. Moreover, differences in distance to Omaha and Kansas City are generally ignored on cattle from the West and Northwest and to take mileage into consideration from one section and not from another would be unfair. Livestock from Southwest to Omaha, 95 I. C. C. 405.

(r) Proposal of carriers in c. f. a. territory to restrict applicaton of combination rule on livestock so that it will only apply where all factors used in arriving at through rates from origin to ultimate destination carry reference thereto and authorize an affirmative application thereof, found not justified. Such restriction would not merely relieve respondents of assumption of deductions from western lines' separately established rates, but also from their own, since the rule would not apply where any carrier in the through route did not make appropriate reference thereto. This would result in increased charges, the burden of justifying which rests upon respondents. Moreover, from some origin points tariffs of western carriers still refer to the rule, and an inadmissible result of the restriction would be to make rates to be applied by respondent eastern lines depend upon separate tariffs of western lines. This would not accord with requirements of section 6 of the act. Combination Rule on Livestock, 93 I. C. C. 458.

(s) Rates on horses and mules between Fort Worth and points in Arkansas, Kansas, Oklahoma, western Louisiana, southern Missouri, portions of Colorado and New Mexico, and in Texas other than in differential territory, found unreasonable and unduly prejudicial to Fort Worth and unduly preferential of Wichita, Kansas City, St. Joseph, St. Louis, and Oklahoma City. Reasonable and nonprejudicial distance rates prescribed. Horse and Mule Rates in the Southwest, 1924, 93 I. C. C. 479.

(t) Upon further consideration of Wichita Board of Commerce, 60 I. C. C. 536, Horses and Mules from Kansas City, Mo., 69 I. C. C. 97, and Kansas City Chamber of Commerce, 89 I. C. C. 22, previous findings modified by finding rates on horses and mules from Wichita and Kansas City to destinations in Arkansas and in certain portions of Louisiana and Texas unreasonable and unduly prejudicial in favor of St. Louis. Reasonable and nonprejudicial bases of rates prescribed. Horse and Mule Rates in the Southwest, 1924, 93 I. C. C. 479.

(u) Proposed changes in rules governing transit on hogs at Watertown, S. Dak., resulting in increased through charges on shipments moving inbound in single-deck cars and outbound in double-deck cars, found justified. Proposed rules remedy the existing situation in respect of tonnage originating at Watertown and there added to through shipments by providing for application of local rate from Watertown instead of through rate from point of origin of initial shipment. Moreover, the weight of this added tonnage may be combined with the weight of the inbound movement to make up the required minimum. Transit on Hogs, 98 I. C. C. 153.

(v) It is the opinion of the commission that under the present rules here involved the through double-deck rate on hogs applies on shipments moving inbound to the transit point in single-deck cars and outbound in double-deck cars. Transit on hogs, 98 I. C. C. 153, 154.

(w) The showing that double-deck loading by reducing the number of car-miles increases the car-mile revenue, does not change the equally apparent fact that respondent would be compelled to accept double-deck rates for that portion of the movement made in single-deck cars. Under the proposed rules car-mile revenues would be further enhanced. Transit on Hogs, 98 I. C. C. 153, 155, 156.

(x) Proposed changes in rules governing the bedding of cars used for the transportation of livestock in central territory, resulting in increased charges and the limitation of services performed, found not justified. Proposed schedules would eliminate present common-carrier obligation, as set forth in 80 I. C. C. 747 and 87 I. C. C. 157, to furnish suitable bedding and would substitute therefor an obligation to place in cars a specified amount of material, and when that amount is insufficient, to force shippers to furnish themselves, or to secure through carriers from private concerns, at charges not subject to regulation, suf-

ficient material to complete the bedding. Suspended schedules ordered canceled. Bedding Livestock, 98 I. C. C. 323.

(y) Charges assessed on mixed carload shipments of livestock from various points in Texas to North Fort Worth, found inapplicable in that they exceeded those accruing at the "rate and minimum weight on straight carloads of the highest-rated livestock in the car," provided for in tariffs. Reparation awarded. Barse Live Stock Commission Co. v. Director General, 98 I. C. C. 539.

(z) Based upon the present yield per car and the volume of traffic, charges resulting from rates on sheep and lambs, in double-deck cars, from Montreal, Canada, to New York, N. Y., and Somerville, Mass., and minima provided in connection therewith, found not unreasonable, as compared with rates and minima on like traffic between other points for similar distances. Swift & Co. v. G. T. Ry. Co. of Canada, 98 I. C. C. 649.

(aa) Carload minima on sheep and lambs in double-deck cars, from Montreal, Canada, to New York, N. Y., and Somerville, Mass., found not unreasonable. While it is true that the minimum appears to be excessive, it must not be overlooked that it is a part of the joint rate found reasonable. Swift & Co. v. G. T. Ry. Co. of Canada, 98 I. C. C. 649.

(bb) Respondents proposed increased interstate rates on horses and mules, carloads, to, from, and between points in the Southwest, more particularly from and to points in Texas differential territory and New Mexico to and from the markets of Fort Worth, Tex., Kansas City, St. Joseph and St. Louis, Mo., Wichita, Kas., and Oklahoma City, Okla. The tariffs under suspension were published in purported compliance with the order in 93 I. C. C. 479. Transportation conditions in differential territory and in New Mexico are substantially less favorable than in southwestern scale territory. In general, differential territory and New Mexico are semiarid, of comparatively rough topography, and sparsely settled. Compared with the territory to the east, differential territory and New Mexico receive and forward per mile of line but a small amount of freight. It has been and is the practice of respondents to add to the main line basis of rates certain arbitraries from and to points on certain branch and independent lines. HELD, suspended schedules not justified. For future maximum reasonable rates from the markets mentioned, on the one hand, and Texas differential territory and New Mexico, on the other rates, will be rates constructed on basis of 93 I. C. C. 479, plus the differentials for the respective short line continuous distances outside southwestern scale territory. Rates on horses and mules in the southwest, 102 I. C. C. 87.

(bba) Proposed increased interstate rates on horses and mules to, from, and between points in the Southwest, more particularly from and to points in Texas differential territory and New Mexico to and from the markets of Fort Worth, Kansas City, St. Joseph, St. Louis, Wichita, and Oklahoma City, published in purported compliance with commission's order in Horse and Mule Rates in the Southwest, 1924, 93 I. C. C. 479, found not justified based on comparisons of numerous bases of rates, including scales of distance rates in effect on horses and mules to, from, or between points in Texas, New Mexico, and the territory west and north thereof. Maximum reasonable interstate rates, based differentially, prescribed for future. Rates on Horses and Mules in the Southwest, 102 I. C. C. 87.

(bbc) Shipment of stock cattle from Limon, Colo., to Atkinson, Nebr., stopped in transit for rest, feed, and water, moved over a route at a rate in excess of that which applied over another available route; FOUND: Shipment misrouted in that it was the duty of originating carrier to forward it over the lowest-rated route, in absence of specific proof or evidence that the higher-rated route was designated by shipper. Reparation awarded. Omaha Chamber of Commerce v. C., R. I. & P., 102 I. C. C. 103.

(cc) Complainant attacked combination rates charged on 70 cars of cattle shipped between Oct. 30, and Nov. 15, 1919 from Edmonton and Patricia, Alberta, Canada, to Chicago and alleged overcharge of 5c per 100 pounds. The shipments originated on the C. P., and were delivered to that carrier to the Soo Line at Portal, N. D. The shipments were accepted by the C. P., for transportation as far as South St. Paul or New Brighton only. Such bills of lading and livestock contracts of the C. P., as were introduced in evidence named St. Paul as the destination. At the time of these shipments and during a period prior thereto the C. P., refused to accept

cattle for movement to points beyond St. Paul, assigning as a reason therefor difficulty and delay in securing the return of its cars. As far as St. Paul the cars remained in the possession of the Soo Line, a carrier closely allied with the C. P. The applicable rates to St. Paul were joint rates of 65c from Edmonton and 64c from Patricia, from St. Paul to Chicago 25c. The record contains uncontradicted testimony that there was an original and continuing intention on the part of shippers that the cattle should move through to the Chicago market. The tariff naming the rate from St. Paul to Chicago was subject to the Morris tariff naming rules for constructing combination rates. The intention as carried out determined, as a matter of law, the essential nature of the movement. Within contemplation of law and within the terms of the tariff the shipments were through continuous shipments from the Canadian points of origin to Chicago and subject to the combination rule. HELD, applicable rates 85c from Edmonton and 84c from Patricia, reparation awarded. Chicago Livestock Exchange v. Director General, 102 I. C. C. 452.

(cca) Interstate rule providing free transportation, to market only, of caretakers accompanying single-car shipments of livestock from points in Washington, Oregon, Idaho, and Montana, to points in Washington and Oregon, while granting free return transportation to caretakers accompanying two or more cars, found not unreasonable or unduly prejudicial. Using a single car as a unit, present rule provides as much free transportation per loaded car-mile for single-car caretakers as is accorded those with two or more cars. Cattle & Horse Raisers Asso. v. A., T. & S. F., 102 I. C. C. 573.

(dd) Complainant attacked commodity rates charged on horses and mules, carloads, from Wichita, Kas., to Houston, Tex., and other destinations as unreasonable and in violation of the fourth section. Shipments moved between Jan. 1, 1919 and July 20, 1920 over lines operated by the Director General. Defendant admits rates charged unreasonable to extent they exceeded aggregate of intermediate rates. HELD, rates attacked unreasonable to extent they exceeded aggregate of intermediates, reparation awarded. Wichita Chamber of Commerce v. Director General, 102 I. C. C. 745.

(ee) Complainant attacked commodity rates charged on cattle, carloads, and calves, sheep, lambs, goats, kids, and hogs in single and double deck cars from eastern and central Oregon and southern Idaho to North Portland, Ore., and Seattle and Tacoma, Wash., as unreasonable and unduly prejudicial. Respondents proposed to increase the rates on cattle and sheep, carloads, from stations on the O. S. L., north of Jones, Idaho to Portland, Seattle and points taking the same rates. Expedited service is afforded livestock trains of the O. S. L., into North Portland. Rates to Tacoma and Seattle are grouped and complainants do not seek a disruption of that group. Except in a few instances, the rates per car on double deck carloads of sheep are the same as the rates on cattle. HELD, rates attacked are not unduly prejudicial but unreasonable to extent they exceed rates per standard car, on cattle fat or stock, carloads, and on sheep or goats in double deck cars, the amounts per car set forth herein for the respective distances over the shortest workable route. On sheep or goats single deck 80 per cent. On hogs in single deck cars. 90 per cent and double deck cars 125 per cent of the rates on cattle. The rates approved range from $53.00 per car for a distance of 100 miles to $156.50 per car for 1,000 miles. Oregon Cattle & Horse Raisers Asso. v. N. P. Ry., 104 I. C. C. 51.

(ff) While commercial conditions and carrier competition are factors to be considered in determining lawful rates, they should not be given such importance as completely to outweigh factors more directly related to transportation, such as the cost and value of the service. In general, if livestock and cured meats are entitled to rates lower than those on fresh meats in one instance, they should also be entitled to lower rates substantially in the same proportion and vice versa, in all other instances where the transportation conditions are similar. Morrell & Co. v. N. Y. C. R. R., 104 I. C. C. 104, 134.

(gg) Complainant attacked commodity rates charged on numerous shipments of livestock, carloads, from Fremont, Ind., and Montgomery and Reading, Mich., to East Buffalo, N. Y., since Sept. 15, 1923 as unreasonable and in violation of section four. The shipments may be divided into two classes, (1) cattle in single deck cars, or mixed livestock taking the cattle rate when in double deck cars, and (2) hogs in single deck cars.

The rates charged were 34c and 39c respectively. These were in effect from Angola, Ind., a farther distant point over a certain route. The rates sought, 32 and 37c, were specifically published from Hillsdale, Mich., a farther distant point over another route. The tariff in which the specific rates from Hillsdale and Angola are named did not restrict the routing to any certain junction point or points on defendants line. Therefore the rates from both Hillsdale and Angola applied through Waterloo and the rate from Angola applied through Hillsdale. Over either route the points of origin of these shipments were directly intermediate. The intermediate clause in the tariff provided in effect that where rates were not specifically named from points of origin located directly between two points from which rates were named, such intermediate point or points would take the higher of the named rates. In another section of the tariff distance rates were named which were to be applied for the distances traversed unless rates made by use of the intermediate clause were lower. The distance rates from Fremont and Montgomery were higher than the rates made by use of the intermediate clause, which, over both routes, were the Angola rates. The distance rates from Reading were the same as the Angola rates. The rates charged were based on those found reasonable in another proceeding, and no evidence, other than the fact that they are higher than the rates from Hillsdale, was directed against their reasonableness during the period of movement. The rates from Hillsdale, although technically applicable through these points of origin, are lower than rates based on those found reasonable by the Commission for the distance over that route. There is nothing to indicate that shipments from Hillsdale or from these origin points have moved over the longer route, but they might so move. This opening for an authorized departure from the fourth section should be promptly corrected. HELD, charges applicable and not unreasonable, complaint dismissed. Ohio Farm Bureau Federation v. N. Y. C. R. R., 104 I. C. C. 490.

(hh) Complainant attacked combination rates charged on live hogs, carloads between June 25, 1918 and Jan. 1, 1922 from Iowa and adjacent states to New England, as in violation of section 6. The hogs are shipped in single deck cars to Squire & Company, East Cambridge, Mass., with instructions to stop for feed, water, weighing, sorting, double decking, and in some cases to complete loading, at one of the Mississippi river crossings. The practice of collecting charges subsequent to June 25, 1918 varied somewhat, but generally Squire & Company paid at the Mississippi river, the June 24, 1918 rates increased 25 per cent and from the river a rate of 50c which is the June 24, 1918 rate increased 7c. The purpose of G O 28 and of the tariffs involved which were published pursuant thereto is plain—to make a maximum increase of 7c per 100 pounds on shipments of livestock whether handled by joint rates or on rates made by combination of separately established rates. The tariffs permitting transit on hogs at the Mississippi river provided that the through rate would be protected, and as no joint rates were published from Iowa stations to the east they specified that certain combination through rates would be charged. HELD, between June 25, 1918 and Feb. 28, 1920 via other carriers, and between August 29, 1918 and Feb. 28, 1920 via the Burlington the rates applicable were combination rates in effect June 24, 1918 increased 7c; that rates charged were unreasonable to extent they exceeded rates as above, reparation awarded. North Packing & Provision Co. v. Director General, 104 I. C. C. 607.

(ii) Complainant attacked commodity rates charged on hogs and sheep, in single deck and double deck carloads, shipped during January, February and March 1918 from South Omaha and various points in Iowa to Kansas City and Wichita, Kas., as unjust and unreasonable. During this period the rates in effect on livestock from and to these points were dependent upon value. Effective on various dates subsequent to the period of movement the rates on ordinary livestock based on value were eliminated from defendants tariffs, and the basic rates were made applicable regardless of value. In 100 I. C. C. 471 the Commission made a distinction between rates on which a declaration of value was required as the released rates, which is forbidden under section 20, and those where the declaration required is the actual value of the shipment, in which the underlying principle is that the articles covered by the different groups of valuations are in fact so different from a transportation standpoint as to constitute in effect different commodi-

ties. HELD, complaint dismissed. Cudahy Packing Co. v. Director General, 104 I. C. C. 705.

(jj) Complainant attacked commodity rates charged on cattle and hogs, carloads, from Chicago, Ill., Indianapolis, Ind., and South St. Paul, Minn., to Allentown, Pa., as unreasonable, unjustly discriminatory, unduly prejudicial and inapplicable. Complainants plant is on the Lehigh Valley, within the switching limits of Allentown, 0.75 mile from East Penn Junction, Pa., the point of interchange between the Reading and the Lehigh. The complaint is directed primarily against the rate applicable from Chicago and Indianapolis over the Pennsylvania to Harrisburg, Pa., Reading to East Penn Junction and Lehigh beyond. Joint rates are not published to complainants plant over the route traversed, but do apply to Allentown and East Penn Junction when for Reading delivery. On shipments over the route traversed fourth and fifth class rates applied and now apply from East Penn Junction to complainants plant. Joint rates which cover delivery to complainants plant, and which are not here attacked were and are now in effect over the following routes: Pennsylvania and other western carriers to Buffalo and Lehigh beyond; Pennsylvania to Mount Carmel, Pa., and Lehigh beyond; B. & O., to Cumbo, W. Va., C. V., to Shippensburg, Pa., Reading to East Penn Junction and Lehigh beyond. The route via Harrisburg is from 30 to 90 miles shorter than the other routes. The Lehigh and Reading also published rates of 5.5c prior to July 1, 1922, and 5c thereafter for switching carload traffic between industries on the Reading at East Penn Junction and industries on the Barber branch of the Lehigh at Allentown. Under the present rates, the charges on cattle and hogs from East Penn Junction to complainants plant would amount to $25.30 and $36.80 per carload. These charges seem excessive, especially when it is considered that, except for the expedited movement, the service required in handling a car of livestock from East Penn Junction to complainants plant is not shown to be essentially different from that required in moving a car loaded with some other commodity. HELD, through rates attacked unreasonable to extent that the component from East Penn Junction to complainants plant at Allentown exceeded 5.5c prior to July 1, 1922, and 5c thereafter, reparation awarded. Arrogast & Bastian Co. v. L. V. R. R., 107 I. C. C. 105.

(kk) Complainant alleged that he shipped one car of horses from Wichita, Kas., to Riverside, Calif., on Dec. 28, 1922 and one car of horses from Wichita to Colorado Springs, Colo., on June 14, 1923; that each of said shipments were for exhibition purposes; that said carloads were returned from said destination to Wichita on March 26 and August 28, 1923, respectively; that complainant paid the tariff rates for the movement from Wichita and complied with the tariff provisions entitling him to free return movements; that defendant has demanded that complainant pay the full tariff rates for said return movements; and that rates demanded are in violation of section 6 of the act. The horses in these shipments were so-called polo ponies and were used in polo tournaments at Riverside and Colorado Springs. Defendant urgues that a polo tournament is not "an exhibition or fair held under public auspices." Complainant asserts that a polo game is an "exhibition" of the ponies which corresponds to the riding of saddle horses or driving of coach horses at fairs. The view that a polo tournament is merely an exhibition of the ponies accords to their riders a role quite below that played by them. A polo tournament is a series of games testing the skill of both riders and ponies and in which the former are the dominating factors. HELD, rates attacked applicable complaint dismissed, undercharges should be collected. Vickers v. A. T. & S. F. Ry., 107 I. C. C. 575.

(ll) Complainant attacked combination rate charged on 38 cars of stocker cattle shipped April 24, 1922 from Alfred, Tex., to Foraker, Okla., as unreasonable and illegal. Cattle were shipped to Foraker to be fattened for market. They originated in the socalled quarantine area of Texas and were subject to federal and state laws for the prevention and spread of infectious or contagious diseases among livestock. These shipments were dipped twice at Fort Worth, Tex., upon arrival at Foraker 18 of the cars were unloaded into the railroad stockyards before further inspection developed that the cattle were not free from ticks. They were then ordered to Oklahoma City for further dipping. When this was accomplished the cattle were again forwarded to Foraker and de-

livered. Shipments moved S. A. & A. P., Waco, Tex., MKT through Muskogee, Okla., to Nelagony, Okla., and Midland Valley beyond, distance 769 miles. The tariff naming the rates provided for the application of the short line rate over any other routes of participating carriers accepting the freight for transportation. HELD, charges not applicable, as they should have been 42c rate applicable for original movement to Foraker, plus 17c per car mile for the 312 mile haul from Foraker to Oklahoma City and return plus $7 for stopping, shipments overcharged, applicable rates not unreasonable, complaint dismissed. Borroum & Tucker v. Midland Valley R. R., 107 I. C. C. 668.

(mm) Rates on livestock from points in Texas differential territory, New Mexico, and Arizona to El Paso, found not to have been or to be unreasonable or otherwise unlawful, except that rates on certain livestock from the Phoenix division of the Arizona Eastern found unreasonable and unduly prejudicial to the extent they exceed rates established upon the scale contemporaneously applicable from the same points to Los Angeles, Calif. Reparation awarded. Peyton Packing Co. v. A. E. R. R. Co., 100 I. C. C. 4.

(nn) Proposed readjustments, involving increases and reductions in rates on livestock in single-deck and double-deck cars between points in Arizona and New Mexico on the one hand and Deming, N. Mex., and El Paso, Tex., on other, to conform with the scale of rates prescribed in American National Livestock Asso., 26 I. C. C. 37, found not justified as to increases, the proposed reductions not being protested. Suspended schedules ordered canceled without prejudice to the filing of new schedules publishing the proposed reduced rates. Peyton Packing Co. v. A. E. R. R. Co., 100 I. C. C. 4, 8, 15.

(oo) No change has been justified in the present practice of transporting caretakers of live poultry. Dairy Products from Southern Points, 100 I. C. C. 756, 762.

(pp) Upon further hearing, joint-line rates under agreed distance scales on livestock to, from and between points in the Southeast found not justified for interstate application over certain specified lines under common management and control, and wherever such rates have been applied over these lines since date of establishment under authority conveyed in original report, 74 I. C. C. 419, they have been, are, and for the future will be, unreasonable to extent they exceeded, exceed or may exceed single-line rates under the agreed scales, as set out in appendixes to original report, on a joint or continuous mileage basis. Livestock to, from, and between Points in Southeast, 101 I. C. C. 105.

(qq) Main-line rates on beef cattle from points on defendants' lines in Arizona to points in their lines in California found not unreasonable or otherwise unlawful as compared with contemporaneous rates on like traffic to same points from producing districts in California and from points of origin in other states for comparable distances, except that single-line rates in effect on Southern Pacific and its subsidiary lines for distances between 5 and 230 miles and between 1000 and 1200 miles are unjust and unreasonable to extent they exceed for corresponding distances rates contemporaneously maintained by Santa Fe. Reasonable basis of rates prescribed. Arizona Cattle Growers Asso. v. A. Ry. Co., 101 I. C. C. 181.

(rr) Rates on feeder cattle from points in Arizona on defendants' lines, except the Tucson, Cornelia & Gila Bend and the Apache, to points in California, found unjust and unreasonable to extent they exceed 80 per cent of the rates on beef cattle from and to same points. Reasonable basis of rates prescribed. Arizona Cattle Grower Asso. v. A. Ry. Co., 101 I. C. C. 181, 188.

(ss) Rates on beef cattle from branch-line points on defendants' lines in Arizona to points in California or from other points on defendants' lines in Arizona to branch-line points on their lines in California; found unjust and unreasonable to extent they exceed rates contemporaneously mantained for corresponding distances from and to points on their main lines in Arizona and California. Reasonable basis of rates prescribed. Arizona Cattle Growers Asso. v. A. Ry. Co., 101 I. C. C. 181, 188.

(tt) Rates on beef and feeder cattle from points on defendants' lines in Arizona to points on their lines in California for joint line hauls in excess of 500 miles, found unjust and unrea-

sonable to extent they exceed rates for single-line hauls of same length, subject to observance of the joint-line rate for 500 miles as a minimum. Reasonable basis of rates prescribed. Arizona Cattle Growers Asso. v. A. Ry. Co., 101 I. C. C. 181, 188.

(uu) Rates on fresh meat, fresh frozen meat and packing-house products from Ogden, Utah, to various interstate destinations, except rates on fresh frozen meat to New York, Brooklyn, and Boston, found not unreasonable, discriminatory or unduly prejudicial. While there is competition in the purchase of livestock at Ogden and in contiguous territory, most of such competition comes from brokers and speculators and not, as complainant contends, from packers at the river cities and Chicago. Ogden Packing & Provision Co. v. A., T. & S. F., 101 I. C. C. 236, 252.

(vv) Rival packing houses are entitled to reasonable rates, which should be fairly related, the one to the other, upon the live animals from various points of production and each is also entitled to a reasonable rate, which again should be so related, upon the products to various markets of consumption. Any locality which remains at a disadvantage after this has been done must sustain that burden, which is due to its location with respect to this business. See 22 I. C. C. 160. Ogden Packing & Provision Co. v. D. & R. G., 101 I. C. C. 258, 268, 269.

(ww) Commission, by division 4 in 98 I. C. C. 649, found that the charges resulting from the rates and minimum weights provided in connection therewith on sheep and lambs, in double deck cars, from Montreal, Can., to New York, N. Y., and Somerville, Mass., were not unreasonable, and dismissed the complaint. HELD, original finding affirmed, complaint dismissed. Swift & Company v. G. T. Ry., 109 I. C. C. 45.

(xx) Complainant attacked class A rate of $1.095 charged on horses and mules, carloads, from Memphis, Tenn., to Fort Worth, Tex., as unreasonable and in violation of the fourth section. Shipments made between Oct. 10, 1923 and Jan. 17, 1924 over M. P., to Texarkana and T. & P., 538 miles. The aggregate of intermediate rates was $186 per car, which rate was made effective Nov. 5, 1924 and on April 20, 1925 a rate of 60c, minimum 23,000 pounds, became effective. HELD, rate attacked unreasonable to extent it exceeded $186 per car, reparation awarded. Darnell Commission Co. v. M. P. R. R., 109 I. C. C. 427.

(yy) Complainant attacked commodity rates charged on horses and mules, carloads, since Oct. 15, 1922 from Oklahoma and Kansas to Houston, Tex., as unreasonable, unjustly discriminatory and as compared with relatively lower rates maintained from the same points to Beaumont and other Texas destinations, unduly prejudicial. Subsequent to the filing of the complaint, and prior to the hearing report was issued in 93 I. C. C. 479, and rates established in accordance with the findings therein. HELD, rates attacked not unreasonable but unduly prejudicial to extent they exceeded rates to Beaumont, reparation denied, complaint dismissed. Cook v. A. T. & S. F. Ry., 109 I. C. C. 493.

(zz) Complainant attacked commodity rates on livestock, in single deck and double deck, carloads, from Sioux Falls, S. D., to Chicago, East St. Louis and Peoria, Ill., Milwaukee, Cudahy and Madison, Wis., St. Louis and Kansas City, Mo., Omaha, Neb., Ottumwa, Des Moines, Cedar Rapids and Mason City, Ia., and Albert Lea and Austin, Minn., as unreasonable and unduly prejudicial as compared with rates to the same destinations from St. Paul, Minn., Sioux City, Ia., Omaha, Neb., and Kansas City, Mo., and the failure to accord Sioux Falls the socalled test the market arrangement is unduly prejudicial to Sioux Falls and unduly preferential of Sioux City and Omaha. Sioux Falls is in the southeastern part of the state served by the G. N., Omaha Line, Milwaukee, I. C., and Rock Island. The rates here attacked were prescribed by the Commission in 77 I. C. C. 451. The relative extent of the haul within South Dakota is negligible. The record indicates with clarity that conditions in general are less favorable to St. Louis than to Chicago. But there is no convincing explanation of record why the same factors, although perhaps to a lesser extent, should not make for a higher rate from Sioux City to St. Louis than from the same point to Chicago. The existing disparity between the Sioux Falls and Sioux City rates to St. Louis in view of the difference in distance of about 61 miles, appears wider

than circumstances warrant. Rates applying on the same traffic in the same general region must be looked to, in order that, after allowance is made for such differences in conditions as exist: Sioux Falls may have rates in proper alignment with the rate structure in this territory. It appears from the record that Sioux Falls as a locality or community is endeavoring to build up a livestock market, and that in doing so is confronted by the competition and intrenched influence in the business of the long established markets in this territory, St. Paul, Sioux City, Omaha and Kansas City. HELD, rates attacked to Austin and Albert Lea not unreasonable or unduly prejudicial; rates to Chicago, Peoria, St. Louis, East St. Louis and Kansas City, Milwaukee, Madison, Cudahy, Omaha, Ottumwa, Cedar Rapids, Des Moines and Mason City unreasonable to extent they exceed 37c to Chicago, Peoria, Milwaukee, Madison and Cudahy, 38c to St. Louis and East St. Louis, 25.5c to Omaha, 36c to Kansas City, 30c to Ottumwa, 30c to Cedar Rapids, 27.5c to Des Moines and 26c to Mason City, these rates to apply on cattle, and on calves, hogs and sheep in double deck cars. On hogs and calves in single deck cars the rates may be 115% of the rates on cattle for the same haul, and on sheep in single deck cars, 125% thereof. TRANSIT. HELD, granting by defendants, C. M. & St. P., Northwestern and Omaha of transit at Sioux City while contemporaneously denying like transit at Sioux Falls subjects Sioux Falls to undue prejudice and this should be removed by establishing at Sioux Falls transit arrangements, embracing conditions, restrictions and limitations similar to those maintained at Sioux City. Sioux Falls Livestock Exchange v. A. T. & S. F. Ry., 109 I. C. C. 501.

(3a) Complainant attacked rates, charges and regulations governing the transportation of beef cattle, in carloads, and sheep and lambs, in double deck and single deck carloads, from points in Oregon, Washington, Idaho and Montana to Chicago, Ill., St. Paul, Minn., Omaha, Neb., and other middle western and Missouri river markets as unreasonable, unjustly discriminatory and unduly prejudicial. Livestock usually moves in trainloads. Yard and siding switching, which is injurious to stock thereby is reduced to a minimum. From the more distant points, if the number of carloads is not inadequate for a full train, dead freight may be and sometimes is included in the train until the accumulation of livestock is sufficient to warrant a segregation of the two classes of freight. Expedited service is given on livestock traffic. HELD, rates on beef cattle, carloads, and on sheep and lambs, double deck and single deck cars, from and to points involved unreasonable to extent they exceed rates ranging from 63c and 70c for 1000 miles and under to 103 and 110c for 2000 miles, rates to St. Louis to exceed rates to Omaha by not more than 12c and to Chicago 15c over St. Paul. Reparation held open. American National Livestock Asso. v. O. W. R. R. & N. Co., 109 I. C. C. 621.

(3b) The history of the adjustment showed that the rates had been based upon the minimum weights and a reduction in the minimum could not reasonably be required without giving consideration to the rates applicable in connection therewith. American National Livestock Asso. v. O. W. R. R. & N., 109 I. C. C. 621, 624.

(3c) There is no question that livestock rates yield car mile earnings lower than those on most other commodities. American National Livestock Asso. v. O. W. R. R. & N., 109 I. C. C. 621, 629.

(3d) Respondents propose to revise their rates on calves, in single and double deck carloads, from Texas to various markets outside of the state. The origin points are in central and northern Texas, including the Pan Handle. The destinations are in the territory reachng from Denver, Colo., on the west to Cincinnati, O., on the east. The only proposed changes of importance, however, are in the rates to Kansas City, Mo., and points grouped therewith, such changes being generally increases ranging from 0.5 to 6.5c. The proposal is not only to correct alleged errors but to make the rates fully 15% higher than the cattle rates. The present rates to Kansas City range from 102 to 115% of the rates on cattle. There seems to be no competitive reason for a spread between the rates on cattle and the rates on calves. It does not appear that the rates on cattle were prescribed by the Commission and the record contains no evidence to show that they are reasonable maximum rates. So far as the

record shows, it is as likely that the cattle rates are now too high as that the calf rates are too low. HELD, respondents have justified proposed rates to points other than those to the Kansas City group, rates not justified to points in that group. Calves to Texas, 112 I. C. C. 163.

(3e) Complainant attacked commodity rates on livestock shipped from points west of the Missouri river and west of and including Kansas, Oklahoma, Texas and extreme western Arkansas and Louisiana, to destinations in that territory other than recognized livestock market points, as unreasonable and unduly prejudicial. The rates primarily in issue are those on socalled stockers and feeders, animals which require further development and fattening before they are ready for the market. It would be difficult to exaggerate the complexity of the situation with which the Commission is called upon to deal. The attack is upon rates applicable on livestock throughout half of the United States. The present rates include specific single line and joint line rates to markets and a considerable number of specific rates from and to points other than markets where any considerable volume of movement has developed, mileage rates, class B rates in Pacific coast territory, round trip rates for the movement of stock cattle to and from feeding points, and feeding in transit arrangements under which stock cattle may be started toward a market, stopped for feeding and development, and then moved on to the market at the market rate for the through movement. This record indicates the desirability of a more stable and readily ascertainable basis of rates which will facilitate the movement of stock cattle between ranges and feeding points. In view of the pendency of Docket 15686, however, complaint dismissed. American National Livestock Asso. v. A. T. & S. F. Ry., 112 I. C. C. 197.

LOADING AND UNLOADING

See Allowances §8 (4⅞); Classification §4, §13; Demurrage; Facilities and Privileges §10; Minimiums; Reasonableness of Rates §15½; Transportation §10.

LOCAL RATES AND COMBINATIONS

See Across Lake Rates (b); Advanced Rates §5 (8); Class Rates; Commodity Rates; Evidence §13 (3) (5), §28, §47; Passenger Fares and Facilities §5¾; Reasonableness of Rates §28; Through Routes and Joint Rates §13½, §15, §22.

(a) Fact that certain factors of combination rates are depressed does not prove that combination rates themselves are unduly low. Afterthought Copper Co. v. Director General, as Agent, 89 I. C. C. 346, 347.

(b) Complainant attacked combination rates charged on munition linters in compressed bales, carloads, from Georgia, Mississippi, Tennessee, Arkansas and Oklahoma to Peoria, Ill., Philadelphia, Pa., Kingston, Pa., and Elizabethport, N. J., as illegal and unreasonable. Shipments made during January, February and March 1921 and between July 1920 and May 10, 1921. Charged proportional commodity rates to East St. Louis, Ill., plus the class R26 rates beyond, from Arkansas and Oklahoma, and sixth class rates from the other origins, while hull fiber or shavings took lower rates, namely, specially commodity rates from Arkansas and Oklahoma and class A rates from the other origins. Munition linters consisted of practically all the fiber taken from the seed after the cotton has been removed, that they were reasonably free from hull particles and other impurities, and that the proportion of linter fiber and hull fiber in the material was substantially equal. They bore a close resemblance to ordinary commercial linters, were shipped in the same manner, and prior to the armistice, generally, if not always, received the same rating. On Sept. 7, 1921 joint commodity rates of 38 and 53.5c were established on munition linters to Peoria from Little Rock and Pauls Valley, respectively. Effective Feb. 16, 1922, the southern carriers published a temporary schedule, expiring on July 31, 1922, providing that munition linters should take the same rates as hull fiber or shavings. HELD, cotton linter rates applicable but unreasonable to extent they exceeded cotton seed hull fiber or shavings, reparation awarded. Cotton By Products Company v. Southern Ry., 92 I. C. C. 201.

(c) Complainant attacked combina-

tion rates charged on chemically hardened fiber soles shipped Jan. 17, 1921 from Nashville, Tenn., to Tomahawk, Wis., as inapplicable, unjust and unreasonable. Shipment was described as 220 cases of rubber soles and moved via L. & N., to Evansville, Ind., C. & E. I., and C. M. & St. P. Ry. beyond, applicable rate second class of 59.5c to Evansville and third class rate of 86.5c beyond Textan sole is composed of rubber, fiber, and filler and complainant contended rate on rubber soles was not applicable. HELD, rate of $1.46 charged on boot and shoe findings, counters, heels, soles, or taps, rubber applicable, complaint dismissed. Tomahawk Shoe Co. v. C. M. & St. P. Ry., 92 I. C. C. 315.

(d) Complainant attacked combination rates charged on 13 cars of potatoes between April, May and June 1921, from Columbia Falls Kalispell, and Somers, Mont., to Kansas City, Mo., and Minneapolis and diverted to Anthony, Arkansas City, Goodland, Hutchinson, Wichita and Winfield, Kas., and Ponca City, Okla., as unreasonable and inapplicable. Rates charged $1.125 to Wichita, $1.205 to Ponca City, $1.26 to Goodland, and $1.085 to the other destinations, made up of commodity rates to Kansas City and class C rates beyond. HELD, rates attacked inapplicable, rates applicable were $1.205 to Ponca City and $1.085 to other destinations named, overcharges ordered refunded. Famechon Company v. A. T. & S. F. Ry., 92 I. C. C. 624.

(e) Complainant attacked combination rates charged on cabbage, in bulk, carloads, from East Grand Forks, Minn., to Topeka, Kans., as unreasonable and unduly prejudicial. Shipment moved over the N. P., at Minnesota Transfer, Minn., and Rock Island, 843 miles, applicable combination 78c, composed of class C rates of 31c to Minnesota Transfer and 47c beyond. A joint commodity rate of 54.5c was applicable over the route traversed on potatoes and on mixed cars of potatoes and other class C vegetables, including cabbage. The rates attacked compare favorably distance considered with the rates found not unreasonable in 89 I. C. C. 437 and 81 I. C. C. 626. HELD: Rates attacked not unreasonable, or otherwise unlawful, complaint dismissed. Anderson Commission Co. v. C. R. I. & P. Ry., 93 I. C. C. 241.

(f) Complainant attacked combination commodity rates charged on 63 cars of crushed stone between July 27, 1922, and Jan. 10, 1923, from Cape Girardeau, Mo., to Bowman, Ark., as unreasonable and in violation of the fourth section. All shipments moved over Frisco to Blytheville Ark., and J. L. C. & E. beyond, short line route being over same lines via Leachville, Ark., charged 9c and 6.5c to and from Blythville, and on some 8c and 5.5c to and from Leachville. A joint class E rate of 28.5c was applicable, shipments undercharged. On March 18, 1923, a commodity rate of 8c was established. HELD: Rate attacked unreasonable to extent it exceeded 8c, reparation awarded. Edwards Construction Co. v. J. L. C. & E. Ry., 93 I. C. C. 370.

(g) Complainant attacked commodity rates charged on clean rice, carloads, from Stuttgart, De Witt, Lonoke, Carlisle, and Wheatley, Ark., to all destinations in official, southern and western classification territories as unreasonable and that rates on clean rice, carloads and less carloads, from the same points to all destinations east of the Missouri and Mississippi rivers as unjustly discriminatory and unduly prejudicial as compared with the rates from New Orleans, La., Memphis, Tenn., and interior Louisiana. Effective Oct. 21, 1922, defendants from Arkansas made certain changes in the carload rates which were accepted by complainants. The report is confined to carload rates to East St. Louis, Cairo, Evansville, Terre Haute, Indianapolis western termini of trunk line territory, all points in southern territory except Florida and Virginia, and all points in Missouri, Kansas, Nebraska and Oklahoma. Principle competition is with New Orleans, Interior Louisiana and Memphis. Because of their geographical location complainants have been unable to engage to any appreciable extent in the export trade. The average short line distances from the milling points in the Arkansas group to interstate destinations are in all instances about the same as the short line distances from Stuttgart to the same destinations. Lake Charles is representative of the interior Louisiana group. Houston is representative of Texas milling points. The rates from Stuttgart to East St. Louis and Cairo are only 4 and 4.5c less than the rates from New Orleans, for differences in distance in favor of

Stuttgart of 346 and 293 miles and 9 and 13.5c less than the rates from Lake Charles for differences in distance of 335 and 332 miles. To points in Iowa the rates from Stuttgart range from 2.5c at Keokuk to 15.5c at Sioux City under New Orleans, and from 2.5c at Cedar Rapids to 10.5c at Keokuk under Lake Charles. The rates from Memphis to Cairo and St. Louis are 26.5 and 33.5c or 8.5c and 9.5c less than from Stuttgart. The rate from New Orleans to Memphis is 33.5c for 396 miles as compared with rate from Arkansas to Cairo of 35c of 273 miles. The rates from Stuttgart are 50c to Evansville, 420 miles, and 56c to Terre Haute and Indianapolis, 482 and 550 miles. The rates are higher to these points from Stuttgart for comparable hauls to other points in Indiana, Illinois and Ohio. They are higher than rates for similar or longer hauls from Stuttgart to points in western trunk line territory. The rates from Stuttgart to the western termini of trunk line territory compare favorably with rates from Stuttgart to other points in Pennsylvania, West Virginia and Ohio. The rates from Memphis to Pittsburgh, Pa., and Buffalo, N. Y. are 12c less than from Stuttgart. The spread between Stuttgart and Lake Charles is 9c for differences in distance of 374 miles at Buffalo and 340 miles at Pittsburg. This spread is the same as at points in central territory for much shorter distances. The rates from New Orleans are 6c at Parkersburg, W. Va., and 5c at other western termini points less than from Stuttgart although the hauls from New Orleans are longer by 233 miles to Parkersburg and 260 miles to Buffalo. The rates from Stuttgart to southern territory are generally the Memphis combinations, composed of the proportional rate of 15.5c to Memphis and Memphis rates beyond. The comparisons of record show that the rates from Arkansas to the south are too high in comparison with rates from other producing points. The rates to Oklahoma are before the Commission in 13954 now pending. HELD: Rates to New Orleans not unreasonable but local rates to Memphis and Vicksburg are unreasonable and unduly prejudicial to extent they exceed 22 and 32c; rates to Cairo not unreasonable but rates to points named unreasonable and unduly prejudicial to extent they exceed to East St. Louis, 41c, to Evansville, 45c, to Terre Haute 49c, to Indianapolis 50c; that rates to points shown not unreasonable but unduly prejudicial to extent they exceed to western termini 5c under New Orleans, Kansas City and Moberly, Mo., 11c under Lake Charles, to Omaha and Fremont 10c under Lake Charles. Stuttgart Rice Mill Co. v. A. & V. Ry., 93 I. C. C. 517.

(h) Complainant attacked combination rate charged on one car of bulk manure salts, shipped Feb. 28, 1920, from Savannah, Ga., to Laurel, Miss., as unreasonable and unduly prejudicial. Shipment moved over C. of Ga. to Birmingham, I. C. to Jackson, Miss., and G. & S. I., 1,011 miles, charged combination of $5.90 on Gulfport, Miss. Laurel is reached by the Southern, G. M. & N., and G. & S. I. With respect to the latter is 89 miles southeast of Jackson and 153 miles north of Gulfport; over Southern lines it is 56 miles south of Meridian and 146 miles north of New Orleans; and over G. M. & N. it is 111 miles north of Mobile and 298 miles south of Jackson, Tenn. The record indicates that the quantity of manure salts discharged from vessels at the Gulf ports is not always sufficient to meet the demands of the fertilizers and that movements from the south Atlantic ports to Mississippi points like Laurel are not unusual. HELD: Rate attacked not unreasonable or otherwise unlawful, complaint dismissed. Laurel Oil & Fertilizer Company v. Director General, 95 I. C. C. 522.

(i) Complainant attacked combination rate charged on one car of silicate of soda, shipped Nov. 13, 1919, from Livny, Calif., to Los Angeles, Calif., as unreasonable. Livny is on the S. P. within the switching limits of Oakland. Vernon, destination, is on the Santa Fe within the Los Angeles switching limits. Tariffs named a rate of 34.5c via S. P. to Oakland thence Santa Fe or S. P. At request of agent at Livny complainant routed the shipment over the S. P., to Fresno, Calif., thence Santa Fe. This was for the purpose of affording the originating carrier a line haul. The usual routing was S. P. to Oakland and Santa Fe to destination. Rate applicable via Fresno was 39c to that point and 54c beyond. There was in effect a rate of 48.5c composed of 14c to Stockton and 34.5c beyond. HELD: Rate attacked

unreasonable to extent it exceeded 48.5c reparation awarded. Philadelphia Quartz Co. v. Director General, 95 I. C. C. 593.

(j) Complainant attacked combination rate of 28.5c charged on eight cars of feldspar between Nov. 13, and Dec. 12, 1922, from Keene, N. H., to Manchester, Conn., as unjust and unreasonable to extent it exceeded 19.5c. Owing to an embargo on the New Haven shipments were consigned to Williamantic, Conn., via B. & M., to South Vernon, Vt., and C. V., beyond, reconsigned at that point to Manchester via New Haven, charged 17c to Williamantic and 11.5c beyond. Direct route is via B. & M. to Springfield, Mass., and New Haven beyond, distance 109 miles, 13.5c rate. HELD: Rate of 17c charged to Williamantic unreasonable to extent it exceeded 15.5c, and that rate of 11.5c Willmantic to Manchester unreasonable to extent it exceeded 7c, reparation awarded. Oxford Soap Co. v. B. B. & N. R. R., 95 I. C. C 615.

(k) Complainant attacked commodity rate charged on 11 cars of green pears between August 9 and Sept. 11, 1921, from Sunnyside, Grand View and Yakima, Wash., to San Francisco and Campbell, Calif., as unjust, unreasonable and illegal. Shipments moved O. W. R. R. & N. to Portland, Ore., and S. P. beyond, charged Portland combination of 94.5c to San Francisco and 8c beyond to Campbell. HELD: Rates attacked applicable, complaint dismissed. Pacific Adjustment Co. v. O. W. R. R. & N. Co., 95 I. C. C. 669.

(l) Complainant attacked commodity rates charged in posts and poles, carloads, from Minnesota to Minnesota, Iowa, Illinois, North Dakota, South Dakota and Montana during 1919 and 1920 as unlawful, unauthorized, unjust and unreasonable. Shipments orginated on the M. & R. R., and M. R. L. & M. The former connects with the G. N., at Deer River, Minn., and the latter with the G. N., M. & I., and Soo Line at Bemidji, Minn. Rates assessed full combinations on Deer River or Bemidji. The rates from those junction points were subject to the rule for constructing combination rates under general increases of June 25, 1918. The tariffs of the originating lines neither carried nor referred to the rule. It is clear that in so far as the shipments prior to Feb. 15, 1919, are concerned the principle of the Sligo case is applicable. Neither the M. & R. R. nor the M. R. L. & M. were under federal control. HELD: rates attacked prior to Feb. 15, 1919, inapplicable and rates applicable were those made by use of the combination rule published in the tariffs naming the rates from Bemidji and Deer River. Rates unreasonable. Shipments originated on the M. & R. R. and moved on and after that date were applicable. Rates attacked on shipments originating on the M. R. L. & M. between Feb. 15 and June 29, 1919, applicable but rates originating on the M. R. L. & M., subsequent to June 30, 1919, inapplicable, reparation awarded. Pendleton & Gilkey v. Director General, 95 I. C. C. 699.

(m) Complainant attacked combination rate charged of $1.31 on fruit and vegetables, in mixed carloads, from Los Angeles, Calif., to Globe, Ariz., between June 27 and Sept. 20, 1918, as unreasonable and inapplicable to the extent it exceeded $1.145. Shipments moved S. P. to Bowie, Ariz., A. E. beyond, 736.7 miles, charged $1.045 to Bowie plus 26.5c beyond. There was a combination of $1.145 in effect made up of 31.5c to Colorado, Calif., 56.5c to Bowie and 26.5c beyond. HELD: Reparation awarded on basis of $1.145. Mauk Produce Co. v. Director General, 95 I. C. C. 728.

(n) Complainant charged combination rates charged on logs, carloads, between March 20, and Nov., 1918, from Goodrich, Whittlesey, Park Falls, and Rib Lake, Wisc., to Black Creek, Wisc., as unjust, unreasonable, unduly prejudicial and unjustly discriminatory. All of the points of origin are on the Soo. Shipments moved via Soo to Amherst Junction, Wisc., thence G. B. & W., 138.6, 134, 144.5 and 187.2 miles. Distance from Amherst Junction to Black Creek is 46.3 miles. When shipments moved joint rates on lumber applicable on logs were assessed. In Jan. 1919 the Soo established a mileage scale of rates on logs, resulting in rates to Amherst Junction log 5.5c from Park Falls, and 4.5c from Whittlesey, Rib Lake and Goodrich. The G. B. & W. maintained from Amherst Junction to Black Creek a proportional rate of 2.5c prior to and 3c on and after June 25, 1918. HELD: Rates attacked unreasonable to extent

they exceeded 6c from Goodrich and Whittlesey, 7.5c from Rib Lake and 8.5c from Park Falls, reparation awarded. Ronz Box & Lumber Co. v. Director General, 95 I. C. C. 741.

(o) Complainant attacked combination less carload rates on trunks, wrapped, from Petersburg, W. Va., to Pueblo., Colo., between April 14 and August 8, 1922, as unjust, unreasonable and inapplicable. Shipments moved via S. A. L. to Birmingham, Ala., and Frisco and M. P. beyond, charged $5.04 prior to July 1, made up of $2 to Memphis and $3.04 beyond, first class; and $4.535 on and after that date. Joint first class rates applied to Columbus, N. M., of $4.635 prior to July 1, and $4.17 thereafter, Pueblo being intermediate as the rates were not restricted to any particular route. HELD: Shipments overcharged to extent they exceeded $4.635 prior to July 1, and $4.17 thereafter, reparation awarded. Frazier Saddlery v. M. P. R. R., 96 I. C. C. 1.

(p) Complainant attacked combination rate charged on three cars of cement shipped April 15 and May 15, 1922, from Richard City to Normal, Tenn., as unjust, unreasonable and in violation of section four. Richard City is on the N. C. & St. L., 32 miles west of Chattanooga, Tenn., and Normal is local to the Southern, 6 miles east of Memphis, Tenn. Shipments moved interstate over N. C. & St. L. to Memphis and Southern beyond 369 miles, charged 19c to Memphis and 7.5c beyond. Effective August 30, 1922, a rate of 17c was established the same as to Memphis. HELD: Rate charged unreasonable to extent it exceeded 19c, reparation awarded. Dixie Portland Cement Co. v. N. C. & St. L. Ry., 96 I. C. C. 47.

(q) Complainant attacked combination rate charged on four cars of liquid tanning extract, during 1922, from Mariners Harbor, N. Y., to Millville, Pa., as unreasonable, unjustly discriminatory and unduly prejudicial. Shipments moved to Linden Junction over the Staten Island Rapid Transit thence Pennsylvania, charged fifth class prior to July 1, 1922, of 125c to Linden Junction and 31.5c beyond; this combination being 40c after that date. Mariners Harbor has been accorded generally the same basis of rates as apply to and from other points in the limits of New York and from these other points fifth class rate of 31.5c was applicable prior to July 1, 1922, and 28.5c subsequently. Distance 211 miles. The rate requested was subsequently established. HELD: Rate attacked unreasonable to extent it exceeded 31.5c prior to July 1, 1922, and 28.5c thereafter, reparation awarded. Quebracho Products Co. v. S. I. R. T. Ry., 96 I. C. C. 52.

(r) Complainant attacked combination rate charged on four cars of cabbage, shipped in Dec., 1922, and Jan. 1923, over an interstate route from St. Francisville, La., to Monroe, La., as unreasonable. Shipments moved over Y. & M. V. to Vicksburg, Miss., 143 miles, thence V. S. & P., 91 miles, charged 38.5c to Vicksburg and 26.5c beyond. Effective Feb. 8, 1924, a joint rate of 38.5c was established. St. Francisville is served by the L. R. & N. but the railway station of that line is known as Bayou Sara. During the period of movement the rate on cabbagge from Bayou to Monroe, 191 miles over the L. R. & N. and M. P., was 43.5c. The basis for this rate, and also for the 26.5c rate from Vicksburg to Monroe is to be found in 52 I. C. C. 105, 58 I. C. C. 610, and 63 I. C. C. 288. HELD: Rate charged unreasonable to extent it exceeded 50c, reparation awarded. Sugar Bros. Co. v. Y. & M. V. R. R., 96 I. C. C. 97.

(s) Complainant attacked combination and commodity rates charged on 43 cars of seed potatoes in April, May and June, 1922, from Kalispell and other origins in western Montana to destinations in the Yakima district, Washington, as unjust and unreasonable. Forty-two moved G. N. to Spokane and N. P., or O. W. R. R. & N., beyond and one moved over N. P. throughout. On 40 charged commodity rate of 49.5c and on the other three charged 49.5c to junction point and local rate beyond. At the time the shipments moved, the rate to the Yakima district from Minnesota origins, about 1,500 miles, was 113c, and from Pendleton and Athena, Ore., about 200 miles, 20c. On April 1, 1924, the rate from the Minnesota origins to the Yakima district was reduced to 90c. HELD: Rates attacked not unreasonable, complaint dismissed. Northwest Potato Exchange v. G. N. Ry., 96 I. C. C. 187.

(t) Complainant attacked combination rates charged from mines on the Kanawha Central, composed of that carrier's proportional rate of 40c per long ton ton Brounland plus the district rate beyond, as unreasonable. Original decision in 78 I. C. C. 429. HELD: Rates attacked unreasonable to extent they exceeded between June 24, 1922, and July 13, 1923, district rates from Brounland plus $8.50 per car, reparation awarded. Kanawha Black Band Co. v. K. C. Ry., 98 I. C. C. 431.

(u) Complainant attacked combination rate of 71.5c charged on nine cars of sugar beets shipped from Talent, Ore., to Toppenish, Wash., between Nov. 21 and Dec. 8, 1919, as unreasonable to extent it exceeded 20c. Talent is on the main line of the S. P., 336 miles south of Portland, Ore., Toppenish is about 319 miles northeast of Portland on the N. P. Shipments moved over these lines except two which moved over the S. P. &. S. to Pasco, Wash., and N. P. beyond, charged class C of 37.5c to Portland and 34c beyond. In 1918 defendant established a 20c rate limited to expire Dec. 31, 1918, from Talent to Sunnyside and Yakima, Wash. Toppenish lies between these points. Considering the low level of sugar beet rates and the fact that defendant had previously established voluntarily the rate of 20c to points within a few miles of complainant's factory, the rate charged on the present shipments is clearly excessive. HELD: Rate attacked unreasonable to extent it exceeded 20c, reparation awarded. Utah Idaho Sugar Co. v. Director General, 98 I. C. C. 541.

(v) Combination rate on rig irons from Pawhuska, Okla., to Haynesville, La., found unreasonable to extent it exceeded joint commodity rate applicable to Haynesville from many points in immediate vicinity of Pawhuska, and which was blanketed from numerous Oklahoma to Louisiana points for distances equal to and greater than that over route of movement here involved. Reparation awarded. Parkersburg Rig & Reel Co. v. M. V. R. R. Co., 91 I. C. C. 583.

(w) Complainant attacked combination rates charged on 82 cars of pulpwood shipped between Nov. 29, 1919 and Feb. 7, 1920 from Keith, Eberlein Spur and Jones Siding, Wis., to Kaukauna, Wis., as unreasonable. Keith, Eberlein Spur and Jones Siding are on the Wisconsin & Northern, now a part of the Soo Line, 103, 101 and 94 miles north of Appleton Jct., Wis., a junction point with the North Western. Kaukauna is a local station on that line 7 miles beyond Appleton Jct. Shipments moved over W. & N., to Appleton Jct. and Northwestern beyond, charged 6c from Keith and Eberlein Spur and 5.5c from Jones Siding, being combination on Appleton Jct. A joint rate of 5c was established from these points on Nov. 29, 1919, but the tariff in which the rate was published was applicable to interstate traffic only, and the rate was not established on intrastate traffic until Feb. 7, 1920. The present record discloses that the W. & N., was not under federal control and was not joined as a party defendant in this case. The record affords no basis for condemning as unreasonable the 2c factor from Appleton Jct. to destination. HELD, factor of combination rate attacked not unreasonable, complaint dismissed. Kieckhefer Container Co. v. C. & N. W. Ry., 100 I. C. C. 317.

(x) Complainant attacked commodity rates charged on cars of bituminous coal, carloads, during April, 1922 from Folks and Narva, O., on Pennsylvania, to Munhall, Pa., and from Kentucky, Virginia and West Virginia to Clariton, as unreasonable, unjustly discriminatory and unduly prejudicial. The destinations are in the vicinity of Pittsburgh. The coal from the Ohio mines originated on the Pennsylvania. That from the other mines originated on the C. & O., N. & W., or their connections, and moved to destination over the Pennsylvania lines through Pittsburgh from the west., the Pennsylvania thus receiving a line haul both west and east of Pittsburg. Combinations of rates to and from Pittsburgh were charged. The movement was unusual as complainant ordinarily obtains its coal from other sources, in or near the Pittsburgh district, but the 1922 coal strike necessitated purchases elsewhere. Complainant shipped this coal regardless of the rates in order to keep its furnaces in operation. In the meantime it negotiated for joint rates from and to the points considered and in the latter part of April, 1922, such rates were made effective under authorization from the Commission based on a differential of 30c over the rates to Pittsburgh. Although the publication of these rates

was originally intended as a temporary expedient, the carriers have now no objection to continuing them indefinitely. The conditions surrounding the joint line haul from the C. & O., and N. & W., mines differ from those in respect of the Ohio mines, where only a single line haul of the Pennsylvania was or is required. No good reason appears for concluding that the territory just east of Pittsburgh should be opened to the coal from mines on their other lines. HELD, rates from Ohio to Munhall unreasonable to extent they exceeded rates to Pittsburgh plus 30c, rates from other mines not unreasonable, reparation awarded. Carnegie Steel Co. v. Pennsylvania R. R., 100 I. C. C. 353.

(y) Complainant attacked combination commodity rates charged on 31 cars of moulding sand, shipped since Sept. 29, 1922 from Rockport, and Sandale, Ind., to Cleveland, Tenn., as unreasonable and in excess of those applicable. Shipments moved E. & O. V. Ry. to Evansville, Ind., and Southern beyond, charged $3.18 prior to April 17, 1923 and $3.15 subsequent thereto. The tariff naming the rate from Evansville to Cleveland made reference to the combination rule and by using this rule the rates prior to April 17, 1923 would be $2.88 and since that date $2.85. HELD, rates charged inapplicable, and should have been $2.88 and $2.85, reparation awarded. Hardwick Stove Co. v. Southern Ry., 100 I. C. C. 409.

(z) Complainant attacked class and commodity rates charged on 10 cars of cork sheets or slabs without binder shipped between Oct. 17 and Oct. 21, 1922 from Camden, N. J., to El Centro and Brawley, Calif., as unjust unreasonable and unlawful. Routing designated by the shipper was B. & O., L. & N., and S. P., at New Orleans. The shipments were delivered by the B. & O., to L. & N., at Louisville, Ky., and moved thence to New Orleans where they were delivered to the S. P. Complainants contended that delivery should have been made to the L. & N., at Cincinnati and that shipments were misrouted. Charged fourth class of 64c to Louisville and a commodity rate of $1.80 beyond. If defendants had delivered the shipments to the L. & N., at Cincinnati, which is in Group C, the shipments would necessarily have moved through Group K. L. or M., to reach New Orleans and the joint commodity rate would not have applied. Effective May 1, 1924 the restriction on the joint commodity rate of $1.88 was changed so that it became applicable via the L. & N., over the route shipments moved. Present rate is $1.70. Fourth class rate from Camden to St. Louis was 75c and a commodity rate from St. Louis was $1.53, making a combination of $2.28. Complainant contends that the St. Louis combination should be protected under rule 5b of tariff circular 18A. This contention is sound, since the rates to and beyond St. Louis applied via the L. & N., through Louisville and New Orleans. HELD, combination rate of $2.28 properly applicable, shipments overcharged, rates attacked not unreasonable, complaint dismissed. Armstrong Cork & Insulating Co. v. Reading Co., 100 I. C. C. 468.

(aa) Complainant attacked combination rate of 35.5c charged on six cars of wet wood pulp between Feb. 5 and April 7, 1921 from Thomson, N. Y., to Whippany, N. J., as unreasonable to extent it exceeded 25c. Thomson is a local point on the G. & J. Whippany is a local point on the M. & E., 5 miles from Morristown, N. J. Shipments moved G. & J., to Johnsonville, D. & H., to Binghamton, N. Y., D. L. & W., to Morristown and M. & E., beyond 355 miles, charged 7.5c to Johnsonville and sixth class 28c beyond. Wet wood pulp is the primary raw material used in the manufacture of wood pulp boards and various papers, rated sixth class. In central territory, by exceptions to the official classification, it takes 90% of sixth class. In trunk line territory by exceptions wood pulp boards take 90% of sixth class and the same basis applies on wood pulp from practically all points where it is produced from which commodity rates are not named. The rates on wood pulp board from Thomson to practically all points in trunk line territory are on the Glens Falls, N. Y., basis. The sixth class rate from Glens Falls to Whippany at the time of shipment was 31.5c and the rate on wood pulp boards from and to these points was 90% of that rate, or 28.5c, and the same rate applied from Thomson. HELD, rates attacked unreasonable to extent they exceeded 28.5c prior to July 1, 1922 and 25.5c thereafter, reparation awarded. United Paperboard Co. v. G. & J. Ry., 101 I. C. C. 171.

(bb) Complainant attacked combination rate charged on cottonseed hull shavings, carloads, from Hermitage, Tenn., to Peoria, Ill., between Nov. 1, 1921 and July 31, 1922 as unreasonable. Collected 56c prior to July 1, 1922 and 50.5c thereafter, rate charged being combination of class A rate of 42c to Ohio River crossings at Cairo or Metropolis, Ill., or Evansville, Ind., and commodity rate of 14c beyond, the 50.5c rate consisting of class A of 38c to river and 12.5c beyond and that these factors of 42 and 38c to river were in violation of section 1 of the act to the extent they exceeded 15.5c and 14c. Some shipments moved N. C. & St. L., to Metropolis and Burlington beyond, others moved Tennessee Central to Hopkinsville, Ky., and I. C., beyond via Evansville. Hermitage is 11 miles east of Nashville on the main line of the T. C., and branch of the N. C. & St. L. Short line distance is 474 via T. C., Hopkinsville and I. C. HELD, rate attacked unreasonable to extent it exceeded 15.5c and 14c, reparation awarded. Barrett Co. v. N. C. & St. L. Ry., 101 I. C. C. 279.

(cc) Complainant attacked commodity rates charged on 61 cars of mine run coal shipped from Coil and Sunset Mine, Ky., to Bonne Terre, Rivermines, and Leadwood, Mo., between May 20 and 28, 1922 as unjust, unreasonable, unjustly discriminatory and unduly prejudicial to extent they exceeded $2.70. Shipments moved as routed by shippers over the L. & N., to Nashville, Ill., Missouri, Illinois to Derby, Mo., M. R. & B. T., beyond, applicable rate $3.70 prior to May 27, made $1.74 to Nashville and $1.96 beyond, and $3.55 subsequent thereto, made $1.59 to Nashville and $1.96 beyond. On May 1, 1922, complainant made request for the publication of joint rates from and to the points in question intending to hold these shipments until such rates were published. The coal miners strike of 1922 which was on at that time did not materially affect production at western Kentucky mines and, in order to move the traffic, after conference with the other defendants, represented to complainant that all defendants would join in an application on the informal docket to make reparation on the basis of the joint rate which would be established if complainant would allow the shipments to go forward. Complainant could have availed itself of a lower combination of $3.46 by way of East St. Louis. After the shipments moved the L. & N., refused to join with the other lines in the application on the informal docket on the basis of the joint rate of $2.70 which was established on May 29, 1922. HELD, rate attacked unreasonable to extent it exceeded $2.70, reparation awarded. St. Joseph Lead Co. v. L. & N. R. R., 101 I. C. C. 352.

(dd) Complainant attacked combination commodity rates charged on two cars of sand from Montezuma, Ind., to Illiopolis, Ill., and reconsigned to Buffalo, Ill., as unreasonable. Shipments originated on C. I. & W., moved via that line via Decatur to Springfield, Ill., thence Illinois Traction through Buffalo to Illiopolis. After placement at Illiopolis the cars were ordered reconsigned to Buffalo. Charged 88c per ton to Illiopolis plus reconsignment charge of $6.30, plus 95c per ton Illiopolis to Buffalo. The rate from Montezuma to Buffalo was 88c. The charges assessed were applicable. No evidence is submitted as to the measure of the local rates. In 91 I. C. C. 615, the Commission found that the assessment in addition to the rates to and from the point of reforwarding, of the reconsignment charge provided by a rule similar to the one quoted was unreasonable. HELD, applicable rates charged, not unreasonable, reparation awarded of $6.30 per car, reconsignment charge. Meneely Co. v. C. I. & W. Ry., 101 I. C. C. 389.

(ee) Complainant attacked commodity rate of $3.36 charged on five cars of bituminous coal shipped Nov. 22 and 23, 1920 from Marissa, Ill., to Anderson, Ind., as unreasonable to extent it exceeded $2.40. Marissa is a local station on the I. C., in the Belleville group, this being the most distant group from which rates apply to Indianapolis, Ind. Coal from Indianapolis moves through the Du Quoin and Centralia groups, the former south and the latter north of the Belleville group. Anderson is about 36 miles northeast of Indianapolis, on the Big Four. When the shipments moved no joint rates applied to Anderson. Shipments moved as routed by shipper. I. C., via Paxton, Ill., L. E. & W., to Indianapolis, a distance of 374 miles, charged $1.96 joint rate. The distance between these points over the shorter route of the I. C., and Big Four is 279 miles, the rate being then the same over both routes. Shipments were later re-

consigned to Anderson over the Big Four and a rate of $1.40 was collected for the 36 mile haul. Total distance over route of movement 410 miles and over the shorter route 315 miles. Complainant offered no evidence in support of its prayer for the establishment of a joint through rate. Its sole interest apparently lies in securing reparation. The movement was unusual and its recurrence in the future is unlikely. HELD, rate not unreasonable, complaint dismissed. Municipal Elec. & Water Depts. v. C. C. C. & St. L. Ry., 101 I. C. C. 618.

(ff) Complainant attacked combination commodity rates on common unglazed doors, in straight carloads or in mixed carloads with other forest products, from Oregon and Washington to destinations in trunk line and New England territories. Rates charged were commodity rates from the points of origin to the Mississippi river or to Chicago plus fifth class rates beyond. In 78 I. C. C. 495 the combination rates were found unreasonable to extent they exceeded 115% of the lumber rates, and awarded reparation. No evidence of unreasonableness was offered by complainant. HELD, rates attacked unreasonable to extent they exceeded 115% of lumber rates, reparation awarded. Pacific Mutual Door Co. v. A. A. Co., 101 I. C. C. 633.

(gg) Complainant attacked combination rate of 62c charged on volcanic ash, carloads, from Meade, Kas., to Jersey City, N. J., two years prior to April 15, 1924 as unreasonable to extent it exceeded 48c. Rate charged 24c to Chicago and 38c beyond, distance Mead to Chicago 887 miles and beyond 908 miles. Shipments are made in box cars. Volcanic ash resembles bank sand, and is used by complainant in making scouring cleanser. It exists in vast beds, close to the surface, extending from the Dakotas to Texas. Volcanic sand is less valuable than glass and molding sand, on which the rate is 31.5c from Chicago to Jersey City, 22.5c from St. Louis to Rochester, N. Y., 777 miles, and 24c from St. Louis to Syracuse, 857 miles. HELD, rate attacked unreasonable to extent the factor east of Chicago exceeded 26.5c prior to July 1, 1922 and 24c thereafter, reparation awarded. Colgate & Co. v. P. R. R., 101 I. C. C. 716.

(hh) Ordinarily the rate charged as one factor of a combination on a through movement might well be less than the corresponding local rate covering the same haul. Salt Cases of 1923, 92 I. C. C. 388, 437.

(ii) Combination rates assessed on crushed stone from Cape Girardeau, Mo., to Bowman found unreasonable as compared with lower rates on same and other similar commodities between other points in same general territory for similar and greater distances, as compared with rate prescribed in Memphis Southwestern Investigation, 77 I. C. C. 473, on stone for distance similar to that here involved, and to extent they exceeded lower joint rate subsequently established. Reparation awarded. Edwards Construction Co. v. J., L. C. & E., 93 I. C. C. 370.

(jj) Combination rates on coal from points in the Meyersdale district of Pennsylvania and Fairmont district of West Virginia to New Castle, Del., a local point on the Pennsylvania, found not unreasonable or otherwise unlawful as compared with joint rates maintained by carriers other than the Pennsylvania from these districts to numerous eastern and New England destinations. Shipments moved during abnormal periods of car shortage and the Pennsylvania defends its policy of refusing to join with other coal-originating lines in publishing joint rates to local points on its line on ground that it was unable to find consumers on its own rails for all coal which it originates, and to maintain such joint rates would cause cross-hauling or substitution of two-line for one-line hauls with resulting reduction of transportation efficiency. Moreover, in 62 I. C. C. 49, the commission refused to condemn similar combinations. Chicago Heights Mfrs. Asso. v. B. & O., 95 I. C. C. 83.

(kk) Combination rate on silicate of soda during Federal control, from Livny, Calif., to Los Angeles, Calif., via Fresno, found unreasonable to extent it exceeded lower rate contemporaneously in effect via a longer distant route through Stockton. Following American Agricultural Chemical Co., 66 I. C. C. 650, shipments moved at time when carriers were operated under a unified and coordinated national control and not in competition and it was unreasonable for the director general to maintain a higher rate over one route than contemporaneously applied over the other where such routes were practically the same in length and subject to same transportation conditions.

Reparation awarded. Philadelphia Quartz Co. v. Director General, 95 I. C. C. 593.

(ll) Due to embargo shipments of feldspar from Keene, N. H., to Manchester, Conn., were forwarded over an indirect route to Willimantic, Conn., thence reconsigned to destination. Combination rates assessed found unreasonable, the initial factor to extent it exceeded lower rate subsequently established and equivalent to 90 per cent of sixth class, the basis maintained by carriers in this territory, and the Willimantic-Manchester factor as compared with rates for entire distance via the direct route and with rates and earnings on numerous comparable commodities for like distances. Reasonable rate for the Willimantic-Manchester factor prescribed and reparation awarded. Orford Soap Co. v. B. &. M., 95 I. C. C. 615.

(mm) Combination rates on naphtha and gasoline, in tank-car loads from Hodge, Tex., to Blue Creek, W. Va., exceeded rates on same commodities from Hodge, via Clarksburg, W. Va., to Charleston, W. Va., Blue Creek being intermediate to Charleston over the Clarksburg route. Resulting fourth-section violation was unprotected but subsequently removed and no damage found to result therefrom. Rates, however, found unreasonable to certain specified extent and reasonable rate prescribed for future, with permission to restrict its application to routes other than that via Clarksburg. Reparation awarded. Transcontinental Oil Co. v. A. & V., 96 I. C. C. 136.

(nn) Combination rates on lumber, box shooks, and articles taking lumber rates, from Williams, Flagstaff, and Holbrook, Ariz., to Nogales, Ariz., destined to points in Mexico, found not unreasonable or otherwise unlawful as compared with joint rates from California points to same destinations. The excessive charges complained of accrued solely in the local rate component of the connecting line in Mexico, which is operated as a separate road, is not a party defendant, and is not subject to the commission's jurisdiction. Arizona Lumber & Timber Co. v. A. E. R. R. Co., 96 I. C. C. 203.

(oo) Combination rates assessed on shipments of fruits and vegetables originally consigned from western points to New York, but reconsigned from Croston, N J., a hold point, to Philadelphia and Washington, found illegal to extent that they exceeded those which would have accrued at the joint rates from the point of origin to ultimate destinations, plus a reconsignment charge, the applicable transcontinental tariffs containing no restrictions prohibiting such movement. Freeman Grain Co., 68 I. C. C. 559, Van Dusen Harrington Co., 47 I. C. C. 59. Steinhardt & Kelly v. E. R. R. Co., 96 I. C. C. 229.

(pp) Applicable combination rate assessed on cull apples shipped from Lewiston, Idaho, to San Francisco, Calif., during Federal control, found not unreasonable because the factor Lewiston to Portland, Oreg., over the route of movement exceeded correspondinng factor over a different route. Upon contention by defendant that a combination rate must be considered in its entirety. HELD. It is the measure of the rate assessed for the through service which must be considered. California Packing Corp. v. Director General, 96 I. C. C. 239.

(qq) Combination rates assessed on coal to specific interstate destinations, from Hot Coal, Wyco, Jonben, Tracoal, Devil's Fork, Corinne, and Fireco, West Va., points in the Winding Gulf section of the New River district served exclusively by the Virginian Railway, found unreasonable and unduly prejudicial for the future to the extent they may exceed rates contemporaneously maintained from competing points on the main and branch line of the C. & O., in the New River district to the same destinations. Wyoming Coal Co. v. U. Ry. Co., 96 I. C. C. 359.

(rr) Combination rates assessed on Lepidolite, in carloads, from Embudo, N. Mex., to Wheeling, W. Va., found-unreasonable to the extent they exceeeded lower joint rates on fluorspar a somewhat analogous natural mineral product having similar transportation characteristics, from Silver City to the same destination. Reparation awarded and reasonable rate prescribed for the future. New Mexico Corp. Commission v. A., T. & S. F., 96 I. C. C. 412.

(ss) Combination rates on Tripoli, c. l., from Seneca, Mo., to destinations in central, trunk-line and Canadian territories, found unduly prejudicial to the extent the factor beyond St. Louis exceeds amounts having the same relationship to the sixth-class rates when rates on silica from Tamms, Ill., bear to the corresponding sixth-class rates. St. Louis Traffic Bureau v. A., T. & S. F., 96 I. C. C. 421.

(tt) Combination rates on prepared sizes of anthracite coal, in carloads, from the Pennsylvania field to Newport News, Va., found not unreasonable except to the extent that the rates by way of Cape Charles, Va., exceeded $4.30 per long ton. Relative adjustment found unduly prejudicial to Newport News and unduly preferential of Norfolk and Richmond. Newport News v. B. & O. R. R. Co., 96 I. C. C. 425.

(uu) Present rates from the Southwest to points in Colorado west of Colorado common points are made by combination on the latter points, with rates to Utah common points as maxima. Defendants authorized to continue present basis, subject to the reasonable rates determined upon the basis herein prescribed, to the first point in Utah beyond the Colorado-Utah line as maxima. Oklahoma Corp. Commission v. A. & S. Ry. Co., 98 I. C. C. 183, 243.

(vv) Carload lumber moved from Delphi, Ind., to Bay City, Mich., where it was placed for unloading but refused by consignee, and upon instructions of shipper was reconsigned to Corry, Pa. The rate applied was the combination rate, and not the joint rate which complainant contends was applicable. HELD: Under the diversion or reconsignment rule governing, the combination rate charged was applicable and not unreasonable. Complaint dismissed. Liberty Cooperage & Lumber Co. v. C., I. & L. Ry. Co., 98 I. C. C. 461.

(ww) Combination rates charged on wheat shipped during Federal control from Colorado points to Antonito, Colo., there milled, and the flour reshipped via Memphis, to Nashville, Tenn., found not unreasonable, as compared with lower joint rates, with milling-in-transit privileges, subsequently established from Durago, Colo., and other intermediate points of origin to Memphis and lower joint rates contemporaneously in effect from Utah common points, with like privileges, to Cairo, Tenn., and Memphis, except to extent that the aggregate of the factors assessed from Antonito to Nashville exceeded a rate herein prescribed as reasonable. Reparation awarded. Conejos Cooperative Mills & Mfg. Co. v. Director General, 98 I. C. C. 515.

(xx) Combination of local rates found applicable on shipment stopped in transit to finish loading, no tariff authority existing for such a stop. Mississippi Pearl Button Co. v. A., T. & S. F. Ry. Co., 98 I. C. C. 560, 563.

(yy) The Commission has condemned the cancellation of combination rules without the substitution of some method of rate publication which would have the effect of holding the rates to their former level or to a level which is affirmatively shown to be reasonable. Combination Rule On Brick, 102 I. C. C. 97, 99.

(zz) Complainant attacked combination rate of $1.15 charged on a car of dried beans shipped Nov. 17, 1921 from Mills, N. M., to Rockdale, Tex., as unreasonable and unduly prejudicial to extent it exceeded 96c. Shipment moved E. P. & S. W., to El Paso, Tex., G. H. & S. A., and S. A. & A. P., distance 1,251 miles, applicable rate $1.33 using 96c to San Antonio plus class C rate of 37c beyond. Contemporaneously a rate of 96c applied from Mills to Rockdale over E. P. & W., to El Paso in connection with the T. & P., and I. & G. N. This rate subsequently became effective via route of movement. HELD, rate attacked unreasonable to extent it exceeded 96c, reparation awarded. Waco Chamber of Commerce v. E. P. & S. W. R. R., 102 I. C. C. 105.

(3a) Complainant attacked combination rate charged on a car of pig iron from Thomas, Ala., on July 12, 1922 to Iola, Kas., reconsigned to Okmulgee, Okla., as in violation of sections 1, 3 and 6 of the act. Charged commodity rate of $9 per long ton to Iola and class D beyond of 36.5c, plus reconsignment charge of $2.25. Although routing via Iola is circuitous, the carriers transporting the shipment are shown as parties to the tariff without restriction as to routing. HELD, overcharges should be refunded, complaint dismissed. United Iron Works v. M. P. R. R., 102 I. C. C. 107.

(3ab) Shipments of printing paper from Lawrence, Mass., to Long Island City, N. Y., found overcharged. There were no joint through rates in effect, and charges were collected on basis of combinations. However, lower combinations contemporaneously in effect were legally applicable. Reparation awarded. Merrimac Paper Co. v. B. & M., 102 I. C. C. 133.

(3ac) Combination rate assessed on lumber from Manchester, Vt., to Cobleskill, N. Y., found unreasonable to extent it exceeded joint commodity rate subsequently established over route of move-

ment. Contention that shipments involved constituted a "transient movement," and that lower rate was established for purpose of handling regular movements, not sustained. Lumber is relatively a low-grade product and generally moves at joint rates less than the combination of locals, and fact that but few shipments moved can not deprive complainants of a reasonable rate on such shipments. Reparation awarded. Harder Mfg. Corp. v. D. & H. Co., 102 I. C. C. 167.

(3b) Complainant attacked combination rates charged on 13 cars of crude clay during May, June and July, 1924 from Langley, S. C., to Cartersville, Ga., as unreasonable. Langley is on the Southern 8 miles from Augusta, Ga. Cartersville is on the L. & N., S. A. L., and N. C. & St. L., 47.6 miles northwest of Atlanta, Ga. Shipments moved over Southern by way of Columbia, S. C., to Atlanta and N. C. & St. L., to destination, distance 401 miles. Nine of the shipments were specifically so routed; the remainder were unrouted. Charged $1.47 to Atlanta and $1.12 beyond. On Oct. 13, 1924 a joint rate of $2.59 became effective. HELD, rate attacked not unreasonable complaint dismissed. Thompson Weinman & Co. v. Southern Ry., 102 I. C. C. 247.

(3c) Complainant attacked combination rate charged on rough oak staves and headings, in carloads, from Cherokee, Ala., to Jackson, Miss., as unreasonable. Cherokee is 129 miles east of Memphis, Tenn., on the southern and the distance from Memphis to Jackson over the I. C. is 211 miles. Complainant specified routing via Memphis and I. C., charged 8.5c to Memphis and 17c beyond. Defendants expressed willingness to publish a rate of 22.5c for the future. HELD, rate attacked not unreasonable, complaint dismissed. Chess & Wymond v. A. & V. Ry., 102 I. C. C. 282.

(3d) Complainant attacked commodity combination rate charged on a car of cedar posts shipped March 2, 1923 from Starks Spur, Minn., to Deer Creek, Ill., as unreasonable and illegal to extent it exceeded 37.5c, rate charged 39c. Shipment moved over M. & R. R., to Deer River, Minn., G. N., and Burlington to Peoria, Ill., and L. E. & W., beyond, charged 8c to Deer River and 31c beyond. The tariff named the latter rate contained reference to Jones tariff providing rule for constructing combination rates. All defendants, except M. & R. R., were a party to the latter tariff. HELD, rate applicable 37.5c, reparation awarded. MacGillis & Gibbs v. L. E. & W. Ry., 102 I. C. C. 333.

(3da) Combination rate charged on cedar posts from Starks, Minn., to Deer Creek, Ill., found inapplicable. Tariff naming rate assessed contained reference to another tariff which provided rules for constructing combination rates and application of those rules produced a lower rate. Refund directed. MacGillis & Gibbs Co. v. L. E. & W., 102 I. C. C. 333.

(3db) Combination rates on furniture from certain points in Indiana, Michigan, New York, and West Virginia to Little Rock, Pine Bluff, and Fort Smith, Ark., found not unreasonable as compared with rates subsequently established pursuant to Memphis-Southwestern Investigation, 77 I. C. C. 473, and which resulted in removal of fourth-section departures protected by appropriate applications and in a reduction in general level of rates on this traffic. Combination basis was maintained on furniture and numerous other commodities from origins in question to all points in Arkansas, except to those located in the Arkansas-Louisiana group. Moreover, earnings under rate found justified in 25 I. C. C. 299 compare favorably with those here assailed. Eads Bros. Furniture Co. v. B. & O., 102 I. C. C. 381.

(3e) Complainant attacked combination rates charged on furniture, carloads, to Little Rock, Pine Bluff, and Ft. Smith, Ark., from Indiana, Michigan, New York and West Virginia, between April 9, 1922 and Nov. 27, 1923 as unreasonable. The applicable rates were combinations on Chicago or East St. Louis, Ill., Memphis, Tenn., Mitchell, Seymour or North Vernon, Ind., whichever was lowest. The rates on furniture to the Arkansas-Louisiana group from all the origins mentioned and to the complaining points from Chicago and the Louisville territory were based on differentials over St. Louis, but the rates to the complaining points from the other origins were based on the lowest combination. The rates from the latter were lower in certain instances to the Arkansas-Louisiana group than to the complaining points. On Nov. 27, 1923, the rates on all furniture from St. Louis became 70c to Little Rock, 74c to Pine Bluff, 76c to Fort Smith, 80c to Hope, 82c to Texarkana, 83c to McNeil and Ashdown, and 86c to Shreveport pursuant to 77 I. C. C. 473. On the same

date the carriers established rates on all furniture to these destinations from all origins indefined territories on the basis of the class A differentials over St. Louis. This resulted in the removal of fourth section departures and in a reduction in the general level of rates on this traffic. It is to the basis of the rates thus established to the complaining points that reparation is sought. Both carriers and shippers in this territory have generally recognized that in most instances substantial justice would not be advanced by awarding reparation on previous shipments to the basis of rates established on Nov. 27, 1923 and where certain shippers have urged otherwise the Commission has found their contentions to be without merit. HELD, rates attacked not unreasonable, complaint dismissed. Eads Bros. Furniture Co. v. B. & O. R. R., 102 I. C. C. 381.

(3f) Complainant attacked combination rates charged on four cars of sugar between July 9 and July 29, 1921 from Brigham and Spanish Fork, Utah to Breckenridge, Tex., as unreasonable. The points of origin are in Utah common point territory. Breckenridge is about 100 miles west of Fort Worth, Tex., in Texas common point territory. It is the terminus of the Cisco & Northeastern, extending 28 miles north from Cisco, Tex., where it connects with the MKT. Distances 1,837 and 1,987 miles, charged $1.145 to Cisco and 20.5c beyond. When these shipments moved there were no joint through rates in effect to points on the Northeastern. Under the stress of competition of other carriers which entered Breckenridge subsequent to the advent of the Northwestern, the latter carrier on Sept. 15, 1921 established to points on its line joint through rates on sugar on the Texas common point basis of $1.145 from Utah and Idaho producing points. HELD, rate attacked not unreasonable, complaint dismissed. Utah Idaho Sugar Co. v. C. & N. E. Ry., 102 I. C. C. 388.

(3g) Complainant attacked combination rates charged on mine timbers, mine props, mine caps, mine ties, and kindred articles from points in Missouri on the M. P., Frisco, Bonne Terre to destinations in Illinois as unreasonable. When complainants shipments were made the rates on mine timbers were generally the combination of local rates to and from the Mississippi river. In 87 I. C. C. 622 these rates were found unreasonable to extent they exceeded a scale of rates then prescribed. HELD, rates attacked unreasonable to extent they exceeded rates prescribed in 87 I. C. C. 622, reparation awarded. Collins Timber Co. v. B. & O. R. R., 102 I. C. C. 467.

(3h) Complainant attacked commodity rates on wheat and coarse grain from points in Iowa on the Atlantic Northern to Council Bluffs, Ia., on the Rock Island, for application on shipments to points beyond Council Bluffs in states other than Iowa, as unreasonable and unduly preferential of Kansas City, Mo., Chicago, Ill., and St. Louis, Mo. The Atlantic Northern extends north from Atlantic, Iowa on the Rock Island, 60 miles east of Council Bluffs to Kimballton, Iowa, 17 miles. The maximum haul to Council Bluffs is 77 miles. Present rates from stations on the Atlantic Northern to Council Bluffs are combinations of distance rates to and from Atlantic, prescribed by the Iowa Commission, and are 20c on wheat and 18c on coarse grain from Kimballton and 19.5c and 18c from the other stations. The basis sought is 0.5c higher than that applying from stations on the Rock Islands Audubon branch, which extends 25 miles north from Atlantic and parallels the Atlantic Northern at cross country stations of from 5 to 8 miles. That is the basis also from stations on the Atlantic Northern to Kansas City, Chicago and St. Louis, in connection with the Rock Island, or the Rock Island and connections beyond Atlantic. The rates for interstate application to Council Bluffs from all short line connections of the Rock Island in Iowa are combinations on junction points, but on intrastate shipments to Council Bluffs and between all points in Iowa, the rates over two lines are 80 per cent of the combination. The rates to Omaha from Atlantic Northern stations are made 1c higher than to Council Bluffs. HELD, present rates from stations on the Atlantic Northern to Council Bluffs in connection with Rock Island beyond Atlantic interstate unreasonable, and that reasonable proportional rates would not exceed 14.5c on wheat and 13c on coarse grain from Kimballton and 13.5c and 12c from intermediate points. Omaha Grain Exchange v. A. N. Ry., 102 I. C. C. 533.

(3ha) Combinations of distance rates on wheat and coarse grain from points in Iowa to Council Bluffs for application

on shipments to interstate points beyond Council Bluffs found unreasonable and reasonable proportional rates prescribed. Omaha Grain Exchange v. A. N. Ry., 102 I. C. C. 533.

(3hb) Combination rate assessed on sporadic shipments of ash staves from Fort Lynn, Ark., to Gulfport, Miss., found unreasonable to extent it exceeded lower combination contemporaneously in effect over route of movement, which would have been applicable in absence of joint rate under ruling of commission in 18 I. C. C. 162, wherein principle was laid down that fair measure of reasonableness of a joint rate that exceeds a combination between same points via same route is the lowest combination that would lawfully apply if the joint rate were canceled. Reparation awarded. Hollingshead Co. v. T. & P. Ry., 102 I. C. C. 603.

(3hc) It is elementary that total charge under a through rate made on a combination basis may or may not be unreasonable because one factor is unreasonable. Wortham-Carter Publishing Co. v. Director General, 102 I. C. C. 729, 738.

(3i) Complainant attacked combination rate charged on two cars of soap stone furnace linings, shipped March 4 and 5, 1920 from Schuyler, Va., to Kaukauna, Wis., as in excess of applicable rate. Shipments moved over N. & A., 5 miles to Rockfish, Va., thence Southern and connecting lines. Charged combination on Rockfish using commodity rate of 9c to that point. At the time these shipments moved the only tariff item published to Rockfish applicable to soapstone products applied on "soapstone manufactured and in slabs, C. L., and less C. L., not exceeding 20 miles, 9c per 100 pounds. Contemporaneously the classification named sixth class on soapstone or talc, linings, fire box or furnace, carloads, 6c. The articles shipped by complainant are clearly comprehended within the commodity description "soapstone manufactured and in slabs." The fact that the classification description more specifically describes the article shipped does not prevent the commodity rate from applying. HELD, rates attacked legally applicable, complaint dismissed. Thilmany Pulp & Paper Co. v. N. & A. Ry., 104 I. C. C. 186.

(3j) Complainant attacked combination rates to and from Gorman, Tex., on a car of tank steel shipped May 13 1919 from Petroleum, Okla., to Gorman, thence reconsigned to Rangor, Tex., as unlawful to extent they exceeded charges based on joint through rate. Shipment was originally billed to complainant at German, routed over Midland Valley and MKT. On May 17 prior to its arrival Gorman, routed over Midland Valley and bill of lading to the MKT with instructions to divert the shipment to Ranger, a point on the T. & P. As an embargo was then in force against Ranger it also forwarded a copy of the diversion order to the T. & P., with request that the latter notify the MKT that the shipment would be accepted when offered. It appears that the MKT returned the bill of lading to complainant with the advice that diversion could not be accomplished until the permit was secured. The shipment arrived at Gorman May 20. At 4.16 p. m. of the same date the T. & P., wired the M. P., authority to divert the shipment to Ranger in accordance with complainants instructions. Charged combination rate of 89c composed of commodity rate of 62.5c to Gorman and fifth class 26.5c beyond. The 62.5c rate was a joint commodity rate then in effect on this traffic from Petroleum to Gorman and points grouped therewith, including Ranger. In the absence of a copy of the record showing that the car was actually placed for unloading at Gorman, the weight of the evidence is that it was not so placed. HELD, through rate of 62.5c was applicable, reparation awarded. Prairie Oil & Gas Co. v. M. V. R. R., 104 I. C. C. 252.

(3k) Complainant attacked combination rates charged on 5 cars of sand and gravel from South Beloit, Ill., and two cars of cement from Buffington, Ind., shipped during July 1924 to Darien, Wis., and reconsigned at the latter point to Vaughn Siding, Wis., as unreasonable and unjust. The material all moved through Bardwell, Wis., in reaching Darien. Darien is on the C. M. & St. P., and Vaughn Siding is on the C. H. & G. L. Ry. In order to accomplish the reconsignment it was necessary to back haul the sand and gravel 2.5 miles from Darien to Bardwell and the cement 11.1 miles from Darien to Walworth. Shipments of sand and gravel moved from South Beloit over the Milwaukee through Darien, and Walworth and the C. H. & G. L., 29.9 miles, and the cement moved over the E. J. & E., to Rondout, Ill., Milwaukee through Darien to Walworth, and C. H. & G. L., 176.5 miles. On sand and gravel, applicable distance commodity rates of 2.8c up to Darien, 2.6c Darien

to Walworth and a charge of $15 per car from Walworth to Vaughn Siding plus a charge of $6.30 per car for reconsignment at Darien were applied. On the cement, a commodity rate of 10.5c was applied from Buffington to Darien, and a class E rate of 11c from Darien to Vaughn Siding, plus $6.30. There was contemporaneously in effect on cement a lower combination rate of 10.5c from Buffington to Darien, 7c Darien to Walworth and $15 per car beyond, plus $6.30. Shipments overcharged. HELD, rate attacked not unreasonable or otherwise unlawful, complaint dismissed. Fess v. C. H. & G. L. Ry., 104 I. C. C. 262.

(3l) Complainant attacked commodity combination rate charged on nine cars of evaporated milk from Lamar, Colo., to Dawson, N. M., between May 21, 1921 and June 29, 1923 as unreasonable, unjustly discriminatory and unduly prejudicial to extent they exceeded the rates from Pueblo. Lamar is a local point on the A. T. & S. F., 53 miles east of La Junta, Colo. Dawson is a local point on the E. P. & S. W., 18 miles west of French, N. M. Lamar is not a Colorado common point and rates therefrom to destinations west of La Junta are generally based on the combination on that junction. Distance Lamar to Dawson 207 miles, charged 80.5c prior to July 29, 1922 and 70c on those which moved after that date. The rate from Pueblo prior to July 1, 1922 was 66c and subsequently 59.5c. So far as the record shows the shipments considered in this proceeding are the only ones which have moved to Dawson from any point within the past five years. HELD, rate attacked not unreasonable or otherwise unlawful, complaint dismissed. Helvetia Milk Condensing Co. v. A. T. & S. F. Ry., 104 I. C. C. 402.

(3m) Complainant attacked combination rates charged on internal combustion engines to Texas from Buffalo, N. Y., Springfield, O., and Mount Vernon, O., and from Mount Vernon to Gorden, Tex.; on pumps from Canton, Ohio to Gordon; on boilers from Covington, Ky., to Brazos, Joshua, and Gainesvville Tex.; and on fuel economizers from Readville, Mass., to Joshua as unjust and unreasonable. The commodities in issue were installed as an integral part of the machinery in the stations or plants, the major portion of the movement consisting of internal combustion engines of about 160 horsepower. They all come under the general heading of machinery, which takes Class A in the western classification. Complainant concedes that, with the exception of the heat exchanges, they are all of the same general character and should take the same rates. Heat exchanges are used in gasoline plants for the transfer of heat between the hot and cold mineral seal oils used in the extraction of gasoline from natural gas. They do not produce any power of themselves. The destinations other than Duncan and Wynewood are all in Texas common point territory. The rate from Mount Vernon to the Oklahoma points is 142c, composed of class A from St. Louis of 117c and plus arbitrary of 24c. The rates to the Texas points are from Buffalo 150c, composed of class A from St. Louis of 120c plus 30c; from Springfield 135.5c, or 16.5c over St. Louis; and from Covington 132c or 12c over St. Louis. There was a rate of 84c applicable on valves and other pipe fittings, minimum 46,000 pounds and with respect to the other commodities on basis of the distance rates prescribed on oil well supplies and agricultural implement from St. Louis to Arkansas and western Louisiana in 77 I. C. C. 473, plus 75 per cent of the fifth class from Painted Post and Readville to St. Louis, or 75 per cent of the class A arbitraries over St. Louis from the other origins, and the water and rail rates from Painted Post and Readville to be based on the same percentage relationship to the corresponding rail rates as at present. No persuasive reason appear for differentiating between any of the commodities in issue and other machinery or machines taking class A rates. While heat exchangers do not generate power, they appear to be of more elaborate construction than valves or pipe fittings and may be properly considered a part of the plant machinery. On traffic from defined territories, the maintenance of the same rates to all Texas common points and of somewhat lower rates to Houston and other destinations in southeastern Texas is chiefly the result of the competition between the rail routes via St. Louis and other gateways, on the one hand, and the water and rail routes via the Gulf ports, on the other. HELD, rates attacked not unreasonable, complaint dismissed. Lone Star Gas Co. v. A. T. & S. F. Ry., 104 I. C. C. 623.

(3n) Complainant attacked combination rate charged on a carload of chestnut hard coal shipped during July 1918

to Uniondale, Ind., from Dunmore, Pa., as inapplicable. Charged combination rate of $4.70 composed of $2.00 to Salamanca, N. Y., plus $2.10 beyond. The supplement containing the combination rule made no reference to the tariff naming the $2.60 rate to Salamanca, nor did the latter contain any reference to the rule. The combination rate on March 26 1918 was $3.60 composed of $2 to Salamanca plus $1.60 beyond, and by adding 15c as provided by the rule, complainants arrived at a rate of $3.75. This rate was applicable on the shipment by virtue of the publication of the rule in a supplement to the tariff naming what would otherwise have been one of the factors of the through rate. HELD, rate charged inapplicable, applicable rate $3.75, reparation awarded. Miller & Brickley Grain Co. v. Director General 107 I. C. C. 81.

(3o) Complainant attacked combination rates charged on 63 cars of pulpwood from Soo Junction and Hendrie, Mich., to Sartell, Minn., during Sept. Oct. and Nov. 1920, as unreasonable, unjustly discriminatory and unduly prejudicial. On 46 of the shipments complainants instructions to the originating carrier, the South Shore, contemplated a movement over the Soo Line from Trout Lake, Minn., to Minneapolis and N. P., beyond. The combinations applicable over that route were 32c from Soo Junction and 31.5c from Hendrie, composed of distance rates of 4.5c and 4c, to Trout Lake, 20.5c to Minneapolis and 7c beyond. The remaining 17 shipments were unrouted. All of the shipments were forwarded over the South Short to Superior and the N. P., via Brainerd, Minn., beyond. Over that route the rate charged was a combination of 23c to Superior and 10c beyond. When these shipments moved the rate on wood pulp, the manufactured product of pulpwood, from Sault Ste Marie, Ont., to Cartell was 22.5c. The rate on pulpwood to Sault Ste Marie was 6c from Soo Junction and 7.5c from Hendrie. Pulpwood could, therefore, have been shipped from Soo Junction and Hendrie east to Sault Ste Marie, and the product, wood pulp, could have been backhauled to Soo Junction 47 miles from Sault Ste. Marie, and thence moved to Sartell Junction over the route traversed by these shipments for 28.5c from Soo Junction and 30c from Hendrie. HELD, applicable rate unreasonable to extent it exceeded 22.5c reparation awarded. As between the South Shore and the Northern Pacific divisions should be 14.5c to the South Shore and 8c to N. P., no order being made as to divisions. Watab Paper Co. v. N. P. Ry., 107 I. C. C. 131.

(3p) Complainant attacked combination rate charged on a carload of fabricated steel tank material from Parkersburg, W. Va., to Riverton, Wyo., Jan. 21, 1922 and a carload of rig iron outfits from and to the same points Feb. 4, 1922 as unreasonable and unduly prejudicial. Shipments moved over B. & O., to Chicago and Northwestern beyond, 1,703 miles. Charged combination rate of $1.99 composed of fifth class of 40.5c to East Clinton, Ill., and a commodity rate on oil well outfits and supplies of $1.585 beyond. This was the applicable rate on the rig iron outfits. The applicable rate on the tank material was $1.925 made up of fifth class of 37c to Chicago and commodity rate on iron and steel articles of $1.555 beyond. Reparation is sought to basis of a rate of $1.735 made up of fifth class rate of 37c to Chicago and a commodity rate of $1.365 beyond. The latter rate was contemporaneously applicable from both Chicago and the Mississippi river crossing to Riverton over the route of movement on tructural iron and steel, fabricated or unfabricated. At the time of movement defendants maintained a commodity rate of $1.64 on fabricated steel tank material and rig irons, carloads from Parkersburg, Wyo., to Casper, Wyo., 1,578 miles. Defendants admit they can not defend a rate higher than $1.735 on the shipment of fabricated steel tank material, but intimate that a rate somewhat higher might properly be applied on rig iron outfits, in view of the fact that the latter are rated class A and the former fifth class in the western classification. HELD, rates attacked unreasonable on fabricated steel tank material to extent it exceeded $1.735, and on rig iron outfits $1.69 or 85 per cent of the rate on oil well outfits and supplies. Reparation awarded. Parkersburg Rig & Reel Co. v. C. & N. W. Ry., 107 I. C. C. 187.

(3q) Complainant attacked combination rates charged on two cars of hay, one shipped April 9, 1923, from Prospect, O., and the other April 17, 1923 from Delaware, O., to Waynesville, N. Y., as unreasonable. Shipments were tendered to the Hocking Valley, unrouted, and moved over that line to Columbus, O., where they were delivered to the B. & O., and Big Four, and moved over those

lines to Cincinnati, O., thence to destination over the C. N. O. & T. P., and Southern, 602 and 624 miles, charged 60.5c from Delaware and 61.5c from Prospect, composed of fifth class rates of 21 and 22c to Cincinnati and class D rate of 39.5c beyond. The rates on hay, car loads, to Columbus were fifth class rates of 13c from Delaware and 14.5c from Prospect. From Columbus to Waynesville the rate on hay was a class D rate of 39.5c, this latter rate not being applicable over either the B. & O., or Big Four. However, the shipments could have moved beyond Columbus over the N. & W., to St. Paul, Va., C. C. & O., to Marion, N. C., and Southern beyond, 641 and 653 miles, respectively. HELD, shipments misrouted by the Hocking Valley, reparation awarded. Dewey Bros. Co. v. H. V. Ry., 107 I. C. C. 303.

(3r) Complainant attacked combination rate of 28.5c charged on eight cars of feldspar between Nov. 13 and Dec. 12 1922 from Keene, N. H., to Manchester, Conn., as unreasonable to the extent that the component factors of 17c to Willimantic, Conn., and 11.5c beyond, exceeded 15.5c and 7c, respectively. In 95 I. C. C. 615, Commission found them unreasonable to that extent and awarded reparation. HELD, original decision affirmed. Oxford Soap Co. v. B. & M. R. R., 107 I. C. C. 338.

(3s) Complainant attacked combination rates charged on 13 cars of solid asphalt in iron barrels and drums shipped from Port Arthur and West Port Arthur, Tex., to Porter, Ind., between June 13 and 28, 1921 and on Feb. 17, 1923 and delivered between June 24 and July 18, 1921 and on March 1, 1923 as unreasonable and in violation of the fourth section. Applicable rates based on Chicago combination. Contemporaneously a lower combination, to the basis of which complainant sought reparation, was in effect on Whiting, Ind. The governing tariff was so restricted that the Whiting combination could not be applied. Effective April 5, 1924, a joint rate of 34.5 was established. HELD, rates attacked unreasonable to extent they exceeded the Whiting combination, reparation awarded. Sall Mountain Co. v. A. T. & S. F. Ry., 107 I. C. C. 395.

(3t) The restriction of the combination rule was tantamount to the absence of the combination rule and the tariff containing the restriction must be construed as if it contained no rule. Poston Brick Co. v. Ill. Traction, 107 I. C. C. 507, 508.

(3u) Complainant attacked combination rates charged on one car of grapefruit shipped Feb. 4, 1922 from Bowling Green, Fla., to St. Paul, Minn., and reconsigned in transit to Wausau, Wis., as unjust and unreasonable and in violation of the fourth section to extent it exceeded a rate of $1.28 per box to Duluth, Minn. Shipment moved over A. C. L., and connections to Chicago and Milwaukee beyond, charged $1.11 per box to Milwaukee, Wis., and 46c beyond, the $1.28 later being published to Wausau. The haul to Albert Lea and Eau Claire is substantially the same as that to Wausau and that to Duluth is considerably greater. Defendants make no attempt to justify the lower basis to those points, nor does the record afford justification for the maintenance of the higher rate to Wausau. HELD, rate attacked unreasonable to extent it exceeded $1.28 per box, reparation awarded. Murphy v. A. C. L. R. R., 107 I. C. C. 651.

(3v) In 88 I. C. C. 593 the Commission found not unreasonable or unduly prejudicial the commodity rate prior to August 26, 1920 of 31.5c and 44c on and after that date, charged on 70 cars of wrapping paper shipped between July 17, 1920 and Dec. 25, 1921 from Madison, Me., to New Hope, Pa. The rate of 44c from Madison to New Hope was composed of proportional commodity rate of 12.5c to Brunswick, Me., and joint commodity rate of 31.5c beyond. From Enfield and Lincoln, producing points on the main line of defendant and from Howland and Motague, located 4 miles from Enfield on a branch line extending from that point, there was a proportional commodity rate of 6.5c to Brunswick. The proportional rate from Madison was reduced to 6.5c on Dec. 26, 1921 making the through rate to New Hope 38c, the same as from the other points named. The distance from Madison to Brunswick is 79 miles, whereas from Enfield, Howland, Montague and Lincoln the distances to the same point range from 143 to 152 miles. HELD, rates attacked unreasonable to extent they exceeded 38c, reparation awarded. Universal Paper Bag Co. v. Me. Central R. R., 107 I. C. C. 661.

(3w) Combination rates on fuel oil from Pryse, Ky., to Newport News, Va., found unreasonable to the effect it exceeded a lower combination contempor-

aneously in effect via the route of movement, one factor of which was so limited as to exclude its application to destinations in Virginia. Subsequent to the movement, the application of this factor was extended to include these destinations. Newport News Shipbuilding & Dry Dock Co. v. L. & N. R. R. Co., 100 I. C. C. 1.

(3x) Application of full combination basis to continuous mileage would tend to force movement of traffic to points local to line of originating carrier, a practice which commission has uniformly condemned, holding that if a shipper pays a reasonable amount for transfer at interchange points he is entitled to a continuous-mileage basis of rates and that a scale of rates for joint-line application higher than the single-line scale approved in 15 I. C. C. 109 (the Beatrice scale), by an amount sufficient to cover the terminal service at interchange and with provision for an additional charge for drayage where necessary, would effect a reasonable adjustment, having due regard for the rights of both shipper and carrier. Kirschbraun & Sons., Inc., v. G. N. Ry. Co., 100 I. C. C. 28, 36.

(3y) Combination rates to Petaluma, Calif. composed of commodity rates to San Francisco, plus local commodity rates beyond, assessed on shipments of grain and grain products from certain points in Utah, Idaho, Montana, Wyoming and Oregon, on the Oregon Short Line, found not unreasonable, but failure to accord Petaluma the San Francisco basis of rates while contemporaneously maintaining that basis to San Francisco, Oakland, San Jose, South Vallejo, Stockton, Woodland and Marysville, Calif., found to be unduly prejudicial to Petaluma and unduly preferential of San Francisco, Oakland, San Jose, South Vallejo, Stockton, Woodland, and Marysville, points with which Petaluma comes into competition. Undue prejudice ordered removed. Golden Eagle Milling Co. v. B. E. R. R. Co., 100 I. C. C. 41.

(3z) Combination rate assessed on a shipment of lumber from Rose Lake, Idaho, to Danvers, Ill., found inapplicable and illegal to extent it exceeded the rate applicable to both Chicago Heights and Peoria, Ill. Danvers is intermediate between Peoria and Chicago Heights, and while the tariff carrying the rate to these points did not prescribe a specific rate to Danvers, it carried an intermediate clause. The commission has frequently found that if carriers desire to restrict the application of a joint rate to any particular route they should do so by clear and unequivocal language. With no routing restrictions shown in the tariff naming the joint rate sought, the shipment is properly entitled to such rate. Reparation awarded. Rose Lake Lumber Co., Ltd., v. O. S. L. R. R. Co., 100 I. C. C. 221.

(4a) Factor from Appleton Junction, Wis, of combination rates on pulp wood, shipped during Federal control, from Keith, Eberlein Spur, and Jones Siding, Wis., to Kaukauna, Wis., found not unreasonable as compared with a lower joint rate contemporaneously in effect applicable to interstate traffic only, and subsequently established on intrastate traffic. The originating carrier was not under Federal control and was not joined as a party defendant, and the jurisdiction of the commission is therefore limited to the participation of the line beyond the junction point during the period of Federal control. Electric Coal Co., 60 I. C. C. 683. Kieckhefer Container Co. v. C. & N. W. Ry. Co., 100 I. C. C. 317.

(4b) Combination rates on lumber from Roach and Springdale, Fla., and Scott, Ga., to Harrison and Jersey City, N. J., and Great Works, Me., stopped in transit at Portsmouth, Va., found applicable, but found unreasonable to extent they exceeded lower contemporaneous combination rates based on Live Oak, Fla., and Savannah, Ga., plus a transit charge. Reparation awarded. McClave & Son v. C. L. R. R. Co., 100 I. C. C. 405.

(4c) Combination rate assessed on cork sheets or slabs without binder from Camden, N. J., to El Centro and Brawley, Calif., found inapplicable. Joint rate alleged applicable was restricted by exception to exclude shipments passing en route through points taking Group K, L, or M rates, and complainant's shipments were therefore not entitled to the joint rate. They were, however, entitled to a lower combination based on St. Louis, applicable under rule 5 (b) of Tariff Circular 18-A. Refund of overcharges directed. Armstrong Cork & Insulation Co. v. Reading Co., 100 I. C. C. 468.

(4d) Combination rates applicable on shipment of wheat from Nebraska City, Nebr., to Kansas City, Mo., reconsigned to Westwego, La., found not unreasonable but found to have been in violation of the fourth section of the act to extent they exceeded joint commodity rates contemporaneously applicable from farther distant points over route of movement. No damage found to have resulted from such violations and complaint dismissed. Moore-Lawless Grain Co. v. C., B. & Q., 101 I. C. C. 52.

(4e) Complainant attacked combination rates charged on sand carloads, between Jan. 1 and Oct. 1, 1923 from Petersburg and Old Dominion Siding, Va., to Bunyan and Marsden, N. C., as unreasonable, unjustly discriminatory, unduly prejudicial and in violation of section four. During the period from May 25 to June 19, 1923, 22 cars moved over A. C. L., to Wilson, N. C., and Norfolk Southern beyond, 174.5 miles, charged $1.60. Applicable rate was $2.06, composed of commodity rates of 76c to Arundel Siding, Va., and $1.60 beyond, subject to combination rule, shipments undercharged. Other shipments moved prior to May 9, 1923 over A. C. L., to Washington, N. C., W. & V., to W. & V., Jct., N. C., and N. S., beyond, 144.8 miles, charged $1.85. Effective Oct. 25, 1923 the rate from Petersburg to Bunyan over route of movement was reduced to $1.40 per ton. HELD, rates attacked unreasonable to extent they exceeded $1.40, reparation awarded. Raleigh Chamber of Commerce v. N. S. R. R., 109 I. C. C. 52.

(4f) Complainant attacked combination rate charged on 4 cars of ground limestone shipped in May and July 1924, from Ladds, Ga., to Henry, Tenn., as unjust and unreasonable and in violation of section 6. No joint rates in effect, rate applicable $2.63 constructed under the combination rule published in Jones I. C. C. U. S. 1. HELD, rate applicable $2.63, undercharges should be collected, complaint dismissed, rate attacked not unreasonable. Ladd Lime & Stone Co. v. L. & N. R. R., 109 I. C. C. 251.

(4g) Complainant attacked combination rate applicable on 34 cars of yellow pine piling from Lumberton and Ansley, Miss., to Bamfield, Mich., as unjust and unreasonable. Shipments moved from August 26, 1922 to Jan. 6, 1923, applicable combination 56.5c based on Au Sable, Mich. Bamfield is about 27 miles from Au Sable, Mich., on the Detroit & Mackinac. A rate of 50c was established to Comins, Bamfield being intermediate. HELD, rate attacked unreasonable to extent it exceeded 50c, reparation awarded. Edward Hines Yellow Pine Trustees v. C. S. & M. R. R., 109 I. C. C. 387.

(4h) Complaint attacked combination of rates over Lumberton, Miss., on forest products and naval stores, carloads, from Barth Kiln and Loretta to interstate destinations, and on coal, carloads, to the same points, and, as compared with blanket rates accorded complainants competitors unjustly discriminatory and unduly prejudicial. During 1921 and 1922 complainant constructed a line of railroad extending from Kiln, its southern terminus, in a northerly direction through Barth and Loretta to Lumberton, distance 52 miles. Blanket or group rates were generally applicable on lumber and naval stores from Lumberton and points in surrounding territory in the lower Mississippi valley. Subsequently the group rates were made applicable from Barth Kiln and Loretta. HELD, rates attacked not unreasonable or unjustly discriminatory, and undue prejudice was removed by subsequent establishment of through rates, complaint dismissed. Hines Yellow Pine Trustees v. A. C. & Y. Ry., 109 I. C. C. 453.

(4i) Complainant attacked combination rates charged on pulp wood, carloads, from Minnesota and Michigan to Wisconsin Dam, Wis., as unreasonable, unjustly discriminatory and unduly prejudicial. Wisconsin Dam and Kings are on the M. T. & W. Ry., called the Marinette. Distances to Wisconsin Dam are 6, 8.8 and 19.4 miles, respectively, from Tomahawk, Bradley and Harrison, the junction points with the trunk lines and to Kings they are 3.6, 9 and 9.8 miles respectively. As far as interstate rates are concerned, complainant and intervenor confine their attack to the rates from Duluth, Minn., or other gateways at the head of the lakes, to Wisconsin Dam and Kings, as applied on traffic originating at Minnesota points. Pulpwood from Minnesota to Wisconsin points usually moves on combination of proportionals to and from Duluth, Superior or other gateways. To the gate-

ways the rates are based on the scale prescribed in 27 I. C. C. 83. Beyond the gateways for single line hauls defendants usually apply a scale about equivalent to the scale prescribed by the Wisconsin Commission for two line hauls in that state, and 1.1c higher than the intrastate single line scale. This difference of 1.1c between the interstate and intrastate scales is accounted for by the addition of an arbitrary of that amount for the haul between Duluth and Superior. For the movement over the Marinette beyond the various trunk line connections that road assesses its local distance rates of 3.5c for 15 miles and under, 4c for 25 miles and 4.5c for greater distances. The short line distances from Duluth to Wisconsin Dam and Kings, are 188.4 and 188.6 miles, over the Soo to Bradley and thence Marinette. Present rate over that route is 10.4c composed of 6.9 and 3.5c to and from Bradley. The gravamen of the complaint is the addition of the full local rates of the Marinette to the trunk line junction point rates. HELD, rates attacked not unreasonable or unduly prejudicial execept rates on pulpwood, carloads, from Minnesota points to Wisconsin Dam and Kings, Wis., when routed from Duluth or Missabe Junction, Minn., over the Soo via Bradley thence M. T. & W., on and after Feb. 1, 1924 are unreasonable to extent the factor from Duluth or Missabe Junction to destinations exceeds 9c, reparation awarded. Tomahawk Kraft Paper Co. v. C. & N. W. Ry., 109 I. C. C. 517.

(4j) Complainant attacked combination rates or local rates plus transit charge on 14 cars of iron and steel articles shipped between Dec. 1, 1921 and Oct. 31, 1922 from Pennsylvania and Ohio to Parkersburg, W. Va., there fabricated in transit, and reforwarded to destinations in Kentucky and to New Orleans, La., for export to Mexico, as unjust and unreasonable; that denial by defendants of fabrication in transit in connection with joint rates over certain routes to points south of the Ohio river was unreasonable, unjustly discriminatory and unduly prejudicial; that the joint rates on like traffic from Parkersburg and from Bridgeport and Steubenville, O., and Pittsburgh, Pa., and points taking same rates to Glasgow and Glasgow Junction, Ky., with fabrication in transit at Parkersburg since July 1, 1923 as unreasonable. Parkersburg is on the B. & O., Ohio river and eastern border of central territory. Points of origin are Pittsburgh and Clairton, Pa., and Bridgeport, New Philadelphia and Warren, O. During the first named period the fabrication in transit tariffs of the B. & O. provided that transited material destined to points south of the Ohio river located on or reached by 15 named railroads would be subject to local rates to and from the Ohio river gateways through which the shipments were forwarded. The result was the application of combination rates on Parkersburg or of local rates to and from other Ohio river points plus a fabrication charge of 3.5c at Parkersburg prior to July 1, 1922 and 3c on and after that date. Contemporaneously fabrication in transit was accorded at Parkersburg in connection with joint rates over the same roads to points west of the Mississippi river, directly through some of these Kentucky destinations. Under the governing tariffs shipments from trunk line territory were entitled to fabrication in transit at the applicable joint rates from origin to ultimate destinations via the Virginia gateways. This restricted application of transit arrangements was discontinued by the B. & O., and its southern connections on Nov. 1, 1922 and fabrication in transit authorized at Parkersburg in conjunction with joint rates to most of the territory south of the Ohio river. The fabrication in transit of iron and steel articles is common and has been in effect in different territories for many years. Its convenience to the fabricator of these products makes it particularly a commercial necessity. HELD, tariff provisions and rates attacked unreasonable and unduly prejudicial to extent that on shipments to Bowling Green and New Orleans to extent they exceeded joint rates plus transit charge; that on shipments to Glasgow and Glasgow Junction Scottsville and Whitesville rates unreasonable to extent they exceeded 52c, plus the transit charge, subject to reduction of July 1, 1922, reparation awarded. Parkersburg Rig & Reel Co. v. B. & O. R. R., 109 I. C. C. 569.

(4k) Complainant attacked combination rate charged on one car of lumber shipped on April 17, 1922 from Millville Jct., Fla., to Decatur, Ga., thence reconsigned to Scottdale, Ga., as unreasonable. Decatur and Scottdale

are local points on the Georgia R. R., 6 and 8 miles east of Atlanta. Shipment was consigned to complainant at Decatur. In accordance with shippers routing instructions reading Ga. Ry. at Macon, Ga., the shipment moved from Macon in a northeasterly direction over a branch line of the Georgia R. R., to Camak, Ga., thence in a westerly direction over the main line of that road through Scottdale to Decatur. While the shipment was in transit complainant placed instructions with the G. R. R., to intercept the car and reconsign it to Scottdale, but the car arrived at Decatur before these instructions could be acted upon. The subsequent movement from Decatur to Scottdale constituted a back haul of 2 miles. Complainant admits that there was no negligence on the part of the carrier. The total distance shipment moved is 468 miles. The normal route from Millville Junction to Atlanta is over the initial line to Dothan, Ala., 80 miles, thence C. of Ga. to Atlanta, 289 miles, a total of 369 miles, charged 24c to Decatur and $8.13 per car Decatur to Scottdale plus $6.50 reconsigning charge. The rate of 24c to Decatur and 20.5c to Atlanta constituted a fourth section departure. HELD, rate attacked unreasonable to extent it exceeded 20.5c prior to July 1, 1922 and 18.5c thereafter from Millville Jct. to Decatur, plus $8.13 per car to Scottdale prior to July 1, 1922 and $7.32 thereafter, reparation awarded. Watters Tonge Lumber Co. v. A. & St. A. B. Ry. 109 I. C. C. 598.

(4l) Complainant attacked combination rate charged on clean rice, carloads, from Galveston, Tex., to Bluefield, W. Va., as unreasonable and unduly prejudicial. Bluefield is a local point on the N. & W., less than 3 miles north of the Virginia-West Virginia state line, and 105 miles west of Roanoke, Va. Shipments moved Aug. 18 and 30, 1921, first over I. & G. N., and T. & P., to New Orleans thence Southern to Bristol, Tenn., and N. & W., beyond; second, I. & G. N., to Houston, Tex., S. P., to New Orleans, thence L. & N., to Norton, Va., N. & W., beyond, applicable rate 101c composed of 42.5c to Memphis, Tenn., and 58.5c beyond. There was contemporaneously in effect a combination of 90.5c based on 42.5c to Memphis and 48c beyond over a route through New Orleans, Memphis Jct., Ky., and Cincinnati, O. On Jan. 10, 1924 a joint rate of 96c was established from both Galveston and Lake Charles to Bluefield over the various routes, increased June 8, 1925 to 104.5c, the present rate, which is 36c higher than the present rate from New Orleans. HELD, applicable rate of 101c not unreasonable but shipments overcharged, which should be refunded, complaint dismissed. Seaboard Rice Milling Co. v. A. G. S. Ry. 109 I. C. C. 718.

(4m) Complainant attacked combination rates charged on 10 cars of wooden railroad ties during April, May and June 1923 and August 1924 from Argyle, Canaan, Rosebud and Bagnell, Mo., to Rapid City, S. D., as unreasonable, unjustly discriminatory, unduly prejudicial and in violation of section four in that they exceeded a rate of 53.5c maintained from St. Louis, Mo. Shipments moved M. P., or Rock Island and Burlington to Mystic, S. D., thence R. C. B. H. & W., to destination, distances ranging from 961 to 1,002 miles, charged 59.5c on shipments from Bagnell and 61 from the other points, based apparently on Kansas City or Omaha. Rosebud, Canaan and Argyle are local stations on the Rock Island, Bagnell on the M. P., 85 miles, 96, 125 and 170 miles west of St. Louis. The rates in issue appear somewhat low as compared with rates from and to points in Oklahoma, Missouri, North and South Dakota and other states for similar distance. HELD, rates not unreasonable or otherwise unlawful, complaint dismissed. Abeles & Taussig Lumber & Tie Co. v. C. R. I. & P. Ry. 112 I. C. C. 62.

(4n) Complainant attacked combination rates charged since Nov. 4, 1922, on unshelled peanuts, carloads, from Suffolk, Va., and other points in that state to Hutchinson, Kas., as unreasonable, unjustly discriminatory and in violation of section four. Unshelled peanuts carloads are classified sixth class in southern and fourth class in official and western classifications, minimum 24,000 pounds subject to rule 34. The rates from Suffolk to Kansas City, Mo., Hutchinson and other interior Kansas jobbing points are made by combinations on East St. Louis, Ill., Memphis, Tenn., or Chicago, Ill. The movement to Hutchinson is via Memphis. The factors east of the Mississippi river are commodity rate which are the same on traffic to Hutchinson, Kansas City or other destinations. The complainants con-

cede that the alleged disparities in the rates exist in the factors west of the river. The rate from East St. Louis to Kansas City is the proportional fourth class rate; to Hutchinson, Salina and Wichita a commodity rate; to Topeka and Concordia fourth class rate. From Memphis to all destinations the rates are the fourth class rates, except to Salina which takes a commodity rate. HELD, rates attacked unreasonable to extent they exceed 123c, minimum 30,000 pounds, reparation awarded. Western Brokerage Co. v. A. C. L. R. R., 112 I. C. C. 103.

(4o) Complainant attacked combination charged on a car of batting dross from Mangrum, Miss., Jan. 5, 1924 to Pensacola, Fla., via G. & S. I., to Gulfport, Miss., L. & N., beyond, 310 miles, as unreasonable, unjustly discriminatory and unduly prejudicial. Batting dross is a by-product of the process by which turpentine and rosin are obtained for the gum of yellow pine trees. It was formerly a waste product. Charged 34.5c, made 21.5c to Mobile and 13c beyond. A lower combination of 34c was applicable made up of 17c to Gulfport and 17c beyond. Shipments overcharged. Effective Feb. 28, 1924 a joint commodity rate of 29c on rosin and batting dross was established. The combination rate compared favorably with the rates in force at the same time from shipping points in territory contiguous to Mangrum. HELD, rate of 34c not unreasonable or otherwise unlawful, complaint dismissed. Western Paper Makers Chemical Co. v. G. & S. I. Ry., 112 I. C. C. 221.

ALL OTHER CITATIONS

Cancellation of Rule for Combination Rates, 85 I. C. C. 101; Bell & Co., v. C. M. & St. P. Ry. Co., 85 I. C. C. 520; Pitts v. T. & P. Ry. Co., 85 I. C. C. 635; Sewell & Co. v. Director General, as Agent, 85 I. C. C. 641; Slogo Coal Corp. v. M. P. R. R. Co., 88 I. C. C. 111; Northwestern Clay Mfg. Co. v. R. I. S. Ry. Co., 88 I. C. C. 131; Montana R. R. Commrs. v. C. M. & St. P. Ry. Co., 88 I. C. C. 183; Southern Cotton Oil Co. v. Director General, as Agent, 88 I. C. C. 208; Michigan Tanning & Extract Co. v. Director General, as Agent, 88 I. C. C. 298; Scheidenhelm Co. v. C. M. & St. P. Ry. Co., 88 I. C. C. 321; Jackson Traffic Bureau v. C. R. I. & P. Ry. Co., 88 I. C. C. 373; Colorado Fuel & Iron Co. v. Director General, as Agent, 88 I. C. C. 453; Early-Foster Co. v. A. T. & S. F. Ry. Co., 88 I. C. C. 507; Hollingshead Co. v. D. S. W. Ry. Co., 88 I. C. C. 659.

LONG AND SHORT HAULS

I. CONTROL AND REGULATION.
- §1. Constitutionality of section 4.
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II. SECTION 4 AS AMENDED.
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- §3. Constitutionality.
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- §4½. In general.
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- §6¾a. Combinations subject to section 4.
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IV. COMPETITION AS JUSTIFICATION.
- §7. In general.
- §7½. Cross-Country competition.
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- §10. Water.

V. PROCEDURE.
- §11. Complaints and orders.
- §12. Evidence.
  - (1) Burden of proof.
  - (2) Circumstances of probative force.
- §13. Reparation.
- §14. Form of fourth section application.
- §15. Suspension of new tariffs.
- §16. Tariffs and publication.
- §17. Actions at law.

CROSS REFERENCES

See Advanced Rates §5 (2½);

Blanket Rates; Market Competition; Motor Truck Competition; Railroad Competition; Through Routes and Joint Rates.

I. CONTROL AND REGULATION.

See Control and Regulation.

§2. Jurisdiction of Commission.

See Interstate Commerce Commission I; Jurisdiction of Commission.

(a) Where there is an evident willful disregard by carriers of an order of the commission denying fourth section relief, such violations of law will be referred to the commission's bureau of inquiry for appropriate action. Knoxville Traffic Bureau v. S. Ry. Co., 89 I. C. C. 708, 718.

ALL OTHER CITATIONS

Atlas Portland Cement Co. v. C. R. R. Co. of N. J., 85 I. C. C. 611.

II. SECTION 4 AS AMENDED.

§2½. Construction in General.

(a) The Commission is of the opinion and find that in the administration of the fourth section the words "reasonably compensatory" imply that a rate properly so described must (1) cover and more than cover the extra or additional expenses incurred in handling the traffic to which it applies; (2) be no lower than necessary to meet existing competition; (3) not be so low as to threaten the extinction of legitimate competition by water carriers; (4) and not impose an undue burden on other traffic or jeopardize the appropriate return on the value of carrier property generally, as contemplated in section 15a of the act. It may be added that rates of this character ought, wherever possible, to bear some relation to the value of the commodity carried and the value of the service rendered in connection therewith. The Commission also finds that where carriers apply for relief from the long and short haul clause of the fourth section and propose the application of rates which they designate are reasonably compensatory, they should affirmatively show that the rates proposed conform to the criteria indicated above. It goes without saying that carriers should not propose rates or rate structures for approval in a fourth section application which create infractions of other provisions of the act, and particularly of section 3. Wool rates investigation, 1923, 91 I. C. C. 235, 242.

(b) Assessment of a transit charge in addition to the through rate at an intermediate point while no charge is assessed from a farther distant point, resulting in higher aggregate charges from the intermediate point, would be in violation of the long-and-short-haul clause. Transit Rules on Grain, 98 I. C. C. 679, 686.

(c) In the administration of the fourth section the words "reasonably compensatory" imply that a rate properly so described must (1) cover and more than cover the extra or additional expenses incurred in handling the traffic to which it applies; (2) be no lower than neccessary to meet existing competition; (3) not be so low as to threaten the extinction of legitimate competition by water carriers, and (4) not impose a burden on other traffic or jeopardize the appropriate return on the value of carrier propery generally, as contemplated in section 15a of the act. It may be added that rates of this character ought, wherever possible, to bear some relation to the value of the commodity carried and the value of the service rendered in connection therewith. Where carriers apply for relief from the long and short haul clause of the fourth section and propose the application of rates which they designate as "reasonably compensatory" they should affirmatively show that the rates proposed conform to the criteria indicated above. Class and commodity rates between western points 104 I. C. C. 578, 583.

(d) Contention that through rates on China-wood oil higher than a combination composed of a commodity factor applicable on whale, fish, and coconut oil and fifth-class factor were in violation of section 4, not sustained. The commodity factor was not specifically applicable on China-wood oil and it would not be proper to base a fourth-section violation on an assumption of analogy. Glidden Co. v. E. R. R. Co., 100 I. C. C. 331, 332.

(e) It is significant that many of the commission's early cases orignated in the South, and that they resulted in a series of Supreme Court decisions with respect to the provision of the fourth section which prohibits, with certain

qualifications, a higher charge for a shorter than for a longer distance over same line or route in same direction. These cases made it clear that commission could not deal effectively with the basing-point system so long as the words "under substantially similar circumstances and conditions" remained in that section. Southern Class Rate Investigation, 100 I. C. C. 513, 521.

(f) Contention that there is no violation of long-and-short-haul provision of section 4 of the act where carrier, under a trackage agreement, operates over another carrier's line between given points and there is no concurrence on part of latter in published rate of former, but a higher rate is charged to an intermediate point in which both lines concur, not sustained. See 81 I. C. C. 497. Shanks & Gannon Co. v. C., C., C. & St. L., 102 I. C. C. 462, 464.

ALL OTHER CITATIONS

North Carolina Pine Asso. v. A. C. L. R. R. Co., 85 I. C. C. 270.

§1. Exceptions.

See Class Rates §2 (tt) (3k) (5i) (6q) (7s); Compress Companies and Charges II (i); Rail and Water Rates (kk); Reduced Rates §4½ (ii); Tariffs §12½.

(a) Emergency rates on hay from Keenesburg and Hudson, Colo., to St. Louis, Mo., were expected from reductions required in 64 I. C. C. 85, but similar rates from competing Colorado common points were not so excepted, Long-and-short-haul violation of fourth section thereby created was subsequently removed by restoration of rate parity. HELD: In absence of proof of damage unauthorized departure from fourth section does not warrant an award of reparation. National Hay & Milling Co. v. C., B. & Q. R. R. Co., 89 I. C. C. 1.

(b) Authority to continue to charge for the transportation of cotton from points in Mississippi to points in Minnesota, Wisconsin, and all States east of Mississippi River, rates which are lower than on like traffic from or to intermediate points, denied. Mississippi R. R. Commission v. A. & V. Ry. Co., 89 I. C. C. 47.

(c) Authority to continue to charge rates on coal from Chicago, Peoria, East St. Louis, Ill., and groups to points in Minnesota, the Dakotas, Iowa, Nebraska, and Canada, without observing the long-and-short-haul provision of the fourth section of the act, denied. Coal to Iowa Minnesota and Dakotas, 89 I. C. C. 105.

(d) Authority granted carriers to establish and maintain for transportation of nitrate of soda, via all routes, from New Orleans, La., and subports thereof taking same rates to destinations in Arkansas the lowest rate herein prescribed as maximum via any route between said points, and to maintain higher rates at intermediate points which shall not exceed rates prescribed as maximum, and in no case exceed the lowest combination. New Orleans Joint Traffic Bureau v. A. & V. Ry. Co., 89 I. C. C. 223.

(e) Applications for authority to continue to charge for the transportation of cottonseed cake and meal from Texas common points to New York, N. Y., Boston, Mass., and other points in trunk-line and New England territories, rates which are lower than the rates contemporaneously maintained on like traffic to intermediate points, denied. Larrowe Milling Co. v. A., T. & S. F. Ry. Co., 89 I. C. C. 439, 442.

(f) Application for authority to maintain class rates within eastern trunk-line territory, between C. F. A. territory on the one hand, and eastern trunk-line and New England territories on the other, and between eastern trunk-line territory and New England territory, lower for longer than for shorter distances over the same line in the same direction, or which are lower than rates from, to, or between intermediate points, denied. No evidence was introduced at hearing in justification of the departures; carriers were not prepared to justify them; and agreed that a general denial order should be entered. Fourth Section Departures in E. T. L. Territory, 89 I. C. C. 470.

(g) This proceeding involves consideration of fourth section applications of eastern carriers asking for authority to continue to maintain class rates in trunk line territory, between points in trunk line territory and central territory, and between trunk line territory and New England territory lower for longer than for shorter distances over the same line, the shorter being included within the

longer distance. No evidence was introduced in justification of the fourth section departures. HELD, applications denied, effective Nov. 15, 1924. Fourth Section Departures in E. T. L. territory, 89 I. C. C. 470.

(h) Petition of Missouri Pacific R. R. Co., for authority to maintain rates on grain and products from St. Louis, Mo., and Cairo, Ill., to Memphis, Tenn., and Mississippi River crossings south of Memphis and from Memphis to river crossings south of that point, than are contemporaneously maintained on like traffic to intermediate points, denied. Applicant failed to justify reasonableness and propriety of rate adjustment from St. Louis, Cairo, and Memphis to numerous points intermediate to the river crossings south of Memphis, and failed to show that proposed rates from St. Louis and Cairo to Memphis to be reasonably compensatory. Memphis Southwestern Investigation, 89 I. C. C. 566.

(i) Fourth Section order 7542 authorized applicants to establish and maintain class and commodity rates, except on fertilizer and grain and grain products, between Mississippi river crossings, St. Louis and south thereof, and points grouped therewith, and Memphis and Mississippi river and south thereof, via St. Louis and crossings south thereof not lower than the rates in effect over the lines of carriers operating east of the Mississippi river between the same points, and to maintain higher class and commodity rates, from, to, and between intermediate points west of the Mississippi river over the M. P., and its connections east thereof extending from St. Louis to New Orleans through Poplar Bluff, Mo., Wynne, Marianna, and McGehee, Ark., and Collinston, Monroe and Alexandria, La. In 80 I. C. C. 157 applicants introduced no evidence in justification of the reasonableness and propriety of the higher rates on grain and grain products which they sought to maintain at intermediate points. The petition is based solely upon differences in transportation conditions east and west of the Mississippi river. The rates which applicant seeks to meet at the river crossings and those to intermediate Arkansas points are proportional rates and are applicable on traffic originating beyond St. Louis, Cairo and Memphis. The rates to intermediate points in Missouri are published as local rates. To Louisiana destinations the lower rate, either local or proportional, is applicable under alternative tariff provisions. The burden of justification rests on the applicant. Relief to continue the existing fourth section departures above referred to is not requested, nor does the record afford any warrant therefor. The record is inadequate to enable the Commission to prescribe a reasonable basis of rate to points to which the present rates admittedly require readjustment. HELD, application denied. Memphis-Southwestern Investigation, 89 I. C. C. 566.

(j) Applications for authority to continue to maintain rates on bituminous coal from mines on northern portion of the Gauley branch of the C. & O. Ry. to destinations in numerous states, lower than from intermediate points on said branch, denied. Coal and Coke from C. & O. Points, 89 I. C. C. 638.

(k) C. & O., asked authority to continue and to establish rates on bituminous coal, carloads, from points on that part of its Gauley branch, extending from Belva, W. Va., north to Bentree and Greendale, W. Va., to destinations interstate on traffic moving west via Gauley lower than from intermediate points on the Gauley branch between Belva and Gauley. On westbound traffic the rates from the Kanawha district range from 5c to 40c higher than rates from the New River district, except to a few points to which the rates are the same from both districts. Traffic from the mines on the C. & O., north of Belva, on which the Kanawha district rates are applied, must pass through the higher rated territory south thereof. On traffic to the east the rates from the Kanawha district are generally 10c over the rates from the New River district. HELD, granting of fourth section relief not warranted. Coal and coke from C. & O., points, 89 I. C. C. 638.

(l) Where there is an evident willful disregard by carriers of an order of the commission denying fourth section relief, such violations of law will be referred to the commission's bureau of inquiry for appropriate action. Knoxville Traffic Bureau v. S. Ry. Co., 89 I. C. C. 708, 718.

(m) In 80 I. C. C. 663 the Commission denied those portions of fourth section applications No. 1952 of the L. & N., and No. 1764 of the C. & O., by which authority was sought to continue rates

on coal from mines on those lines in the Inner Crescent groups to Detroit, Mich., lower than to Tama, O., Jackson, Mich., and other intermediate points. Cases were reopened and consolidated with No. 12527 of the C. N. O. & T. P., in which that carrier asks for similar relief as to rates from mines served by it in Kentucky and Tennessee. The higher rates intermediate points are those on the C. N., M. C., and Wabash in the Jackson group. Rates to this group are uniformly 10c higher than the rates to the group in which Detroit is situated. There are three principal lines between Cincinnati and Toledo and seven between Toledo and Detroit. There are 19 routes from the L. & N., mines to Detroit, 38 from the C. & O., mines and 18 from the C. N. O. & T. P., mines. All of these routes pass through Toledo except those here asking fourth section relief and routes in connection with the D. T. & I., as the delivering line. Witnesses agreed that, if the rates to Detroit over the petitioning routes were increased 10c to eliminate the fourth section departures, coal would not be routed over the C. N., except in case of extreme necessity, but would be diverted to routes through Toledo and add to the burden of the already overtaxed facilities at that point. In view of the public convenience and necessity for keeping the C. N., routes open for the movement of coal to Detroit and other points in the same group, thereby reducing the congestion at the Toledo gateway, HELD, authority will be granted to the applicants to continue and to establish and maintain the same rates via Jackson or Alvordtown as apply via Toledo to Detroit and points taking the same rates, but not lower than the present rates via Toledo, while maintaining higher rates to Jackson and other intermediate points taking the same rates, subject to the conditions that the rates to intermediate points shall not be increased, except as may hereafter be authorized by the Commission, and shall in no case exceed the lowest combination. Coal from Crescent districts, 91 I. C. C. 194 .

(n) Fourth section application of the Northern Pacific for itself and the M. & I., and B. F. & I. F. Rys. sought relief to continue rates on coal from Duluth, Minn., and Superior, Wis., via Brainerd, Minn., to International Falls, Minn., lower than rates applied at intermediate points. The rates sought to be applied in both instances were those in effect over the short line, the D. W. & P. Distances over this latter route from Duluth are 171.3 miles to International Falls and 171.7 miles to Fort Frances, both taking same rates. The distance via the N. P., 311.8 miles; represents a circuity of 82% over the short line. HELD, relief from fourth section should be granted to extent rates are not lower than from Duluth over the D. W. & P., and maintain higher rates at intermediate points provided the authority shall not extend to such intermediate points as to which the haul of the petitioning line or route is not longer than that of the direct lines. Rates on coal and cement from Duluth and Superior, 91 I. C. C. 627.

(o) Whatever fourth section applications may have protected fourth section departures in the past are now inoperative because the carriers have since complied with the fourth section. Tin, Terne and black plate, 92 I. C. C. 356, 358.

(p) Northern Pacific, respondent, sought authority to establish rates on sugar, carloads, from Billings, Mont., to Superior, Wisc., Twin Cities and Duluth, Minn., and points taking same rates without observing the long and short haul provision of the fourth section. Billings is 225 miles east of Butte, Mont. applicant's line being the most direct to the points of destination, the distance to St. Paul being 890 miles and to Duluth not more than 10 miles more. The present rate is 56c to destinations involved and 68c to intermediate points. HELD: Application for relief denied. Rates on Sugar, 95 I. C. C. 151.

(q) Carriers sought authority to establish between so-called Utah common points, on the one hand, and Los Angeles, Calif., and Portland, Ore., and points taking same rates, on the other hand, class and commodity rates lower than those to be applied on traffic to and from intermediate points. Utah common point territory extends from Ogden, Utah, south to Payson, Utah. Salt Lake City is the most important point in this group. The application is based on the desire of the Southern Pacific and its connections in the group territory at the terminals to compete via circuitous routes with the short line rates of the U. P. Distance from Salt Lake City to Los

Angeles by the direct route is 784 miles, and by applicant's route 1,177 miles, or 50% longer. Higher rates are proposed at points intermediate to Los Angeles than at points intermediate to Ogden. In support of its contention that class rates from Los Angeles to intermediate points are reasonable applicant testified that they were made in relation to the class rates maintained to the same territory from Sacramento, and San Francisco, Calif. HELD: Carriers will be granted relief to establish and maintain class rates between the competitive points the same as the class rates maintained between the said points by direct line, but not lower than the proposed rates between the said points, and to maintain higher rates from, to, and between intermediate points. **Application No. 12,293.** S. P. and its connections serving the terminal groups proposed the establishment of reduced rates on all classes and commodities between Utah common points and Portland, Ore., Seattle, Wash., and points taking same rates. Proposed rates are to be equal to those maintained over the direct route of the O. S. L., and O. W. R. R. & N. Distance from Portland to Ogden is 853 miles via direct route and 1,342 through Roseville, Calif., via applicant's route, or 57% greater than the short line. From Seattle to Salt Lake City the distances are 1,070 and 1,559 miles, making the S. P. route 46% longer than the short line between those points. HELD: Applicant carrier granted relief from the fourth section. Class and Commodity Rates from Utah, 95 I. C. C. 417.

(r) When the intermediate clause here under susupension was published it automatically removed fourth section departures at unnamed intermediate points. These departures can not be reinstated without new authority from the Commission. Lumber from Pacific Coast, 95 I. C. C. 744, 746.

(s) In 88 I. C. C. 345 the Commission granted authority to carriers to establish rates on paper and paper articles from points in Wisconsin, Minnesota, Michigan, and Canada to New Orleans, La., without observing the long and short haul provision of the fourth section as to intermediate points of destination. Upon application of Jackson, Miss., proceeding reopened, this point being about 183 miles north of, and intermediate to, New Orleans. The only paper jobber in Mississippi is located at Jackson, and it appears that Jackson is the only Mississippi point intermediate to New Orleans from the northern mills which distributes paper in substantial quantities. HELD: Rates to Jackson and New Orleans established under the former order unduly prejudicial to Jackson to extent they exceed rates to New Orleans. Paper and Paper Articles to New Orleans, 96 I. C. C. 600.

(t) K. C. S., and other carrier sought permission to establish rates on classes and commodities from New Orleans, La., and points taking same rates or arbitraries higher, to a territory bounded on the south by the C. & A. from Kansas City, Mo., through Mexico, Mo., and Roodhouse, Ill., to Springfield, Ill.,, and Wabash from the latter point to Danville, Ill., on the east by the Indiana-Illinois state line and a northerly extension thereof, on the west by the C. G. W. from Kansas City to Des Moines, Ia., the Rock Island from Des Moines to Minneapolis, Minn., and on the north by the Canadian border, without observing the provisions of the fourth section as to intermediate points. To points on and east of the Mississippi river in the destination territory defined in the application there are joint class rates governed by southern classification, established by the Illinois Central and other lines having direct routes, in which applicants desire to participate. Applicants witnesses say that during the 22 years in which their lines engaged in this traffic on the basis of rates which they desire to reestablish the earnings therefrom were generally regarded as reasonably compensatory. In 81 I. C. C. 522 the Commission denied authority to maintain rates on asphalt from New Orleans and other Gulf ports to Chicago and Excelsior Springs, Mo., lower than those contemporaneously in effect to Kansas City and other intermediate points. There is no evidence in the present record to warrant a change in the conclusion reached in that case. HELD: Relief is granted from the fourth section as desired, except on asphalt. Class and commodity rates from New Orleans, 98 I. C. C. 673.

(u) Respondents sought authority to establish and maintain rates on vinegar from Oklahoma City, Okla., to points

in Texas without observing the long and short haul provision of the fourth section. Respondents are Frisco, M. K. & T., Rock Island. A distance scale of rates on vinegar is in effect from Oklahoma City to points in Texas. These rates are in the same as the class D rates, which by exception apply on that Texas. The latter rates were prescribed in 48 I. C. C. 312. The same rates also apply intrastate in Texas. Fourth section relief was granted in connection with the rates prescribed. At present the rates from Oklahoma City are restricted to apply only over certain routes. The Rock Island also sought authority to maintain rates to points located in common point territory lower than to intermediate points located in differential territory. This is desired even HELD: Applicants will be authorized to establish and maintain over all routes from Oklahoma City to points in Texas, the lowest rate applicable over any route but not lower than the scale published in Leland I. C. C. 1590, and to maintain higher rates at intermediate points, provided that the rates at the said intermediate points shall not exceed the rates in said scale, and shall in no case exceed the lowest combination, and provided further, that the relief granted shall not include routes more than 70% longer than the direct lines or routes where the Rock Island is the direct line. between the competitive points. Vinegar to Texas Points, 98 I. C. C. 688.

(v) Authority to continue to charge for transportation of furniture from Chattanooga, Tenn., to New York, N. Y., Philadelphia, Pa., Boston, Mass., and other eastern destinations rates which are lower than on like traffic from Nashville and other intermediate points, denied. Standard Furniture Co. v. N., C. & St. L. Ry., 91 I. C. C. 27.

(w) Upon further hearing, applications for authority to charge rates on coal from mines on L. & N., C. & O., and C., N. O. & T. P. in Inner and Outer Crescent districts to Detroit, Mich., and points taking same rates, lower than to Jackson, Mich., and other intermediate points, granted. Unless petitioning carriers can maintain rates to Detroit via certain routes on an equality with rates via routes through Toledo, traffic will be diverted to routes through Toledo and add to burden of the already overtaxed facilities at that point, and public convenience and necessity require maintenance of petitioning routes for movement of coal to Detroit in order to relieve congestion at Toledo gateway. Previous report, 80 I. C. C. 663. Coal from Crescent District, 91 I. C. C. 194.

(x) Fourth-section applications seeking authority for trans-continental lines to establish or continue rates on wool and mohair from Pacific coast terminals and adjacent points to eastern defined territories, lower than from intermediate points of origin, for purpose of meeting competition of intercoastal water carriers, denied. Through rates from adjacent points would be considerably lower than present rates, thereby reducing disparities as between coast cities and nearby- interior points, but, on the other hand, disparities would be increased as between these points and farther inland points, which take considerably higher rates. Wool Rates Investigation, 1923, 91 I. C. C. 235, 264.

(y) Carriers authorized to establish and maintain from competitive points via indirect routes rates applicable via shortest and most direct routes and to maintain higher rates from intermediate points, authority granted not to include intermediate points as to which haul of circuitous line or route is not longer than that of direct line or route between competitive points; rates from intermediate points in no case to exceed lower combination; and relief granted not to include routes more than 33⅓ per cent longer than direct line or route between competitive points. Wool Rates Investigation, 1923, 91 I. C. C. 235, 265.

(z) Application for authority to establish and maintain rates on fertilizer from Wilmington, N. C., to certain points in the Carolinas, which are lower than rates to intermediate points, on ground of circuity, granted where routes are 15 per cent or more longer than short-line routes between same points, and denied where routes are more than 70 per cent longer than direct lines. Goldsboro Chamber of Commerce v. A. C. L. R. R. Co., 91 I. C. C. 315, 327, 328.

(aa) Fourth-section applications in connection with rates on cypress lumber and lumber articles, from Waycross, Hebardville, and Hopkins, Ga., to destinations in North Carolina, South Carolina, and Florida which are not in conformity with either long-and-short-haul or aggregate-of-intermediates provisions of

fourth section of the act, denied. Hebard Cypress Co. v. A. & R. R. R. Co., 91 I. C. C. 343, 352.

(bb) When joint rates were established on lumber and shingles from Pacific Northwest to Arona, Pa., Pittsburgh basis of rates were specifically published to apply, and under an intermediate clause that basis applied at points intermediate thereto. Subsequently, intermediate clause was canceled and Philadelphia basis of rates became applicable to intermediate points, thereby creating a violation of long-and-short-haul provisions of section 4 of the act. Proposal of carriers to remove fourth-section departure by increasing rates to Arona to Philadelphia basis found not justified. Carriers are under no restriction as to manner of removing fourth-section departure and have not shown that a basis to Arona from the Pacific Northwest different from that maintained from other lumber-producing points is justified. Lumber from Northwest, 91 I. C. C. 457.

(cc) Applications for authority to continue to charge for transportation of petroleum and products from Oklahoma producing points and southwestern Missouri to Cairo, Ill., via East St. Louis, Ill., rates which are lower than rates contemporaneously in effect on like traffic to Murphysboro, and other intermediate points, denied. Petroleum from Southwestern States, 91 I. C. C. 464.

(dd) Authority granted Northern Pacific for itself and on behalf of Minnesota & International and Big Fork & International Falls to charge rates on coal and continue rates on cement from Duluth, Minn., and Superior, Wis., to International Falls, Minn., and Fort Frances, Ontario, lower than to intermediate points. Traffic can be moved at very little out-of-pocket cost, since cars must be hauled northward to handle preponderant southbound traffic. Hence, any revenue from this source in excess of bare additional expense of handling seems desirable for economy of operation. Moreover, applicant roads are not in very prosperous condition and unquestionably need additional business; agricultural development of region is progressing very slowly; and passenger traffic is suffering from automobile competition. Rates on Coal and Cement from Duluth and Superior, 91 I. C. C. 627.

(ee) Authority to continue to charge rates on grain and products from points in southeastern Missouri to Memphis, Tenn., Mobile, Ala., St. Louis, Mo., Cairo, Ill., New Orleans, La., and points taking same rates, also to points in Arkansas and points taking same rates or basing thereon, without observing provisions of fourth section of the act, denied. Grain and Products, 91 I. C. C. 666, 675, 676.

(ff) Rates on pig iron from South Chicago, Ill., to, Acme, Peoria, Ill., during Federal control, found unreasonable as compared with lower rates from South Chicago to Keokuk, Iowa, a farther distant point, which lower rate was subsequently established from South Chicago to Acme, thereby removing any fourth-section departures that may have existed. Reparation awarded. Keystone Steel & Wire Co. v. Director General, 91 I. C. C. 741.

(gg) Countiss on behalf of transcontinental lines asked authority under fourth section application No. 12608 to establish a rate of 40c, minimum 80,000 pounds, on sulphur (not refined or manufactured) in carloads, from Bryanmound, Damon, Freeport, Gulf Hill, and Hoskins, Tex., and from Sulphur Mine, La., to East San Pedro, Wilmington, Oakland, Richmond, San Diego, and San Francisco, Calif., via Belen, N. M., in connection with Santa Fe, and via El Paso, Tex., in connection with S. P., or E. P. & S. W., and to continue higher rates at intermediate points. Present rate of 55c was established under authority of fourth section order 8429 of Oct. 30, 1922 in 74 I. C. C. 48, 90. Under the same order a rate of 65c was authorized and published to all north Pacific coast terminals without a reduction in the rates from and to intermediate points. The rates at the time of the hearing in the latter case were 83.5c and $1 respectively. The effect of the application if granted will be to authorize the applicant carriers to further depart from the provisions of the fourth section by reducing the rates to the California terminals 15c. The rate to El Paso, Sanderson and Marfa is 40c, the same as the proposed rate to California terminals. Using Bryanmound as the point of origin, the distance to San Francisco is about 1,296 miles greater than to El Paso, 1,609 miles greater than to Sanderson and 1,493 miles greater than to Marfa. The rail carriers

transport the sulphur from the points of production to ship side, from ports of destination to interior points, and large quantities to points in the interior intermediate between the points of production and California ports, while the ships can only transport it to the ports. The revenue earned by the ocean carriers as compared with that earned by the rail carriers in transporting sulphur, is necessarily small. While the record contains evidence purporting to show that the proposed rate of 40c on sulphur from Texas and Louisiana points to California terminals would yield revenue that might be reasonably compensatory, it is not sufficiently comprehensive and convincing to warrant the Commission in granting the application. HELD, proposed rate not reasonably compensatory as required by the act, application denied. Sulphur to California terminals, 100 I. C. C. 369.

(hh) Interstate Public Service Co. and C. I. & W., and I. T. system sought authority to establish class rates between points on its line in Indiana and Kentucky on the one hand, and St. Louis, Mo., and points in Illinois on the I. T. system east of Decatur, and south and west of Springfield, on the other, via Indianapolis, Ind., without observing the long and short haul provisions of the act as to intermediate points of destination. The Interstate Public Service Co. owns and leases and operates electric lines between Louisville, Ky., and Indianapolis, Ind., between New Albany and Jeffersonville, Ind., and between the latter point and Charlestown, Ind. The C. I. & W., a steam road, extends westward from Indianapolis to and through Decatur and Springfield, Ill., at which point it connects with the Illinois Traction, and electric line which extends northeastwardly from St. Louis and East St. Louis through Springfield, Decatur, Monticello and Champaign to Danville, Ill., and thence south to Ridge Farm, Ill., with a branch line projecting southwesterly from Danville to Catlin, Ill. The Interstate is paralleled by the Pennsylvania between Louisville and Indianapolis, and the principal points on the Illinois Traction are reached by steam roads. With few exceptions the steam roads form the direct routes between these points. The class rates of the direct routes conform to the fourth section. HELD, the routing of traffic over applicants lines would result in wasteful transportation and proposed rates would not be reasonably compensatory. Class rates via I. P. S. Co., 101 I. C. C. 189.

(ii) In 83 I. C. C. 207, the Commission denied application No. 12378 of the Florida East Coast to establish carload commodity rates from Jacksonville, to Miami, Fla., without observing the long and short haul provision of section four as to intermediate points of destination. The record shows that the proposed rates more than cover the additional cost of handling the traffic and are not lower than necessary to meet legitimate water competition. It also shows that they would not impose an undue burden on other traffic or jeopardize the return value of carrier property generally. It is manifestly impossible to say with any degree of certainty just what difference there would have to be between the water rates and rail rates in order that the water lines and the applicant should each receive an equitable share of the traffic in question. HELD, relief sought will be granted for a period of one year, prior to the expiration of which time the matter may again be brought to attention of the Commission for such determination as the circumstances may then warrant. Commodity rates from Jacksonville to Miami, 101 I. C. C. 347.

(jj) Authority to maintain class rates, and commodity rates that are not less than sixth-class, from New York, and points taking same rates, to points in c. f. a. and western trunk-line territories, and to maintain higher rates from intermediate points on the Central Vermont Ry. in New England, granted, provided that rates from said intermediate points shall in no case exceed the lowest combination. Present sixth-class rates from New York are reasonably compensatory, and shippers not only do not complain against the higher intermediate rates, which have been in effect for a long period of years, but on the contrary strongly favor continuance of the present adjustment. Rail-and-Lake Rates from New England, 92 I. C. C. 106.

(kk) Proposal to comply with commission's order denying fourth-section relief with respect to rates from New York by reducing class and commodity rates from points on Central Vermont Ry. in New England to points in c. f. a. and western trunk-line territories, applying via the differential rail-and-lake

route through Depot Harbor, Ontario, and boat line of Canada Atlantic Transit Co., found not justified. Present rates from New York are reasonably compensatory and to permit removal of fourth-section departures by reducing the intermediate rates would necessitate reductions over other routes at competitive points, result in a chaotic condition of rates throughout New England, and further aggravate the financial difficulties of New England lines. Rail-and-Lake Rates from New England, 92 I. C. C. 106.

(ll) Applications for authority to continue to charge rates on lumber and forest products from Baltimore, Philadelphia, Jersey City, and New York, to destinations in Pennsylvania, New York, and New Jersey without observing provisions of fourth section of the act, denied. Lumber between Points in Trunk Line Territory, 92 I. C. C. 144, 149, 150.

(mm) Applications for authority to continue rates on sugar from Savannah to points in Arkansas, Louisiana, Missouri, Oklahoma, and Texas, without observing provisions of the fourth section of the act, denied. Sugar from Macon Territory, 92 I. C. C. 275.

(nn) Authority to continue rates on sugar from points in Colorado, Idaho, Kansas, Nebraska, and Utah to points in Illinois and Indiana, without observing provisions of amended fourth section of the interstate commerce act, denied, no direct testimony being offered in justification for such departures. Indiana Public Service Comm. v. A., T. & S. F., 92 I. C. C. 279.

(oo) Rates on refuse molasses from Grants Pass, Oreg., to Oakland, Calif., higher than to San Francisco, a farther distant point to which Oakland is intermediate via route of movement, unprotected by appropriate application, found violative of long-and-short-haul provisions of section 4 of the act. Mason By-Products Co. v. Director General, 92 I. C. C. 646, 648.

(pp) Fourth section relief granted by authorizing carriers to establish and maintain by all routes between Fort Worth, Wichita, Kansas City, St. Joseph, St. Louis, and Oklahoma City, on the one hand, and various interstate destinations on the other, the lowest rates on horses and mules prescribed as maximum rates over any route between said points, and to maintain higher rates from, to, or between intermediate points, provided that rates from, to, or between the intermediate points shall not exceed rates prescribed as maximum and in no case exceed the lowest combination. Horse and Mule Rates in the Southwest, 1924, 93 I. C. C. 479.

(qq) Authority to maintain and establish rates on sugar from Billings to Superior, St. Paul, Minneapolis, and Duluth, and points taking same rates, without observing the long-and-short-haul provision of section 4 of the act, denied. Applicant relied on market competition for relief in connection with its application but submitted little evidence with respect thereto, other than a mere statement of rates from competing points. Comparisons with commodities rated the same as sugar indicate that the sugar rate is materially lower than the normal rate adjustment between Billings and eastern terminals. Under evidence submitted carriers failed to make out a special case within meaning of the fourth section. Rates on Sugar, 95 I. C. C. 151.

(rr) Authority to continue to charge for the transportation of wooden box material from New Orleans to Key West, Miami, and Tampa, for domestic use, and to Key West, for export to Cuba, rates which are lower than on like traffic from Crystal Springs and other intermediate points, denied. Jackson Traffic Bureau v. A. & V., 95 I. C. C. 251.

(ss) Fourth-Section relief relating to class rates and certain commodity rates between Utah common points and points in California and Oregon, based on a desire of the Southern Pacific and its connections to compete via circuitous routes with short-line rates of the Union Pacific lines, granted in instances where proposed rates between competitive points are shown to be "reasonably compensatory" within meaning of section 4 of the act. Class and Commodity Rates from Utah, 95 I. C. C. 417.

(tt) Where suspended schedules contain or threaten departures from long-and short-haul provision of section 4 of the act, such schedules should be ordered cancelled "without considering the intrinsic reasonableness of the proposed rates." Rice Products to Jackson, 44 I. C. C. 364. Citrus Fruits between Points in Florida, 95 I. C. C. 532, 538.

(uu) Carriers authorized to establish and maintain via all routes the lowest rates prescribed as maximum over any routes between points of origin and destination and to maintain higher rates

from, to, or between intermediate points, provided that rates from, to, or between intermediate points do not exceed rates prescribed as maximum and in no case the lowest combination, the relief granted not to apply to carriers whose lines or routes are more than 70 per cent longer than the short line or route between the same points. Alton Mercantile Co. v. A. &.W. Ry., 95 I. C. C. 645, 655.

(vv) Authority to continue to charge for the transportation of rice from points of origin in Arkansas, Louisiana, and Texas, and Memphis, Tenn., to destinations in Oklahoma, rates which are higher than those contemporaneously maintained on like traffic to more distant points, denied. Alton Mercantile Co. v. A. & W. Ry., 95 I. C. C. 645, 656.

(ww) Fourth-section relief granted by authorizing carriers to establish and maintain via all routes the lowest rates prescribed as maximum over any route, and to maintain higher rates from, to, or between intermediate points, provided rates from, to, or between the intermediate points shall not exceed rates prescribed as maximum and in no case the lowest combination, the relief granted not to apply to carriers whose lines or routes are more than 70 per cent circuitous than the short line or route. Butter, Eggs, Dairy Products, and Poultry, 96 I. C. C. 19, 41, 42.

(xx) Authority to continue to charge for the transportation of butter, eggs, and dressed poultry, in straight or mixed carloads, from Houston and other contiguous points in Texas to Cleveland, Pittsburg, and destinations east thereof, rates which are lower than those contemporaneously maintained on like traffic from Dallas, Ft. Worth, and other points in Texas to the same destinations, denied. Butter, Eggs, Dairy Products, and Poultry, 96 I. C. C. 19, 42.

(yy) Combination rates on naphtha gasoline, in tank-car loads from Hodge, Tex., to Blue Creek, W. Va., exceeded rates on same commodities from Hodge, via Clarksburg, W. Va., to Charleston, W. Va., Blue Creek being intermediate to Charleston over the Clarksburg route. Resulting fourth-section violation was unprotected but subsequently removed and no damage found therefrom. Rates, however, found unreasonable to certain specified extent and reasonable rate prescribed for future, with permission to restrict its application to routes other than that via Clarksburg. Reparation awarded. Transcontinental Oil Co. v. A. & V., 96 I. C. C. 136.

(zz) Authority granted to the Alabama, Tennessee & Northern to maintain trunk-line basis of rates on naval stores from Calvert, Ala., and higher rates from intermediate stations. Naval Stores from Southern Points, 96 I. C. C. 417.

(3a) Fourth section violations herein involved are covered by applications not set for hearing with the complaint, and in advance of a hearing upon the fourth-section applications no finding under the fourth section will be made. Oklahoma Portland Cement Co. v. St. L. S. F. Ry. Co., 96 I. C. C. 468.

(3b) Application for authority to continue to charge for transportation of apples from Charles Town, W. Va., and kale, potatoes, and cabbage from Norfolk and Suffolk, Va., to Kenova, W. Va., Ashland, Ky., and Portsmouth, Ohio, rates which are lower than rates contemporaneously maintained on like traffic to Williamson, W. Va., and other intermediate points, denied, the departures covered by the application, so far as involved herein, having been removed. Amicon Fruit Co. v. N. &. W. Ry. Co., 96 I. C. C. 477.

(3c) Application for authority to continue to charge for the transportation of bags, burlap, and gunny, from New York, Philadelphia, Baltimore, and points taking the same rates to Richmond, Va., rates which are lower than rates contemporaneously maintained on like traffic to Alexandria, Va., and other intermediate points, denied. Bryant v. P. R. R. Co., 96 I. C. C. 564, 566.

(3d) Application for authority to continue to charge for transportation of crude oil from Mexia, Tex., to Beaumont and Port Arthur, Tex., rates which are lower than rates contemporaneously maintained on like traffic to Texarkana, Ark.-Tex., Shreveport, La., and other intermediate points, denied. Caddo Central Oil & Refining Corp. v. K. C. S. Ry. Co., 98 I. C. C. 39.

(3e) Proposed increases in rates on glass and glassware, in straight or mixed carloads, from, Oklahoma points & Fort Smith, Ark., to Mississippi River crossings, Memphis, and south, in order to bring about rates between said points no lower than rates between intermediate points within the territory

covered by the Memphis-Southwestern Investigation, 77 I. C. C. 473, found not justified. There is no evidence of record warranting the granting of fourth-section relief such as that sought or now in effect under the applications assigned for hearing in connection with this proceeding, and all such relief will be denied. Glass and Glassware to Interstate Points, 98 I. C. C. 83, 89.

(3f) Defendants granted fourth-section relief to apply via all routes between points in territories under consideration the lowest rates available via any route under scales prescribed and to maintain higher rates from, to, or between intermediate points, provided such rates do not exceed rates prescribed in aforesaid scale, subject to limitations prescribed, and without prejudice to such further limitations as may be prescribed in Memphis-Southwestern Investigation, pending on further hearing respecting that question. Oklahoma Corp. Commission v. A. & S. Ry. Co., 98 I. C. C. 183, 251.

(3g) Relief from long-and-short-haul provision of the act with respect to rates on moss in machine-pressed bales from points in Louisiana to defined territories to extent involved in this proceeding denied, except in so far as such relief has already been granted. National Asso. of Furniture Mfrs. v. A. A. R. R. Co., 98 I. C. C. 501, 510.

(3h) Proposal to restrict routing on lumber from points served by Cent. of Ga. and certain short-line connections to destinations in central, Buffalo-Pittsburgh, and eastern territories, designed to limit available routes to more direct lines and eliminate routing over other intermediate carriers and other short hauling, found not justified. Proposed schedules are shown to be faulty and admittedly in error, and, among other things, would continue and create departures from the long-and-short-haul clause of fourth section of the act. Restrictions in Routing of Lumber, 98 I. C. C. 529.

(3i) Following 73 I. C. C. 396, and other cases cited, proposed cancellation of numerous less than carload and any-quantity commodity rates from points in southeastern and Carolina territories to destinations in Mississippi Valley, leaving effective generally higher class rates, found justified, except as to such rates on marble, granite, and stone. This adjustment will correct fourth-section departures. Commodity Rates Between Points in Southern Territory, 98 I. C. C. 627.

(3j) Authority granted to carriers to establish rates on classes and commodities, except asphalt, from New Orleans, La., and points taking same rates or arbitraries higher, to destinations east and north of Kansas City, Mo., and west of Indiana-Illinois line, the same as contemporaneous rates on like traffic from and to same points via routes east of Mississippi River, but not lower than 90 per cent of present rates via such east side routes from and to same points, provided that present rates at intermediate points shall not be increased except as authorized by the commission and shall in no case exceed lowest combination, and further, that no rate shall be established lower than present rate on asphalt from and to same points. The purpose of fourth-section relief is to enable west-side carriers herein considered to compete with east-side carriers between Mississippi River crossings. Class and Commodity Rates from New Orleans, 98 I. C. C. 673.

(3k) Application for authority to establish rates on classes and commodities from New Orleans, La., and points taking same rates or arbitraries higher, to destinations east and north of Kansas City, Mo., and west of Indiana-Illinois line without observing the long-and-short-haul provision of fourth section of the act, granted, except as to rates on asphalt to enable western carriers herein considered to compete with eastern carriers between Mississippi River crossings. Class and Commodity Rates from New Orleans, 98 I. C. C. 673.

(31) Fourth-section relief granted by authorizing carriers to establish and maintain over all routes from Oklahoma City, Okla., to points in Texas, lowest rates applicable on vinegar over any route but not lower than scale published in tariff I. C. C. No. 1590, and to maintain higher rates at intermediate points, provided that the relief granted shall not include routes more than 70 per cent longer than the short line between the competitive points. In view of the fact that distances over many routes are two or three times or more greater than distances over the direct routes, it is manifest that unless some reasonable limit is placed on the degree of circuity this requirement of the law would not

be met. Vinegar to Texas Points, 98 I. C. C. 688.

(3m) In view of the fact that many routes seeking relief are composed of two or more lines, over which joint-line differentials apply, it is contended that any relief that may be granted should not be made subject to the equidistant provision. In Memphis-Southwestern Investigation, 77 I. C. C. 473, the commission found that the equidistant provision was not mandatory in such a case. Vinegar to Texas Points, 98 I. C. C. 688, 690.

(3n) Applicant asked authority to establish a rate of 71c on canned goods, vegetables, in tin cans or earthenware packages, in carloads, minimum 60,000 pounds, from Bozeman, Hamilton and Stevensville, Mont., to San Francisco and Oakland, Calif., over certain rail routes and to establish and maintain higher rates to Sandia, Parker and Millersburg, Ore., and intermediate points south thereof on the Southern Pacific. The traffic over all route would move via Portland, Ore., and would be transported from that point to destinations via the S. P. This application is predicated upon the desire of the S. P., to meet competition of rail and water routes at San Francisco and Oakland. The latter routes are composed of rail lines to Portland or to Seattle, Wash., and boat lines beyond. The proposed all rail rate is 3c higher than the present rail and water rate of 68c. Practically no traffic has moved over the all rail routes to the competitive destinations under the existing rail rates to those points. The Commission is of the opinion that the rate of 71c is reasonably compensatory. The proposed rates to a large part of the intermediate territory are materially lower that the rates at present in effect. They are also in nearly all instances lower, and in no case higher, than available combinations to numerous destination points. HELD, applicants granted relief to establish the proposed rate of 71c, subject to the conditions that the rates on like traffic to intermediate points to and including Fagan, Calif., shall not exceed those proposed by applicant. and that rates to other intermediate points shall not exceed the rate to Fagan, and that rates to said intermediate points shall not exceed the rates to San Francisco and Oakland by more than the differences existing between the rates in effect on like traffic from Portland to San Francisco and Oakland, on the one hand, and intermediate points, on the other, and that said intermediate rates shall in no case exceed the lowest combination of applicable rates subject to the act. Canned goods from Montana. 102 I. C. C. 3.

(3na) Authority to establish and maintain all-rail rates on canned goods from Boseman, Hamilton, and Stevensville, Mont., to San Francisco and Oakland, over the Southern Pacific and connections, lower than to intermediate points, granted subject to certain conditions. Application is predicated upon the desire of the S. P. to meet competition of rail-and-water routes at San Francisco and Oakland, rates proposed are reasonably compensatory, and to a large part of the intermediate territory are materially lower than rates at present in effect. They are also in nearly all instances lower, and in no case higher, than available combinations to numerous intermediate points. Canned Goods from Montana, 102 I. C. C. 3.

(3nb) Relief from long-and-short-haul provision of section 4 of the act similar to that granted in connection with class rates approved in Southern Class Rate Investigation, 100 I. C. C. 513, granted in connection with commodity rates on clean rice, l. c. l., from New Orleans and other points in Mississippi Valley to destinations in the Carolinas, the Virginias, and Maryland. Rice Between Points in Southern Territory, 102 I. C. C. 79.

(3nc) Authority granted to establish and maintain via all routes between Fort Worth, Wichita, Kansas City, St. Joseph, St. Louis, and Oklahoma City, on one hand, and points in Texas differential territory and New Mexico, on the other, the lowest rates herein prescribed as maximum over any route between such points, and to maintain higher rates from, to, and between intermediate points, provided that rates from, to, or between the intermediate points do not exceed those herein prescribed, and in no case the lowest combination. Rates on Horses and Mules in the Southwest, 102 I. C. C. 87.

(3o) Respondents proposed to cancel the commodity rates on tanning extract, carloads, from Norfolk and Newport News, Va., to Memphis, Tenn., and to Chicago, Ill., and other destinations in central territory with the result that fifth class rates, which are higher,

would become applicable. The present rate from these ports to Memphis is 38c proposed rate 93.5c; to Chicago the present rate is 42c proposed 51.5c. The commodity rate on tanning extract from Helen, Ga., to Chicago, in which no change is proposed, is 44c. The routing in the tariff naming the later rate is unrestricted and shipments may move from Helen to Chicago via Norfolk and Newport News. There would be unauthorized fourth section departures under the proposed rates. HELD, schedules not justified. Tanning extract from Norfolk and Newport News. 102 I. C. C. 196.

(3oa) Rate on rough-oak staves and headings from Cherokee, Ala., to Jackson, moving over a circuitous route specified by shipper, found not unreasonable as compared with contemporaneous lumber rates from and to other points in same general territory for comparable distances. Chess & Wymond Co. v. A. & V. Ry., 102 I. C. C. 282.

(3ob) Rate on clean rice from New Orleans to destinations in Canada, applying through Memphis, and lower than applicable rate from Memphis to same destinations, found to violate section 4 of the act, and fourth-section application for its continuance denied. Memphis Frt. Bureau v. A. A. R. R., 102 I. C. C. 489.

(3p) Complainant attacked commodity rates charged on clean rice, carloads, from Memphis, Tenn., to Hamilton, Brantford, and Ste. Catherines, Ont. Canada, since October 1922, as unjust and unreasonable and as compared with rates from New Orleans unduly prejudicial and in violation of the fourth section. Average distance 924 miles. Applicable rate 61c, rate from New Orleans 56.5c. This rate from New Orleans applies through Memphis and a departure from the fourth section. No clean rice moves under that rate. This fourth section departure should be removed immediately. No damage is shown by reason of the alleged undue prejudice. HELD, complaint dismissed. Memphis Freight Bureau v. A. A. R. R. 102 I. C. C. 489.

(3pa) Fourth-section relief granted Mississippi Central, Columbus & Greenville, and Gulf, Mobile & Northern Railroads with respect to rates on salt from Louisiana mines to Mississippi points on their lines so as to enable those carriers to meet rates of competing trunk lines at junction points and to maintain higher rates at intermediate points on their own rails, provided (1) that rates to junctions and intermediate local points do not exceed those herein prescribed, (2) that authority granted shall not include intermediate points to which petitioning lines or routes is not longer than direct lines or routes between the competitive points, and (3) that rates to intermediate points do not exceed lowest combination. Miss. R. R. Comm. v. A. & V. Ry., 102 I. C. C. 540, 552, 553.

(3pb) Application seeking authority to continue to charge for transportation of fruits and vegetables from Bowling Green and other producing points in Kentucky, Tennessee, and Alabama to South Bend and Fort Wayne, rates which are lower than those contemporaneously maintained on like traffic to Logansport and other intermediate points, denied. Caruso & Co. v. C. & E. I., 102 I. C. C. 619.

(3pc) Maintenance of rates on lumber from Jonesville, La., to Cleveland and Loudon, Tenn., higher than to Lenoir City and Knoxville, Tenn., and from Jonesville to Greenville, Tenn., higher than to Johnson City, Tenn., and Bristol, Tenn.-Va., found unlawful in violation of long-and-short-haul provision of section 4 of the act. Southern Lbr. Co. v. L. & A. Ry., 102 I. C. C. 633.

(3q) Fourth section departure, if unprotected, is unlawful and should promptly be corrected. Wimberly Grocer Co. v. Pennsylvania R. R. 102 I. C. C. 637, 638.

(3r) Fourth section applications Nos. 1860, 1842, and 1862 were filed by Agent Hosmer to protect departures from the long and short haul provision of the fourth section with respect to class and commodity rates from, to, or between St. Louis, Mo., Peoria and Chicago, Ill., and St. Paul and Minneapolis, Minn., and points taking same rates, also points basing thereon,on the one hand and points in Arkansas, Colorado, Kansas, Missouri, and Nebraska, on the other. No. 3024 was filed by the Union Pacific on behalf of itself and other carriers to protect departures in rates on hay and straw at points in the territory described. The C. M. & St. P. Ry. is the only carrier which asks for relief under this application. No. 4220 is a blanket application filed by the Mo.

Pac., to protect all departures not specifically covered by other applications filed by that carrier. It is considered herein only to the extent that it protects departures in rates on salt over the Mo. Pac., and its connections from, to, or between the points described. Consideration of 1842 is limited to departures in rates on sugar at points on the Santa Fe. The rates as to which applicants are asking for fourth section relief, at the present time, apply between the general territory lying east of the Mississippi river from St. Louis, Mo., to St. Paul, Minn., south of an irregular line from St. Paul to Lake Michigan, west of the west bank of Lake Michigan and a line just east of the Indiana-Illinois state line to West Dana, Ind., and north of a line extending thence in a southwesterly direction to St. Louis, on the one hand, and points in Missouri, Kans., Nebraska and Colorado, on the other. CHICAGO BURLINGTON AND QUINCY. The Burlington asks for authority to continue to maintain rates on certain manufactured articles from Rockford and DeKalk, Ill., to points west of the Missouri river lower than from intermediate points on its line over its route in connection with the C. M. & G. The later carrier serves the points named and interchanges traffic with the Burlington at Aurora, Ill. Rockford and DeKalb are in Group 3, but on these commodities an exception to the group adjustment has been made and the Group 2 rates applied. Traffic moving over the route described passes through points taking Group 3 rates. This carrier submitted no evidence with respect to distances or the rates on particular commodities. HELD, relief sought denied. CHICAGO MILWAUKEE AND ST. PAUL AND ILLINOIS CENTRAL. The evidence presented to show that the lower rates for the longer hauls over the circuitous routes are reasonably compensatory is meager and unsatisfactory, consisting mainly of mere statements of opinion that the rates conform to the requirements of the law in this respect. It is readily apparent that the existing groups and group relationships involved herein can not be maintained if the rates involved are adjusted to conform to the equidistant provision, as that would require a revision of the present rates upon substantially a distance basis. These groups and group relationship, except as modified by general rate changes, have existed for many years, and at the hearing in this matter no complaint was made against this adjustment and no objection offered to its continuance. On the whole the rates appear to be properly adjusted and their reasonableness and propriety have not been questioned. The fact that some routes whose geographical location is such as to make it necessary for them to haul traffic from or to points in a lower rated group through a higher rated group does not affect this justification. HELD, relief will be granted the Milwaukee and the I. C., to continue and maintain rates on classes and commodities between St. Louis, Mo., Peoria and Chicago, Ill., and St. Paul and Minneapolis, Minn., and other points in Minnesota, Wisconsin, Indiana, Illinois, Iowa and Misouri grouped therewith or included in related groups, on the one hand, and points in Arkansas, Colorado, Kansas, Missouri and Nebraska, on the other, the same as rates contemporaneously in effect over other routes operating between the above described points and to maintain higher rates at intermediate points in the same groups in those instances where the lines or routes of the said Milwaukee and I. C., operate to or from a lower rated through a higher rated group, provided (1) that rates at the said intermediate points shall not exceed rates in effect over other routes from or to the said higher rated intermediate groups, (2) that the said intermediate rates shall not be increased except as hereafter may be authorized by this commission and shall not exceed the lowest combination, (3) that the rate on any commodity from or to any intermediate point in the said higher rated intermediate group shall not exceed the rate on the same commodity from or to any more distant point by more than the difference by which the rate to or from the said intermediate point on the class to which the commodity belongs exceeds the corresponding class rate from or to the said more distant point, and (4) that the relief herein granted shall not apply in those cases where the lines or routes of the applicants are more than 60% circuitous. ST. LOUIS SAN FRANCISCO. This carrier asks for authority to continue to maintain rates on classes and commodities from, to, or between, according as the rates are published,

Groups 1, 2, and 3, on the hand, and Glen Park and Rosedale, Kas., and points south thereof on its line between St. Louis and Kansas City, Mo., via Nichols, Mo., also points on the Santa Fe north and west of Kansas City, on the other, lower than at intermediate points. The same relief is sought as to proportional class rates on traffic originating east of the Indiana-Illinois state line. To the lower rated points south of Kansas City the direct route in most instances is the Wabash to Kansas City and the Frisco beyond. The M. P., also reaches a number of those points and its line from St. Louis is shorter than that of the Frisco from St. Louis via Nichols. The joint through rates apply over the Wabash and the Frisco through Kansas City, and are generally graded up for varying distances in a southerly direction as far as Lamar, Mo., which is located about 20 miles east of the Missouri-Kansas state line, and is 302 miles from St. Louis over the Frisco. On traffic so routed the rates conform to the long and short haul rule. Application of the rates so made over the circuitous line of the Frisco through Nichols, Mo., on traffic from the opposite direction results in fourth section departures. HELD, relief will be granted the applicant to maintain rates between points in the groups described above, on the one hand, and points on its line south and southeast of Kansas City, on the other, the same as rates in effect betwen the same points via competing lines provided (1) that the rates at intermediate points shall in no case exceed the lowest combination and shall not be increased except as may hereafter be authorized by the Commission; and (2) that commodity rates applying on interstate traffic at the said intermediate points shall not exceed the rates at the next more distant point by more than the difference existing between the corresponding class rates on the class to which the commodity belongs. The record does not warrant a finding that the rates at points north and west of Kansas City are reasonably compensatory and relief in respect to such rates will be denied. UNION PACIFIC. The fourth section relief at the present time sought by this carrier is principally to continue to maintain rates on classes and commodities from, to, or between Groups 1, 2, 3, and 4 and points basing thereon, on the one hand, and points on its line extending from Council Bluffs, Iowa, to St. Joseph, Leavenworth, and Kansas City also from Norfolk, Neb., to Omaha, Neb., on the other hand, lower than at intermediate points on the Union Pacific in Kansas and Nebraska. This application for relief is not predicated upon circuity but upon the desire of the carrier to continue to handle the traffic via any of its Missouri river junctions. A denial of relief would require a restriction of routing so that the rates would apply only through junctions where the rates now conform to the long and short haul rule. HELD, relief will be granted provided (1) that the rates at the said intermediate points shall not exceed the lowest combination and shall not be increased except as may hereafter be authorized by the Commission; (2) that the rate on any commodity from or to any of the said intermediate points shall not exceed the rate on the same commodity from or to a more distant point by more than the difference existing between the rate on the class to which the commodity belongs to or from the said intermediate point exceeds the corresponding class rate from or to any more distant point. That this relief shall not apply in respect of rates between any point in the said groups, on the one hand, and any of the said intermediate points on the Union Pacific, on the other, where the haul over the applicants route between the said points is not longer than that of the direct line or route between the same point in any of the said groups on the one hand and the competitive point in Kansas or Nebraska on the other; (4) that the said relief shall not apply in any instance where the route via the U. P., between competitive points is more than 60% longer than the direct line or route between the same points. CHICAGO ROCK ISLAND AND PACIFIC. This carrier asks for authority to continue to maintain rates on class and commodities from, to, or between Groups 1, 2, 3 and 4 and points basing thereon, on the one hand, and points in Kansas and Nebraska on its line extending from Council Bluffs to Kansas City, Leavenworth, Atchison and St. Joseph on the other hand lower than at intermediate points in Kansas and Nebraska. The line of the Rock Island between the Missouri river points named is situated similarly to that of the U. P., fourth section departures result from practically the same conditions as in the case of

the U. P., and relief is desired to the same extent. The routing is open under the tariff and traffic may be handled via any of the Missouri river gateways mentioned. The rates conform generally to the long and short haul rule from any particular gateway up to a point where the distance is not longer than through another gateway. The desired relief will be granted in this situation to the same extent and subject to the same conditions as in the case of the U. P. ATCHISON TOPEKA AND SANTA FE. This carrier asks for authority to continue to maintain class rates and rates on certain commodities from, to, or between groups 1, 2, 3, 4 and points basing thereon, on the one hand, and points on its line, Girard, Kas., to Joplin, Mo., on the other, lower than at intermediate points on its line north of Girard and south of Kansas City. HELD, relief will be granted the Santa Fe to continue and maintain rates between points in the groups hereinbefore described, on the one hand, and points on its line, Girard, Kas., to Joplin, Mo., on the other, the same as rates contemporaneously in effect via competing lines, and to maintain higher rates at intermediate points, (1) provided that rates at the said intermediate points shall not exceed the lower combination and shall not be increased except as may be hereafter authorized by order of the Commission; (2) that the rate on any commodity from or to any intermediate point shall not exceed the rate on the same commodity from or to any more distant point by more than the difference existing between the rate on the class to which the commodity belongs to or from the said intermediate points exceeds the corresponding class rate from or any more distant point; and (3) that this relief shall not apply in respect of rates between any point in the said groups on the one hand, and any intermediate point on the Santa Fe south of Kansas City on the other, as to which the haul via the applicants route is not longer than that of the direct line or route between the same point in any of the said groups and any of said competitive points in Kansas and Missouri. MISSOURI KANSAS AND TEXAS. This carrier asks for authority to continue to maintain rates on classes and commodities from, to, or between Groups 1, 2, 3 and 4 and points basing thereon on the one hand, and (1) Joplin, Mo., Galena and Columbia, Kas.; (2) points on the MKT Paola, Kas., to Gunn City, Mo., on traffic routed via Kansas City, Mo.; (3) certain points on the MKT west of Kansas City, on the other hand, lower than at intermediate points. The circuitous line of the MKT from St. Louis to Columbus, Galena and Joplin is 22, 26 and 33% longer than the direct line of the Frisco from and to the same points. HELD, relief will be granted the applicant in respect to class rates to and from Joplin, Galena and Columbus, subject to the same conditions and limitations as in the case of class rates over the Santa Fe. Sufficient information and justification concerning the commodity rates between the points involved via the route of the applicant not having been shown, the applications herein will be denied to the extent that they cover such commodity rates provided, that if application for relief in respect to such rates is filed within 60 days from the date of the service of this report, showing rates on commodities which applicant desires to maintain at competitive points with corresponding rates at intermediate points at which it is proposed to maintain higher rates and other information required by fourth section order number 8900 in connection therewith, the rates included in and covered by such application will not be required to be changed until the determination of such application. MISSOURI PACIFIC. This carrier asks for authority to continue to maintain rates on classes and commodities from, to or between Groups 1, 2, 3 and 4 and points basing thereon, on the one hand, and (1) Aurora and Springfield, Mo., and (2) certain points in eastern Kansas on the other, lower than at intermediate points. HELD, relief will be granted with respect to class rates at Springfield and Aurora, Mo., subject to the same conditions as relief herein before granted the Santa Fe. All other and further relief will be denied, provided that if within 60 days from the date of the service of this report an application is filed showing the rates on commodities which petitioner desires to maintain at competitive points with corresponding rates proposed to be maintained at intermediate points, together with other information in connection therewith as required by fourth section order 8900, the rates included in and covered by such application will not be re-

quired to be changed until the determination of such application. KANSAS CITY SOUTHERN. This carrier asks authority to continue to maintain rates on classes and commodities from, to, or between Groups 1, 2, 3 and 4 on the one hand, and Kansas City, Mo., and points on the KCS north of Gulfton and Eve, Mo., on the other, lower than at intermediate points, via (1) MKT from St. Louis to Eve, Mo., KCS beyond, and (2) the Frisco from St. Louis to Gulfton, Mo., KCS beyond. HELD, relief will be granted the KCS and its connections to continue and maintain rates on classes and commodities between points in groups hereinbefore described on the on hand, and points on the KCS north of Gulfton and Eve, Mo., on the other, via (1) the MKT Eve, Mo., and KCS., and (2) the Frisco, Gulfton, Mo., and KCS., the same as rates contemporaneously in effect over other routes operating between the above described points, and to maintain higher rates at intermediate points, provided (1) that the rates at the said intermediate points shall in no case exceed the lowest combination and shall not be increased except as may hereafter be authorized by the Commission, (2) that commodity rates applying on interstate traffic at the said intermediate points shall not exceed the rates at the next more distant points by more than the difference existing between the corresponding class rates on the class to which the commodity belongs, and (3) that rates at any of the said intermediate points shall not exceed the present rates from or to, as the case may be, Gulfton and, or Eve, Mo. Class and commodity rates between western points 104 I. C. C. 578.

(3s) In 85 I. C. C. 270 the Commission prescribed reasonable maximum basis for rates on lumber and other forest products taking the same rates, carloads, from points in southeastern and Carolina territories and Virginia cities to destinations in trunk line and New England territories. Upon petition from the American Short Line Railroad Association the Commission reopened the case for rehearing upon the question of lawfulness of the present rates or rate basis from points on short lines in southern territory, and also upon fourth section applications or portions thereof filed by short lines in southern territory which were embraced in fourth section order No. 8843. The applications of short lines, except those seeking relief on the ground of water competition, are based upon the ground of light traffic density and unfavorable operating and financial conditions. The short lines seeking relief on the ground of water competition are the Atlanta & St. Andrews Bay, Apalachiola Northern and G. F. & A. Each of these carriers extends from a point in the interior of Georgia or Alabama to a point or points on the coast of Florida on the Gulf of Mexico, the St. Andrews to Panama City, the A. N., to Apalachiola and Port St. Joe, and G. F. & A. to Carrabelle. The present rates from Carrabelle may be taken as typical, the basis to eastern destinations is 2c over Georgia main line rates, and from local points on the G. F. & A., north of Carrabelle to and including Bowers, Ga., the rates are 1c higher than from Carrabelle. The extent of the departure sought therefore is 1c per 100 pounds. HELD, applications or portions thereof based on water competition will be denied. Some of the short lines are in better financial condition than others, but all of them indicate a weak condition similar to that of the Tennessee Central before the Commission on the original record and upon which the Commission granted to that carrier in fourth section order No. 8843. No complaint is made by any shipper that the present rates or basis for rates from points on these short lines are unreasonable or otherwise unlawful. HELD, rates, or basis of rates, on lumber and other forest products taking the same rates, carloads, from points on short lines in southern territory to trunk line and New England territories are not as a whole unreasonable or otherwise unlawful. HELD, further, rates on lumber and other forest products taking the same rates, carloads, from points on the A. & St. A. Bay to the aforesaid destinations are unduly prejudicial to extent they exceed rates from Dothan by more than 3c from points north of Cottondale and 4c from Cottondale and points south thereof. Other independent short lines will be granted authority to charge higher rates on lumber and other forest products carloads, from intermediate points on their lines to destinations in trunk line and New England territories than are maintained from more distant junction points with trunk line carriers; provided that the rates from such inter-

mediate stations shall in no case exceed the lowest combination, and provided further that the difference between the rates from the more distant junction points on the one hand and the intermediate points on the short lines on the other shall not be increased except as may hereafter be authorized by the Commission. North Carolina Pine Asso. v. A. C. L. R. R. 107 I. C. C. 190.

(3t) Authority to continue to charge for transportation of furniture from Chattanooga, Tenn., to eastern destinations, rates which are lower than on like traffic from Nashville and other intermediate points, denied. Fourth section order No. 8940, entered in original report, 91 I. C. C. 27, vacated. Furniture from Southern Points, 100 I. C. C. 127.

(3u) Authority to maintain between St. Louis, East St. Louis, Cairo and Thebes, on the one hand, and points in Missouri and Arkansas, on the other, the lowest rates applicable via any of the routes and to maintain rates higher but not in excess of the proposed scale at intermediate points, granted in connection with the rates herein approved to carriers operating interstate routes from St. Louis and East St. Louis, subject to condition that the rates at intermediate points shall not exceed the scale herein approved and shall in no case exceed the lowest combination. In the case of Cairo and Thebes relief is restricted to routes not over certain percentages circuitous. The commission also finds that the lower rates herein authorized for application at points on circuitous routes will be reasonably compensatory for the service performed. Class Rates between Missouri and Interstate Points, 100 I. C. C., 274, 289, 290.

(3v) Authority to continue to charge for transportation of lumber, other than pine, c. l., from Jonesboro, Ark., and from other intermediate points on lines of defendants through Jonesboro, to Des Moines, Iowa, rates that are higher than rates contemporaneously maintained on same through route from Memphis, Tenn., Helena, Glencoe, and Wilson, Ark., denied. Jonesboro Freight Bureau v. St. L.-S. F. Ry. Co., 100 I. C. C. 324.

(3w) Application for authority to establish rate on sulphur from points in Texas and Louisiana to California terminals lower than that authorized in 74 I. C. C. 48, 90, without observing the long-and-short haul provision of fourth section of the act, denied, on ground that proposed rate has not been shown to be reasonably compensatory as required by the act. Sulphur to California Terminals, 100 I. C. C. 369.

(3x) Fourth section relief discussed in connection with basis of class rates approved as result of the general investigation, on commission's own motion, of interstate class rates within southern territory and between southern and official territories. Relief denied except in case of weak and short lines. Southern Class Rate Investigation, 100 I. C. C. 513, 545, 708.

(3y) Fourth-section relief granted by authorizing carriers to establish and maintain, via all routes between points in Oklahoma and Texas points, from points in the Panhandle of Texas and eastern New Mexico to Kansas City,, Kans.-Mo., and between Oklahoma, on one hand, and Kansas and Missouri, on the other, the lowest rates on grain, grain products and related articles prescribed herein as maximum rates via any route between said points, and to maintain higher rates from, to, and between intermediate points, provided such latter rates shall not exceed respective scales of rates prescribed herein, and shall in no case exceed the lowest combination, the relief granted not to apply where lines or routes are more than 70, 50 and 33⅓ per cent circuitous than the short line or route, according to the distance over such short line or route. Oklahoma Corp. Comm. v. A. & S. Ry. Co., 101 I. C. C. 116, 133.

(3z) Application for authority to establish class rates between points on the lines of the Interstate Public Service Co., in Indiana and Kentucky, and certain points on the lines of the Illinois Traction System in Missouri and Illinois, without observing the long-and-short haul provision of section 4, of the act, denied. Routing of traffic over applicant's lines as proposed would result in wasteful transportation, and proposed rates would not be reasonably compensatory. Class Rates via. I. P. S. Co., 101 I. C. C. 189.

(4a) Authority to continue rates on lumber and related articles from junction points on the G. & S. I. R. R. to Mobile and New Orleans, the same as those contemporaneously in effect via more direct lines or routes, and to maintain

higher rates at intermediate points, granted. Such authority not to include intermediate points as to which the haul of the petitioning line or route is not longer than that of the direct line or route between the competitive points, nor include routes which are more than 70 per cent longer than the direct line or route between the competitive points; rates from said intermediate stations in no case to exceed the lowest combination. Ingram Day Lbr. Co. v. G. & S. I. 101 I. C. C. 287, 296.

(4b) Upon further hearing, temporary authority to establish commodity rates from Jacksonville to Miami, for application on interstate traffic, without observing long-and-short-haul provision of section 4 of the act as to intermediate points of destination, granted. Proposed rates more than cover additional cost of handling the traffic, are not lower than necessary to meet legitimate water competition, and will not impose an undue burden on other traffic or jeopardize the return value of carrier property generally. Original report, 83 I. C. C. 207. Commodity Rates from Jacksonville to Miami, 101 I. C. C. 347.

(4c) Carriers authorized to establish and maintain via all routes from any point of origin to any destination from and to which maximum rates are prescribed herein rates not in excess of the lowest rates prescribed via any route between such points, and to maintain higher rates from, to, and between intermediate points; provided that the rates from, to, or between the said intermediate points shall not exceed the rates prescribed, and in no case exceed the lowest combination; and provided further that the relief granted shall not include routes more than 70 per cent longer than the direct line or route between the competitive points. Procter & Gamble Distributing Co. v. St. L.-S. F., 101 I. C. C. 563, 591.

(4d) C. G. W., Rock Island, M. & St. L., I. C., and M. N. & S., ask authority to establish, continue and maintain class and commodity rates from New England, eastern trunk line territory and Canada to Minneapolis and St. Paul, Minn., and related points lower than the rates contemporaneously maintained on like traffic to intermediate points in Iowa, southeastern Minnesota, and western Illinois. The relief sought relates only to fourth section departures at destinations, as any departures in the origin territory are being considered in another proceeding. The applications include rates over rail lake and rail, lake and rail, and all rail routes operating by way of Chicago, Chicago junctions or Peoria, Ill., and the lines west thereof extending through a portion of Illinois, Iowa, and Minnesota to the Twin Cites. The rates to intermediate points in Iowa are not only higher than those to the Twin Cities but are also higher than those to intermediate points in Minnesota, resulting in a situation where the measure of the fourth section departure decreases as the distance increases. The relief sought is not based upon the circuity of the routes in question, but upon the ground that the rates to the Twin Cities are repressed by lake and rail and rail lake and rail rates applying via Duluth and Superior, Wis., and low rates in force over routes operating through Canada. There is no contention that the rates to Chicago are depressed below the normal basis. They are observed at all intermediate points. The much greater spread existing at at the Twin Cities, negative applicants contention that the all rail rates have there been repressed by rates applicable over the water routes. Moreover, even if the record would warrant a finding that applicants are correct in asserting that the rates to the Twin Cities are depressed by water competition, it is obvious that any relief authorized on that account should of necessity be restricted to the rates on those commodities which actually move in substantial volume over the rail lake and rail or lake and rail routes to the Twin Cities. The record contains nothing to indicate the commodities which move over the latter routes. HELD, applications denied. Rates from eastern territory to Twin Cities, 109 I. C. C. 437.

ALL OTHER CITATIONS

North Carolina Pine Asso. v. A. C. L. R. R. Co., 85 I. C. C. 270; Elk Brand Shirt & Overalls Co. v. D. &. S. Ry. Co., 85 I. C. C. 320; Atlas Portland Cement Co. v. C. R. R. of N. J., 85 I. C. C. 611; Prairie Pipe Line Co. v. Director General, 88 I. C. C. 175; Jackson Paper Co. v. B. S. L. & W. Ry. Co., 88 I. C. C. 219; Paper and Paper Articles to New Orleans, 88 I. C. C. 345; Lincoln Gas Coal Co. v. B. & O. R. R. Co., 88 I. C. C. 379; Early-Foster Co. v. A. T. & S. F. Ry.

Co., 88 I. C. C. 507; Rates to Gray's Harbor and Willapa Bay Points 88 I. C. C. 512; Brick and Clay Products in the South, 88 I. C. C. 543; Fourth Section Order No. 8900, 88 I. C. C. 769.

§4¼. **Direct Lines.**

ALL CITATIONS

Cotton and Cotton Linters to Louisiana and Texas Ports, 85 I. C. C. 5.

III. APPLICATION OF SECTION 4 TO RATES.

See Basing Points and Lines §3 (r); Distance Rates §1 (d); State Rates and Regulations (5b).

§4½. **In General.**

(a) Emergency rates on hay from Keenesburg and Hudson, Colo., to St. Louis, Mo., were excepted from reductions required in 64 I. C. C. 85, but similar rates from competing Colorado common points were not so excepted. Long-and-short-haul violation of fourth section thereby created was subsequently removed by restoration of rate parity. HELD: Higher rates assessed during interim from Keenesburg and Hudson found not unreasonable; in absence of proof of damage unauthorized departure from fourth section does not warrant an award of reparation; and since there is no showing that competitors were enabled to control the St. Louis market, compelling complainant to meet their price, no damage has been shown by reason of undue prejudice which may have existed. National Hay & Milling Co. v. C., B. & Q. R. R. Co., 89 I. C. C. 1.

(b) The provisions of the fourth section of the act apply where point of origin is in an adjacent foreign country and intermediate point and more distant point of destination are in the United States. United Paperboard Co., 74 I. C. C. 733. Duluth Iron & Metal Co. v. Director General, as Agent, 89 I. C. C. 343, 345.

(c) Where suspended schedules contain or threaten departures from the long and short haul provision of the fourth section, such schedules should be ordered canceled without considering the intrinsic reasonableness of the proposed rates. Citrus Fruit between Points in Florida, 95 I. C. C. 532, 538.

(d) When joint rates were established on lumber and shingles from Pacific Northwest to Arona, Pa., Pittsburgh basis of rates was specifically published to apply and under an intermediate clause that basis applied at points intermediate thereto. Subsequently intermediate clause was canceled and Philadelphia basis of rates became applicable to intermediate points, thereby creating a violation of long-and-short-haul provisions of section 4 of the act. Proposal of carriers to remove fourth section departure by increasing rates to Arona to Philadelphia basis found not justified. Carriers are under no restriction as to manner of removing fourth-section departure and have not shown that a basis to Arona from Pacific Northwest different from that maintained from other lumber-producing points is justified. Lumber from Northwest, 91 I. C. C. 457.

(e) The existing deviation from the long and short haul provision of section four is not covered by an appropriate application and is unlawful. Standard Paving Co. v. A. T. & S. F. Ry., 100 I. C. C. 233, 236.

(f) The fourth section departure was unprotected, and is, therefore unlawful. Moore Lawless Grain Co. v. C. B. & Q. R. R., 101 I. C. C. 52, 53.

(g) A violation of the long and short haul clause of the fourth section does not in itself establish the unreasonableness of the higher rate or form a basis for an award of reparation. Moore Lawless Grain Co. v. C. B. & Q. R. R., 101 I. C. C. 52, 54.

(h) Rates on tractors from Detroit, to Mason City, Iowa, found not unreasonable, discriminatory, unduly prejudicial, or in violation of long-and-short-haul provision of section 4 of the act, as compared with lower rates from Detroit to Minneapolis and St. Paul, more distant points. Lower rate did not apply over route of movement through Mason City and therefore no fourth-section violation existed. Furthermore, lower rates are on basis entirely different from that applying to Mason City; they were established as a result of decisions in 28 I. C. C. 47, 29 I. C. C. 530, and 46 I. C. C. 39, and found not unreasonable or unduly prejudicial in North Iowa Traffic Asso., 58 I. C. C. 491. Wagner Motor Co. v. M. C., 93 I. C. C. 195.

(i) Rates prescribed in Mississippi Valley case, 64 I. C. C. 306, were not prescribed as standards of reasonable maxi-

mum rates, but primarily to bring about an adjustment in harmony with requirements of section 4 of the act and at same time conserve revenues of carriers. Paper Boxes between Southeastern points, 93 I. C. C. 559, 563.

(j) Shipments of cement moved from Richard City, Tenn., to Normal, via an interstate route through Memphis. Shipments could have moved via another available route through Stevenson, Ala., over which latter route Normal is intermediate to Memphis. FOUND. While the normal route is through Memphis the route through Stevenson was actually open and its use in tariff unrestricted. The maintenance, therefore, of a higher rate thereover to Normal than to Memphis was in violation of the long-and-short-haul provision of section 4 of the act. Dixie Portland Cement Co. v. N. C. & St. L., 96 I. C. C. 47.

(k) Fact that carriers have charged or received rates which violate the long-and-short-haul rule of section 4 of the act is not of itself sufficient basis for an award of reparation in absence of proof of damage to shipper. See also 88 I. C. C. 619. Lissberger & Co. v. N. Y., N. H. &. H., 96 I. C. C. 231, 233.

(l) Unauthorized departures from terms of the fourth section of the act are unlawful. Lissberger & Co. v. N. Y. N. H. & H., 96 I. C. C. 231, 233.

(m) Although routes were unusual, they were open, and the fourth section is violated. Sinclair Oil & Gas Co. v. C. & N. E. Ry., 96 I. C. C. 286, 288.

(n) Proposed increased proportional commodity rate on chinaware or earthenware plumbers' goods to Oklahoma City, Okla., from upper Mississippi River crossing, on traffic originating at Trenton, N. J., found not justified on ground it would create violations of the long-and-short-haul provision of fourth section. Plumbers' Goods from Mississippi River Crossings to Oklahoma City, Okla., 98 I. C. C. 403.

(o) Contention by defendants that supplemental fourth-section order No. 7542 issued pursuant to Memphis-Southwestern Investigation, 80 I. C. C. 157, 172, authorized the fourth-section departures assigned for hearing, not sustained. The order in that case grants authority for higher rates on lumber on line of the Missouri Pacific through Nettleton from points between St. Louis and points grouped therewith taking same rates, and Memphis, Helena, and other points in the southeast, than those maintained from latter points, but does not grant such authority in respect of rates to Des Moines. Jonesboro Freight Bureau v. St. L. S. F. Ry. Co., 100 I. C. C. 324, 326.

ALL OTHER CITATIONS

North Carolina Pine Asso. v. A. C. L. R. R. Co., 85 I. C. C. 270; Atlas Portland Cement Co. v. C. R. R. of N. J., 85 I. C. C. 611; Jeremy Fuel & Grain Co. v. Director General, as Agent, 88 I. C. C. 397.

§4¾. Circuitous Routes.

See Class Rates §2 (tt).

(a) Authority granted carriers to establish and maintain for transportation of nitrate of soda, via all routes, from New Orleans, La., and subports thereof taking same rates, to destinations in Arkansas the lowest rates herein prescribed as maximum via any route between said points, and to maintain higher rates at intermediate points which shall not exceed rates prescribed as maximum, and in no case exceed the lowest combination. New Orleans Joint Traffic Bureau v. A. & V. Ry. Co., 89 I. C. C. 223.

(b) Proposed schedules limiting to certain direct routes the application of distant rates on stocker or feeder cattle moving from points on the Texas-Mexican Ry. to Arkansas City, Wichita, and Wichita Union Stock Yards, Kans., effect of which will be to eliminate admittedly circuitous routes through Coffeyville, Kans., and remove fourth section departures resulting from higher rates in effect over those routes to intermediate Kansas points, found justified. Livestock between Texas and Kansas Points, 89 I. C. C. 720.

(c) A differential route through Canada, 322 miles, or 33 per cent greater than so-called standard route, found not an unreasonable route. Petertyl v. N. Y. N. H. & H. R. R. Co., 91 I. C. C. 699, 700.

(d) Fourth-section relief granted by authorizing carriers to establish and maintain via all routes the lowest rates prescribed as maximum over any route and to maintain higher rates from, to, or between intermediate points, provided rates from, to, or between the intermediate points shall not exceed rates pre-

scribed as maximum and in no case the lowest combination, the relief granted not to apply to carriers whose lines or routes are more than 70 per cent circuitous than the short line or route. Butter, Eggs, Dairy Products, and Poultry, 96 I. C. C. 19, 41, 42.

(e) Application for authority to establish rates on classes and commodities from New Orleans, La., and points taking same rates or arbitraries higher, to destinations east and north of Kansas City, Mo., and west of Indiana-Illinois line without observing the long-and-short-haul provision of fourth section of the act, granted, except as to rates on asphalt, to enable western carriers herein considered to compete with eastern carriers between Mississippi crossings. Class and Commodity Rates from New Orleans, 98 I. C. C. 673.

(f) The Commission has many times denied relief from the long and short haul section of the act where it appeared that the routes of applicant carriers were unduly circuitous. Class and commodity rates between western points, 104 I. C. C. 578, 585.

(g) The Commission is authorized under the fourth section to grant relief from the operation thereof "in special cases." The circuity of a rail line or route has long been recognized as a special case in which it may properly grant relief if the circumstances as a whole warrant that action. In practice the Commission has generally limited the relief to routes which are not less than 15% circuitous but this has not been regarded as an inflexible rule. The equidistant rule, though formerly also observed by the Commission as an administrative practice, is now an integral part of the law, and its application is mandatory where relief is sought because of circuity, regardless of methods of rate making. Class and commodity rates between western points. 104 I. C. C. 578, 595.

(h) Shipments of milk and cream from Iowa points to Omaha, Nebr., moved over indirect route via Tara, Iowa, some of the shipments being unrouted and other being routed via Illinois Central. Charges based upon applicable rates were collected. Upon contention that shippers are entitled to through express rates to Omaha via Onawa or Sioux City, or to joint baggage and express rates equal to express rates applicable over these routes prior to decision in Express Rates on Milk and Cream, 74 I. C. C. 427, HELD: Contention has force in connection with demand for reasonable route and rate for future but its cogency is not apparent as to shipments made in the past. Furthermore, as to shipments which were unrouted, there is no distinction in principle between this case and the situation presented in 24 I. C. C. 626, wherein commission refused to award reparation to basis of subsequently established joint through rate based upon the aggregate of intermediates over short lines which was lower than joint rate over more indirect route of movement. Kirschbraun & Sons, Inc., v. G. N. Ry. Co., 100 I. C. C. 28, 32, 33.

(i) In finding rates on cottonseed from points in Oklahoma to Dallas and Fort Worth, Tex., unreasonable to extent indicated, it is held that the conditions and limitations under which fourth-section relief will be granted to circuitous lines in southwestern territory prescribed in the Oklahoma case, 98 I. C. C. 183, will govern the instant case. International Vegetable Oil Co. v. A., T. & S. F., 100 I. C. C. 240, 241.

(j) Authority to maintain between St. Louis, East St. Louis, Cairo and Thebes, on the one hand, and points in Missouri and Arkansas, on the other, the lowest rates applicable via any of the routes and to maintain rates higher but not in excess of the proposed scale at intermediate points, granted in connection with the rates herein approved to carriers operating interstate routes from St. Louis and East St. Louis, subject to conditions that the rates at intermediate points shall not exceed the scale herein approved and shall in no case exceed the lowest combination. In the case of Cairo and Thebes relief is restricted to routes not over certain percentages circuitous. The commission also finds that the lower rates herein authorized for application at points on circuitous routes will be reasonably compensatory for the service performed. Class Rates between Missouri and Intertate Points, 100 I. C. C. 274, 289, 290.

(k) Fourth-section relief granted by authorizing carriers to maintain over circuitous routes from Ohio and Mississippi River crossings to competitive points in Carolina territory same rates on petro-

leum and products as are maintained on like traffic by direct lines or routes, and to maintain higher rates to intermediate points of destination, provided such rates to intermediate points shall not exceed lowest combination, relief granted not to extend to intermediate points as to which haul is not longer than that of direct line or route, or to routes that are less than 15 per cent or more than 70 per cent longer than direct line or route to said competitive points. Petroleum to Southern Points, 102 I. C. C. 756.

ALL OTHER CITATIONS

Prairie Pipe Line Co. v. Director General, as Agent, 88 I. C. C. 167; Montana R. R. Commrs. v. C. M. & St. P. Ry. Co., 88 I. C. C. 183; North Carolina Pine Asso. v. A. C. L. R. R. Co., 85 I. C. C. 270; Lehigh Lime Co. v. A. C. & Y. Ry. Co., 85 I. C. C. 341; Fourth Section Order No. 8900, 88 I. C. C. 765.

§5. Intermediate Points.

See Advanced Rates §14¾ (d); Class Rates §2 (a); Import Traffic §2 (qq); Through Routes and Joint Rates §21.

(a) Contention that rule 77 of Tariff Circular 18-A constitutes relief from provisions of the fourth section of the act, and that prior to request by shipper for publication from intermediate point of the lower rate applying from more distant point no damages can be found unless rate from intermediate point is shown to be unreasonable per se, or unless evidence constitutes such proof of damages as it required under section 3 of the act, not sustained following Pittsburgh Crucible Steel Co., 81 I. C. C. 659. Standard Oil Co. v. Director General, as Agent, 89 I. C. C. 7, 9.

(b) Rates on petroleum and products from Lawrenceville, Ill., to Bristol, Va.-Tenn., higher than from Chicago, Ill., and Whiting, Ind., unprotected by appropriate application found in violation of long-and-short-haul provision of section 4 of the act and removal thereof directed. Indian Refining Co. v. Director General as Agent, 89 I. C. C. 657.

(c) Complainant attacked commodity rates charged on petroleum and its products from Lawrenceville, Ill., to Bristol, Va., as unreasonable unduly prejudicial and in violation of the long and short haul clause of the act. Lawrenceville is on the B. & O., and Big Four. Bristol is on the N. & W., and Southern, 110 miles southwest of Walton, Va., at which point the Bristol line of the N. & W., connects with the main line running from Cincinnati and Columbus, O., to Norfolk, Va. During the period from August 26, 1920 to Dec. 31, 1921 when the rate of 63.5c was in force from Lawrenceville to Bristol, defendants contemporaneously maintained 19.5c to Jeffersonville and 41.5c beyond and to that extent the through rate is unreasonable. Traffic from Chicago and Whiting may move over the N. Y. C., or Big Four to Danville, Ill., over the latter line through Lawrenceville to Mount Carmel, Ill., and thence Southern or that line and its connections to Bristol. Defendants have failed to indicate any change in conditions which warrant approval of the present violation, the prompt removal of which will be expected. HELD, rates attacked not unreasonable or unduly prejudicial except rate in effect of 63.5c from August 26, 1920, to Dec. 14, 1921, unreasonable to extent it exceeded 61c, reparation awarded. Indian Refining Company v. Director General, 89 I. C. C. 657.

(d) Complainant attacked fifth class rate of 30c charged between November 1918 and July 1919, from Northumberland, N. H., to South Utica and New Hartford, N. Y., as unreasonable to extent it exceeded 22.5c. New Hartford is intermediate to Utica over route of movement and the rates charged were in violation of the fourth section, this having been removed. HELD, rates attacked not unreasonable, complaint dismissed. Sauquoit Paper Co. v. Director General, 92 I. C. C. 61.

(e) Complainant attacked class A rate of 36.5c charged on three cars of cotton seed during federal control from Memphis, Tenn., to Altheimer, Ark., as unreasonable and in violation of the fourth section. Shipments moved via St. Louis Southwestern, 142 miles. A commodity rate of 17c was applicable to Pine Bluff, Ark., a point beyond. HELD, rate attacked unreasonable to extent it exceeded 17c, reparation denied. Russell Heckle Seed Company v. Director General, 91 I. C. C. 63.

(f) Complainant attacked commodity rates charged on 797 cars of rosin from Louisiana, Mississippi, Alabama, Florida and Georgia to Kalamazoo, Mich., as unreasonable, unjustly discriminatory and unduly prejudicial and in violation

of the fourth section. The rates to Kalamazoo are in excess of the rates from the same points to Chicago, Ill., Milwaukee, Wis., and Detroit, Mich., although by workable routes Kalamazoo is said to be intermediate to these destinations. In 87 I. C. C. 740 the Commission found reasonable rates to apply from Jacksonville to Chicago, 40c, Kalamazoo 40c, Milwaukee 42c, Detroit, 40c and to Grand Rapids 41c. HELD, rates attacked not unreasonable but reasonable rates prescribed for the future of 40c to Kalamazoo from Jacksonville and 37c from New Orleans. Complaint dismissed. Western Paper Makers Chemical Co. v. Director General, 91 I. C. C. 223.

(g) Complainant attacked class rate charged on two cars of sand shipped from Nichols, N. Y., to Athens, Pa., in November 1919 as unjust, unreasonable and in violation of section four. Shipments moved over the L. & W., to Waverly, N. Y., 10 miles, thence L. V., 3.5 miles, charged sixth class 9c. Rate of 6c was established in August 1919 to Miland and Ulster, Pa., points 4 and 8 miles, beyond Athens, and established to Athens in February 1920. The tariff publishing the rate to Miland and Ulster referred to rule 77 of Tariff Circular 18 A and provided that upon reasonable request therefor the rates in the tariff would be established from or to intermediate points. HELD, rates charged unreasonable to extent they exceeded 6c, reparation awarded. Warren Brothers Company v. Director General, 91 I. C. C. 559.

(h) Complainant attacked commodity rate of $1.26 charged on one car of rig irons, shipped Sept. 17, 1921 from Pawhuska to Haynesville, La., unreasonable to extent it exceeded 90c, and in violation of the fourth section. Shipment moved Midland Valley to Muskogee, Okla., the M. K. & T., to Shreveport, La., L. & A., to Chestnut, La., and L. & N. W., beyond, 626.9 miles, charged 36c to Muskogee and 90c beyond. The joint commodity rate of 90c applied from blanketed Oklahoma points to Louisiana for distances equal to and greater than that over the route of movement; and it applied to Haynesville from many points in the immediate vicinity of Pawhuska. HELD, rate attacked unreasonable to extent it exceeded 90c, reparation awarded. Parkersburg Rig & Reel Co. v. M. V. R. R., 91 I. C. C. 583.

(i) Complainant attacked commodity rate of 25c charged on 13 carloads of acid phosphate between March and April 1920 from New Orleans and Gretna, La., to Camden, Ark., as unjust, unreasonable, unduly discriminatory and in violation of section four. Charged applicable jobbers rate of 25c although there was contemporaneously maintained to Little Rock and Pine Bluff, Ark., Camden being intermediate, a rate of 15.5c. HELD, rate attacked unreasonable to extent it exceeded 15.5c reparation awarded. Ouachita Cotton Oil Co. v. M. P. R. R., 91 I. C. C. 750.

(j) Complainant attacked commodity rates charged on cotton seed, carloads, from western Kentucky and Tennessee on the Hickman division of the I. C., to Cairo, Ill., as unreasonable and unduly prejudicial. Hickman division extends west from Dyersburg, Tenn., 93 miles south of Cairo to Deer, Tenn., 3.07 miles, and thence north to Hickman, 48.53 miles. They are commodity rates and only apply over the Hickman division through Dyersburg and the main line of the I. C. beyond. It is 73 miles from Hickman to Cairo over that line to Union City, Tenn., and M. & O., beyond. Thus the short route from most Hickman division points is through Hickman, but the rates over that route from all points here concerned are considerably higher than those attacked. Prior to March 4, 1923 class D rate of 18c applied from Hickman to Cairo over the route of movement, since that date a commodity rate of 14.5c has applied. Rates from intermediate points are higher. Hickman is a competitive point and defendants are not the rate making lines, the fourth section departure being authorized in 1911. Considering the differences in distance and the relative levels of these rates, the adjustment attacked can not be said to be unduly prejudicial to Cairo. HELD, rates attacked not unreasonable or unduly prejudicial, complaint dismissed. Cairo Cotton Oil Mill v. I. C. R. R., 91 I. C. C. 765.

(k) Complainant attacked combination commodity rates charged on tank cars of petroleum products shipped between April 1, 1920 and Oct. 28, 1921 from Dodge, Tex., to Boynton, Eram, Morris, Delaware and Watova, Okla., as unjust and unreasonable. Shipments forwarded via T. & P., M. K. T. Specific rates were not in effect to Boynton and Eram until April 20, 1921. Prior to

April 25, 1922 when specific through rates became effective to Delaware and Watova these points took the rate to Kansas City, a farther distant point on the same line, under an intermediate clause in the tariffs. Rates sought are those ordered in 66 I. C. C. 426. Defendants are willing to accord Boynton the same rates as Muskogee, retroactively, the rate of 30c being established to Boynton via the Frisco upon complainants representation. HELD, rates attacked unreasonable to extent they exceeded 22.5c prior to August 26, 1920 and 30.5c thereafter, reparation awarded. Transcontinental Oil Co. v. M. K. & T. Ry., 92 I. C. C. 39.

(l) Complainant attacked commodity rate charged on matches, carloads, from Oswego, N. Y., to Philadelphia, Pa., Charleston, S. C., Brunswick, Ga., and Jacksonville, Fla., between August 1917 and May 1920 as unreasonable, unduly prejudicial, and in violation of fourth section. Shipment in 14599 moved via N. Y. C., to Newberry Junction, Pa., thence P. & R., to team track delivery points at Fifth and Willow, Sixth & Willow, Willow & Noble Sts., Broad and Somerset Sts., and 22nd St., Philadelphia. Charged fourth class 21.5c between August 1917 and June 24, 1918, and 27c between August 8, 1918 and May 11, 1920. When shipments moved commodity rates applied to Baltimore, Md., 18.9c, prior to April 18, 1918 20.5c from that date to August 18, 1919 and 25.5c thereafter. The commodity rate to Baltimore has since been canceled making applicable the fourth class rate. The destinations in Philadelphia were intermediate to Baltimore and shipments overcharged. In 14600 shipments moved via D. L. & W., or N. Y. C., to New York, thence Clyde Steamship Line to Charleston, Brunswick and Jacksonville, charged joint fourth class rate. Contemporaneously commodity rates were in effect to and from Charleston, Brunswick and Jacksonville lower than through class rate, which were subsequently published as through rates. HELD, rates charged to Philadelphia unreasonable to extent they exceeded rates to Baltimore, and rates charged to Charleston, Brunswick and Jacksonville unreasonable to extent they exceeded combination on New York, reparation awarded. Diamond Match Company v. Director General, 92 I. C. C. 68.

(m) The mere fact that a rate to a more distant point is lower than a rate on the same commodity to an intermediate point is not proof that the rate to the intermediate point is unreasonable. Diamond Match Co. v. Director General, 92 I. C. C. 68, 69.

(n) Respondents proposed to modify the rules governing intermediate application of rates on lumber, including ties, from stations on the Frisco, between St. Louis and Springfield, Mo., to Missouri River cities, such as Omaha, Nebr., and certain points beyond. The tariff names no specific rates from any point on the Frisco except St. Louis. Prior to July 15, 1924 the rate on lumber and ties from St. Louis to Omaha was 19c, while the rate to Rapid City, S. D. was 53.5c. Under the immediate rule these rates applied from points on the Frisco between St. Louis and Springfield, such as Lebanon, Mo. It was not intended to extend the St. Louis basis to such points as Lebanon. Effective July 15, 1924 the rates from the St. Louis over the Frisco to all Missouri river cities, except Kansas City, were canceled. This cancellation resulted in the application of combination rates from such points as Lebanon to Missouri river cities, except Kansas City, or the basis which would result had the proposed intermediate rule not been suspended. The rates from Lebanon under the proposed rule because of the maintenance by the Frisco of lower rates from St. Louis to points beyond the Missouri river, would violate the long and short haul provision of the fourth section. Respondent has not indicated any intention to bring such departures into conformity with the statute nor could such action well be accomplished prior to the time the proposed schedules might take effect. HELD, schedules not justified. Intermediate rule on lumber, 92 I. C. C. 153.

(o) Complainant attacked commodity rate of 23.5c charged on one car of dressed yellow pine lumber shipped September, 1921, from Mobile, Ala., to College Park, Ga., as unreasonable and in violation of section four to extent it exceeded 19.5c. Shipment moved L. & N., to Montgomery, Ala., Western Ry. of Ala., to West Point, Ga., and A. & W. P., beyond 344 miles. College Park is 9 miles south of, and intermediate to Atlanta, over route of movement. Rate

attacked was made up by adding to the specific rate of 19.5c Mobile to Atlanta the arbitrary or basing rate of 4c from Atlanta to College Park. Effective Jan. 1, 1923 a rate of 17.5c was established to College Park, which was the rate to Atlanta subsequent to July 1, 1922. HELD, rate attacked unreasonable to extent it exceeded 19.5c, reparation awarded. Watters Tonge Lumber Co. v. A. & W. P. R. R., 92 I. C. C. 251.

(p) Complainant attacked combination class rates charged on manure spreaders from Coldwater, O., to Wisconsin between March 17, 1919 and Jan. 16, 1920 and between March 1 and Dec. 27, 1919, as unreasonable and unduly prejudicial. Coldwater is on the Cincinnati Northern and L. E. & W., 112 miles north of Cincinnati. Shipments moved through Chicago, charged fifth class rate of 20.5c to Chicago and class A rates of 20 and 25c beyond. All of the destinations except Richland Center and Prairie du Sac, are intermediate to Winona, Minn., or points in the Winona group, to which the rate from Coldwater at the time was 39.5c a joint rate, which was established to these destinations in December, 1920. HELD, rates attacked unreasonable, reparation awarded on basis of 39.5c. New Idea Spreader Co. v. Director General, 92 I. C. C. 742.

(q) Interstate Commerce Act, §4, as amended by Act June 18, 1910, and Act Feb. 28, 1920 (Comp. St. Ann. Supp. 1923, §8566), prohibiting common carriers from charging a higher rate for a shorter than for a longer distance over same line or route in same direction, without permission of Interstate Commerce Commission, may be violated by charging a higher rate for transportation over the shorter distance, though property has not been moved over the longer distance at the lower published rate. Davis, Agent, etc. v. Portland Seed Co. 44 Sup. Ct. 380; San Francisco & P. S. S. Co. v. Parrington, 44 Sup. Ct. 380, Davis, Agent, United States Railroad Administration v. Same, 44 Sup. Ct. 380; Great Northern Ry. Co. v. McCaull-Dinsmore Co., 44 Sup. Ct., 380.

(r) Complainant attacked class rates charged on scrap brass, carloads, from Binghamton, N. Y., to Philadelphia, Pa., since April, 1923, as unreasonable and in violation of the fourth section. Shipments moved over D. L. & W., and Pennsylvania at fifth class rate of 28.5c. Contemporaneously there was in effect over the same route a commodity rate of 23c on scrap brass from Black Rock, Buffalo, and East Buffalo, N. Y., to Philadelphia. Binghamton is directly intermediate between Buffalo and Philadelphia over authorized routes. A rate of 21c from Binghamton to Philadelphia was established May 20, 1924. HELD: Rate charged unreasonable to extent it exceeded 23c, reparation awarded. Levenes Sons v. D. L. & W. R. R., 93 I. C. C. 344.

(s) Complainant attacked commodity rates charged of 48.5c on green coffee, carloads, from New Orleans, La., to Montgomery, Ala., as unjust and unreasonable. Montgomery is 318 miles from New Orleans. The rate from New Orleans to Nashville, Louisville, and St. Louis is only 0.5c higher than the rate to Montgomery. The rates on green coffee from New Orleans to Ohio river crossings are depressed because of competition existing at those points on coffee imported through the eastern ports. While this may explain the level of rates from New Orleans to those crossings, it does not necessarily follow that rates substantially the same in amount to intermediate points are also depressed regardless of their distances from points of origin. HELD: Rate attacked not unreasonable, complaint dismissed. Fletcher Wilson Coffee Co. v. L. & N. R. R., 93 I. C. C. 555.

(t) Complainant attacked class rates charged on empty returned beer packages from West Virginia, Virginia, New York, Pennsylvania, Ohio, Kentucky, Indiana, Michigan and Washington, D. C., to La Crosse, Wisc., in federal control as unjust and unreasonable and in violation of section four. Rates charged were higher than the combination on Chicago present rates being based on that combination. HELD: Rates charged unreasonable to extent they exceeded the Chicago combination, reparation awarded. La Crosse Chamber of Commerce v. Director General, 93 I. C. C. 602.

(u) Complainant takes the position that because the rate to the intermediate point is higher than to the more distant point, the higher rate is therefore unreasonable under section 1. This does not follow. Forrester Nace Box Co. v. Director General, 93 I. C. C. 665, 666.

(v) Complainant attacked combina-

tion rate charged on one car of strawberries from Castleberry, Ala., to Mansfield, O., on April 20, 1922, as unjust, unreasonable, unjustly discriminatory and unduly prejudicial and in violation of section four. A rate of $1.29 applied from Castleberry to Sandusky, O., a farther distant point to which Mansfield is intermediate, that rate being established to Mansfield April 22, 1923. Charged 90c to Cincinnati and 46.5c beyond, shipments moving via L. & N., to Cincinnati and B. & O. beyond. There was no justification for charging a higher rate to Mansfield than maintained to Buffalo, Detroit, Cleveland and Sandusky. HELD: Rate charged unreasonable to extent it exceeded $1.29, reparation awarded. Lee Farm Co. v. L. & N. R. R., 93 I. C. C. 699.

(w) Complainant attacked class and commodity rates charged on 17 cars of canned vegetables and condensed milk from Wisconsin to Cincinnati, O., between August 1, 1920 and Nov. 1, 1921, as unreasonable. Both class and commodity rates charged were higher than commodity rates from the same points to Ashland, Ky., and Huntington and Kenova, W. Va., to which Cincinnati is intermediate, the rates to Cincinnati being subsequently reduced. HELD: Rates charged not unreasonable, complaint dismissed. Vossler Co. v. E. J. & E. Ry. 96 I. C. C. 75.

(x) Complainant attacked commodity rates charged on 3 tank cars of fuel oil shipped from Kansas City, Mo., to Kearney, Nebr., during May and June, 1923, as unreasonable, unjustly discriminatory, unduly prejudicial and in violation of the long and short haul provision of the act. Shipments moved 385 miles, charged commodity rate of 47c, reduced on July 1, 1923, to 34.5c. Rates of 27 and 42.5c were in effect to Grand Island, Nebr., and Sable, Colo., respectively. Grand Island is a point on defendant's line intermediate to Kearney and 42 miles distant therefrom, and Sable is a point on defendant's line 245 miles farther distant from Kearney. Shipments to Sable move through Kearney. HELD: Rate charged unreasonable to extent it exceeded 34.5c, reparation awarded. Tyner Construction Co. v. U. P. R. R., 96 I. C. C. 91.

(y) The legal effect of the publication of rates under authority of rule 77 is equivalent to an admission by defendants that the higher rates to intermediate points were unreasonable. Randall Bros. v. L. & N. R. R., 96 I. C. C. 342, 344.

(z) Complainant attacked commodity rates on cement, carloads, from Ada, Okla., to destinations in Louisiana as unreasonable and because higher than to New Orleans, La., to which they are intermediate. The destinations are on the T. & P. south of Shreveport, La., and north of Orleans. Shipments moved M. K. & T. to Mineola, Tex., and T. & P. beyond, or Frisco to Sherman, Tex., and T. & P. beyond. The rate to Shreveport is 21.5c to the destinations here considered, 25.5c to Alexandria, 22c and to New Orleans 23.5c. There is no evidence tending to show that the rates in issue are inherently unreasonble, and the only allegation as to other violations of the act is that of departure from the fourth section. HELD: Complaint dismissed. Oklahoma Portland Cement Co. v. St. L. S. F. Ry., 96 I. C. C. 468.

(aa) Rates on sewer pipe from Brazil, Ind., to Manitowac, and Sheboygan, Wis., and Menominee, Mich., higher than to farther distant points in Minnesota, Wisconsin, and Michigan, found in violation of long-and-short-haul clause of section 4 of the act. While such lower rates to farther distant points applied via car-ferry routes across Lake Michigan, they were unrestricted as to routing, and were, therefore, also applicable via all-rail routes of movement. Chicago Fire Brick Co. v. Director General, 91 I. C. C. 755.

(bb) Complainant attacked commodity rates on lumber, other than pine, carloads, from Jonesboro, Ark., to Des Moines, Ia., as unduly prejudicial as compared with rates from Helena, Wilson, and Glencoe, Ark., and Memphis, Tenn. Jonesboro is in the interior of Arkansas, 64.4 miles northwest of Memphis, on the Frisco. It is also on the St. L. S. W. Memphis, on the east bank of the Mississippi river, is 305.4 miles and Helena, on the west bank, is 362 miles from St. Louis. Wilson is on the direct line of the Frisco between Memphis and St. Louis. Glencoe is served by the B. L. & A. S., and J. L. C. & E. Joint rates on lumber, other than pine, are published from Jonesboro, Memphis, Helena, Glencoe and Wilson to Des Moines without re-

gard to the combination rates made on St. Louis or Thebes. On account of the different operating circumstances and conditions prevailing east and west of the river the west side carriers have long been permitted to maintain rates somewhat higher than those of the east side carriers. Jonesboro is west of the line of the M. P., through Nettleton, which is the boundary east of which the carriers were authorized to depart from the provisions of the fourth section in 80 I. C. C. 157, on traffic south of St. Louis. The record is not sufficiently comprehensive to authorize consideration of the alleged fourth section violations other than through Jonesboro. HELD, rate attacked unduly prejudicial in that it exceeds rates from Glencoe and Wilson to Des Moines. Jonesboro Freight Bureau v. St. L. S. F. Ry., 100 I. C. C. 324.

(cc) Complainant attacked class rates charged on plow irons, parts, and castings, less carloads, from Macon, Ga., to Opelika, Dothan, Roanoke, Troy, Union Springs and Hurtsboro, Ala., since July 1, 1922 as unreasonable and unjustly discriminatory in favor of Atlanta, Ga. Fourth class rates are applicable from Macon to Alabama destinations while commodity rates apply from Atlanta and Columbus, Ga., to these destinations. Complainant has not shown that it suffered damage because of fourth sections violations or the undue prejudice found to exist. HELD, rates attacked not unreasonable but in violation of long and short haul clause of the act to extent they exceeded rates from Atlanta to same points. Massey Gin & Machine Works v. C. of Ga. Ry., 101 I. C. C. 45.

(dd) Complainant attacked class D rate of 12.5c charged on eight cars of scrap iron from Barksdale, Wis., to Duluth, Minn., between Nov. 27, 1922 and May 10, 1923 as in violation of sections 1, 2, 3 and 4 of the act. Distance handled 147.4 miles. Reparation is sought to basis of 8c applicable at time of movement from Washburn, Wis., a point to which Barksdale is intermediate to Duluth. The rate of 8c also applied from Ashland to Duluth. Distances from Ashland and Washburn to Duluth over the N. P., were 88.4 and 75.5 miles, respectively and 151.8 miles and 147.4 miles. Subsequently a rate of 9.5c was established from Ashland Junction to Duluth, the rate from Ashland remaining at 8c. Barksdale and Washburn are not intermediate to Ashland, but the rate of 9.5c was voluntarily made applicable from these points by defendant. HELD, rate charged unreasonable to extent it exceeded 9.5c. reparation awarded. West End Scrap Iron & Metal Co. v. C. St. P. M. & O. Ry., 101 I. C. C. 108.

(ee) Complainant attacked commodity rate charged on 38 cars of cement from Leeds, Ala., to Deerland, Ga., during April, May, and June, 1923 as unreasonable, unduly prejudicial and in violation of the fourth section. Leeds is on the C. of Ga., and the Southern 18 miles east of Birmingham, Ala. Deerland is on the S. A. L., 4.8 miles northeast of Atlanta, Ga., and 1.8 miles east of Howell, Ga., the point at which the shipments concerned were interchanged with the S. A. L. Howell is intermediate between Leeds and Atlanta over the Southern. Distance moved 148.8 miles. Charged 12.5c, but at time they moved a rate of 10.5c was applicable from Leeds to Atlanta and to Armour Belt Junction, and Inman Park, suburban points about Atlanta, about 3, 7 and 12 miles east of Howell and as to which Deerland is intermediate. This rate was published to Deerland July 20, 1923. Certainly there is no proof that the rate charged was unreasonable as applied over the longer route of the Central, over which most of the shipments moved, and the evidence does not sufficiently show that it was unreasonable as applied on the shipments which moved over the shorter route of the southern and S. A. L. HELD, rate attacked not unreasonable, complaint dismissed. MacDougald Construction Co. v. C. of G. Ry., 101 I. C. C. 226.

(ff) Complainant attacked class rate of 88c charged on green salted hides, carloads, from Savannah, Ga., to Manchester, N. H., from March 1 to 8, 1922 as unjust and unreasonable, unjustly discriminatory to extent it exceeded 60c. Manchester on the B. & M., is 57 miles north of Boston, Mass. Shipments unrouted, moved 1,479 miles, charged sixth class 88c. On March 9, 1923 a commodity rate of 54c was established. When the shipments moved there was in effect from Jacksonville, Fla., a farther distant point, a commodity rate of 60c which was reduced to 54c on July 1, 1922. On March 9, 1923 the same rate was established from Savannah. HELD, rate

attacked unreasonable to extent it exceeded 60c, reparation awarded. McElwain Co. v. S. & A. Ry., 101 I. C. C. 359.

(gg) Complainant attacked class rate charged on carbon black, carloads, from Monroe, La., gas district to Chattanooga, Tenn., as unreasonable to extent they exceeded rates from the same district to Louisville, Ky. Carbon black is light in weight, and, for transportation, is packed in paper bags holding 12.5 pounds each. The capacity of a standard car is about 20,000 pounds. Effective Feb. 11, 1922 the carriers established commodity rates of 55.5c from the Monroe district to Memphis, Tenn., and of 47c from Memphis to Chattanooga, making a through rate of $1.025 which was equalized through the Vicksburg, Miss., gateway. Effective July 1, 1922 these rates became 92.5c to Chattanooga. The departure from the long and short haul clause of the fourth section results from the fact that the rate to Louisville applies over the Southern and C. N. O. & T. P. through Chattanooga. Over this route the distance is 861 miles, or about 140% of the short line distance. Southern has expressed its willingness to withdraw from participation in the rate to Louisville. HELD, rates attacked unreasonable to extent they exceeded 77.5c prior to July 1, 1922 and 70c thereafter, reparation awarded. Lookout Paine Mfg. Co. v. M. P. R. R., 101 I. C. C. 691.

(hhii) Contention that lower rate from Lake Charles, La., a more distant point than Columbia, La., on traffic moving to Howard, Kans., was subject to rule 77 of Tariff Circular 18-A, which authorizes establishment of rates from intermediate points not exceeding those from next more distant stations, not sustained, since applicable tariffs carrying lower rate from Lake Charles provided specific routing under which Columbia was excluded. Transcontinental Oil Co. v. A., T. & S. F., 92 I. C. C. 285.

(jj) Rates on cottonseed-hull shavings from East St. Louis, Ill., to Hopewell, Va., found unreasonable to extent they exceeded lower rate from Cairo, Ill., a farther distant point, which lower rate was published in accordance with rule 77 of Tariff Circular 18-A. Reparation awarded. East St. Louis Cotton Oil Co. v. B. & O., 92 I. C. C. 633.

(kk) Rates on tractors from Detroit, to Mason City, Iowa, found not unreasonable, discriminatory, unduly prejudicial, or in violation of long-and-short-haul provision of section 4 of the act, as compared with lower rates from Detroit to Minneapolis and St. Paul, more distant points. Lower rate did not apply over route of movement through Mason City and therefore no fourth-section violation existed. Furthermore, lower rates are on basis entirely different from that applying to Mason City; they were established as a result of decisions in 28 I. C. C. 47, 29 I. C. C. 530, and 46 I. C. C. 39; and were found not unreasonable or unduly prejudicial in North Iowa Traffic Asso., 58 I. C. C. 491. Wagner Motor Co. v. M. C. R. R., 93 I. C. C. 195

(llmm) Rate on scrap brass from Binghamton, N. Y., to Philadelphia, found unreasonable to extent it exceeded lower rate from Black Rock, Buffalo, and East Buffalo, N. Y., farther distant points. Publication subject to rule 77 of Tariff Circular 18-A of lower rate from farther distant points was in violation of long-and-short-haul clause of the fourth section and was tantamount to an admission by defendant that higher rate from Binghamton was unreasonable. Standard-Asphalt & Refining Co., 66 I. C. C. 611, and cases there cited. Reparation awarded. Levene's Sons v. D., L. & W., 93 I. C. C. 344.

(nn) Fifth-class rates on scrap brass and brass ingots or pigs, from Meadville to New York, found in violation of the long-and-short-haul provision of section 4 of the act to extent they exceeded rates contemperaneously applicable from East Liberty, Pa., a farther distant point to which Meadville is intermediate. Union Smelting and Rfg. Co. v. C. R. R. Co. of N. J., 95 I. C. C. 104, 105.

(oo) Rates on canned vegetables and condensed milk from Wisconsin points to Cincinnati, found not unreasonable as compared with rates to Ashland, Ky., and Huntington and Kenova, W. Va., to which Cincinnati is intermediate. Cincinnati formerly took rates lower than to the more distant points but increases authorized in the Fifteen Per Cent Case, 45 I. C. C. 303, disrupted this adjustment and created the fourth-section violation which carriers subsequently removed by reducing rates at the intermediate point. Fact that rates to intermediate point were in excess of those to more distant points does not prove unreasonableness, nor, in absence of evi-

dence of specific damages to shipper, afford a sufficient basis for an award of reparation. Vessler Co. v. E. J. & E. Ry., 96 I. C. C. 75.

(pp) Fact that rates to an intermediate point were in excess of those to more distant points is not proof of unreasonableness, nor, in absence of evidence of specific damages to shipper, is it a sufficient basis for an award of reparation. Vessler Co. v. E. J. & E. Ry., 96 I. C. C. 75, 76.

(qq) Class rate on spelter from Trenton, N. J., to Baltimore and Sparrow's Point, Md., Weir Branch, Cambridge, Boston, and Worchester, Mass., Providence, R. I., and Stamford, Springdale, Cheshire, Bridgeport, and Waterville, Conn, found not to have been unjustly discriminatory or unduly prejudicial and not unreasonable, except for a certain period when they exceeded lower commodity rates which were published subject to Rule 77 of Tariff Circular 18 A and would have been applicable upon request. Reparation awarded. Trenton Smelting & Refining Co. v. P. R. R., 96 I. C. C. 264.

(rr) Mere fact that rate from a more distant point is lower than a rate on the same commodity from an intermediate point is not proof that the rate from the intermediate point is unreasonable. Diamond Match Co., 92 I. C. C. 68. Trenton Smelting & Refining Co. v. P. R. R., 96 I. C. C. 264, 266.

(ss) Rates on coal from mines in Tennessee and Kentucky to sidings on the Fort Worth branch of the Southern Ry., intermediate to Sawtell, Ga., found to have been unjust and unreasonable to the extent they exceeded rates from the same mines to Sawtell prior to a certain date and to the extent they exceeded rates from same points to Constitution, Ga., since that date. The tariffs under which these shipments moved and which named the rates to Sawtell and Constitution contained a notation to the effect that in accordance with Rule 77 of Tariff Circular 18 A, rates to intermediate points not in excess of those to the more distant points would be established on one day's notice. The legal effect of the publication of the lower rates to Sawtell and Constitution under authority of Rule 77 is equivalent to an admission by defendants that the higher rates to intermediate points here involved were unreasonable. Producers Refining Co., 69 I. C. C. 403; Pittsburgh Crucible Steel Co., 81 I. C. C. 659, and Pacific Grain Co., 85 I. C. C. 710. Reparation awarded. Randall Bros. v. L. & N., 96 I. C. C. 342.

(tt) Rates on burlap bags from New Orleans, La., to Jackson, Miss, found to have been unreasonable to the extent they exceeded rates to points to which Jackson is directly intermediate from New Orleans. Reparation awarded. Jackson Traffic Bureau v. I. C. R. R. Co., 96 I. C. C. 449.

(uu) Removal of long-and-short-haul provision violations of section 4 in connection with rates on bananas from New Orleans, La., and points taking the same rates, to Hannibal, Mo., and points in Iowa, directed, lower rates to farther distant destinations being applicable over the somewhat indirect routes through certain points. Lagomarcino-Grupe Co. v. A., T. & S. F., 96 I. C. C. 465, 467.

(vv) Rates for the transportation of manufactured iron and steel articles from points in the Pittsburgh, Pa., district to St. Louis, Mo., and points in Illinois and Indiana, found unjust and unreasonable, and just and reasonable rates, based on distances, prescribed for the future. Defendant carriers are authorized to establish and maintain via all routes between the points involved rates from or to intermediate points higher than the lowest rates prescribed as maximum, provided such rates shall not exceed the rates approved as maximum rates and in no case the lowest, and provided further that this relief shall not apply where certain percentages of circuity exist. Jones & Laughlin Steel Corp. v. B. & O., 96 I. C. C. 682.

(ww) Combination rate assessed on a shipment of lumber from Rose Lake, Idaho, to Danvers, Ill., found inapplicable and illegal to extent it exceeded the rate applicable to both Chicago Heights and Peoria, Ill. Danvers is intermediate between Peoria and Chicago Heights, and while the tariff carrying the rate to these points did not prescribe a specific rate to Danvers, it carried an intermediate clause. The commission has frequently found that if carriers desire to restrict the application of a joint rate to any particular route they should do so by clear and unequivocal language. With no routing restrictions shown in the tariff naming the joint rate sought, the shipment is properly entitled to such rate. Reparation awarded. Rose Lake

Lumber Co., Ltd. v. O. S. L. R. R. Co., 100 I. C. C. 221.

(xx) Rate on zinc ore from Murray and Midvale, Utah, to Canon City, Colo., during Federal control, found unreasonable to extent it exceeded a rate contemporaneously in effect from these points to Denver and Pueblo, Colo., more distant points. The tariffs publishing the lower rate, which was not limited as to value, contained a notation that in accordance with rule 77 of Tariff Circular 18-A, rates to intermediate points not in excess of those to the more distant points would be established on one day's notice, upon reasonable request, but, because of the specific rate in effect at Canon City rule 77 was not applicable, Standard Asphalt & Refining Co., 66 I. C. C. 611. However, there were no specific rates from Murray and Midvale to several points near to and on either side of Canon City and subsequently the lower rate was established to Canon City. Reparation awarded. Western Metals Co. v. Director General, 100 I. C. C. 314.

(yy) Class rates as applied to plow irons, parts, and castings in l. c. l., from Macon, Ga., to points in Alabama, found not unreasonable, but unduly prejudicial and in violation of long-and-short-haul clause of fourth section of the act to extent they exceed or may exceed lower contemporaneous rates on plow irons, l. c. l., in effect from Atlanta, Ga., to same destinations. Massey Gin & Machine Works v. C. of G. Ry., 101 I. C. C. 45.

(zz) Combination rates applicable on shipment of wheat from Nebraska City, Nebr., to Kansas City, Mo., reconsigned to Westwego, La., found not unreasonable, but found to have been in violation of the fourth section of the act to extent they exceeded joint commodity rates contemporaneously applicable from farther distant points over route of movement. No damage found to have resulted from such violations and complaint dismissed. Moore-Lawless Grain Co. v. C., B. & Q., 101 I. C. C. 52.

(3a) Complaint alleging refrigeration charges on vegetables and citrus fruits, c. l., from Imperial Valley points to Fort Worth, Tex., to be unreasonable and in violation of section 4 of the act, dismissed for lack of evidence. Home Star Produce Co. v. S. P. Co., 101 I. C. C. 69.

(3aa) Rate assessed on sand from LaFayette, Ind., to Manteno, Ill., found not unreasonable, discriminatory, or unduly prejudicial as compared with lower contemporaneous rate on like traffic from LaFayette to Chicago, to which Manteno is intermediate over route of movement, but in violation of long-and-short-haul provision of section 4 of the act. Shanks & Gannon Co. v. C., C., C. & St. L., 102 I. C. C. 462.

(3b) Complainant attacked rates charged and carload minimum weights on strawberries and cabbage, carloads, from Kentucky and Tennessee to Kalamazoo, Battle Creek, Sturgis and Coldwater, Mich., as unreasonable and unlawful. Rates sought on same basis as to Grand Rapids and Detroit, Mich., farther distant points were established on Nov. 4, 1925, reparation only being involved. Charged combination on the Ohio river, there being through rates published to Grand Rapids and Detroit. HELD, rates attacked unreasonable and unduly prejudicial to extent they exceeded rates to Grand Rapids, Mich., reparation awarded. Lewis Co. v. L. & N. R. R., 112 I. C. C. 213.

(3c) Florida East Coast Ry. asked for authority to establish a rate of 25c subject to a minimum of 40,000 pounds on sugar, carloads, from Key West, Fla., when imported from Cuba to Jacksonville, Fla., and to establish higher rates on like traffic to intermediate points, in contravention of the long and short haul provision of section four. It is extremely difficult if not impossible to ascertain accurately the cost of transporting a particular kind of traffic for a certain distance. The showing made by applicant, however, leads to the conclusion that the additional transportation of sugar over its lines under the rate proposed would increase applicants revenue in a greater amount than it would increase expenses. Actual competition with water lines between Cuba and Jacksonville direct does not exist. There is a substantial movement of raw sugar from Cuba to Port Wentworth, but the volume of refined sugar shipped to Jacksonville from Port Wentworth is not shown, nor is it shown that competition with that sugar warrants the establishment of the rate proposed. HELD, fourth section relief denied. Sugar from Key West, 112 I. C. C. 347.

ALL OTHER CITATIONS

Midland Coal Co. v. F. S. & W. R. R.

Co., 85 I. C. C. 146; Acid from Moundsville, 85 I. C. C. 149; North Carolina Pine Association v. A. C. L. R. R. Co., 85 I. C. C. 270; Atlas Portland Cement Co. v. C. R. R. Co. of N. J., 85 I. C. C. 611; Mid-Continent Equipment & Machinery Co. v. M. & O. R. R. Co., 85 I. C. C. 683; Pacific Grain Co. v. Director General, as Agent, 85 I. C. C. 710; Hoskins Lumber Co. v. Director General, as Agent, 85 I. C. C. 740; Texas Farm & Ranch Publishing Co. v. A. & W. Ry. Co., 88 I. C. C. 417; Lynchburg Traffic Bureau v. P. R. R. Co., 88 I. C. C. 619; Barrett Co. v. Director General, as Agent, 88 I. C. C. 459; Piowaty & Sons v. Director General, as Agent, 88 I. C. C. 597; Fourth Section Order No. 8900, 88 I. C. C. 768.

§6. Intermediate Points off Line.

See Supra §5.

(a) Complainants attacked commodity rate charged on bananas, carloads, from New Orleans, La., to Hannibal, Mo., Keokuk, Burlington, Muscatine, Davenport, Clinton, Cedar Rapids, Ottumwa, Centerville and Creston, Ia., as unduly prejudicial. Rates attacked are 81c to Hannibal, 84c to Keokuk and Burlington, 90c to Muscatine, Davenport and Clinton, 99c to Cedar Rapids, Ottumwa and Centerville, and $1.055 to Creston. The points alleged to be preferred are Galesburg, Monmouth, Kewanee, Aurora, Chicago, Peoria, Springfield, La Salle, and other Illinois points taking a rate of 79.5c from New Orleans. There are fourth section departures in connection with the rates through Hannibal, Keokuk and Burlington, also Quincy, Ill., the lower rates to the farther distant Illinois destinations being applicable over the somewhat indirect routes through those points. HELD: Rates attacked not unduly prejudicial, complaint dismissed. Lagomarcino Grupe Co. v. A. T. & S. F. Ry., 96 I. C. C. 465.

(b) Complainant attacked class rates charged on 33 cars of potatoes from Hightstown, Cranbury, Jamesburg, Plainsboro, Prospect Plains, and Windsor, N. Y., to Jacksonville, Fla., between Sept. 9 and Dec. 2, 1920, as unjust, unreasonable and in violation of the fourth section. Shipments moved Pennsylvania to New York and Clyde Steamship lines beyond, charged sixth class 53.5c. Contemporaneously the rate on potatoes, carloads, to New York was from Jamesburg 16c, from Hightstown, Cranbury, Plainsboro and Prospect Plains 17c, and from Windsor 19.5c, beyond New York 30.5c. HELD: Rate attacked unreasonable to extent it exceeded New York combination, reparation awarded. Chamberlin & Barclay v. Clyde Steamship Co., 98 I. C. C. 7.

(c) Complainant attacked commodity rate of 20c charged on 10 cars of lumber between May and October, 1923, from Gantt and Sports, Ala., to Pensacola, Fla., as unjust and unreasonable. Both points are on the C. of Ga., 9 and 22 miles east of Andalusia, Ala. Short line distances to Pensacola are from Gantt 123 miles and Sports 135 miles, charged 20c, which is a blanket or group rate extending between Columbus, Ga., and Andalusia on the one hand, and between Montgomery and Eufaula, Ala., on the other. When the shipments moved there was a lower combination on Andalusia of 13c from Gantt and 15c from Sports. Subsequently 13c was published from Gantt and 13.5c from Sports. HELD: Rate charged unreasonable to extent it exceeded 13c from Gantt and 15c from Sports, reparation awarded. Pensacola Creosoting Co. v. C. of Ga. Ry., 98 I. C. C. 36.

(d) Complainant attacked combination rate charged on one car of lumber shipped May 3, 1921 from Rose Lake, Ida., to Danvers, Ill., as unreasonable and in violation of section four. Shipments was routed over U. P., C. B. & Q., to Peoria, and Big Four beyond charged 76c, made up of 70c to Peoria and 6c beyond. The 70c rate also applied to Chicago Heights, Ill. Danvers is on the Big Four east of Peoria, and in connection with another carrier, intermediate between Peoria and Chicago Heights. The tariff carrying the 70c rate did not prescribe a specific rate to Danvers, but carried the following clause: Directly intermediate stations or sidings not shown in tariff via routes specified, but located between points to which rates are provided, will take rates published to next more distant station. The tariff authorized the application of the 70c rate from Rose Lake to Chicago Heights by way of Council Bluffs for M. C. delivery. No intermediate carrier was specified between Council Bluffs and Chicago Heights and the M. C., does not serve Council Bluffs. Complainant contended that the rate applied over the lines of any carrier party to the tariff, including

the C. B. & Q., Council Bluffs to Peoria, Big Four from Peoria, to Chicago, Ill., and M. C., to Chicago Heights. Over that route Danvers is intermediate to Chicago Heights. HELD, rate charged inapplicable and illegal to extent it exceeded 70c, shipment overcharged, reparation awarded. Rose Lake Lumber Co. v. O. S. L. R. R., 100 I. C. C. 221.

ALL OTHER CITATIONS

Atlas Portland Cement Co. v. C. R. R. Co. of N. J., 85 I. C. C. 611.

§6¼. Comparison of rates.

See Comparative Rates.

(a) The earnings per mile for short hauls ordinarily are and should be higher than for longer hauls. Iron and Steel Articles, 89 I. C. C. 606, 629.

(b) A lower rate over a route other than route of movement does not constitute a violation of the long-and-short-haul provision of section 4 of the act. Wagner Motor Co. v. M. C. R. R., 93 I. C. C. 195, 196.

§6½. Participation in route.

(a) Desire of a carrier to get the long hauls on traffic does not warrant it in maintaining rates that are unreasonable or otherwise unlawful to particular consuming territories. A shipper is entitled to forward its products to any market over any route it selects at reasonable rates. United Verde Extension Mining Co. v. A., T. & S. F. Ry. Co., 89 I. C. C. 95, 100.

§6¾. Exceeding Combination of Intermediates.

See Advanced Rates §5 (2½); Through Routes and Joint Rates §15.

(a) The aggregate of intermediate rates within meaning of section 4 of the act is the sum of the separate rates and not an amount determined by application of the so-called combination rule. McLeod v. T. & P. Ry. Co., 89 I. C. C. 356, 357.

(b) This is no violation of the aggregate of intermediates clause of section 4 of the act unless carrier maintains a specific through rate which is higher than the lowest aggregate of intermediate rates over the same route. The product of intermediate rates treated by a rule which results in something less than the aggregate is not the aggregate within the meaning of this section. McLeod v. T. & P. Ry. Co., 89 I. C. C. 356, 357.

(c) In 77 I. C. C. 439, the Commission found not unreasonable through fifth class rates on iron and steel articles, carloads, from Pittsburgh, Pa., and other points in western Pennsylvania to Cleveland, Lorain, Canton, and Akron, O., which exceeded the aggregate of contemporaneous intermediate rates to and from Youngstown, O., and other intermediate points. In 78 I. C. C. 724, the Commission found that the through fifth class carload rates from Pittsburgh and certain other points to Parkersburg, W. Va., were unreasonable to extent they exceeded the combination to and from Wheeling, W. Va.; that the rates from Johnstown, Conellsville and Monessen, Pa., were unreasonable to extent they exceeded 2c over the rate from Pittsburgh; and that the rate from Portsmouth, O., was unreasonable to the extent it exceeded the rate from Pittsburgh. HELD, upon further consideration rates attacked unreasonable to extent they exceeded the aggregate of intermediates, reparation awarded. American Shipbuilding Company v. Director General, 89 I. C. C. 601.

(d) Complainant attacked commodity rates charged on lumber, carloads, between June 25, 1918 and Feb. 14, 1919, from Hopkins, Fla., to Baltimore and Port Covington, Md., Utica, N. Y., Stroudsburg, Pa., Spartanburg, S. C., and Johnson City, Tenn., as unreasonable. In 58 I. C. C. 442, the Commission found rates attacked unreasonable to extent they exceeded the combination to and from Jacksonville, Fla., in effect June 24, 1918, increased 5c. HELD, rates attacked unreasonable to extent named in original report shown above, reparation awarded. Union Cypress Company v. F. E. C. Ry., 89 I. C. C. 679.

(e) Complainant attacked class D rate charged on two cars of mine run coal shipped June 26, 1918 from Hammond, Kas., to Stark City, Mo., as unjust and unreasonable. Hammond, a local point on the Frisco is about 91 miles south of Kansas City, Mo. Shipments routed by shipper Frisco-M. & N. N. A., moving via Frisco Joplin and M. & N. A., charged class D rate of $3.30. A combination rate of $2.30 was applicable over the same lines via Neosho, Mo., but the aggregate of intermediate rates in effect over routes traversed was $2.60.

made up of $1.20 to Joplin and $1.40 beyond, and on August 14, 1919 a joint commodity rate of $2.10 was established. HELD, rates attacked unreasonable to extent they exceeded $2.60, reparation awarded. Midland Coal Company v. St. L. S. F. Ry., 92 I. C. C. 283.

(f) Complainant attacked fifth class rates charged on 41 tank cars of creosote oil shipped from Ensley, Ala., to De Ridder, La., between April 19, 1919 and Feb. 19, 1920 as unreasonable, unjustly discriminatory, unduly prejudicial and in violation of the fourth section. Ensley is within the switching limits of Birmingham, Ala. De Ridder is on the L. & P., K. C. S., Santa Fe and L. C. & N. Shipments moved at fifth class rate of 86.5c. The plant at De Ridder was constructed in 1918 and immediately thereafter complainant applied for establishment of a commodity rate of 25c, the rate in effect to Shreveport, La., and on March 11, 1921 a rate of 55.5c was established the same as the rate to Lake Charles, La. On Feb. 3, 1922 a rate of 33c was established, this being the rate to Shreveport. The through class rates exceeded the aggregate of the intermediate rates via New Orleans and Baton Rouge, La. HELD, rate attacked unreasonable to extent it exceeded a rate of 25c, reparation awarded. Shreveport Creosoting Co. v. L. & P. Ry., 92 I. C. C. 519.

(g) A joint rate that exceeds the aggregate of intermediate rates over the same line or route is prima facie unreasonable. The Commission has never found that the charging of such a rate is an overcharge. It has always maintained that the statute requires rigid observance of the tariff, without regard to the inherent lawfulness of the rates specified. Pacific Adjustment Co. v. Director General, 93 I. C. C. 50, 52.

(h) Complainant attacked class rates charged on a car of common furniture shipped March 3, 1922, from Fort Smith, Ark., to Jackson, Miss., as unreasonable and, as compared with the rates to Memphis, Tenn., Vicksburg, Miss., and New Orleans, La., unjustly discriminatory and unduly prejudicial and in violation of the fourth section. Shipment moved via Mo. Pac. to Memphis and I. C. beyond, 514 miles, charged third class rate of $1.51. The combination of local rates to and from Vicksburg was 96.5c, made up of 54c to Vicksburg and 42.5c beyond, this subsequently being published. HELD: Rates attacked unreasonable to extent they exceeded the Vicksburg combination, reparation awarded. Jackson Traffic Bureau v. A. & V. Ry., 93 I. C. C. 55.

(i) Complainant attacked combination commodity rates charged on 37 cars of sand and gravel shipped in Sept. 1922, from Winona, Minn., to Viroqua, Wis., as unreasonable. Shipments moved from Winona to La Crosse, 29 cars via C. M. & St. P., and 8 cars via Burlington thence L. C. & S. E. When shipments moved neither the Milwaukee nor the Burlington maintained joint commodity rates on sand and gravel to Viroqua in connection with the Southeastern. Charged combinations on Winona, 6.6c and 6.7c via the Milwaukee and Burlington, these rates composed of commodity rates of 3.5c to LaCrosse and 72c per ton beyond over Burlington plus commodity rate of 3.1c. The applicable rate in connection with both the Burlington and the Milwaukee was the joint class E rate of 12c, shipments undercharged. Viroqua is served by the Milwaukee and the Southeastern, but no track connection exists there between the rails of these two carriers. The Milwaukee has its own route from Winona to Viroqua. The Burlington has not. The Northwestern serves Winona and La Crosse but has no rails to Viroqua. The Northwestern in connection with the Southeastern maintains to Viroqua a joint rate on sand and gravel equal to the rate over the single line route of the Milwaukee. Milwaukee conceded that the joint class E rate of 12c exceeded the combination of intermediates on La Crosse, composed of commodity rate of 3.5c to La Crosse plus 7c class E rate of Southeastern beyond. Effective Nov. 1, 1922, the Southeastern published a commodity rate of 5c from La Crosse to Viroqua. HELD: Rates charged not unreasonable but applicable rates unreasonable to extent they exceeded present combinations of 8.5c and 8.6c over Milwaukee and Burlington in connection with the Southeastern, undercharges waived, complaint dismissed. Campbell Construction Co. v. L. C. & S. E. Ry., 93 I. C. C. 99.

(j) Complainant attacked commodity rate charged on gasoline, carloads, between Jan. 10 and Feb. 29, 1920, from

Salt Lake City, Utah, to Baker, Ore., as unreasonable and in violation of the fourth section. Shipments moved over O. S. L. and O. W. R. R. & N., charged 87.5c which exceeded the combination of 78c on Weiser, Ida., the latter rate being subsequently established. HELD: Rate attacked unreasonable to extent it exceeded 79c, reparation awarded. Standard Oil Co. v. Director General, 93 I. C. C. 278.

(k) Complainant attacked commodity rate charged on two cars of rice bran, in carloads, from Wheatley, Ark., to Jackson and Meridian, Miss., Jan. 26 and Feb. 14, 1923, as unjust, unreasonable, unduly discriminatory as compared with rates on grain and grain products. Routed via Rock Island to Memphis, 64.4 miles, I. C., to Jackson, 211 miles, and over A. & V., to Meridian 95.8 miles. Rate charged to Jackson 41c, compared of commodity rate of 15.5c to Memphis and class D rate of 25.5c beyond. Rate charged to Meridian was 34.5c composed of 15.5c to Memphis and 19c beyond. Subsequent to the movement of the Jackson shipment a commodity rate of 19c was established from Memphis to Jackson, thus making the present combination to Jackson 34.5c. Joint class rates of 78c were applicable on both shipments. The combination rate applied from Whetley to Jackson was 13.5c higher than the joint rate to New Orleans, a more distant point on the same route in the same direction. The rate to the more distant point also applies through Meridian. HELD, rates attacked unreasonable and in violation of the long and short haul clause, to extent they exceeded 27.5c, reparation awarded. Jackson Traffic Bureau v. A. & V. Ry., 93 I. C. C. 321.

(l) Complainant attacked combination commodity rates charged on four cars of sand shipped between March 9, 1919 and Nov. 24, 1919 from Turner, Kans., to Cassidy, Galloway, Bolivar, and Cabool, Mo., as unreasonable and unduly prejudicial. Turner is on the Santa Fe 0.75 miles west of Kansas City, Mo., switching limits and about 7 miles west of Kansas City, Mo. Serridge is a local station on the K. C. K. V. & W., an electric road not a party defendant. At the time when the shipments moved to Kansas City rate applied from Serridge. Destinations are local points on the Frisco near Springfield, Mo. Charged commodity rates to and beyond Kansas City on shipments to Galloway and Cassidy and at the joint class E rates from St. Joseph, Mo., applicable under intermediate rule from Turner, to Bolivar and Gabool. Rates contemporaneously in effect from Kansas City were 6c to Gallaway, 199 miles; 7c to Cassidy, 206 miles; 5.5c to Bolivar, 151 miles; 7.5c to Cabool, 269 miles. The Kansas City rate was established from Turner to Bolivar on Dec. 30, 1919 and to the other destinations on Dec. 31, 1919. HELD, rates attacked not unduly prejudicial; rates to Bolivar and Cabool unreasonable to extent they exceeded Kansas City combination, rates to Galloway and Cassidy not unreasonable, reparation awarded. Kaw River Sand & Material Co. v. Director General, 93 I. C. C. 346.

(m) Complainant attacked commodity rate charged on grapefruit, carloads, and in mixed carloads with oranges, shipped between Feb. 19, 1921 and Jan. 3, 1922 from Florida to Omaha, Neb., as unreasonable and in excess of the aggregate of intermediate rates to and from Jacksonville, Fla. Rates charged $1.385 from Haines City and Winter Haven, $1.42 from Manatee, Manavista, and Palmetto, $1.435 from Arcadia, $1.60 from Cocoanut Grove and Miami and $1.62 from Homestead. These rates established as result of 17 I. C. C. 552 and 22 I. C. C. 11. HELD, rates attacked not unreasonable and not in violation of the fourth section except from Homestead, the latter being removed March 20, 1921. Complaint dismissed. Omaha Chamber of Commerce v. A. B. & A. Ry., 93 I. C. C. 583.

(n) A joint rate does not violate the aggregate of intermediates clause of the fourth section unless it exceeds the sum of the rates contemporaneously effective to and from some intermediate point. It can not be said to violate that clause if it must first be broken up into component parts in order to provide rates to and from an intermediate point which are lower in the aggregate, because in such event the basis of comparison is destroyed. Omaha Chamber of Commerce v. A. B. & A. Ry., 93 I. C. C. 584, 585.

(o) A joint rate which does not violate the aggregate of intermediate clause of the fourth section may still be unreasonable because it exceeds the

through charges which would be applicable in the event of its cancellation. Omaha Chamber of Commerce v. A. B. & A. Ry., 93 I. C. C. 584, 585.

(p) The aggregate of the intermediate rates within the meaning of the fourth section was the sum of the two separate rates and not the sum of those rates subjected to the combination rule. Crowell Lumber & Grain Co. v. Director General, 96 I. C. C. 259, 261.

(q) Complainant attacked commodity rates on coal prior to April 26, 1923, from Tennessee and Kentucky mines, served by the L. & N., and named by group numbers, to Atlanta and Sawtell, Ga., were the same; that complainants sidings are served by the Southern and are intermediate to Sawtell from Atlanta; that for the delivery of coal from these mines to complainants sidings complainants paid the Atlanta rate plus a switching charge, which rates and charges are unreasonable, unlawful and in violation of section four. The departure from the long and short haul clause of the fourth section which existed at Sawtell prior to April 26, 1923 was removed on that date by increasing the rate to that point. No evidence was offered to prove impropriety in any rate to Atlanta. What complainants seek is the application of Atlanta rates to their sidings. The fair average distance from the Harlan group to complainants sidings, located between Atlanta and Sawtell, and also between Atlanta and Constitution, is 375 miles, charged $2.815, present $2.565. HELD, total charges paid for coal from Tennessee and Kentucky served by the L. & N., to sidings on the Fort Valley branch of the Southern intermediate to Sawtell, between May 22, 1921 and April 25, 1923, unreasonable to extent they exceeded rates to Sawtell, and since that date unreasonable to extent they exceeded rates to Constitution, reparation awarded. Randall Bros. v. L. & N. R. R., 96 I. C. C. 342.

(r) Complainant attacked fifth class rate of 55c charged on one car of sulphate of ammonia from Gary, Ind., to Little Rock, Ark., on Feb. 17, 1919 as unreasonable. Shipment moved E. J. & E., to Joliet, Ill., C. & A., to St. Louis, Mo., M. P., beyond, 678 miles. There was in effect a rate of 29c from the competing points of Joliet and Chicago, Ill., 592 and 617 miles. This rate was published effective June 1, 1921 from Gary, plus increase authorized in Ex Parte 74. Rate Gary to St. Louis was 9.5c and 22.5c beyond. HELD, rate attacked unreasonable to extent it exceeded 32c, reparation awarded. Arkansas Fertilizer Co. v. Director General, 96 I. C. C. 567.

(s) Complainant attacked commodity rates charged on 5 cars of bridge iron from South Chicago, Ill., and Gary, Ind., to Appleby, Kurth and Strawn, Tex., between Sept. 1 and Dec. 6, 1921 as unreasonable and in violation of the fourth section. Appleby and Kurth are on the H. E. & W. T., 83.4 miles and 104.4 miles southwest of Shreveport and Strawn is on the T. & P., 302.7 miles west of Shreveport. Shipments were fabricated at Jacksonville. Charged joint commodity rate of $1.135 Chicago to Texas with plus charge of 2c for fabrication. There was in effect 87.5c to Appleby, 90c to Kurth and $1.105 to Strawn, made up of a joint commodity rate of 62.5c from Chicago to Shreveport plus distance commodity rate beyond. HELD, rate attacked unreasonable to extent it exceeded the Shreveport combination, reparation awarded. Illinois Steel Bridge Co. v. C. B. & Q. R. R., 96 I. C. C. 698.

(t) Complainant attacked commodity rates charged on 45 cars of molding sand shipped from Ottawa and Utica, Ill., to Buchanan, Mich., between Jan. 26, 1918 and Feb. 25, 1919 as unreasonable, unjustly discriminatory and unduly prejudicial and in violation of the fourth section. Ottawa is on the Burlington and Rock Island 81 miles southwest of Chicago over the former and 84 miles over the latter. Utica is on the Rock Island near Ottawa. Commodity rates charged exceeded combination of intermediates. HELD, reparation awarded. Clark Equipment Co. v. C. B. & Q. R. R., 98 I. C. C. 465.

(u) Complainant attacked commodity rate charged on wheat carloads, shipped in November and December, 1919 and January and February 1920 from Colorado to Antonito, Colo., there milled and the flour shipped via Memphis, Tenn., to Nashville, Tenn., as unjust, unreasonable and unduly prejudicial. The originating points are on the narrow gauge line of the D. & R. G. W., along the southern boundary of Colorado. The grain moved to Antonito and was milled

there by complainant. The flour in sacks was then shipped in narrow gauge cars to Alamosa, Colo., transferred there to 15 standard gauge cars and moved to destination via Pueblo, Colo., and Memphis, a total average distance of about 1,643 miles. Between Antonio and Alamosa 29 miles, there are three rails so that the flour could have been loaded directly from complainants mill into standard gauge cars at Antonito. Applicable rates were combination on Memphis. On Feb. 1921 carrier established joint rate of 76c to Cairo and 81.5c to Memphis from Durango and intermediate points. All points of origin except Hesperus are intermediate between Durango and Pueblo. These rates permitted milling in transit at Antonito and other directly intermediate points. The 12.5c factor to Nashville also applied from Cairo and reparation is sought to the basis of 88.5c the subsequent Cairo combination. HELD, rates attacked unreasonable to extent the aggregate of factors assessed from Antonito to Nashville exceeded 72.5c, reparation awarded. Conejos Cooperative Roller Mills v. Director General, 98 I. C. C. 515.

(v) Combination rate on rig irons from Pawhuska to Haynesville, La., in excess of rate applicable from Arkansas City and Wichita, Kans., further distant points, through Pawhuska over route of movement, and unprotected by appropriate application, found to be in violation of the long-and-short-haul provision of fourth section. Parkersburg Rig & Reel Co. v. M. V. R. R. Co., 91 I. C. C. 583, 585.

(w) Complainant attacked commodity rates charged on cars of tin plate since August 26, 1920 from McKeesport, Pa., Yorkville, O., and Cumberland, Md., to New London, Wis., as unreasonable to extent they exceeded aggregate of intermediates. Shipments moved via Frankfort or Ludington, Mich.; thence by car ferry to Manitowoc or Kewaunee, Wis.; thence by rail to destination. Rates charged through commodity rates which are higher than the combination via Manitowoc or Kewaunee. HELD, rates attacked unreasonable to extent they exceeded aggregate of intermediates, reparation awarded. Borden Co. v. A. A. R. R., 100 I. C. C. 153.

(x) Through rates higher than the aggregate of the intermediates are prima facie unreasonable. Borden Co. v. A. A. R. R., 100 I. C. C. 153, 155.

(y) The product of intermediate rates treated by a rule which results in something less than the aggregate is not the aggregate within the meaning of the fourth section. McLeod v. T. & P. Ry., 100 I. C. C. 219, 220.

(z) Complainant attacked joint third class rates charged on plate glass from Toledo, O., Rossford, O., Saginaw, Mich., and Blairsville, Pa., to Memphis, Tenn., as unreasonable, unjustly discriminatory and in violation of the fourth section. The aggregate of the intermediate rates composed of third class or rule 26 rates to the Ohio river crossings and commodity rates beyond were lower than the applicable rates. Joint commodity rates constructed on the lowest Ohio river combination were published to Memphis, effective Jan. 5 and Nov. 15, 1924. HELD, rates attacked unreasonable to extent they exceeded the aggregate of intermediates, reparation awarded. Memphis Freight Bureau v. B. & O. R. R., 100 I. C. C. 327.

(aa) Complainant attacked combination rates of 48c prior to June 25, 1918 and 63c thereafter on ferromanganese, carloads, between Jan. 1, 1918 and Mar. 1, 1920, from Tacoma, Wash., San Francisco and South San Francisco, Calif., as unreasonable to extent they exceeded applicable rates of 46 and 57.5c from Cheyenne, Wyo., to the same points. Shipments moved from Tacoma over N. P., to Portland, Ore., thence S. P. Charged at Portland combination of 50.5c and 63c. The rate claimed was based on application of an intermediate rule but the state of Washington was specifically excepted. HELD, rates charged applicable, complaint dismissed. Pacific Coast Steel Co. v. Director General, 100 I. C. C. 415.

(bb) Complainant attacked commodity rate charged on two cars of cottonseed shipped on March 31 and April 11, 1922 from Clarksville, Tex., to Memphis, Tenn., as unjust and unreasonable and in violation of the fourth section. Charged 45.5c and a combination of 34c was made up of 13c to Texarkana, Tex., and 21c beyond. HELD, rate attacked unreasonable to extent it exceeded combination of locals, reparation awarded. Russell Heckle Seed Co. v. M. P. R. R., 101 I. C. C. 29.

(cc) Complainant attacked commodity rate charged on 18 cars of liquid asphalt

in tank cars between Sept. 1 and Dec. 1, 1921 from Port Neches, Tex., to Morrillton, Conway and Galla, Ark., as unreasonable. Port Neches is on the K. C. S., 4 miles north of Port Arthur. Points of destination are on the M. P., west of Little Rock, Ark. Shipments moved as routed by shipper over K. C. S., to Texarkana, Tex., and M. P., beyond, charged 44c to Van Buren, Ark., and applicable under the intermediate rule to destinations shown. Present joint rate is 25.5c, established Feb. 15, 1923. The joint rate was in excess of 26c to Argenta, Ark., plus 15.5c beyond. HELD, rate attacked unreasonable to extent it exceeded 27c, reparation awarded. Texas Co. v. K. C. S. Ry., 101 I. C. C. 177.

(dd) A rate which exceeds the aggregate of intermediates is prima facie unreasonable, but that presumption is not conclusive. Ogden Packing & Provision Co. v. A. T. & S. F. Ry. 101 I. C. C. 236, 255.

(ee) Complainant attacked commodity rates charged on sugar, carloads from San Francisco, Calif., to Bowie, Ariz., as unreasonable, unduly prejudicial and in violation of the fourth section. The governing tariff does not carry specific rates on sugar to Bowie. It does publish rates to Benson, Fairbanks, and Tuscon, Ariz., Deming, N. M., and El Paso, Tex., and under an intermediate clause in the same tariff Bowie takes the same rate as El Paso. Applicable rates are subject to minimum of 60,000 pounds. Bowie is on the main transcontinental line of the S. P., 197 miles west of El Paso. Attacked rate was 96.5c prior to August 20, 1921, 96c from that date to July 1, 1922, 86.5c from that date to Jan. 10, 1924 and 84c thereafter. This rate applied and applies to practically all main line points on the S. P., from the California state line to El Paso, minimum 60,000 pounds. Following the general reductions of 1922 and until recently defendants and their connections maintained rates on sugar from California points ranging from 79c at St. Louis, Mo., and Chicago, Ill., to 83c at Burlington, Iowa, minimum 80,000 lbs. To the same territory somewhat higher rate subject to minimum of 60,000 pounds were maintained, the rate to Chicago being 91c. Since Jan. 10, 1924 the rate to Chicago, minimum 80,000 pounds, has been 84c which is not exceeded at intermediate points, 81 I. C. C. 448. HELD, rate attacked unreasonable to extent it exceeded 83c prior to July 1, 1922 and 75c thereafter, minimum 60,000 pounds, reparation awarded. Solomon Wickersham Co. v. Santa Maria R. R., 101 I. C. C. 667.

(ff) Fact that a rate violates the long-and-short-haul provision of section 4 of the act, in and of itself, does not establish its unreasonableness. Wagner Motor Co. v. M. C., 93 I. C. C. 195, 196.

(gg) Rates on baled hay from McLaughlin, McIntosh, and Walker, S. Dak., to Sioux City, Iowa, found unreasonable to extent they exceeded the aggregate of intermediates contemporaneously in effect over the route of movement, such departures from the fourth section of the act being unprotected. Cohn v. C., M. & St. P. Ry. Co., 96 I. C. C. 257.

(hh) Combination rates on naphtha and gasoline, in tank-car loads from Hodge, Texas, to Blue Creek, W. Va., exceeded rates on same commodities from Hodge, via Clarksburg, W. Va., to Charleston, W. Va., Blue Creek being intermediate to Charleston over the Clarksburg route. Resulting fourth-section violation was unprotected but subsequently removed and no damage found to result therefrom. Rates, however, found unreasonable to certain specified extent and reasonable rates prescribed for future, with permission to restrict its application to routes other than that via Clarksburg. Reparation awarded. Transcontinental Oil Co. v. A. & V., 96 I. C. C. 136.

(ii) Allegation that rates assessed on shipments of coal from Pinnacle and Mount Harris, Colo., to destinations in Nebraska, were in violation of aggregate of intermediates provision of the fourth section, not sustained. The aggregate of intermediate rates within the meaning of the fourth section was the sum of the two separate rates and not the sum of these rates subjected to combination rule. See Caddo Central Oil & Refining Co., 83 I. C. C. 734. Such aggregates were higher than rates charged and there was no violation of the fourth section. Crowell Lumber & Grain Co. v. Director General, 96 I. C. C. 259, 261.

(jj) Section four of the act provides that it shall be unlawful for any common carrier to charge any greater compensation as a through rate than the aggregate of the intermediate rates subject to the act. There is no violation of this

clause unless the carrier maintains a specific through rate which is higher than the lowest aggregate of intermediates over the same route. The product of intermediate rates treated by a rule which results in something less than the aggregate is not the aggregate within the meaning of the this section. Refiners Oil Co. v P. R. R. 102 I. C. C. 249, 250.

(kk) Complainant attacked class rates charged on iron and steel articles from Pittsburgh and other points in western Pennsylvania to Barberton, O., and on structural steel, iron pipe and tubing from Barberton to Pittsburgh, Nadine, Corliss and Midland, Pa., between Jan. 1, 1918, and Feb. 29, 1920, as unreasonable, unjust and in violation of the fourth section. Charged fourth class less carload and fifth class carload, the rates charged exceeding the combination of commodity rates based on Youngstown, O., and other intermediate points. HELD, rates attacked unreasonable to extent they exceeded aggregate of intermediates, reparation awarded. Babcock & Wilcox Co. v. Director General 104 I. C. C. 405.

(ll) Complainant attacked commodity rates on iron and steel articles, carloads from Pittsburgh, Economy and Midland, Pa., to Cleveland, Lorain, Canton, and Akron, O., as unreasonable to extent they exceeded aggregate of intermediates. In 89 I. C. C. 601 the Commission so found and awarded reparation. Although the finding was that the rates were unreasonable to extent that they exceeded the aggregate of intermediate rates via the routes of movement, this was in fact a finding that the rates were unreasonable per se; and the record amply supports the finding that the rates over the routes via Wellsville were unreasonable to extent they exceeded the aggregates via Youngstown. HELD, rates, attacked unreasonable to extent they exceeded the aggregates via Youngstown, reparation awarded. American Shipbuildings Co. v. Director General 102 I. C. C. 530.

ALL OTHER CITATIONS

Midland Coal Co. v. F. S. & W. R. R. Co., 85 I. C. C. 146; Traffic Bureau of Nashville, Tenn. v. Director General, as Agent, 85 I. C. C. 261; Crown Willamette Paper Co. v. Director General, as Agent, 85 I. C. C. 657; Pacific Mills, Ltd. v. Director General, as Agent, 85 I. C. C. 677; Hoskins Lumber Co. v. Director General, as Agent, 85 I. C. C. 740; Sutherland Bros. Co. v. Director General, as Agent, 88 I. C. C. 585; Peycke Bros. Comm. Co. v. Director General, as Agent, 88 I. C. C. 617.

§6¾a. Combinations subject to section 4.

(a) Complainant attacked class rates charged on four cars of sewer pipe from Brazil to Sheboygan and Manitowoc, Wis., and Menominee, Mich. during 1919, as unreasonable, unjustly discriminatory, unduly prejudicial and in violation of section four. Shipments moved via Pennsylvania to Chicago, Ill., Northwestern beyond, via Milwaukee, 319 miles to Sheboygan, 344 miles to Manitowoc and 435 miles to Menominee, charged sixth class of 24c to Sheboygan and Manitowoc and 26.5c to Menominee. Northwestern maintained proportional class E rate of 4.5c from Milwaukee to Sheboygan, local class E rate of 10c from Chicago to Manitowoc and proportional class E rate of 10c from Chicago to Menominee. Lowest combination was 20c to Chicago and 22.5c to Manitowoc and Menominee. Present adjustment conforms to the long and short haul rule. HELD, rates attacked unreasonable to extent they exceeded combination of locals, reparation denied, complaint dismissed. Chicago Fire Brick Company v. Director General, 91 I. C. C. 755.

(b) Complainant attacked commodity rate charged on 10 cars of alfalfa shipped during November and December 1918 from Melina, Colo., to St. Louis, Mo., as unreasonable. Shipments moved over Santa Fe to Lexington, Mo., Wabash beyond, charged joint commodity rate of 37.5c. Lowest combination through Bucklin was 37c composed of 22.5c to Argentine, Kas., and 14.5c beyond. HELD, rate attacked unreasonable to extent it exceeded combination of locals, reparation awarded. Denver Alfalfa Products Co. v. Director General, 92 I. C. C. 326.

(c) Complainant attacked commodity rate charged on nine tank cars of refuse molasses shipped between Jan. 30 and March 20, 1918, from Grants Pass, Oreg., to Oakland, Calif., as inapplicable unduly prejudicial and in violation of fourth section and that one car was misrouted. Shipments were tendered to the S. P., at Grants Pass and were originally consigned to San Francisco without routing instructions. The complainant intended to take barge delivery at Oyster Wharf,

San Francisco, for the purpose of moving the shipments to Sausalito, a point on the north shore of San Francisco Bay. Oyster wharf accommodated but two or three cars, and the S. P., declined to make spottings there until tank barges were present to take delivery. Complainant, thinking that the rates to Oakland and to San Francisco were the same, agreed to take delivery at Long wharf, Oakland. Seven of the shipments moved through Tehama, Roseville, Elvas, Tracy, and Redwood City, to San Francisco, thence car ferry to Oakland. One shipment moved over same route to San Francisco and thence to Oakland by rail via Dumbarton for carriers convenience. The Dumbarton cut off is the usual route for shipments moving from Oregon points south of Portland to San Francisco. The remaining shipment never reached San Francisco, its billed destination, but was diverted to Oakland enroute. Refuse molasses is rated class C in western classification, eight shipments charged 45c. Contemporaneously a commodity rate of 20c was applicable to San Francisco and a class E rate of 2.5c between San Francisco and Oakland. HELD, rate attacked of 45c applicable; that as it applied via Benicia it was unlawful in violation of the fourth section; that as applied via Dumbarton it was unlawful in violation of fourth section; that it was unreasonable to extent it exceeded combination via Dumbarton; that the shipment which moved via Benicia was not misrouted, reparation awarded. Mason Bv Products Co. v. Director General, 92 I. C. C. 646.

(d) Complainant attacked commodity rates charged on watermelons and vegetables, carloads, between June 24 and August 23, 1919 from California to Spokane, Wash., as unreasonable. Complainants sought reparation to basis of a combination of the class C rates, except from Tegner and Chatom, Calif., from which commodity rates applied, to the basing points, Lathrop or Stockton, Calif., the proportional class C rate from those points to Portland, Ore., and class C rate of 35.5c beyond. Defendant conceded that the rate of 99c from Merced exceeded the aggregate of the intermediate rates, using local class rate from Lathrop to Portland as a factor. HELD, rate attacked from Merced unreasonable to extent it exceeded 91.5c, reparation awarded. Nash Spokane Co. v. Director General, 100 I. C. C. 223.

§6¾b. Intermediate Rule.

(a) When rates are so established shippers at the intermediate point have a lawful right to a rate no higher than that from the next more distant point. By the very language of the rule the carriers hold themselves out to grant the same rate at the intermediate point as is in effect from or to the more distant point. The relief afforded by rule 77 is in reality only relief from the tariff provisions, under section 6 of the act, which requires the printing and keeping open to public inspection of schedules showing rates between all points. In view of the purposes of the rule, it must follow that rates voluntarily established thereunder from the more distant points are prima facie reasonable, and if reasonable from or to the more distant points they must be deemed reasonable from or to the intermediate points. The shipper has paid cash out of pocket that should not have been required of him and there is no question as to the amount of the proximate loss. Worth Steel Co. v. Director General, 93 I. C. C. 37, 38.

(bc) Respondents proposed to cancel the socalled intermediate clause contained in Countiss I. C. C., 1132 in connection with rates on lumber from the Pacific coast, Hawley-Truckee and Arizona groups to Kansas, Oklahoma, Texas, Iowa, Missouri, Arkansas, Louisiana, Wisconsin, Ohio, West Virginia, New York and Pennsylvania. They also proposed to eliminate Bradford and East Bradford, Pa., from Group K. and to place these points in higher rated groups in connection with traffic routed over the Erie or Pennsylvania from the same territory of origin. The clause reads as follows:—and intermediate points located between and directly intermediate to and on the same line with two of the above named stations. Thus an unnamed point which now takes a rate under the intermediate clause will automatically take the rate applicable to "all other points" if the intermediate clause be canceled. If the suspended schedules become effective there would result a rate to the unnamed intermediate point which would be higher than the rate to the farther distant point, resulting in new unprotected fourth section departures. HELD, proposed schedules not justified. Lumber from Pacific coast, 95 I. C. C. 744.

(d) Complainant attacked commodity

rates charged on roofing and allied articles in straight and mixed carloads, from Lockland and Carthage, O., to points on the C. N. O. & T. P., Southern and L. & N., intermediate to Knoxville and Chattanooga, Tenn., as unreasonable, unjustly discriminatory and in violation of the fourth section. Lockland and Carthage are on the Big Four and B. & O., within the switching limits of Cincinnati, O. Rates attacked are constructed by adding to the rates from Cincinnati certain charges of the originating lines. Rate to Knoxville and Chattanooga is 28.5c and rule 77 is applicable in connection therewith. HELD, rates attacked unreasonable to extent it exceeded rates to Knoxville and Chattanooga, reparation awarded. Carey Co. v. C. N. O. & T. P. Ry., 96 I. C. C. 455.

(e) Complainant attacked class rates charged on burlap and gunny bags, carloads and less carloads, from New York, Philadelphia and Baltimore to Alexandria, Va., as unjust, ureasonable and unduly prejudicial. Alexandria is on the Southern, R. F. & P., and C. & O., 8 miles south of Washington, D. C. A commodity rate of 27c applied on burlap bags, any quantity from these points to Washington. To Norfolk, Va., rates, any quantity apply as follows; From New York 25c from Philadelphia 23.5c, from Baltimore 22c. Third class less carload rate from New York to Alexandria is 52c, exceeding the combination on Washington. A rate of 41.5c, any quantity, applies from New York to Front Royal and Riverton, Va. This rate is applicable through Alexandria and is published subject to rule 77. HELD, rates attacked unreasonable to extent they exceed 27c any quantity from New York and Philadelphia and 22c less carloads from Baltimore, reparation awarded. Bryant v. P. R. R., 96 I. C. C. 564.

(f) The Commission has repeatedly held that the notation on a tariff in accordance with Rule 77 is a substantial compliance with the fourth section requirements, and that a request for the publication of a rate under that rule prior to the movement of shipment is not essential in order that the shipper may take advantage of such provision. Churchill Compresses v. C. & G. R. R., 98 I. C. C. 5, 6.

(g) Publication subject to rule 77 of Tariff Circular 18—A of lower rates from farther distant than from intermediate points is tantamount to an admission that higher rate from the intermediate points is unreasonable. Levene's Sons v. D., L. & W., 93 I. C. C. 344.

(h) Proposed cancellation of the "intermediate clause" in connection with transcontinental rates on lumber from Pacific coast, Hawley-Truckee, and Arizona groups to destinations in Kansas, Oklahoma, Texas, Iowa, Missouri, Arkansas, Louisiana, Wisconsin, Ohio, West Virginia, New York, and Pennsylvania; also to eliminate Bradford and East Bradford, Pa., from Group K, found not justified. If suspended schedules become effective rates to unnamed intermediate points will become higher than to farther distant points and thereby create new and unauthorized fourth-section departures, and will transfer to Group E certain points geographically located in Group F territory. Lumber from Pacific Coast. 95 I. C. C. 744.

(i) When an intermediate clause published by carriers automatically removes fourth-section departures, these departures can not be reinstated without new authority from the commission. Conf. Ruling 395. Lumber from Pacific Coast, 95 I. C. C. 744, 746, 747.

(j) First-class rates assessed on uncompressed cotton in bales, from Greenville, Miss., to Dyeburg, Tenn., found unreasonable to extent it exceeded lower commodity rate contemporaneously in effect on cotton, in bales, compressed or uncompressed, from Greenville to Cairo, Ill., over route of movement and the Illinois Central, subject to rule 77 of Tariff Circular 18-A. Reparation awarded. Churchill Compresses v. C. &. G. R. R. Co. 98 I. C. C. 5.

(k) Rates on moss in machine-pressed bales from Rosedale, La., and Louisiana points west of Mississippi River intermediates from Rosedale and Baton Rouge, La., to destinations in the defined territories named intermediate to Albany Rochester, Syracuse, and Utica, N. Y., found to have been unreasonable prior to August 1, 1924, to extent they exceeded lower contemporaneous rates applicable from farther distant points, subject to Rule 77 of Tariff Circular 18-A for intermediate application. Reparation awarded. National Asso. of Furniture Mfrs. v. A. A. R. R. Co. 98 I. C. C. 501.

(l) Respondents proposed a change in the rule covering the application of

rates on cement to intermediate points in western trunk line territory. The principal change complained of is that the proposed rule is restricted to apply only where no specific through rate on the same commodity from the same point of origin to the same point of destination is published in some other tariff. From the Kansas gas belt mills to many points in southeast Missouri specific rates are published, some of which are higher than the rates published from the same points of origin to points in southern Illinois. The present intermediate point rule applies the rates to Thebes and Ullin as a maximum to points in southeast Missouri on the Frisco while the proposed rule would not do so, for the reason that specific rates are published in other traiffs to many points in southeastern Missouri. HELD, proposed rule not justified. Intermediate points rule on cement. 102 I. C. C. 76.

(m) Respondents sought to amend the socalled combination rule so as to make it applicable on shipments of brick and related articles moving under combination rates from Texas producing points to interstate destinations. Through routes other than those over which joint rates apply already exist and combination rates which are lower than the joint rates with or without recourse to the combination rule, apply over such routes. The suspended schedules will cause increases in these existing lower combinations which respondents do not attempt to justify. HELD, suspended schedules not justified. Combination rule on brick, 102 I. C. C. 97.

§6⅞. Discrimination and Reasonableness.

See Advanced Rates §2½ (h); Discrimination; Reasonableness of Rates.

(a) Proposed revision in short-haul rates, consisting of increases and decreases on iron and steel articles between points in Pittsburgh district and adjacent territory in Pennsylvania, New York, Ohio, West Virginia, and Maryland, promulgated primarily for purpose of bringing rates within provisions of the aggregate-of-intermediates clause of section 4 of the act, found not justified as a whole. Iron and Steel Articles, 89 I. C. C. 606.

(b) Respondents proposed changes consisting of increases and reductions, in the rates on petroleum and its products, carloads, from points in Missouri, Kansas and Oklahoma to stations on the M. & O., between East St. Louis and Cairo, Ill. Present rates except to points in the East St. Louis switching district are made on East St. Louis combination. A joint rate is maintained to Cairo, which is lower than the combination rates to the intermediate points. It is proposed to place all of the destinations on the Chicago basis of 36c, which would represent increases at East Carondelet and Cairo and reductions at the intermediate points. The suspended rates to East Carondelet and Cairo have not been justified but no reason appears why the proposed reduced rates to the intermediate points should not be approved. Some readjustment of the rates to those points or to Cairo will be necessary in complying with the fourth section order which will be entered. HELD, proposed schedules not justified. Petroleum from southwestern states, 91 I. C. C. 464.

(c) Complainant attacked combination rates charged on burnt shale, carloads, from Nashville, Tenn., to Tamms, Ill., as unreasonable, unduly prejudicial and in violation of section four. Shipments moved N. C. & St. L., to Union City, Tenn., 153.9 miles, M. & O., beyond 65.7 miles, total 219.6 miles, Charged $2.88 to Cairo, Ill., $1.70 beyond. Effective Feb. 14, 1923 a rate was established of $3 on shale, burnt. ground, minimum 50,000 pounds. HELD, rate attacked unreasonable to extent it exceeded $3.335 prior to July 1, 1922 and $3 subsequent thereto, reparation awarded. Tamms Silica Co. v. M. & O. R. R., 91 I. C. C. 728.

(d) In 87 I. C. C. 115, the Commission found the joint rates on iron and steel articles, carloads, from St. Louis, Mo., Pittsburgh, Pa., and other points to Dallas and Harrys, Tex., as unreasonable to extent they exceeded the combinations via Shreveport. HELD, rates attacked unreasonable to extent they exceeded the Shreveport combination, reparation awarded. Southern Wire & Iron Co. v. A. C. & Y. Ry., 92 I. C. C. 463.

(e) Complainant attacked sixth class rate of 70c charged on one car of boiler and fixtures, shipped Dec. 15, 1919 from Chattanooga, Tenn., to Belhaven, N. C., as unjust, unreasonable and in violation of section four in that the combination via Nashville, Tenn., was 50.5c. There was a commodity rate of 19c to Nashville and sixth class of 31.5c beyond, or

total of 50.5c. HELD, rate attacked unreasonable to extent it exceeded 50.5c reparation awarded. Walsh & Widner Boiler Co. v. Director General, 93 I. C. C. 1.

(f) Complainant attacked as unreasonable fifth class rates charged on 25 cars of steel plates shipped between Nov. 2, 1918 and March 1, 1919 from Claymont, Del., to Lancaster, Steelton, York, Warren and Oil City, Pa., previous report found in 87 I. C. C. 29. Claymont is on the Pennsylvania, between Chester, Pa., and Wilmington, Del. Rates from these two points were published subject to rule 77 of tariff circular 18A, the same rates being published from Claymont, April, 1919. HELD, rate attacked unreasonable to extent it exceeded rate from Chester, reparation awarded. Worth Steel Co. v. Director General, 93 I. C. C. 37.

(g) Complainant attacked commodity class rates charged on four cars of tractors shipped in July and Sept., 1923 from Detroit, Mich., to Mason City, Iowa, as unreasonable, unduly discriminatory and unduly preferential to Gordonsville, Minn., and in violation of the fourth section. Shipments moved over M. C., to Michigan City, Ind., L. E. & W., through Tipton, Ind., to Peoria, Ill., and M. & St. L., beyond 885 miles, charged fifth class 35c to Keithsburg, Ill., plus class A rate of 21c beyond. When the shipments moved there was in effect on tractors, a joint fifth class rate of 52c from Detroit to Minneapolis, and St. Paul, Minn., and that rate applied to a number of intermediate points, including Gordonsville. This rate did not apply through Mason City and there was no violation of the fourth section. HELD, rate attacked not unreasonable or otherwise unlawful, complaint dismissed. Wagner Motor Co. v. M. C. R. R., 93 I. C. C. 195.

(h) Complainant attacked combination rates charged of 37.5c on five cars of lumber and lath between August 9 and Sept. 16, 1922 from Big Fork, Minn., to Horicon, Wis., as unjust, unreasonable and in violation of section four. Big Fork is 50 miles from the Canadian boundary on the M. & R. R. Horicon is about 50 miles west of Milwaukee, Wis., on the C. M. & St. P. Shipment moved over M. & R. R., to Minnesota Transfer and C. M. & St. P., beyond, charged 8c to Deer River and 29.5c beyond. Joint rates over the G. N., applied and now apply from Deer River to points in Wisconsin and Illinois, the rate contemporaneously in effect from Deer River to Milwaukee being 23c. Horicon is intermediate between Milwaukee and Deer River. On Feb. 1, 1923 rates to Horicon were reduced to 23c. HELD, rate attacked not unreasonable, complaint dismissed. Cotton v. M. & R. R., 93 I. C. C. 275.

(i) Complainant attacked class and commodity rates from central territory to Jackson, Miss., on traffic moving over the I. C., as delivering line as unreasonable, unjustly discriminatory, unduly preferential and in violation of the long and short haul clause. Jackson is on the I. C., Y. & M. V., A. & V., N. O. G. N., and G. & S. I., 44 miles east of Vicksburg. The tariff under consideration names specific rates on most of the commodities to Vicksburg but not to Jackson. The rates to the latter point are made by combination on some Ohio or Mississippi river crossing. Defendant admits that the rates to the Mississippi Valley territory are in need of readjustment. They are, in fact, at present engaged in effecting such readjustment by establishing joint commodity rates somewhat lower than the existing combinations, but these revisions are necessarily dependent in a measure upon the level of class rates which will be fixed in No. 13494. HELD, rates attacked not unreasonable, unjustly discriminatory or unduly prejudicial, complaint dismissed. Jackson Traffic Bureau v. A. C. & Y. Ry., 93 I. C. C. 339.

(j) Complainant attacked commodity rates on sugar, minimum 80,000 pounds, from San Francisco, Calif., to Phoenix, Ariz., since Feb. 17, 1921 as unreasonable, unjustly discriminatory, unduly prejudicial and in violation of the fourth section. Phoenix is served by the Santa Fe and S. P. The distances to Phoenix over the Santa Fe are 489 and 800 miles, and over the S. P., 451 and 921 miles, from Los Angeles and San Francisco, respectively. From Sept. 17, 1921 to and including June 30, 1922 a rate of 96c, minimum 60,000 pounds, applied from California to Phoenix, reduced on the latter date to 86.5c. Rates to El Paso and Tuscon are on a lower basis although more distant. The rate to Chicago is now 84c minimum 80,000 pounds, this now being established to Phoenix, subject to minimum of 60,000 pounds. HELD, rates attacked not unjustly dis-

criminatory or unduly prejudicial, but unreasonable to extent they exceed 79c and 71c prior and subsequent to July 1, 1922, reparation awarded. Phoenix Chamber of Commerce v. A. T. & S. F. Ry., 95 I. C. C. 244.

(k) Complainant attacked 77c commodity rate charged on roofing and building paper or felt and prepared roofing from Lockland, O., to Beaumont, Galveston, Houston and Orange, Tex., and points taking same rates, unreasonable, unjustly discriminatory, unduly prejudicial and in violation of section four. Since the hearing in this case the rate from Lockland has been reduced to 65c, based 11.5c over the rate of 53.5c from St. Louis. The fourth section departures have been removed. HELD, rates attacked unreasonable to extent they exceeded 11.5c over rates from St. Louis. Carey Company v. A. T. & S. F. Ry., 95 I. C. C. 296.

(l) Complainant attacked fifth class rate on a car of wrapping paper from Orange, Tex., to Hutchison, Kas., in January, 1924 as unreasonable. Shipment moved over T. & N. O., to Fort Worth, Tex., Rock Island beyond, 861 miles, applicable rate fifth class of $1.145. There was a rate of 48.5c to Wichita and 17.5c beyond also in effect. HELD, rate attacked unreasonable to extent it exceeded 66c, reparation awarded. Hutchison Paper Co. v. T. & N. O. Ry., 95 I. C. C. 457.

(m) Complainant attacked fifth class rates charged on four cars of corrugated strawboard boxes, shipped during July and August, 1922 from St. Louis, Mo., to Urbanette and Green Forest, Ark., as unreasonable, unduly prejudicial and in violation of section four. Shipments moved Frisco to Seligman, Mo., and M. & N. A., beyond 344 miles to Urbanette and 353 miles to Green Forest, rate charged $1.06. Locals to and from Seligman were 65.5c to Urbanette and 66c to Green Forest. Effective August 10, 1922 a rate of 53.5c was established to Searcy, Ark., a point beyond Urbanette and Green Forest on the M. & N. A. HELD, rate attacked unreasonable to extent it exceeded 53.5c, reparation awarded. Villines Canning Co. v. Mfrs. Ry., 96 I. C. C. 3.

(n) Complainant attacked combination rates charged on baled hay, carloads from McLaughlin, McIntosh and Walker, S. D., to Sioux City, Iowa during Dec. 1917 as unreasonable and in violation of the fourth section. Charged 30c commodity rate from Dodge, Mont. and available from these points or origin under an intermediate clause of the tariff. To McCook, intermediate over the route of movement between points of origin and Sioux City, class E rate of 22.5c from McIntosh, 21c from Walker and 20c from McLaughlin were in effect and these plus class C rate of 4.5c beyond resulted in departures from the fourth section. HELD, rates attacked unreasonable to extent they exceeded 27c for McIntosh, 25.5c from Walker and 24.5c form McLaughlin, reparation awarded. Cohn v. C. M. & St. P. Ry., 96 I. C. C. 257.

(o) Complainant attacked commodity rates charged on 86 cars of coal between August 20 and Nov. 6, 1922 from Wheatcroft, Ky., to Mount Vernon, Ind., as unreasonable. Charged on 6 cars via I. C., to Evansville, and C. & E. I., beyond. $2.27. The other cars moved via I. C., to Evansville and L. & N., beyond at $2.33. Rate charged was combination on Evansville. Complainant asked for rate of $1.72 equal to local to Evansville plus intrastate rate beyond. HELD, rate charged unreasonable to extent it exceeded $1.72, reparation awarded. Mt. Vernon Strawboard Co. v. C. & E. I. Ry., 96 I. C. C. 571.

(p) Complainant attacked first class rate charged on one car of uncompressed cotton, in bales, shipped from Greenville, Miss., to Dyersburg, Tenn., on Sept. 15, 1922 as unjust, unreasonable and in violation of the fourth section. Greenville is 70 miles north of Vicksburg, Miss., on the C. & G., and Y. & M. V. Dyersburg is on the B. & N. W., and I. C., about 78 miles north of Memphis, distance via the Y. & M. V., and I. C., 229 miles, shipment moved as routed by complainant via C. & G., to West Point, Miss., M. & O., to Jackson, Tenn., and B. & N. W., beyond, 353 miles, charged first class of $1.145. A commodity rate of 80.5c was in effect on cotton, in bales, compressed or uncompressed from Greenville to Cairo, Ill., applicable over the route of movement and the I. C. This was subject to rule 77 of tariff circular 18A. HELD, rate attacked unreasonable to extent it exceeded 80.5c, reparation awarded. Churchill Compresses v. C. & G. R. R., 98 I. C. C. 5.

(q) Respondents proposed to cancel

interstate commodity rates on iron and steel articles, carloads, from certain points of origin on the W. & L. E., in Ohio to destinations on the P. & L. E., in Ohio and Pennsylvania, and to apply the higher fifth class rates in lieu thereof. To Monessen, Pa., a representative destination, the present rate is connection with respondents line are 18.5c from Massillon and Canton and 19c from Cleveland and Lorain. The fifth class rates proposed are 20.5c from Massillon and Canton, 21.5c from Cleveland and 23c from Lorain, and are the same as the fifth class rates on this traffic in effect over all other routes. By virtue of the intermediate rule the present commodity rates apply to Pittsburgh, Coraopolis and other destinations in Pennsylvania. The distances from Massillon to Monessen and Coraopolis are 145 and 119 miles in connection with respondents line, 192 and 135 miles over the B. & O., and 148 and 98 miles over the Pennsylvania. The aggregate of intermediate rates on this traffic from Massillon to Coraopolis is 18c, compared of 14.5c to Woodlawn, Pa., plus 3.5c beyond. HELD, proposed schedules not justified. Iron and steel from Ohio to Pennsylvania, 98 I. C. C. 151.

(r) Respondents proposed to increase the rate on sand from Eau Claire, Wis., to Detroit, Mich., from $3.49 to $3.74 per ton. The rate in effect was subject to rule 77 to tariff circular 18A. Request was received to apply this rate at intermediate territory. Respondent, Soo Line, notified the publishing agent to comply with rule 77. The eastern lines notified the publishing agent to withhold publication pending a revision in the rate to Detroit. Effective Feb. 1, 1925 a rate of $3.36 was published to Grand Rapids. Effective Dec. 10, 1925 the rate of $3.49 was established to Iona, Owosso and Cadillac, and on April 1 to Saginaw and Ecorse. The rate of $3.49 is a joint commodity rate first established Sept. 12, 1923 over the Soo Line to Manitowoc and A. A., and D. T. & I., beyond. No justification of the increase has been offered, except a contention of the eastern carriers that the division of $1.89 is unsatisfactory to them. The western carriers are satisfied with the present rate and the divisions thereof. HELD, proposed schedules not justified. Sand from Eau Claire, Wis to Michigan destinations, 100 I. C. C. 213.

(s) Respondents proposed to increase the rates to St. Joseph, Mo., on grain and grain products, carloads, from 28 Kansas points on the U. P., south of Marysville, Kas., to and including Junction City northwest of Junction City to and including Wakefield, and west of Garrison Crossing to and including Lasita, when routed over the U. P., to Marysville and St. J. & G. I., beyond. Marysville is on the U. P., and Grand Island, 113 miles west of St. Joseph. Carden and Home, Kans., are just east and Kerkiner and Bremen, Kas., just west of Marysville. All are served by the Grand Island. The rates from Kerkimer, Bremen, and Marysville to Atchison and Leavenworth, Kas., Kansas City, Mo., and St. Joseph are the same, 14.5c on on wheat and 13c on coarse grain; from Carden to these destinations the rates are 14c and 12.5c and from Home they are 13.5c and 12c. From the points of origin on the U. P., described above the rates to these Missouri river crossings vary from 13 to 14c on wheat and 11.5c and 12.5c on coarse grain. They apply via all routes. The rates from Marysville and from the U. P., points have been in effect for about 15 years. Yet neither the carriers nor the shippers were aware, in connection with the Marysville route, that the existing rates to St. Joseph were and are in violation of the fourth section. Respondents here proposed to remove the fourth section violations by leaving in effect the existing rates to St. Joseph over all routes other than the Marysville route, and by increasing the rates over the Marysville route to the level of the rates from Marysville to St. Joseph. Protestant at Marysville would be unduly prejudiced as it would not be able to purchase grain at these U. P., points in competition with its St. Joseph competitor. Respondents should forthwith remove the existing fourth section violations in a manner which will not result in undue prejudice to Marysville. HELD, schedules not justified. Grain and grain products from Kansas, 101 I. C. C. 595.

(t) Proposal to comply with commission's order denying fourth-section relief with respect to rates from New York, by reducing class and commodity rates from points on the Central, Vermont Ry., in New England, to points in c. f. a. and western trunk-line territories, applying via differential rail-and-lake route through Depot Harbor, Ontario,

and the boat line of the Canada Atlantic Transit Co., found not justified. Present rates from New York are reasonably compensatory and to permit removal of fourth-section departures by reducing the intermediate rates would necessitate reductions over other routes at competitive points, result in a chaotic condition of rates throughout New England, and further aggravate the financial difficulties of New England lines. Rail-and-Lake Rates from New England, 92 I. C. C. 106.

(u) While commission has consistently found that a joint rate that exceeds the aggregate of intermediate rates over the same line or route is prima facie unreasonable, it has never found that the charging of such a rate is an overcharge. Moreover, it has always maintained that "the statute requires rigid observance of the tariff, without regard to inherent lawfulness of rates specified." Pacific Adjustment Co. v. Director General, 93 I. C. C. 50, 52.

(v) Fact that a rate violates the long-and-short-haul provision of section 4 of the act, in and of itself, does not establish unreasonableness. Wagner Motor Co. v. M. C. R. R. 93 I. C. C. 195, 196.

(w) Rate on steel grinding balls moving water-and-rail from Chrome, N. J., to Ada, Okla., via Galveston, found not unreasonable or in violation of aggregate-of-intermediates clause of section 4 of the act. Tariffs in effect provided for alternative application of maximum rates, whereby rates to Deming, N. Mex., and Clifton, Ariz., would apply if lower than rate to Ada. The Clifton and Deming rates, however, were restricted to routes other than route of movement, and application of the alternative rule was contingent upon specific reference being made in connection with rates to destinations in the tariff, and no such reference was made in connection with rate to Ada. Moreover, rate from point of origin to Deming was higher than rate to Ada. Oklahoma Portland Cement Co. v. A., T. & S. F., 93 I. C. C. 203.

(x) Combination rates on rice bran from Wheatley, Ark., to Jackson and Meridian, Miss., higher than joint rate to New Orleans, a more distant point on same route in same direction, found in violation of long-and-short-haul provision of section 4 of the act. Jackson Traffic Bureau v. A. & V., 93 I. C. C. 322.

(y) Rate on peaches from Fort Valley, Ga., to Watuppa, Mass., found not unreasonable, discriminatory, or unduly prejudicial as compared with rate in effect at time of movement from Eufaula, Ala., a farther distant point to which Fort Valley is directly intermediate over route of movement, or with lower rate established after shipment moved. Existence of fourth-section departure, protected by an appropriate application, is not in itself proof that rate from Fort Valley was unreasonable. The subsequent reduction was part of a voluntary general reduction in rates from Georgia to New England points, made at request of shippers in order to enable them to meet adverse marketing conditions. Under the circumstances it can not be regarded as implying any admission on part of carriers that prior rate was unreasonable. Gentile Bros. Co. v. C. of G. Ry., 93 I. C. C. 328.

(z) Existence of a departure from long-and-short-haul clause of section 4 of the act is not in itself proof that rate from the intermediate point is unreasonable. Gentile Bros. Co. v. C. of G. Ry., 93 I. C. C. 328, 329.

(aa) Rate on scrap brass from Binghamton, N. Y. to Philadelphia, found unreasonable to extent it exceeded lower rate from Black Rock, Buffalo, and East Buffalo, N. Y., farther distant points. Publication subject to rule 77 of Tariff Circular 18-A of lower rate from farther distant points was in violation of the long-and-short-haul clause of the fourth section and was tantamount to an admission by defendant that higher rate from Binghamton was unreasonable. Standard Asphalt & Refining Co., 66 I. C. C. 611, and cases there cited. Reparation awarded. Levene's Sons v. D., L. & W., 93 I. C. C. 344.

(bb) Rate assessed on petroleum fuel oil from Loftus, Calif., to Bisbee, Ariz., found inapplicable. Applicable rate which exceeded the aggregate of intermediates found in contravention of section 4 of the act, and unreasonable to extent it exceeded lower group rate applicable from farther distant points in southern California, which lower rate carriers subsequently extended to Loftus. Reparation awarded. Gilmore Co. v. P. E. Ry., 93 I. C. C. 357.

(cc) Rate on empty wooden boxes from Kansas City to Carl Junction, during Federal control, found not unreasonable because in excess of the rate to

Carthage, Mo., to which Carl Junction is intermediate. Complainant submitted no evidence bearing upon unreasonableness of the rate assailed but takes position that because rate to intermediate point is higher than to more distant point, the higher rate is therefore unreasonable under section 1 of the act, but this does not follow. Defendants show that rate assailed compares favorably with rates on similar and other empty containers for similar hauls from Kansas City. Forrester-Nace Box Co. v. Director General, 93 I. C. C. 665.

(dd) Rates on paper and paper articles from points in Wisconsin, Minnesota, Michigan, and Canada, to Jackson, Miss., and New Orleans, La., established in accordance with findings in 88 I. C. C. 345, found unduly prejudicial to shippers at Jackson and unduly preferential of shippers at New Orleans, in that they are higher to Jackson than to New Orleans. Fourth-Section order entered as a result of previous finding accordingly modified so as to except rates to Jackson from the authority therein granted. Paper and Paper Articles to New Orleans, 96 I. C. C. 600.

(ee) Application by defendant carriers of commodity rates lower than corresponding class rates on various commodities from St. Paul, Minneapolis, and Duluth, Minn., Superior, Wis., and points taking same rates to Fargo, N. Dak., while contemporaneously applying the full class rates on same commodities to Valley City and Jamestown, N. Dak., found unduly prejudicial to later two points and unduly preferential of Fargo to extent that the percentage relationships between rates asailed and corresponding class rates herein prescribed under western classification applicable on same commodities to Valley City and Jamestown exceed, or may exceed, percentage relationships between the rates on such commodities and corresponding class rates to Fargo. Fargo Commercial Club v. A. & W. Ry. Co. 98 I. C. C. 691.

(ff) Complainant attacked combination and joint rates charged on lumber, carloads, from Jonesville, La., to Loudon, Greenville, and Cleveland, Tenn., and Thomasville and High Point, N. C., as unjust, unreasonable and in violation of the fourth section. Jonesville is diate to Lynchburg. HELD, rate at- on the L. & A., 27 miles west of Natchez, Miss., the later point being on the east bank of the Mississippi river. The rate of 38c from Thomasville and High Point made effective Nov. 25, 1923 is a joint rate. Prior to that time the rates to those destinations were and the rates to the other destinations were and now are combinations basing on Natchez and subject to the socalled single increase rule. HELD, rate attacked not unreasonable but maintenance of rates from Jonesville to Cleveland and Loudon higher than to Lenoir City and Knoxville, and to Greenville higher than to Johnson City, Bristol, unlawful in violation of the long and short haul provision of the act, complaint dismissed. Southern Lumber Co. v. L. & A. Ry., 102 I. C. C. 633.

(gg) Complainant attacked commodity rate of 17c charged on two cars of lumber Oct. 26, 1923 from Tupelo, Miss., to Normal and Buntyn, Tenn., as unreasonable and unjustly discriminatory and unduly prejudicial to extent it exceeded rate to Memphis, Tenn. Two cars moved M. & O., to Corinth, thence Southern, distances 137 to Normal and 138 to Buntyn. Present rate and rate at time of shipment from Tupelo to Memphis is 11.5c and is applicable over Frisco and M. & O., and Southern, distances 104 and 143 miles, the long and short haul departure being permitted by the Commission in fourth section order 2754 to July 30, 1913. HELD, rate attacked unreasonable to extent it exceeded 14c, reparation awarded. Northeast Mississippi Traffic Bureau v. M. & O. R. R. 104 I. C. C. 15.

(hh) Complainant attacked combination rate charged on a car of lime, in paper sacks, March 29, 1923 from Gibsonburg, O., to Rivermont, Va., as unjust, unreasonable and in violation of the fourth section. Charged 25.5c to Lynchburg plus 6c beyond, less 2c. August 28, 1923 the rate to Rivermont was made the same as that to Lynchburg. Rivermont is on the Southern, 6 miles north of Lynchburg, betwen Potomac Yard and Lynchburg. Bill of lading prepared by complainant shows routing instructions by Pennsylvania and Southern. Shipment was routed by defendants over Pennsylvania, N. & W., and Southern. By way of the route designated by complainant, Rivermont is intermediate to Lynchburg. Held rate attacked unreasonable to extent it exceed-

ed 25.5, reparation awarded. Traffic Bureau, Lynchburg, Va., v. Pennsylvania R. R. 104 I. C. C. 293.

(ii) Complaint attacked combination rate charged on one car and two less carload shipments of black sheet steel from Lynchburg, Va., to Nashville, Ga., in May and June 1924 as unreasonable and in violation of the fourth section. Shipments moved Southern to Augusta, Ga., and G. & F., beyond 590 miles, charged 66c composed of 49c from Lynchburg to Sparks, Ga., and sixth class rate of 17c beyond, charged on less carload sixth class of 78c. A commodity rate of 49c applies by way of defendants lines through Nashville on black sheet steel, carloads, from Lynchburg to Sparks, Moultrie, and Valdosta, Ga., and on less carload sixth class rates of 65c to Moultrie and Valdosta and 70c to Sparks are applicable. Defendant is among the short and weak lines which were authorized by fourth section order 7026 to continue and establish class and commodity rates to and via their junctions with other lines the same as the rates contemporaneously in effect on like traffic over the lines of their competitors and to maintain higher rates to their intermediate local points on basis of lowest combination. HELD, rates charged not unreasonable, complaint dismissed. Lynchburg Chamber of Commerce v. G. & F. Ry., 109 I. C. C. 39.

ALL OTHER CITATIONS

Traffic Bureau of Nashville, Tenn. v. Director General, as Agent, 85 I. C. C. 261; North Carolina Pine Asso. v. A. C. L. R. R. Co., 85 I. C. C. 270; Central Pennsylvania Lumber Co. v. T. V. Ry. Co., 88 I. C. C. 303; Hickman, Williams & Co. v. Director General, as Agent, 88 I. C. C. 501; Utah Oil Refining Co. v. Director General, as Agent, 85 I. C. C. 654.

V. PROCEDURE.

See Procedure Before Commission.

§11. Complaints and Orders.

ALL CITATIONS

Beaumont Chamber of Commerce v. Director General, as Agent, 85 I. C. C. 139.

§12. Evidence.

(1) Burden of Proof.

See Evidence I.

(ab) The burden of justifying the reasonableness and propriety of rates to intermediate points which are higher than to farther distant points, rests on applicant seeking fourth section relief. Memphis Southwestern Investigation, 89 I. C. C. 566, 570.

(c) The burden is on applicant to make an affirmative showing as a condition precedent to the granting of relief from the requirements of the fourth section, that the proposed rates are reasonably compensatory. Memphis-Southwestern Investigation, 89 I. C. C. 566, 572.

(d) The mere fact that a rate from a more distant point is lower than a rate on the same commodity from an intermediate point is not proof that the rate from the intermediate point is unreasonable. Trenton Smelting & Refining Co. v. Pennsylvania R. R., 96 I. C. C. 264, 266.

(e) Commission considers that, so far as Jackson is concerned, the burden remains on the applicant carriers to justify departures from the fourth section. They have not shown that there is competition from foreign countries in any of these articles, except wrapping paper. Paper and Paper Articles to New Orleans, 96 I. C. C. 600, 603.

ALL OTHER CITATIONS

Cities of Marshall and Jefferson v. T. & P. Ry. Co. Co., 85 I. C. C. 115; North Carolina Pine Asso. v. A. C. L. R. R. Co., 85 I. C. C. 270; Fourth Section Order No. 8900, 88 I. C. C. 765.

§12. (2) Circumstances of probative force.

See Evidence II.

(a) A reduction in rates on cotton would have a very serious effect on the ability of many short lines serving Mississippi to earn sufficient revenue to serve the public efficiently, as many short roads serving that State are unable to stand any appreciable losses in revenue. Traffic density of these short roads is low, and while they are seeking to stimulate greater production of farm produce the tonnage has not yet reached a heavy state. Some short lines are unable to pay operating costs; rates from many points on such roads are held down by force of cross-country competition with points situated on stronger trunk lines; and to compel them to bear any greater strain would undoubtedly cause

an impairment of service inimical to the general welfare of Mississippi. Mississippi R. R. Commission v. A. & V. Ry. Co., 89 I. C. C. 47, 69.

(b) Complainant attacked rates charged on sand, carloads, shipped during 1923 from Lafayete, Ind., to Kankakee and Manteno, Ill., as unjust, unreasonable, unduly prejudicial and in violation of section four. Shipments moved via Big Four to Kankakee and were there delivered to the I. C. The later carrier switched 99 of the shipments to complainants unloading lot within the city and switching limits of Kankakee. The remaining 28 shipments moved over I. C., from Kankakee to Manteno. Rates applied $1.01 and $1.09, respectively. Complainants introduced no evidence as to the unreasonableness of the $1.09 rate other than attention to the lower rate to farther distant point. There is no proof that complainants have been damaged by the maintenance of the lower rate to Chicago. HELD, rate attacked not unreasonable or unduly prejudicial but was in violation of fourth section which should be removed, complaint dismissed. Shanks & Gannon Construction Co. v. C. C. C. & St. L. Ry., 102 I. C. C. 462.

ALL OTHER CITATIONS

Jeremy Fuel & Grain Co. v. Director General, as Agent, 88 I. C. C. 399.

§13. Reparation.

See Reparation.

(a) In absence of proof of damage, an unauthorized departure from the long-and-short-haul rule of the fourth section of the act does not warrant an award of reparation. National Hay & Milling Co. v. C., B. & Q. R. R. Co., 89 I. C. C. 1, 2.

(b) Complainant attacked class rate charged of 69c on hubs in the white, shipped from Tullahoma, Tenn., December, 1922 and $1.05 charged on spokes shipped from Sparta, Tenn., January 1923 to South Clarksville, Va., as unreasonable, discriminatory, unduly prejudicial and in violation of the fourth section. Tullahoma is on the N. C. & St. L., intermediate to Nashville, Tenn., on traffic to South Clarksville. Sparta is on a branch line of this carrier to which Tullahoma is intermediate. The shipments moved via Chattanooga, thence Southern to destination, charged on the hubs sixth class 69c. Contemporaneously there was a combination rate of 38.5c to Chase City, Va., plus 16.5c beyond. Proper rate from Sparta to South Clarksville was 53.5c to Danville, Va., plus 22.5c beyond. No damage was shown to have been suffered by reason of the alleged unjust discrimination, or undue prejudice, or under the fourth section departures. HELD, applicable rate on spokes not unreasonable, rate atttacked on hubs from Tullahoma unreasonable to extent it exceeded 55c, reparation awarded. Lynchburg Traffic Bureau v. N. C. & St. L. Ry., 91 I. C. C. 586.

(c) A violation of the long and short haul clause of the fourth section is not of itself sufficient grounds upon which to award reparation. Sanquoit Paper Co. v. Director General, 92 I. C. C. 61, 62.

(d) Where a railroad, under Interstate Commerce Act §6, as amended by Act June 18, 1910, and Act. Feb. 28, 1920 (Comp. St. Ann. Supp. 1923, § 8569), filed and published a schedule of rates fixing a rate between two points lower than published rate for shorter haul on same line from intermediate point, without the permission of the Interstate Commerce Commission, and thereafter imposed and collected the higher rate from the intermediate point, in violation of the long and short haul clause of section 4 (Comp. St. § 8566), consignee, who paid such higher rate, could not recover the amount paid in excess of the lower rate without proof of actual damages sustained, in view of section 8 (Comp. St. § 8572), making a carrier "liable to the person or persons injured thereby for the full amount of damages sustained in consequence of any" violation of the act, and in view of amendment, to section 4 by Transportation Act of 1920, since in such case the publication of the lower rate for the long haul did not wholly efface the higher intermediate one from the schedule, so as to make the lower rate the maximum rate which railroad could charge, even though railroad was liable to penalty under section 10 for publishing lower rate for longer haul. Davis, Agent, etc. v. Portland Seed Co., 44 Sup. Ct. 380; San Francisco & P. S. S. Co. v. Parrington, 44 Sup. Ct. 380; Davis, Agent United States Railroad Administration v. Same, 44 Sup. Ct. 380; Great Northern Ry. Co. v. McCaull-Dinsmore Co., 44 Sup. Ct. 380.

(e) Complainant attacked commodity rate charged on empty wooden boxes, carloads, between February, 1919 and

February, 1920 from Kansas City, Mo., to Carl Junction, Mo., as unreasonable and in violation of the fourth section. Rate charged 19c and to Carthage 18c, distances 154 and 168.9 miles. Record contains no proof of damage growing out of the alleged departure from the fourth section. HELD, rate attacked not unreasonable, complaint dismissed. Forrester Nace Box Co. v. Director General, 93 I. C. C. 665.

(f) The fact that the attacked rates from the mines on two of the defendants contravened the long and short haul provision of the fourth section is not of itself a sufficient ground for awarding reparation. Peerless White Lime Co. v. C. & E. I. Ry., 95 I. C. C. 260, 266.

(g) The fact that the rates charged were in excess of the rates to more distant points is not proof of unreasonableness, nor, in the absence of evidence of specific damages to the shipper, is it a sufficient basis for an award of reparation. Vossler Company v. E. J. & E. Ry., 96 I. C. C. 75, 76.

(h) The Commission has uniformly awarded reparation on shipments moving to intermediate points under rates which are higher than to more distant points where the rates to the latter points were established subject to rule 77. Carey Co. v. C. N. O. & T. P. Ry., 96 I. C. C. 455, 457.

(ij) An unprotected violation of long-and-short-haul provision of section 4 of the act does not present an issue of illegality of rates for which reparation may be awarded. Davis v. Portland Seed Co. 264 U. S. 403. Parkersburg Rig & Reel Co. v. M. V. R. R. Co., 91 I. C. C. 583, 585.

(kl) Notation in a tariff in accordance with rule 77 of Tariff Circular 18-A is a substantial compliance with fourth-section requirements of the act, and request for publication of a rate under that rule prior to movement is not essential in order that shipper may take advantage of its provisions. Producers Refining Co., 69 I. C. C. 403 and other cited cases. East St. Louis Cotton Oil Co. v. B. & O., 92 I. C. C. 633, 638.

(m) Proof of specific damage is required before reparation may be awarded under sections 2 and 3 and the long-and-short-haul clause of section 4 of the act. International Coal Co. case, 230 U. S. 184; Iten Biscuit Co., 50 I. C. C. 724; 53 I. C. C. 729; Portland Seed Co. case, 265 U. S. 403. Fowler Commission Co. v. St. L.-S. F., 92 I. C. C. 641, 642.

(n) A suit against a carrier for damages for charging a higher rate on through shipments than the aggregate of rates to intermediate points, in violation of Interstate Commerce Act, §4 (Comp. St. §8566), cannot be maintained, without allegation of special damage to plaintiff. Patterson v. Louisville & N. R. Co., 2 Fed. (2d) 592.

(o) Complaint seeking reparation, as overcharges, based upon violations of long-and-short-haul provision of section 4 of the act, dismissed following Portland Seed Co. case, 264 U. S. 403. Pacific Adjustment Co. v. Director General, 93 I. C. C. 50.

(p) Complaint seeking reparation, as overcharges, based upon violations of aggregate of intermediates provision of section 4 of the act, dismissed following Portland Seed Co. case, 264 U. S. 403. While case cited did not involve violations of that clause, the court's reasoning is conclusive as applied to it as well as to long-and-short-haul clause. Published rates must be charged and paid whether lawful or not; and while an unlawful rate may subject carrier to payment of penalties to the Government, its charging does not give shipper any right save to recover "the full amount of damage sustained in consequence of any such violation of the provisions of this act." It would be going too far to find that unauthorized publication established the lower aggregate of intermediate rates as maximum permissible charge, and only rate which could be demanded. Pacific Adjustment Co. v. Director General, 93 I. C. C. 50.

(q) Fact that rates contravene the long-and-short-haul provision of section 4 of the act is not in itself a sufficient ground for awarding reparation. Peerless White Lime Co. v. C. & E. I., 95 I. C. C. 260, 266.

(r) Except under unusual conditions the commission has uniformly awarded reparation on shipments moving to intermediate points under rates which are higher than to more distant points where rates to the latter points were established subject to rule 77 of Tariff Circular 18-A. Carey Co. v. C. N. O. & T. P. Ry. Co., 96 I. C. C. 455, 457.

(s) In the absence of proof of damage to shipper, the fact that a carrier has

charged rates which violate the long-and-short-haul provision of fourth section of the act is not a sufficient basis for an award of reparation. Rates charged found not unreasonable or unduly prejudicial, this finding being without prejudice to such disposition as may later be made of fourth-section application herein discussed. England Walton & Co. v. Sou. Ry. Co., 98 I. C. C. 449, 450.

(t) In the absence of proof of damage to the shipper, the fact that carriers have charged or received rates which violate the long and short haul provision of the fourth section is not a sufficient basis for an award of reparation. Shanks & Gannon Construction Co. v. C. C. C. & St L. Ry. 102 I. C. C. 462, 464.

(ta) In absence of proof of damage to shipper the fact that carriers have charged or received rates which violate long-and-short-haul rule of section 4 of the act is not of itself a sufficient basis for an award of reparation. Eads Bros. Furniture Co. v. B. & O., 102 I. C. C. 381, 383.

(u) The existence of a lower rate from a more distant point on the same line or route is not in and of itself sufficient to justify a finding of unreasonableness and an award of reparation by reason of the exaction of higher rates from an intermediate point or points. Ohio Farm Bureau Federation v. N. Y. C. R. R. 104 I. C. C. 490, 492.

(v) The fact that a joint rate exceeds the aggregate of intermediate rates does not afford a basis for an award of reparation where fourth section relief has been granted. The defendants have rebutted the presumption of unreasonableness attaching to the joint rate, and it is not shown that the joint rate is otherwise unlawful. Valley City Milling Co. v. C. & O. Ry. 104 I. C. C. 634, 636.

(w) The commission has consistently found that a violation of the long-and-short haul clause of section 4 does not in itself establish unreasonableness of a higher rate or form a basis for award of reparation. Iten Biscuit Co., 50 I. C. C. 724; Oregon Fruit Co., 50 I. C. C. 719. Moore-Lawless Grain Co. v. C., B. & Q., 101 I. C. C. 52, 54.

(x) Departures from the provisions of the fourth section are insufficient to support an award of reparation. Lake Charles Rice Milling Co. v. L. W. R. R., 109 I. C. C. 195, 198.

(y) It does not follow that an award of damages should be made because the rate contravened the long and short haul provisions of the fourth section. Northeast Mississippi Traffic Bureau v. M. & O. R. R., 109 I. C. C. 246, 248.

(z) When a tariff is subject to rule 77 it is not necessary for a shipper to request establishment of the lower rate applicable to the more distant point in order to be entitled to reparation to the basis of such rate. Stauffer Chemical Co. v. H. & B. V. Ry., 112 I. C. C. 311, 312.

(aa) In absence of proof of damage to shipper, the fact that carriers have charged or received rates which violate the long-and-short-haul provisions of the fourth-section is not of itself a sufficient basis for an award of reparation. Iten Biscuit Co., 50 I. C. C. 724, 53 I. C. C. 729; Anaconda Copper Mining Co., 64 I. C. C. 136. Lynchburg Traffic Bureau v. P. R. R. Co., 88 I. C. C. 619, 620.

ALL OTHER CITATIONS

Thompson Wells Lumber Co., v. Director General, as Agent, 88 I. C. C. 395.

§15. Suspension of New Tariffs.

See Suspended Rates; Tariffs §1½.

(a) The publication of a rate under authority of rule 77 is a substantial compliance with the requirements of the fourth section, and that a request for the publication of a rate under that rule prior to the movement of shipments is not essential in order that the shipper may take advantage of such provision. Any other view would be inconsistent with the purpose of the rule to avoid the publication of numerous paper rates at intermediate points. National Asso. of Furniture Mfrs. v. A. A. R. R., 98 I. C. C. 501, 509.

(b) Proposed readjustment of rates on live and dressed poultry, butter and eggs from points in Kentucky, Tennessee, Alabama and Mississippi to eastern cities and Buffalo-Pittsburg zone, resulting among other things, in removal of numerous departures from long-and short-haul rule of fourth section, found justified. Dairy Products from Southern Points, 100 I. C. C. 756.

§16. Tariffs and publication.

See Tariffs II.

(a) Contention that rule 77 of Tariff Circular 18-A constitutes relief from provisions of the fourth section of the act, and that prior to request by shipper for publication from intermediate point of the lower rate applying from more distant point no damages can be found unless rate from the intermediate point is shown to be unreasonable per se, or unless the evidence constitutes such proof of damages as is required under section 3 of the act, not sustained following Pittsburgh Crucible Steel Co., 81 I. C. C. 659. Standard Oil Co. v. Director General, 89 I. C. C. 7, 9.

(b) The notation on a tariff in accordance with rule 77 is a substantial compliance with the fourth section requirements, and that a request for the publication of a rate under that rule prior to the movement of shipments is not essential in order that the shipper may take advantage of the provision. East St. Louis Cotton Oil Co. v. B. & O. R. R., 92 I. C. C. 633, 638.

(c) Although the regulations of the Commission require that where a tariff carries rates which depart from the provisions of the fourth section under authority of the Commission reference shall be made to the order on the title page of the tariff, they do not require similar reference to fourth section applications. West End Scrap Iron & Metal Co. v. C. St. P. M. & O. Ry., 101 I. C. C. 108, 109.

(d) From certain Texas points over certain routes Tulsa, Okla., is intermediate to St. Louis, Mo., and the existing deviation from the long-and-short-haul provision of section 4 not being covered by an appropriate application is unlawful. Standard Paving Co. v. A., T. & S. F., 100 I. C. C. 233, 236.

(e) Defendants state that the use of the rates on local shipments to St. Louis will result in fourth section violations, but this does not constitute a ground for holding that they apply other than in accordance with the terms of the tariff. National Candy Co. v. P. R. R., 101 I. C. C. 43.

(f) Contention that rate was unlawful because tariff did not refer to the application covering the fourth-section departure involved, not sustained. A reference to fourth-section applications is not necessary, although the regulations of the commission require that where a tariff carries rates which depart from the provisions of the fourth section under authority of commission's order a reference shall be made to the order on the title-page of the tariff. West End Scrap Iron & Metal Co. v. C., St. P., M. & O., 101 I. C. C. 108, 109.

ALL OTHER CITATIONS

Prairie Pipe Line Co. v. Director General, as Agent, 88 I. C. C. 167; Pacific Grain Co. v. Director General, as Agent, 85 I. C. C. 710; Fourth Section Order No. 8900, 88 I. C. C. 765.

LOSS AND DAMAGE

I. THE CARMACK AND CUMMINS AMENDMENTS.
- §1. Constitutionality.
- §2. Construction in general.
- §2¼. Construction of bill of lading.
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- §5½. In general.
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- §11. Notice of loss.
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III. EVIDENCE.
§13¾. In general.
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IV. CRIMINAL LIABILITY.
§19. In general.

CROSS REFERENCES

See Bills of Lading; Cars and Car Supply VI; Claims; Consignor and Consignee; Discrimination §15; Export Rates and Facilities §4; Express Companies; Evidence §52; Interstate Commerce Commission VI; Inspection; Passenger Fares and Facilities §10; Perishable Freight; Reconsignment §10; Refrigeration §9; Released Rates; Reparation §3; Telephone and Telegraph Companies IV; Water Carriers VI.

I. THE CARMACK AND CUMMINS AMENDMENTS.

See Act to Regulate Commerce.

§4. Jurisdiction of Commission.

See Interstate Commerce Commission I; Jurisdiction of Commission.

(a) Where a commodity is damaged through any act or neglect of carriers, resulting in its being rejected by consignee at destination, such damage is not cognizable by the commission. Toberman, Mackey & Co. v. Director General, as Agent, 89 I. C. C. 365, 366.

(b) The Commission is not empowered to prescribe rules and regulations for the settlement of claims arising from loss or damage to shipments in transit. Such claims, and the measure of damages applicable thereto, are cognizable only in the courts. Rosser & Fitch v. A. C. L. R. R., 91 I. C. C. 611.

(bc) Complainant alleged that defendants have failed and neglected to establish, observe, and enforce just and reasonable regulations for the uniform settlement of loss and damage claims arising out of the handling, transportation and nondelivery of property, and are guilty of practicing unreasonable and unjust regulations, in violation of section 1, paragraph 6 of the act, and unjust discrimination in violation of section 2 of the act. HELD, complaint dismissed as the Commission has not jurisdiction over loss and damage claims. Rosser & Fitch v. A. C. L. R. R., 91 I. C. C. 611.

(d) Commission is without jurisdiction to prescribe rules and regulations governing settlement of loss and damage claims or measure of damages applicable thereto. Such claims and measures of damages applicable thereto are cognizable only in the courts. See 45 I. C. C. 161 and 61 I. C. C. 120, 125. Rosser & Fitch v. A. C. L. R. R. Co., 91 I. C. C. 611.

(e) Loss sustained by complainant in connection with a shipment of lumber sold by carriers and proceeds applied in satisfaction of accrued demurrage, storage, and freight charges after such shipments had been refused by consignee at billed destination, found not to have resulted from any violation of the act. Such charges were assessed in accordance with applicable tariffs and no evidence was adduced to show that rules or regulations under which they were assessed were unreasonable or otherwise unlawful. The commission is empowered to award reparation only for violations of the act and complainant's remedy, if any, lies in the courts. Leslie Bros. Lbr. Co. v. P. R. R., 92 I. C. C. 55.

(f) Upon complaint that attempt of N. Y., N. H. & H. R. R. Co. to eject complainant from its produce house at Harlem River station, New York, N. Y., previously leased to him, and threat to refuse to place cars consigned to him, subjected complainant to unjust discrimination and undue prejudice. HELD, that complainant's evidence is insufficient to warrant a finding that consignees receiving shipments on team tracks are unduly prejudiced or lessees of the produce house unduly preferred, and that he has not proven damage by reason of any undue prejudice which may have existed during the time when the question of the lease was in process of litigation in the courts. Com-

plaint dismissed. Gallup v. N. Y., N. H. & H. R. R. Co. 98 I. C. C. 453.

(g) Inasmuch as it has been held that degradation of coal is an incident of loss and damage, complainant is remitted to its remedy for loss and damage, which is not within the jurisdiction of the Commission. Atwater & Co. v. M. C. R. R. 107 I. C. C. 491, 492.

(h) Damages caused by delay in transportation of one car of potatoes from Freehold, N. J., to Statesville, N. C., found not to have resulted from violation of any provision of the interstate commerce act. Complainant concedes that the commission has no jurisdiction over damages resulting from delay, but contends that the damages in this case resulted from misrouting. There was no misrouting in this case. Lambertson Co. v. C. R. R. Co. of N. J., 100 I. C. C. 259.

(i) Commission does not exercise jurisdiction over claims for loss of freight in transit. Smith & Duckworth v. D., C., C. & St. L. Ry. Co., 100 I. C. C. 300, 302.

(j) Under section 20 of interstate commerce act, as amended, any attempted limitation of the shipper's right of recovery for actual loss, damage, or injury to property received for transportation is "declared to be unlawful and void" except when the limitation is published under an order from the commission; and it follows that any attempt on part of a carrier to set up a defense of limited liability as to goods shipped under actual-value rates not published under such an order would fail. Crown Overall Mfg. Co. v. Director General, 100 I. C. C. 471, 477.

II. CARRIER'S LIABILITY.

See Classification §22 (3s).

§10. Common Law Liability in General.

(1) Liability for Negligence.

(a) Loss of property, after its delivery to another, authorizes an inference that its loss was occasioned by the negligence of the person receiving it, as where the hand bag of a railway passenger was lost after the passenger had delivered it to the conductor in charge of the train, for the purpose of its being taken by the conductor from the coach when the passenger was leaving the train at a station. Atlantic Coast Line R. Co. v. Barksdale (Ga., 1924) 124 S. E. 362.

MAILS

See Branch Lines §1 (hh).

(a) In 85 I. C. C. 157, the Commission found upon reexamination of the facts and circumstances surrounding the transportation of mail by the New England lines, that the existing rates of pay were inadequate, increased rates being prescribed Dec. 13, 1923. Case was reopened as to findings on rates of pay for services rendered from Sept. 1, 1920 or from Feb. 25, 1921, the date upon which their application was filed, to the date the increased rates became effective. The Act empowers and directs the Commission to fix and determine from time to time the fair and reasonable rates and compensation. It directs the Commission to follow substantially the procedure prescribed therein when an application is filed for reexamination of the rate or rates for service covered by the application. HELD, rates prescribed for future are reasonable to apply from and to dates shown above. Railway mail pay, 95 I. C. C. 204.

(b) Applicant lines, asked for an increase in their rates of pay for the transportation of mail matter. Previous decision in general case, 56 I. C. C. 1. A majority of the applicant roads are located between the Rocky Mountains and the Sierra Nevada. The others are on the east and west slopes of the Sierra Nevada and in the mountain ranges close to the Pacific. For the most part they are feeder lines connecting outlying mining and lumbering communities with larger roads. They encounter heavy grades in many instances and operate generally under unfavorable conditions in the sparsely settled regions they serve. No full mail cars are operated. Apartment car service, storage and closed pouch service only are used. Of the seven roads furnishing apartment service two are over 100 miles in length and four are over 50 but less than 100 miles in length. It is evident that there was a very large amount of unused space operated in connection with mixed cars. There is no evidence in this record to show whether or not such operation is necessary. It is clear that the space ratios upon which the relative cost of each service is based have a definite relation to the amount of unused space. A decrease in the unused space, whether brought about by more inten-

sive use of space or by increased passenger, miscellaneous, express or mail service, affects the relative ratios, the relative costs, and the relative value of property investment in each service. HELD, present rates of mail pay for transportation of mail upon applicants lines should be increased on and after June 30, 1921. Railway Mail Pay., 95 I. C. C. 493.

(c) Woodstock Ry. and White River Railroad, asked for a reexamination of the facts and circumstances surrounding the transportation of mail matters on their lines and an increase in their rates of mail pay for services rendered by them since Dec. 13, 1923. Woodstock Ry. extends from Woodstock to White River Junction, Vt., distance 13.88 miles. White River extends from Bethel to Rochester, Vt., 19.34 miles. The rate per mile for the unit is 5.625c fixed by the Commission in 56 I. C. C. 1. In 85 I. C. C. 157 the Commission increased the rates of mail pay for New England roads about 35% and made the minimum $84 per mile per annum. An increase similar to that shown would give the applicant carriers a total annual compensation of $1,303 and $1,816. HELD, fair and reasonable rate of compensation for mail matter upon applicant carriers will be 7.5c for each mile of service by a 3 foot closed pouch unit of space, minimum $84 per mile per annum. Railway Mail Pay, 96 I. C. C. 43.

(d) American Electric Railway Association applied for a reopening of 58 I. C. C. 455 upon the ground that there had been no adequate presentation as to the cost of transporting mail upon a space basis, and that the rates of pay prescribed by the Commission are inadequate and not just and reasonable. Mail service is now authorized on the lines of 311 urban and interurban electric railway companies. It was mutually agreed that 30 cubic feet of space would be considered as equivalent to one linear foot of car space. The 10 bag unit was considered by the department as occupying one linear foot in determining the space occupied by such authorizations. The Commission does not think that a schedule of rates resulting from a determination of the general average cost of all services rendered by urban and interurban lines which render primarily passenger service may fairly be applied to mail service. Nor on the other hand should rates be fixed upon a study simply of the space and mileage run without regard to the peculiar features of the service on such lines. As has been shown, the greater part of the service is rendered in passenger cars which are not specially equipped for handling mail. These cars are run on schedules and under conditions affected by the exigencies of local passenger service. The extent to which the expenses of operating such cars is augmented by the carriage of mail therein is not capable of exact determination. The local factor in passenger service, as to which the carriers introduced considerable evidence and upon which the base rate proposed by them for application to service in passenger cars is to a large extent predicted, is not applicable to the mail. After giving due regard to the various factors entering into the transportation of mail in closed pouch service in passenger cars and compartments, and in baggage cars and compartments, and to the studies made in this record, the Commission is of the opinion that the present rates of pay for such service are fair and reasonable and that no change in such rates should be made. The remaining services are those rendered in independent cars, in which railroad employes handle the mails, and in railway postoffice cars and railway postoffice apartments in which postal employes handle the mails. The record shows that with respect to independent car service and service in r. p. o. cars and apartments some increase in rates is justified. The limitation of a mail route, by definition, to a mail service of a specific character would have a tendency to increase the excess payments. Many of the roads perform two or more classes of mail service, and at least one performs every class of service. The evidence does not show the contract of one class of service with another on the same road, such as the contract between closed pouch service and apartment or full car service. There was no evidence from any road that is paid the minimum rate with respect to the circumstances surrounding the service performed. The minimum rate is stated in the rule to be the rate of payment on any electric railroad mail route and provides the minimum compensation for all classes of services by an electric road as a whole. The present record does not furnish an adequate basis for a different rule. One other question

raised at the hearing remains to be considered, namely, whether a carrier may be permitted to bid for side and terminal services in cases where the department prefers not to require the carrier to perform the service, but to have such service performed under contract after public bidding. The Commission sees no reason why in such a case the carrier should not be permitted to bid for such service. HELD, present rates of pay for the transportation by urban and interurban electric lines of mail on passenger cars, on baggage or express cars, and baggage and express compartments in passenger cars, are fair and reasonable. The fair and reasonable rate for independent cars devoted to the transportation of the mails, on which railroad employees handle the mails, is 50c per car mile of authorized travel of cars 36 feet in length. Where the railroad company is unable to furnish cars of the length authorized but furnishes cars of lesser length which are accepted by the department to be sufficient for the service, payment shall be made only for the actual space furnished, the compensation to be not exceedeing a prorate of that provided for a 36 foot car. Where cars exceeding 36 ft. in length, are authorized and used, the compensation shall be not exceeding a prorate of that provided for a 36 ft. car. In computing car miles of independent cars the space in both directions of an authorized round trip car run shall be regarded as the space to be computed unless the car or any part thereof is used by the company in the return movement. That the fair and reasonable rate for r. p. o. cars and r. p. o. apartment in cars, in which postal employees handle the mails, is 2c per lineal foot, or fraction thereof, per mile of authorized travel in cars or apartments in cars 20 ft. or less in length, and in cars or apartments in cars more than 20 ft. in length, 2c per linear foot per mile of authorized travel for the first 20 ft. and 0.875c per linear foot per mile of authorized travel per each additional foot or fraction thereof. In computing the car miles of full and apartment railway post office cars, the maximum space authorized in either direction of a round trip car run shall be regarded as the space to be computed in both directions. Electric Railway Mail Pay, 98 I. C. C. 737.

(ef) Transportation of mail between different states and territories is interstate commerce. Missouri Pac. R. Co. v. Baldwin (Tex., 1924) 261 S. W. 418.

(g) Upon reargument, rates of pay for transportation of mail matter by New England lines, fixed and determined by commission in 85 I. C. C. 157, to be fair and reasonable for service rendered on and after December 13, 1923, found reasonable for same service rendered on and after February 25, 1921, date of filing of application by carriers. Railway Mail Pay, 95 I. C. C. 204.

(h) Rates of pay for transportation of mail over certain carriers located between the Rocky Mountains and Sierra Nevadas, and in the mountain ranges close to the Pacific Ocean, found to have been unfair and unreasonable. Fair and reasonable rates established for the future. Railway Mail Pay, 95 I. C. C. 493.

(i) Space ratios and costs based thereon are not constant, but variable, affected at any stated time or in any stated year by prevailing operating and traffic conditions. After a sufficient number of space studies have been made, the definite limits within which the ratios for each service may be expected to vary can be determined, and mail-space ratios may ultimately be ascertained which will be more nearly representative of conditions over a number of years. Ratios obtained as a result of a 30-day test can not be considered as necessarily governing the mail service for the future. Such ratios are, however, evidence which must be given considerable weight in determining whether present rates of pay are reasonable. Railway Mail Pay. 95 I. C. C. 493, 507.

(j) The diversion of freight traffic to parcel post is not a circumstance that the commission should take into consideration in determining what are just and reasonable rates of compensation to be received by carriers from the Post Office Department for carrying the mails. Railway Mail Pay, 95 I. C. C. 493, 508, 509.

(k) Rates of pay for transportation of mail by Woodstock Ry. and White River R. R. Co., found unfair and unreasonable. Fair and reasonable rates prescribed for the future. Railway Mail Pay, 96 I. C. C. 43.

(l) Fair and reasonable rates for transportation of mail prescribed back to date of filing of applications with the

commission only, and request for findings as to rates of pay as of a date prior to such applications, denied. Railway Mail Pay, 96 I. C. C. 43, 46.

(m) Space ratios for a test period covering a single year and apportionments of expense and investment based on such ratios can not be regarded as exact mathematical ascertainments of cost of rendering mail service because such ratios reflect only the particular operating and traffic conditions of the test period. They do, however, afford a basis for determining whether present rates of mail pay are reasonable. New England Mail Pay case, 85 I. C. C. 157, 179. Railway Mail Pay, 96 I. C. C. 43, 46.

(n) On further hearing, present rates of pay for the transportation by urban and interurban electric lines of mail on passenger, baggage, or express cars, and in baggage and express compartments in passenger cars, found fair and reasonable, and fair and reasonable rates for transportation of mail in independent cars and in railway post-office cars and railway postoffice apartments in cars prescribed for future. Rules for the computation of the space to be paid for in connection with independent cars and railway post office cars and apartments prescribed. Original report, 58 I. C. C. 455, modified accordingly. Electric Railway Mail Pay, 98 I. C. C. 737.

(o) Space study in connection with rates of pay for transportation of mail by urban and interburban electric-railway common carriers discussed, and rules for the computation of the space to be paid for in connection with independent cars and railway post-office cars and apartments prescribed. Electric Railway Mail Pay 98 I. C. C. 737.

(p) Fair and reasonable rates for transportation of mail in independent cars and in railway post-office cars and railway post-office apartments in cars by urban and interurban electric-railway common carriers prescribed for future, which rates represent increases over those prescribed in original report, 58 I. C. C. 455. Electric Railway Mail Pay, 98 I. C. C. 737.

(q) The load factor in passenger service is not applicable to the mail.Electric Railway Mail Pay, 98 I. C. C. 737, 756.

(r) The questions presented upon reargument are whether the Commission had authority to find in 95 I. C. C. 204, 208, 95 I. C. C. 493, 513 and 96 I. C. C. 43, 46 that the rates established by the order in 56 I. C. C. 1, for the transportation of mail matter by the applicant carriers were not fair and reasonable during the periods from the dates the respective applications for re-examination were filed to the dates of the orders establishing certain increased rates as the reasonable rates to be received for the future, and that such increased rates were the reasonable rates for service during said periods; and if the Commision had such authority, whether it had authority to enter orders, as requested by the carriers, in addition to such findings, establishing, in each case, such increased rates as the reasonable rates that should have been paid during the said periods. HELD, from the statute as a whole it appears that the Congress conferred upon the Commission full power to determine the just and reasonable rates for the transportation of mail. The provision for re-examination gives it power to reexamine rates placed in issue by the applications in the instant cases, and if upon the record the Commission is of the opinion that the rates for service covered by the applications were not fair and reasonable as of and following the dates the applications were filed the Commission has the power so to find and to fix and determine the rates that were fair and reasonable. Railway Mail Pay, 104 I. C. C. 521.

(s) The Canadian National Ry. and the Tonopah & Goldfield Ry. requested reexamination of their rates of pay for carrying the mails. Present rates prescribed in 56 I. C. C. 1. The Canadian National related to the lines operated by it in New England under lease, namely, the Atlantic & St. Lawrence Ry. and Norway branch, located in Vermont, New Hampshire, and Maine and the Lewiston & Auburn Ry. in Maine, 172.2 miles in length. HELD, present rates of pay not fair and reasonable, but fair rates will be those for service on and after Oct. 25, 1924 as prescribed in 104 I. C. C. 521 and 85 I. C. C. 157. Tonopah & Goldfield is about 97 miles in length and extends from Tonopah Junction to Tonopah and Goldfield, Nevada. It asks that it be brought within the decision in 95 I. C. C. 493. HELD, rates of mail pay not fair and reasonable on and after Feb. 16, 1925, but fair rates

will be those prescribed in 95 I. C. C. 493. Railway Mail Pay, 109 I. C. C. 13.

(t) By application filed May 25, 1925 the Alabama Tennessee & Northern R. R., requested a reexamination of the facts and circumstances surrounding the transportation of mail matter upon its line, and increased rates of pay. Applicants road is 186 miles long. It extends from Calvert, Ala., to Reform, Ala., where it connects with the M. & O. At Calvert and York, Ala., it connects with the Southern. HELD, rates of pay on and after May 25, 1925 not fair and reasonable but should be for each mile of service by a 15-foot compartment car 25c, by a 3-foot storage space 6.25c, by a 3-foot closed pouch space 7.50c. Railway Mail Pay, 112 I. C. C. 151.

ALL OTHER CITATIONS

Railway Mail Pay, 85 I. C. C. 157; Pneumatic Tubes in City of New York, 85 I. C. C. 207.

MARKET COMPETITION

See Advanced Rates §13; Differentials; Discrimination §4, §7, §8 (7); Equalization of Rates §3, §4, §5, §6, §31½ §32; Long and Short Hauls §4, §8; Reasonableness of Rates §8 (1½); Reduced Rates §6½; Through Routes and Joint Rates §8.

MERCHANT MARINE ACT

See Export Rates and Facilities; Import Traffic; Navigable Waters.

(a) Under section 27 of the merchant marine act, 1920, recognition by the commission merely operates to stay the operation of the section to merchandise transported in such manner as otherwise to be subject to the penalty of forfeiture. Whether such merchandise is exempt from the penalty because the commission recognized the route is a question of fact to be determined by the court. The duty of administering the merchant marine act, 1920, does not rest upon the commission and it is not within its province to construe its provisions. Rail-Lake-and-Rail Rates via Canada, 96 I. C. C. 633.

(b) It is the policy of Congress as declared in section 500 of the transportation act, 1920, to promote, encourage, and develop water transportation, service, and facilities in connection with the commerce of the United States and to foster and preserve in full vigor both rail and water transportation, and the provisions of section 8 of the merchant marine act, 1920, is of the same tenor. Galveston Commercial Asso. v. G., H. & S. A. Ry. Co., 100 I. C. C. 110, 122.

(c) In determining its powers and duties under the interstate commerce act and merchant marine act, 1920, the commission must have recourse to the intent of Congress as indicated in section 28 of the merchant marine act. That expressed intent the commission must effectuate in spirit as fully and as promptly as possible. The wisdom or unwisdom of the policy is not for the commission to determine. Section 28 of Merchant Marine Act, 88 I. C. C. 645, 650.

MEXICO

See Adjacent Foreign Country; Through Routes and Joint Rates.

(a) Complainant attacked rates on lumber, box shooks, and other articles taking lumber rates, carloads, from Williams, Flagstaff, and Holbrook, Ariz., to Naco and Nogales, Ariz., and the through charges on such shipments when destined to Cananea, Mexico, and other points on the S. P. of Mexico, of which San Blas and Culiacan are representative, as unreasonable, unjustly discriminatory and unduly prejudicial. Points of origin are in northern Arizona on the Santa Fe. Cananea is in Sonora, 87 miles southeast of Nogales and 38 miles south of Naco, northern points and northern termini of S. P., of Mexico. San Blas and Culican are in Sinaloas, 460 and 597 miles south of Nogales. Routes are over Santa Fe to Phoenix, Ariz., A. E., to Maricopa, Ariz., and S. P., to connection with the Mexican lines at Nogales, or over E. P. & S. W., from Tucson, Ariz., to connection with the Mexican line at Naco. A combination rate of 106.5c on box and crate shooks only, from Williams and Flagstaff to Mexican west coast points, composed of 25c to Phoenix and 81.5c beyond, has been the lowest available rate on these products. The rate on lumber from Cananea was not considered in 80 I. C. C. 487. From Williams and Flagstaff to Cananea

it is a combination of 46.5c to Naco and Mexican tenth class rate of 8c beyond. Distances from Williams, Flagstaff and Holbrook to Nogales are 403, 437 and 528 miles. To Naco they are 32 miles greater. Cananea is reached by the S. P., of Mexico direct via Nogales, but the E. P. & S. W., participates in traffic through Naco. Practically all through traffic for Cananea now moves through the latter point, but the rates from Williams, Flagstaff and Holbrook to the two gateways should be fairly related. In view of the shorter haul from the Arizona points the S. P., and its connections are not justified in maintaining therefrom higher rates than from the more distant California mills. From Holbrook to Naco 560 miles, the rate is 77.5c. This is clearly out of line with the rate from Williams and Flagstaff and defendants made no attempt to justify it. HELD, rates attacked from Williams, Flagstaff and Holbrook to Naco on shipments destined to Cananea unreasonable to extent they exceeded 42.5c from Williams and Flagstaff and 45c from Holbrook. HELD, further, rate components which accrued within the United States have not been shown to have been unreasonable and the components in Mexico are beyond the jurisdiction of the Commission. Arizona Lumber & Timber Co. v. A. E. R. R., 96 I. C. C. 203.

(b) The component within the United States has not been shown unreasonable, and the Commission is without power to award reparation under section 1 with respect to the charges which accrued on the Mexican line. Arizona Lumber & Timber Co. v. A. E. R. R., 96 I. C. C. 203, 206.

(c) Rates on lumber, box shooks, and articles taking lumber rates from Williams, Flagstaff, and Holbrook, Ariz., to Naco, Ariz., destined to Cananea, Mexico, found unreasonable to extent they exceed or may exceed rates prescribed in 80 I. C. C. 487, on same commodities from same points of origin, via Nogales, when destined to Cananea. Arizona Lumber & Timber Co. v. A. E. R. R. Co. 96 I. C. C. 203.

(d) Where combination rates are assessed on shipments from United States to points in Mexico, the commission is without power to award reparation under section 1 with respect to the charges which accrued on the Mexican line. Arizona Lumber & Timber Co. v. A. E., 96 I. C. C. 203, 206.

(da) Complaint seeking establishment of through routes and joint rates between points in Oregon and California, on one hand, and points in other parts of United States, on other, via El Centro and San Diego, Calif., dismissed for want of jurisdiction to establish such routes and rates through Mexico, an adjacent foreign country. San Diego Chamber of Commerce v. A. & V., 102 I. C. C. 27.

(db) Rate on cowpeas from Navojoa, Sonora, Mexico, to San Francisco, found unreasonable to extent it exceeded lower rate on peas, Mexican (garbanzo), which lower rate was subsequently established on cowpeas. Reparation awarded. Lewis-Simas-Jones Co. v. S. P. Co., 102 I. C. C. 245.

(dc) Following Greene Cananea Copper Co., 80 I. C. C. 121, contention that rates from Cananea, Sonora, Mexico, to Perth Amboy, N. J., increased under General Order No. 28 of director general, were unlawful and unreasonable since laws of Mexico required publication of increased rates for 30 days before becoming effective, not sustained. Rates assailed were lawfully established under acts administered by this commission, which is without jurisdiction to determine whether or not they were lawfully established under laws of Mexico. Greene Cananea Copper Co. v. Director General, 102 I. C. C. 473.

(e) Complainant attacked rates charged on numerous cars of chick peas, or garbanzo, shipped in June, July, August and September 1921 from Naranjo, Cajeme, and Esperanza, in Sonora and Naranjo and Guamuchil, in Sinaloa, Mexico to New Orleans, La., as unreasonable. The shipments moved in bond to Nogales, Ariz., where they were stored in bond for several months under a storage in transit arrangement accorded by defendants. From Nogales they were forwarded to New Orleans, consigned on order notify bills of lading to the Commission Monetaria, notify Commercial Credit Company. Upon arrival at New Orleans the shipments were held in cars, in bond, or stored in a bonded warehouse, as collateral, by the Credit Company pending settlement by complainants of the amount due that company, including freight charges. The shipments were eventualy exported to foreign countries or to Porto Rico, with the

exception of a few cars forwarded to New York in bond, at the rate applicable to New Orleans. Since March 2, 1917, the act has not been applicable to Porto Rico. Neither does the act confer upon the Commission jurisdiction over the transportation of property from Mexico through the United States to Porto Rico, in so far as such transportation takes place within the United States, for even though the transportation from Mexico through the United States to Porto Rico were shown to have been partly by railroad and partly by water under a common control, management, or arrangement for a continuous carriage or shipment, and this is not shown in this proceeding, and even though Porto Rico is a territory appurtenant to the United States it has no jurisdiction over such transportation. To hold otherwise would be to extend the act, contrary to the provision cited. HELD, Commission is without jurisdiction, complaint dismissed. Fernandez & Co. v. S. P. R. R. 104 I. C. C. 193.

ALL OTHER CITATIONS

U. S. Graphite Co. v. Director General, as Agent, 88 I. C. C. 157.

MINIMUM RATES

See Classification §15, §16; Inter-State Commerce Commission §10¼; Minimums §1 (i).

(a) Minimum charge of $12 per car on hay and straw for local movement between St. Louis, Mo., on the one hand, and East St. Louis, Madison, Granite City, and National Stock Yards, Ill., on the other, found not unreasonable or unduly prejudicial as compared with rates on other commodities on which specific rates are applied. Movement is through congested districts and over expensive bridges across Mississippi River, and a minimum charge of $12 for this service was approved by commission in St. Louis Chamber of Commerce, 74 I. C. C. 308. Toberman, Mackey & Co. v. T. R. R. Asso. of St. L., 91 I. C. C. 79.

(b) The power to prescribe minimum rates should be sparingly exercised and only in cases where it clearly appears that its exercise is necessary in order that substantial public injury may be avoided. Salt cases of 1923, 92 I. C. C 388, 409.

ALL OTHER CITATIONS

Western Coal Rates, 88 I. C. C. 13.

MINIMUMS

I. APPLICATION OF MINIMUM.

§1. In general.
§2. Effect of not publishing.
§3. Furnishing car of minimum ordered.
§4. Larger car furnished than ordered.
§5. Minimum higher than car capacity.
§6. Mixed carloads.
§7. Reasonableness and discrimination.
§8. Two cars for one ordered.
§9. Follow-lot and multiple shipments.
§10. Tank cars.
§11. Reparation.

CROSS REFERENCES

See Adjacent Foreign Country; Cars and Car Supply; Classification §4, §15, §21; Evidence §65; Express Companies §37½; Refrigeration §6, §7; Weights and Weighing.

I. APPLICATION OF MINIMUM.

§1. In general.

(a) The minimum weight must be taken into account in connection with the volume of the rate in arriving at what will be a reasonable charge. Standard Oil Co. v. A., T. & S. F. Ry. Co., 89 I. C. C. 27, 31.

(b) When articles which are identical, except for a difference in density, can practicably be covered by distinguishing tariff descriptions, carriers commonly accord lower ratings with higher minima to form of the article which loads more heavily. Such distinctions apply to articles set up and knocked down, nested and not nested, in bags and in machine-compressed bales, and notably to tanks and similar objects made of metal of different gauges. Aluminum Goods Mfg. Co. v. A. & V. Ry., 92 I. C. C. 346, 351.

(c) Present third-class c. l. ratings, minimum 20,000 pounds, in official, southern, and western territories, applied to aluminum articles as a whole, found to result in unjust and unreasonable charges. Carriers ordered to establish for alternative application, a rating

of second class, minimum 12,000 pounds, subject to rule 34, making latter rating applicable when it would result in lower charges. While maintenance of a minimum which can be loaded only by certain shippers seems improper, it would be equally unfair to such shippers to reduce minimum to a figure reflecting actual loadings of other shippers with a compensating increase in the c. l. rating. Aluminum Goods Mfg. Co. v. A. & V. Ry., 92 I. C. C. 346.

(d) Bulk salt ordinarily is loaded to 10 per cent above marked capacity of the car, and will average about 88,000 pounds in 80,000-pound capacity cars and 110,000 pounds in 100,000-pound capacity cars. Package salt is ordinarily loaded to 45,000 or 48,000 pounds without difficulty. Salt Cases of 1923, 92 I. C. C. 388, 392.

(e) Principle enunciated in 25 I. C. C. 442, 607, that "The commercial minimum is a real thing, and established methods and customs governing business at any particular time should be given proper weight in the establishment of minimum weights at that time," was never intended to perpetuate a minimum based upon conditions in 1870 and 1880 which have since become obsolete. Nor should that principle be controlling in disregard of increasing size and capacity of equipment during the past 30 to 50 years. The modern doctrine was more clearly expressed in 68 I. C. C. 98, 106. Salt Cases of 1923, 92 I. C. C. 388, 399, 400.

(f) Existing c. l. minima applicable in connection with rates on salt from Detroit and Saginaw, Mich., and from Akron and Cleveland, Ohio, to points in trunk-line, Carolina, southeastern, and Mississippi Valley territories found unreasonable for future to extent they are more or less than 45,000 pounds. Salt Cases of 1923, 92 I. C. C. 388, 400.

(g) Maintenance of c. l. minima on salt in connection with intrastate rates within Virginia, West Virginia, the Carolinas, Georgia, Florida, Kentucky, Tennessee, Alabama, Mississippi, Louisiana, Wisconsin, Illinois, Iowa, Missouri, Kansas, and Texas, lower than the minima contemporaneously applicable in connection with rates on interstate traffic from producing points in Ohio and Michigan to destinations in above-named States, found unduly preferential of persons and localities in intrastate commerce, unduly prejudicial to persons and localities in interstate commerce, and unjustly discriminatory against interstate commerce. Salt Cases of 1923, 92 I. C. C. 388, 400, 401.

(h) Upon evidence adduced sustaining contention of numerous carriers and shippers that an increase in the minima will result in increased loading of cars and conservation of equipment, proposed increase in c. l. minimum on common salt (sodium chloride), in packages, in block and in bulk, to 45,000 pounds, for uniform application throughout United States east of Rocky Mountains, found justified. Salt Cases of 1923, 92 I. C. C. 388, 393, 401.

(i) The act prescribes no different tests or standards for determination of just and reasonable minimum rates than for just and reasonable maximum rates. And there is nothing in the act which either directs or implies that the commission should use tests of different general character in the determination of reasonable minimum rates than those which have been consistently and uniformly applied for many years, with tacit consent and sanction of Congress and express approval of the courts, in fixing maximum reasonable rates. Salt Cases of 1923, 92 I. C. C. 388, 410.

(j) When the commission has been called upon to adjust maximum reasonable rates on a specific commodity from different points of origin to a common destination, it has always given special consideration to comparisons of going rates on the same commodity in the same or similar territories, in relation to distances, revenue per car, per car-mile, and per ton-mile variations in traffic density, and peculiarities in transportation which affects transportation costs in general. No practical reasons appear why these same standards should not be applied in the fixing of minimum reasonable rates. Salt Cases of 1923, 92 I. C. C. 388, 410, 411.

(k) If experience showed that more shippers of a particular commodity were able to and did load more than the prescribed minimum, a rating compatible with the higher loading would be proper. Edlund Broom Corp. v. B. & M., 92 I. C. C. 749, 752.

(l) Commission has same authority and duty with respect to removal of unjust discrimination brought about by different c. l. minima as it has in case of unjust discrimination interstate traffic caused by state rates. Kansas City Mil-

ler's Club, 50 I. C. C. 170, 182. New Mexico Corp. Commission v. A. T. & S. F., 93 I. C. C. 43, 47.

(m) Under section 1 of rules 15 and 18 of the classification named, the lowest charges, either at the carload rates and minima or the less-than-carload rates and actual weight, were applicable. Charges based upon the actual weights would have been lower, because of the graduated minima rule, than charges based upon the applicable minima under that rule, except in one instance. Klein-Simpson Fruit Co. v. Director General, 98 I. C. C. 547, 550.

(n) Complainant attacked carload minimum weight applied on shipments of materials used in the manufacture of tanning extracts from New York to Morgantown, N. C., as unlawful and unreasonable and as the rule in B. & O., I. C. C. 20,000 governing carload minimum weights is not applicable on shipments moving to southeastern territory, it results in discrimination against traffic to points in that territory. The issue is one of tariff interpretation. Shipments consisted of myrobalans, wattle bark and divi-divi pods imported from India and South America and reshipped from New York lighterage, moved during the period from Oct. 26, 1922 to Aug. 8, 1923, charged 58c prior to Nov. 26, 1922 and 52c thereafter based on minimum weight of 60,000 pounds on extract, bark and tanning, viz: quebracho, myrobalans, valonia, wattle bark and divi-divi pods, dry, in barrels, bags or boxes. The classification minima were 36,000, 30,000 and 24,000 pounds. To avoid any question, the present tariff names commodity rates on extract and tanning materials separately. Sixth class rates of 72c applied on wattle bark and fifth class of 93c on myrobalans and divi-divi pods. HELD, minimum weight assessed inapplicable, and applicable minima of classification not unreasonable, complaint dismissed. International Shoe Co. v. B. & O. R. R., 109 I. C. C. 641.

ALL OTHER CITATIONS

Express Rates on Milk and Cream in Va., 88 I. C. C. 687.

§5. Minimum higher than car capacity.

(a) The Commission has frequently found unreasonable minimum weights which exceed the loading capacity of Cars. Wool Rates Investigation, 1923, I. C. C. 235, 239.

(b) Complainant attacked carload minimum of 60,000 pounds on coiled elm hoops as unreasonable from Group E points to South Pacific terminals as well as unduly prejudicial. The shipment from Chaffee, Mo., weighed 54,500 pounds and moved over the Frisco, M. P., D. & R. G. and W. P. Charged at rate of $1.065 minimum 60,000 pounds. Prior to March 15, 1918 the minimum on coiled elm hoops from Group E to California terminals was 30,000 pounds and rate of 85c. At that time the minimum on cooperage stock was 40,000 pounds and rate 75c. An alternative minimum of 60,000 pounds of 60c rate also applied on cooperage stock. Following 46 I. C. C. 236, the carriers canceled these minima and rates on coiled elm hoops and cooperage stock and established in lieu thereof on March 15, 1918 a minimum of 60,000 pounds and rate of 75c on both commodities. On May 1, 1922 carriers established an alternative minimum of 40,000 pounds and rate of $1.20 reduced on July 1, 1922, to $1.08, on both commodities. The hoops comprising the shipment from Chaffee were loaded into a 50 feet car with level full capacity the bill of lading bearing the notation "loaded to full visible capacity." The minimum on coiled elm hoops from Group E to north Pacific coast points is 40,000 pounds, rate 96c, or the same as the present rate with the higher minimum on this traffic from these points to California HELD, minimum of 60,000 pounds from Group E to California unreasonable to extent it exceeded 55,080 on 50 foot cars, reparation awarded. Ozark Cooperage & Lumber Co. v. A. & R. R., 91 I. C. C. 329.

(c) If carriers desire to protect themselves against unduly low charges per car they should not do so by prescribing arbitrary minimum weights which can not be loaded in the ordinary equipment available, and it is unreasonable to base charges on a minimum to which cars are incapable of being loaded. Ozark Cooperage & Lumber Co. v. A. & R. R. R., 91 I. C. C. 329, 333.

(d) Ordinarily carload minimum weights should be established with reference to the loading capacity of the car. Aluminum Goods Mfg. Co. v. A. & V. Ry. 92 I. C. C. 346, 351.

(e) Ordinarily carload minimum weights should be established with ref-

erence to the loading capacity of the car. If carriers desire to protect themselves from unduly low charges per car they should do so by regulating the rate and not by prescribing arbitrary minimum weights which can only be loaded in cars of unusual size. Stanfield v. O. W. R. R. & N. Co., I. C. C. 598, 605.

(f) The Commission has repeatedly condemned and will not prescribe a minimum beyond the limit of safe loading. Kloeber v. N. P. Ry., 96 I. C. C. 437, 442.

(gh) Generally speaking, minimum weights should be made to conform as nearly as possible to ability of shippers to load cars. In cases where no direct relationship between minimum and rates is disclosed the possible physical loading of traffic becomes an element of controlling importance, and in such cases propriety of minima can be fairly determined without reference to rates. This general rule, however, is not applicable to cases where facts disclose a definite relationship between minima and rates. Stanfield v. O. W. R. R. & N. Co., 91 I. C. C. 598, 605.

(i) We have repeatedly condemned and will not prescribe a minimum beyond the limit of safe loading. Kloeber v. N. P. Ry. Co., 96 I. C. C. 437, 442.

(j) The Commission has uniformly refused to approve a minimum weight which it is impossible to load. Classification on radio sets, 102 I. C. C. 140, 144.

(ja) Practice of assessing charges at published minimum, where cars furnished by carriers for their own convenience can not reasonably be loaded to the minimum, is unwarranted. See 74 I. C. C. 747. Florida R. R. Commrs. v. A. & R., 102 I. C. C. 677, 680, 681.

(k) The Commission has repeatedly held that if carriers desire to protect themselves from unduly low charges per car they should do so by regulating the rate and not by prescribing arbitrary minimum weights which can be loaded only in cars of unusual size, and that it is unreasonable to base charges on a minimum to which cars are incapable of being loaded. Swift & Company v. G. T. Ry., 109 I. C. C. 45.

(l) The Commission does not look with favor upon minimum weights that can not ordinarily be loaded. Carriers should not regulate their revenues by prescribing arbitrary minima that can be loaded only in cars of unusual size, but by adjusting their rates with relation to a reasonable minimum. Gille Mfg. Co. v. K. C. S. Ry., 109 I. C. C. 408, 412.

(m) The Commission has frequently said that a minimum beyond the limit of safe loading will not be prescribed, and that protection against unduly low charges per car should be accomplished by regulating the rate and not by an arbitrary minimum. A minimum does not contemplate a weight closely approaching the maximum loading possible. Heinz Co. v. Director General, 112 I. C. C. 206, 209.

ALL OTHER CITATIONS

Colorado & Utah Coal Co. v. D. & S. L. R. R. Co., 85 I. C. C. 545; U. S. Graphite Co. v. Director General, as Agent, 88 I. C. C. 157; Beaver Sand Co. v. Director General, as Agent, 88 I. C. C. 159.

§7. Reasonableness and Discrimination.

See Blanket Rates §10½ (g), §12½ (a); Cars and Car Supply §8; Class Rates §2 (tt) (3j); Classification §20 (c) §22 (4i); Commodity Rates §5 (ee); Discrimination; Distance Rates §3; Emergency Rates; Live Stock Shipments (j) (m) (aa); Reasonableness of Rates.

(a) Complainant attacked minima and charges on sheep, in double deck cars from Utah, Idaho, Oregon and Washington to Denver, Colo., Chicago, Ill., and Missouri river crossings, as unreasonable. In western territory the minimum carload weights on sheep or goats in double deck cars vary according to the length of the equipment. For double deck cars of standard length 36 ft. 6 or 7 inches in length the minima on east bound shipments from Mountain Pacific states are generally 23,000 pounds, and to, from, or between practically all other points in western territory where the rates are stated in amounts per 100 pounds the minima are 22,000 pounds. There are no specific rates or minima on lambs or kids. Such animals are subject to the rates and minima on sheep or goats in western territory, or the basis generally applicable in other portions of the United States. Sheep frequently move to the

markets in consignments consisting of more than one car. In such cases the practice at the different markets is to ascertain the aggregate weight of all the sheep in the consignment and divide this by the number of cars, crediting to each car the average of all of them. It is obvious that the average weight does not fairly indicate actual or possible loading unless all of the cars included in the consignment are properly loaded, as even one underloaded car would considerably reduce the average weight of several properly loaded cars. Overloading, or crowding in the cars, tends to increase the shrinkage and the number of dead and crippled; underloading also results in dead and crippled sheep but probably not to the same extent as overloading. Sheep or lambs will die, become crippled, and shrink in transit regardless of the degree of efficiency exercised in the loading. It has already been pointed out that practically all of the minima attacked in this case, were used as divisors to determine the rates per 100 pounds. It follows that the minima, coupled with the new rates, resulted in revenue substantially equal to that produced by the old rates per car. It should be remembered that many young lambs and light weight sheep can not be loaded to any minimum except a very low and impracticable one; it follows, therefore, that any fair minimum on sheep must of necessity be arbitrary to the extent that certain of the animals can not be loaded to the required weight. Since very young lambs can not be loaded to the present minima, the earnings per car and per car mile under the existing rates and minima represent the maximum earnings of the carriers on such traffic. Substantial reduction in defendants earnings would result from a reduction in the minima without corresponding increases in the rates. Special facilities for loading must be provided at the points of origin and at many intermediate stations where the animals are unloaded in transit to feed, water and rest. The traffic requires very fast service, with precedence over all other except passenger trains. The empty movement of double deck stock cars almost equals the loaded movement. Caretakers are carried free. Loss and damage claims are heavy. HELD, present minimum not unreasonable, unjustly discriminatory or unduly prejudicial, complaint dismissed. Stanfield v. O. W. R. R. & N. Co., 91 I. C. C. 598.

(bc) The minimum carload weight is a factor in the carload rate and in connection with the rate determines the carload earnings. Any reduction in the minimum weight without an increase in the rate would, therefore, reduce the carload earnings of the carrier and would be equivalent to a reduction in the rate itself. Stanfield v. O. W. R. R. & N., 91 I. C. C. 598, 606.

(d) The commercial minimum is a real thing, and established methods and customs governing business at any particular time should be given proper weight in the establishment of minimum weights at that time. Salt Cases of 1923, 92 I. C. C. 388, 399.

(e) While minima should be high enough to insure a proper utilization of equipment, they should not exceed what can be reasonably and generally loaded. Shippers can not be expected in all cases to fit their lumber to the great variety of cars that may be furnished them, when there is practically no equipment designed especially for lumber traffic. In fixing reasonable minima some leeway should be accorded for commercial conditions and the minima should not require the loading of all cars to their utmost capacity. Salt Cases of 1923, 92 I. C. C. 388, 400.

(f) A carload minimum weight reasonably adapted to the traffic generally should not be increased merely because one shipper, on account of conditions peculiar to himself is able to load in excess of the existing minimum thereof. Edlund Broom Corp. v. B. & M. R. R., 92 I. C. C. 749, 752.

(g) Complainant attacked carload minimum weights applicable on alfalfa hay from New Mexico to Texas destinations as unreasonable, unduly prejudicial and unjustly discriminatory. The principal market for New Mexico alfalfa, as well as that produced in west Texas, is in east Texas and Louisiana. HELD, minimum weights per car on alfalfa hay from New Mexico located on the Santa Fe between the Texas-New Mexico state line and Rincon, N. M., and between Corral and Elida, N. M., to points on Texas on defendants will be unreasonable to extent they exceeded 16,500 pounds for cars under 36 ft. 20,000 pounds cars 36 feet 6 inches, 22,000 pounds over 36 ft. 6 inches to 40 ft., 24,000 pounds 40 feet to and including 42 ft., over 42 ft, 30,000 pounds. The present minima,

applicable intrastate in Texas, are lower than the reasonable minima prescribed for application on interstate traffic from New Mexico to Texas and such disparities are not justified by differences in circumstances and conditions pertaining to the two classes of traffic. The undue prejudice should be removed by increasing the minima intrastate in Texas to interstate minimum prescribed. New Mexico Corp. Comm. v. A. T. & S. F. Ry., 93 I. C. C. 43.

(hi) Respondents in western trunk line territory proposed to apply on shipments of junk, in mixed carloads, the class C rates subject to minimum of 50,000 pounds. The commodities included in the junk list take class rates, either fourth, fifth, C or D, when in straight carloads, subject to minima which range from 24,000 to 50,000 pounds. Mixed carload shipments are now charged on the basis of the highest rate and highest minimum weight applicable to any article in the car. The record demonstrates that the proposed 50,000 pound minimum can only be loaded in exceptional cases. HELD, suspended schedules not justified, without prejudice to publishing of a minimum of 36,000 pounds. Junk in mixed carloads in W. T. L. territory, 93 I. C. C. 263.

(j) Respondents proposed to increase the car load minimum weight from 15,000 to 20,000 pounds in connection with the rates on cotton factory sweepings, motes, and card strippings, from and to various points in the South Atlantic states, Virginia cities, and trunk line and New England territories. The proposed minimum of 20,000 pounds is subject to rule 34 of classification, which, in substance, provides graduated minima for cars longer than the standard of 36 ft. 6 inches. Respondents convincingly prove that more than 20,000 pounds of cotton factory sweepings, packed in average uniform bales at representative cotton mills in the south, can be loaded in standard box cars 36 ft. 6 inches in length. HELD, proposed minimum justified. Minimum weight on cotton sweepings, 95 I. C. C. 291.

(k) Respondents proposed to cancel the present rates and minimum weights on wooden hoops from eastern points to western destinations and establish in lieu thereof higher rates based upon lower minimum weights. At present rates from Group C points to San Francisco are $1.205, minimum 40,000 pounds, and $1.02 minimum 60,000 pounds. Under the suspended schedules these rates would become $2.55 minimum 16,000 pounds and $1.33 minimum 34,000 pounds. Respondents do not contend that the present rates are unreasonably low and have offered no justification of these increases. HELD, proposed schedules not justified. Wooden hoops to western destinations, 95 I. C. C. 519.

(l) Respondents proposed to increase to 40,000 pounds the minimum weight in connection with commodity rates applying between points on their lines in Illinois Rate Committee territory, on canned goods of various kinds, vinegar, and certain packing house products. In this territory class rates are governed by the Illinois classification which provides fifth class, minimum 36,000 pounds, on various canned goods, carloads, the rating and minimum being the same as those provided by western, official and southern classifications. But, many commodity rates are maintained on that traffic, and as to these, with a few exceptions, the present minimum is 30,000 pounds. The record in this case is meager. HELD, schedules not justified. Minimum weights on canned goods and vinegar, 96 I. C. C. 157.

(m) Respondents serving California points and other points in Pacific coast territory sought to modify the provisions of their existing tariffs governing minimum weights applicable in connection with interstate traffic moving on the so-called minimum class scale in the western classification. Class rates in exception to the western classification are sometimes published in connection with minimum weights which are less than the minimum weights provided in the classification itself. It thus happens that the class rate on a commodity which has been given a special rating in an exception sheet is lower for short distances than the minimum rate for the class to which the article belongs in the classification. In such event, under the above rule the minimum class rate is applied and not the class rate which would otherwise be applicable under the exceptions. It appears from the record that for several years there has been a conflict between shippers and carriers as to which of these two minimum weight provisions was applicable in connection with shipments moving under the present rule on

a minimum class scale. In 66 I. C. C. 669, the Commission found that the proper minimum weight to apply in connection with the minimum class rate was that provided by the exceptions to the classification. It follows that the protested modification of the rule, which would make applicable the classification minimum weight in connection with minimum class rates, would result in increases in charges per car which respondents have not attempted to justify. HELD, schedules not justified. Minimum weights between Pacific coast states, 96 I. C. C. 330.

(n) Minimum weights which exceed loading capacity of cars are unreasonable. Wool Rates Investigation, 1923, 91 I. C. C. 235, 239.

(o) Carload minimum weight on coiled elm hoops from Mississippi River territory to San Francisco and other California terminals found not unduly prejudicial as compared with lower minimum maintained to Seattle, Wash., and other north Pacific coast terminals, but such minimum, to which cars are incapable of being loaded, found unreasonable and reasonable minimum prescribed. Ozark Cooperage & Lumber Co. v. A. & R. R. R. Co., 91 I. C. C. 329.

(p) Carriers undertook to justify assailed c. l. minimum on ground that earnings under rate applicable in connection therewith are less than reasonable. HELD: If carriers desire to protect themselves from unduly low charges per car they should not do so by prescribing arbitrary minimum weights which can not be loaded in ordinary equipment available, and it is unreasonable to base charges on a minimum to which cars are incapable of being loaded. Riverside Mills, 25 I. C. C. 434; Durham Coal & Iron Co., 34 I. C. C. 10. Ozark Cooperage & Lumber Co. v. A. & R. R. R. Co., 91 I. C. C. 329, 333.

(q) Proposed increased c. l. minima on batting, cotton, in western trunk-line territory found justified as to shipments in machine-pressed bales, but not justified as to shipments in boxes, paper-lined crates, or in bales not machine pressed. It is impossible to load bales not machine pressed to minima proposed, and if carriers desired to protect themselves from unduly low charges per car they should not do so by prescribing minimum weights which can not be loaded in ordinary equipment available. Moreover, it is unreasonable to base charges on minimum weights to which cars are incapable of being loaded. Cotton Batting in W. T. L. Territory 91 I. C. C. 535.

(r) Generally speaking, minimum weights should be made to conform as nearly as possible to ability of shippers to load cars. In cases where no direct relationship between minimum and rates is disclosed, possible physical loading of traffic becomes an element of controlling importance and in such cases propriety of minima can be fairly determined without reference to rates. This general rule, however, is not applicable to cases where facts disclose a definite relationship between minima and rates. Stanfield v. O. W. R. R. & N. Co., 91 I. C. C. 598, 605.

(s) Respondents proposed to increase the commodity rates on tin cans and to increase the minimum carload from 14,000 to 20,000 pounds, maintaining the fourth class rates with a minimum carload of 14,000 pounds, subject to rule 34, for alternative application, from Chicago, Ill., and points basing thereon to about 130 points in Wisconsin and to Menominee, Mich., and Winona, Minn., and to cancel the two for one rule wherever in effect under commodity rates. Tin cans are rated fourth class, minimum 14,000 pounds, subject to rule 34 of the classification. Carload shipments from the tin can factory are not made in crates or other containers, but, instead, the cans are packed in the car to its cubic capacity. The weight of the cans that can be packed into a car of a certain length varies with the size of the cans. In order to load a car with cans in bulk the shipper has to complete the inside boarding of the car, which is boarded only to the grain line, and line the entire inside of the car with paper. This dunnage of lumber and paper, which is included in the revenue weight, weights about 649 pounds when No. 10 cans are to be shipped. This lining of the car costs the shipper about $14.25 if extensions are not built at the doorway and $15.75 if extensions are built. The minimum carload under the proposed commodity rates is 20,000 pounds for all sizes of cars, and the carrier will not furnish two smaller cars in lieu of a large car ordered by the shipper but which the carrier is unable to furnish. The rates on tin cans from Chicago to Minnesota and Iowa and to points in central territory

are in general the fourth class rates, but there are commodity rates lower than fourth class to a few destinations in the territories mentioned and apparently to all important consuming points in Illinois. Within central territory fourth class rates apply almost without exception. The present basis of rates to Wisconsin has existed for over 20 years, except for the general changes in rate levels. The light loading, a value of about $1,500 per carload, practically complete freedom from loss and damage claims except in case of wreck, the regularity of movement in the canning season, are the chief characteristics of tin can transportation. HELD, suspended schedules not justified. Tin cans from central territory, 100 I. C. C. 208.

(t) Respondents proposed increased minimum weights in connection with multiple carload shipments of iron and steel articles from, to, and between points in the southwest. The exceptions provide that when iron and steel articles on account of length require two or more cars to transport them, the minimum charge for each series or lot not to exceed three cars shall be based on a minimum weight of 45,000 pounds for two cars and 60,000 pounds for three cars. The schedules under suspension would cancel the exceptions and leave the classification basis to apply, which provides that weight for one car shall be that provided as the minimum carload weight for the article or articles constituting the shipments, and for each additional car in the series that weight shall be increased 24,000 pounds. This rule was incorporated in consolidated classification No. 1, under 54 I. C. C. 1, 21. The proposed minima would not much affect protestants ability to compete with fabricators of steel at other points, because the latter would also be subject to them, but to the extent that orders called for long items and required less than such weights of steel, protestants ability to compete with shippers of other construction materials, such as concrete, would be correspondingly affected. In such cases the presence of higher minimum weights would not increase the loading. HELD, schedules justified except as to trusses and lattice girders the minimum weights shall not exceed 54,000 pounds for a double carload and 78,000 pounds for a triple load. Minimum weights on iron and steel articles, 101 I. C. C. 3.

(u) Although commercial requirements may properly be given consideration in the fixing of carload minimum weights, reasonable measures looking toward the efficient use of equipment should not be discouraged by according undue weight to local rather than general conditions. Minimum weights on iron and steel articles, 101 I. C. C. 3, 6.

(v) Present third-class c. l. ratings, minimum 20,000 pounds in official, southern, and western territories, applied to aluminum articles as a whole, found to result in unjust and unreasonable charges. Carriers ordered to establish for alternative application a rating of second class, minimum 12,000 pounds, subject to rule 34, making latter rating applicable when it would result in lower charges. While maintenance of a minimum which can be loaded only by certain shippers seems improper, it would be equally unfair to such shippers to reduce the minimum to a figure reflecting actual loadings of other shippers with a compensating increase in the c. l. rating. Aluminum Goods Mfg. Co. v. A. & V. Ry., 92 I. C. C. 346.

(w) Carriers have frequently established alternative commodity rates, based on different c. l. minima, and commission has approved such rates, Strawboard and Other Paper Articles, 85 I. C. C. 470, but they have consistently declined to introduce into the classification the principle of alternative ratings and minima, and commission has never heretofore prescribed such ratings. Aluminum Goods Mfg. Co. v. A. & V. Ry., 92 I. C. C. 346, 351.

(x) Principle annunciated in 25 I. C. C. 442, 607, that "The commercial minimum is a real thing, and established methods and customs governing business at any particular time should be given proper weight in establishment of minimum weights at that time" was never intended to perpetuate a minimum based upon conditions in 1870 and 1880 which have since become obsolete. Nor should that principle be controlling in disregard of increasing size and capacity of equipment during past 30 to 50 years. The modern doctrine was more clearly expressed in 68 I. C. C. 98, 106. Salt Cases of 1923, 92 I. C. C. 388, 399, 400.

(y) Maintenance of c. l. minima on salt in connection with intrastate rates within Virginia, West Virginia, the Carolinas, Georgia, Florida, Kentucky,

Tennessee, Alabama, Mississippi, Louisiana, Wisconsin, Illinois, Iowa, Missouri, Kansas, and Texas, lower than the minima contemporaneously applicable in connection with rates on interstate traffic from producing points in Ohio and Michigan to destinations in above-named States, found unduly preferential of persons and localities in intrastate commerce, unduly prejudicial to persons and localities in interstate commerce, and unjustly discriminatory against interstate commerce. Salt Cases of 1923, 92 I. C. C. 388, 400, 401.

(z) Minimum weights on alfalfa hay from points in New Mexico to points in Texas, higher than from competing points in Texas to the same destinations found unreasonable and unduly prejudicial to shippers in New Mexico, unduly preferential of shippers in Texas, and unjustly discriminatory against interstate commerce. Maximum minimum weights from New Mexico to Texas suggested. New Mexico Corp. Commission v. A., T. & S. F. 93 I. C. C. 43.

(aa) Commission has same authority and duty with respect to removal of unjust discrimination brought about by different c. l. minima as it has in case of unjust discrimination against interstate traffic caused by state rates. Kansas City Millers' Club, 50 I. C. C. 170, 182. New Mexico Corp. Commission v. A. T. & S. F., 93 I. C. C. 43, 47.

(bb) Proposal to apply a minimum of 50,000 pounds to mixed c. l. shipments of junk in western trunk-line territory found not justified. Only one article in entire junk list carries this minimum in straight carloads, and record demonstrates that minimum proposed can only be loaded in exceptional cases. Junk in Mixed Carloads, 93 I. C. C. 263.

(cc) Proposal to increase the c. l. minimum weight from 15,000 to 20,000 pounds on cotton-factory sweepings, motes, and card strippings, in connection with rates from and to various points in southeastern Carolina, trunkline, and New England territories, found justified. A special investigation of this subject conducted by the Southern Weighing & Inspection Bureau convincingly proves that proposed minimum can be loaded in standard box cars, and protestants failed to instance any case where a standard car was loaded to full practical capacity which contained less than 20,000 pounds. Evidence appeared to show that cars were not being loaded efficiently or as heavily as they should be. Minimum Weight on Cotton Sweepings, 95 I. C. C. 291.

(dd) Proposal to cancel rates and minimum weights on wooden hoops from Group C points to western destinations and established higher rates based upon lower minima, in compliance with carriers' interpretation of the commission's order in Ozark Cooperage & Lbr. Co., 91 I. C. C. 329, found not justified. Reasonableness of the rate was not in issue in the case cited and in pointing out that carriers should not protect themselves from unduly lower charges per car by prescribing minimum weights which can not be loaded in ordinary equipment available, the commission merely intended to dispose of a contention that minimum assailed was justified because earnings under rate applicable in connection therewith were less than reasonable. The commission did not intend to sanction an increase in rates. Carriers do not contend here that present rates are unreasonable and offered no justification of the proposed rates, which reflect substantial increases. Wooden Hoops to Western Destinations, 95 I. C. C. 519.

(ee) Lump coal rate charged on shipments of so-called domestic lump, found inapplicable. Coal here shipped, after coming from the mine, was passed over either a 1¼ inch wire mesh screen or 1⅝ inch round perforated plate. In other words, is consisted of run of mine, except that all slack and screenings that would pass through the above described screens were removed. The tariff described run coal as "lump mixed with smaller sizes" and it did not follow of necessity that it must include screening or slack. While it was intention of carriers that lump coal rates should apply on such coal as was here shipped, the tariff was not so restricted. Run of mine rates were legally applicable, and shipments were overcharged. Reparation awarded. Detweiler Coal Co. v. D. & R. G. W. 96 I. C. C. 88.

(ff) Proposed increased carload minimum weight in connection with commodity rates applying between points in Illinois rate-committee territory on canned goods of various kinds, vinegar, and certain packing-house products found not justified. Record in the case is meager, and respondents asked at the hearing that they be accorded a further opportunity to present evidence asserting "the

carriers have not had time to work up complete justification for the change." No application for further hearing in conformity with Rules of Practice has been received. In a circular published by the commission, April 30, 1921, it held that "Before filing changes in rates the carriers should have considered the action, the reasons underlying it and the effects of it so thoroughly as to be prepared in case the changes are protested to immediately present in full their defense.'" Minimum Weights on Canned Goods and Vinegar, 96 I. C. C. 157.

(gg) Proposed modification of present tariffs by the inclusion of a provision making applicable the minimum weights of western classification in connection with commodities moving on minimum class rate scale in western classification, resulting in increased charges, found not justified, following 66 I. C. C. 669. Minimum Weights between Pacific Coast States, 96 I. C. C. 330.

(hh) Charges on one locomotive crane, with detached parts, found to have been assessed on basis of greater weight than provided for in tariff. Applicable tariff item provided for assessment of charges on actual weight, minimum 60,000 pounds, for crane, and minimum of 24,000 pounds for each additional car. Actual weight of shipment exceeded total minimum for crane and 2 additional cars used, and charge should never have been assessed on basis of actual weight. Raleigh Granite Co. v. S. A. L. Ry. Co., 96 I. C. C. 573.

(ii) Interstate rates and minimum weights on cottonseed, c. l., between defined points in the Southwest; between such points, on the one hand, and Mississippi River crossings, Memphis to New Orleans, on the other, and from points in the Southwest to East St. Louis, Cairo, and Thebes, Ill., and Kansas City, Mo., found unreasonable to the extent they exceed or may exceed rates under the distance scale shown in Appendix 7, subject to a minimum weight of 40,000 pounds with certain exceptions. Oklahoma Corp. Commission v. A. & S. Ry. Co. 98 I. C. C. 183, 216.

(jj) If the carload minimum weight of 20,000 pounds on pea threshers, the classification description under which defendants rate complainant's type C huller, and of 24,000 pounds on hand pea hullers, are indicative of the weights of those commodities that can ordinarily be loaded in a standard box car, it is quite apparent that complainant's hullers are considerably lighter than the average machines moving under those classification descriptions. Star Pea Huller Co. v. C. N. O. & T. P. Ry. Co. 98 I. C. C. 357, 359.

(jja) Upon further hearing, minimum-weight rule applicable on mixed carload shipments of cottonseed meal and cottonseed hulls between Memphis and points in Arkansas, found unreasonable for future. Reasonable rule prescribed and findings in 77 I. C. C. 473 and 98 I. C. C. 183, modified. Memphis-Southwestern Investigation, 102 I. C. C. 227.

(kk) In fixing reasonable minima some leeway should be accorded for commercial conditions and the minima should not require the loading of all cars to their utmost capacity. Memphis Southwestern Investigation, 102 I. C. C. 227, 228.

(ll) Complainant attacked carload minimum on four cars of cattle from Sturgis, S. D., on Dec. 16, 1919 to Omaha, Neb., as unjust and unreasonable to extent they exceeded charges on the lower actual weight. Complainant placed an order with the agent for four 36 foot stock cars. The agent accepted that order, but when complainant reached Sturgis with his cattle, the agent advised him for the first time that stock cars were not available and in lieu thereof asigned him four box cars. Into these cars complainant loaded 91 head of cattle, and drove back to his ranch 24 head which he had intended to load along with the other 91 head into the four stock cars ordered. The cars were stopped at Long Pine, Neb., for feed, water and rest, and the cattle were reloaded into four stock cars at that point. Charged 43c minimum 24,000 pounds per car, claimed 43c actual weight 75,420 pounds. HELD, charges collected unreasonable to extent they exceeded 43c at actual weight, reparation awarded. Gullikson v. Director General 102 I. C. C. 327.

(mm) Complainant attacked carload minimum of 350 crates, applicable in connection with rates on celery under refrigeration cars of less than standard length from Florida to destinations in the United States and Canada as unjust and unreasonable. For many years the car load minimum on Florida has

been 350 crates. The refrigerator cars furnished by defendants for the movement of Florida celery are obtained from the Fruit Growers Express Company and are mostly of a standard length of about 32 ft. 6 inches. Their ice capacity is 9,600 pounds or more. During the shipping seasons of 1923 and 1924 defendants, against the protests of the celery shippers, assigned to this movement a number of refrigerator cars of less than standard length, ranging from 28 ft. 9 inches to 31 ft. 6 inches. The bunker capacities of these cars ranged from 6,200 to 6,800 pounds most of them holding 6,800 pounds of ice. The shorter length of these cars necessitated a different method of loading. Although the minimum of 350 crates in standard cars is not complained of, it appears that there is some difficulty at times in securing efficient refrigeration of celery in the fourth layers of those cars, and for that reason some shippers do not load more than 336 crates in any car. The inability of the short cars to refrigerate properly the present minimum of 350 crates of celery, however, is clearly established, irrespective of the variety of the celery composing the shipments. It is clear that the short refrigerator cars here considered will not efficiently refrigerate more than 315 crates of celery. HELD, carload minimum of 350 crates of celery from Florida unreasonable to extent it exceeds 315 crates for refrigerator cars ranging in length from 28 ft. 9 inches to 31 ft. 6 inches, when such cars are furnished for the convenience of the carrier, reparation awarded. Florida R. R. Commissioners v. A. & R. R. R. 102 I. C. C. 677.

(mma) Carload minimum of 350 crates on celery under refrigeration from Florida to interstate and foreign destinations, found unreasonable to extent it exceeded 315 crates for refrigerator cars ranging in length from 28 feet 9 inches to 31 feet 6 inches, inside measurement, when furnished for carrier's convenience. Reparation awarded. Florida R. R. Commrs. v. A. & R., 102 I. C. C. 677.

(nn) It does not follow that when a carrier for its own convenience furnishes a shipper a short car, which will not safely carry as much freight as a standard car, the carrier is entitled to the same revenue as it would have received had a standard car been furnished. The Commission has held that the practice of assessing charges at the published minimum, where the cars furnished by the carriers for their own convenience can not reasonably be loaded to the minimum, is unwarranted. Florida R. R. Commissioners v. A. & R. R. R. Co. 102 I. C. C. 677, 680.

(oo) Complainant attacked minimum weights and rules in connection therewith governing the transportation of lumber and other forest products from Oregon, Washington, Idaho and Montana to eastern transcontinental destinations as unreasonable, unjustly discriminatory, unduly prejudicial and preferential. The carload minima attacked were prescribed in 56 I. C. C. 318 and 68 I. C. C. 98. In general it may be said that the minima and rules prescribed are more favorable to the shipper than those formerly in effect, and that in a great majority of the instances where minimum weights formerly applied actual weights or lower minimum weights would now apply. HELD, minimum weights and rules attacked not unreasonable or otherwise unlawful, complaint dismissed. Western Pine Mfrs. Asso. v. Director General, 102 I. C. C. 753.

(pp) Respondents proposed to reduce from 60,000 pounds to 50,000 pounds the minimum weight on salt from eastern shipping points, except points taking Group B and Group C rates, to destinations in Arizona, California, Mexico, Nevada, New Mexico, Oregon and Utah. Reductions in the rates on salt to Pacific coast destinations from eastern shipping points were made effective July 1 and Oct. 1, 1924 with a contemporaneous increase in the minimum weight from 50,000 to 60,000 pounds. The reductions in rates were established upon representations that they were necessary to enable shippers to meet competition, the shippers agreeing to the increased minimum as a means of preserving to some degree the carload revenue. Subsequently the shippers west of Chicago represented to the carriers that they were handicapped by the higher minimum in marketing their salt in competition with salt produced in Utah and California which moved on a lower minimum. Protestants agree that subsequent developments have shown that the 60,000 pound minimum is not satisfactory. HELD,

schedules justified. Minimum weight on salt, 104 I. C. C. 631.

(qq) Proposed increased commodity rates and increased minimum weight on tin cans, in carloads, from points in Illinois to points in Michigan, Minnesota, and Wisconsin, and proposed cancellation of the two-for-one rule wherever in effect under commodity rates, found not justified. In Wisconsin Dairy Products Co., 68 I. C. C. 307, and Armour & Co., 74 I. C. C. 709, the commission found that the commodity rate from Chicago to Stoughton, Wis., and the fourth-class rate from Chicago to Bloomer, Wis., applicable on tin cans, was unreasonable to extent they exceeded the basis of commodity rates subsequently established and these rates as modified only by general changes in rate levels are now in effect. Tin Cans from C. F. A. Points to Michigan, Minnesota and Wisconsin, 100 I. C. C. 208.

(rr) Proposed increased minimum weights on multiple carload shipments of iron and steel from, to, and between points in the Southwest, found justified except as to trusses and lattice girders. Proposed schedules would cancel applicable minimum-weight provisions published in exceptions to western classifications, providing for minimum weight of 45,000 pounds for two cars and 60,000 pounds for three cars, and make applicable the classification basis published in rule 29 of consolidated classification No. 4, which provides for an increase of 24,000 pounds for each additional car, or a minimum of 60,000 pounds and 84,000 pounds, for double and triple loads, respectively, which is the basis approved by commission in Consolidated Classification Case, 54 I. C. C. 21, 22. Suspended schedules ordered canceled without prejudice to the filing of new schedules in conformity with views herein expressed. Minimum Weights on Iron and Steel Articles, 101 I. C. C. 3.

(ss) While Commercial requirements may properly be given consideration in the fixing of carload minimum weights, reasonable measures looking toward the efficient use of equipment should not be discouraged by according undue weight to local rather than to general conditions. Minimum Weights on Iron and Steel Articles, 101 I. C. C. 3, 6.

(tt) Minimum weight of 20,000 pounds on prairie hay in cars 36 feet in length, from points in northeastern Oklahoma to Group A points in Texas, found unreasonable to extent it exceeds 18,000 pounds, which is prescribed as reasonable for future. Oklahoma Corporation Commission v. A. & S. Ry., 101 I. C. C. 116, 132, 133.

ALL OTHER CITATIONS

Eshelman & Son v. Director General, as Agent, 85 I. C. C. 578; Iten Biscuit Co. v. A. T. & S. F. Ry. Co., 88 I. C. C. 653; Valley Camp Coal Co. v. B. & O. R. R. Co., 88 I. C. C. 682.

§8. Two Cars for One Ordered.

See Bills of Lading §5; Cars and Car Supply §8; Classification §21; Follow Lot Shipments.

(a) Complainant attacked commodity rate charged on a shipment of corrugated boxes, knocked down, from Nashville, Tenn., to Houston, Tex., as unjust and unreasonable. Shipment moved in March, 1923 over N. C. & St. L., to Memphis, Tenn., I. C., to New Orleans, and G. C. L., beyond, in two 36 foot cars, charged 69.5c based on minimum of 40,000 pounds on the first car and on the actual weight on the second car under the socalled two for one rule. Complainant had ordered a 50 foot car for this shipment, and the two 36 foot cars were furnished for the carriers convenience. The tariff provided that when a carrier was unable to furnish a car of the size ordered two smaller cars might be used in lieu thereof, the freight charges to be assessed on contents of both cars on basis of actual weight, subject to the minimum weight provided in rule 34 of the western classification for a car 50 foot in length. HELD, charges illegal to extent they would have exceeded charges based on actual weight, reparation awarded. Goodpasture v. N. C. & St. L. Ry., 93 I. C. C. 65.

(b) Proposed increased minimum weights on multiple-carload shipments of iron and steel from, to, and between points in the Southwest, found justified except as to trusses and lattice girders. Proposed schedules would cancel applicable minimum-weight provisions published in exceptions to western classifications, providing for minimum weight of 45,000 pounds for two cars and 60,000 pounds for three cars, and make applicable the classification basis published in rule 29 of consolidated classi-

fication No. 4, which provides for an increase of 24,000 pounds for each additional car, or a minimum of 60,000 and 84,000 pounds, for double and triple loads respectively, which is the basis approved by commission in Consolidated Classification Case, 54 I. C. C. 21, 22. Suspended schedules ordered canceled without prejudice to the filing of new schedules in conformity with views herein expressed. Minimum Weights on Iron and Steel Articles, 101 I. C. C. 3.

§11. Reparation.

See Reparation.

(a) Carload minima on lumber and rules in connection therewith from points in Oregon, Washington, Idaho, and Montana to transcontinental territory, prior to reductions ordered in Lumber Carload Minima, 56 I. C. C. 318, 68 I. C. C. 98, found not unreasonable or otherwise unlawful. Evidence offered by complainant found too meager to justify application of minima and rules prescribed, and proof of payment and bearing of charges found insufficient to support an award of reparation. Furthermore, cited case embraced a widespread readjustment of rates under which no reparation is ordinarily awarded on shipments moving prior thereto. Western Pine Mfrs. Asso. v. Director General, 102 I. C. C. 753.

MIXED CARLOADS

See Classification §7, §16⅝; Evidence §34¼; Express Companies §16; Minimums §6.

MOTOR TRUCK COMPETITION

See Differentials; Evidence §14 (6); Long and Short Hauls §8½.

MOTOR TRUCK SERVICE

See Allowances §8 (7) (a); Common Carriers §7½ (a) (d); Crimes §34 (a) (f).

(a) While motor truck or wagon transfer companies are not common carriers subject to the act, truck or wagon transfer services performed in connection with terminal services of a common carrier subject to the act, or with transfer of freight in transit at an intermediate point by such carriers, are subject to the jurisdiction of the Commission. Such service is a part of a transportation service by a carrier over which the Commission has jurisdiction. The term terminal service may also include accessorial services in the nature of the collection and delivery of freight commonly referred to as store delivery. There is nothing in the act to prevent the establishment of such service or the publication of charges in connection therewith by carriers subject to the act. The Commission has no jurisdiction over the line haul rates of motor truck companies operated as an extension of the lines of rail or water carriers. Charges to the public for the truck service under jurisdiction of the Commission must be published in tariffs the same as charges for any other service granted by the carrier as part of its transportation service, and if such drayage or transfer charge is absorbed the tariff must show the conditions and amount of the charge absorbed. Contracts under which respondents employ truck or drayage companies to perform transportation services for them should also be filed with the Commission to prevent any suggestion of discrimination. The question of whether the employment by a common carrier of one concern as its exclusive agent to perform all such terminal services may result in unjust discrimination under the act against other trucking companies is a question outside the issue of this proceeding. Tariffs embracing motor truck or wagon transfer service, 91 I. C. C. 539, 547.

(ab) Upon investigation into and concerning legality of tariffs purporting to embrace or cover motor-truck or wagon transfer service in connection with transportation by rail or water; FOUND: That tariffs covering truck or wagon transfer service, when performed as a terminal service of a common carrier subject to the act, or in connection with transfer of freight in transit at intermediate points by such common carriers, are not unlawful; that tariffs covering truck services for movements commonly designated as line hauls, when operated as an extension of the line and as part of a through movement in connection with a carrier subject to the act, are not in accord with section 6 of the act and commission's tariff regulations. Motor-Truck or Wagon Transfer Service, 91 I. C. C. 539.

(b) Motor-truck or wagon transfer can be, and is, employed by owners of property transported under arrangements whereby such owners render a service

connected with transportation which carriers otherwise would be under obligation to perform. The act contemplates that carriers may make just and reasonable allowances to such owners for rendering the service and commission is given authority to determine what is a reasonable charge and allowance as maximum to be paid by carrier and to fix same by appropriate order. Commission has required that such charges or allowances be duly published in carriers' tariffs and be made available to all owners of property transported furnishing like instrumentalities or performing like services. Motor-Truck or wagon Transfer Service, 91 I. C. C. 539, 540.

(c) Commission has consistently found that motor-truck or wagon transfer companies are not common carriers subject to the act. Parmalee case, 12 I. C. C. 39. Motor Truck or Wagon Transfer Service, 91 I. C. C. 539, 546.

(d) Application of provisions of the act is limited to certain classes of common carriers expressly named and specified in section 1, none of which include motor truck. Motor Truck or Wagon Transfer Service, 91 I. C. C. 539, 546.

(e) Although language employed in section 1 of the act in connection with the term transportation would be broad enough if standing alone, to include every form of motor-truck or drayage service, its meaning must be determined by referring to definition of common carrier by "railroad," which names among other things "terminal facilities of every kind used or necessary in the transportation of the persons or property designated herein." Construed in this manner, provisions of the act, and consequently commission's jurisdiction, are applicable to service by motor-truck or drayage transfer only when they can be regarded as terminal facilities. Motor Truck or Wagon Transfer Service, 91 I. C. C. 539, 546.

(f) Words "such transportation" in paragraph (2) of section 1 of the act can only refer to transportation of passengers or property by common carriers described in paragraph (1), and effect of such second paragraph is to impose additional restrictions to application of provisions of the act over transportation by these carriers. Motor-Truck or Wagon Transfer Service, 91 I. C. C. 539, 546.

(g) Commission has no jurisdiction over line-haul rates of motor-truck companies operated as extensions of lines of rail or water carriers. Motor Truck or Wagon Transfer Service, 91 I. C. C. 539, 547.

(h) While motor-truck or wagon transfer companies are not common carriers subject to the act, truck or wagon transfer services performed in connection with terminal services of a common carrier subject to the act, or with transfer of freight in transit at an intermediate point by such common carriers, are subject to commission's jurisdiction. Such service is a part of a transportation service by a carrier over which commission has jurisdiction. Motor Truck or Wagon Transfer Service, 91 I. C. C. 539, 547.

(i) Charges to the public for motor-truck service under commission's jurisdiction must be published in tariffs same as charges for any other service granted by carriers as part of their transportation service, and if such drayage or transfer charges are absorbed tariff must show conditions and amount of charges absorbed. Contracts under which carriers employ truck or drayage companies to perform transportation service for them should also be filed with commission to prevent any suggestion of unjust discrimination. Motor-Truck or Wagon Transfer Service, 91 I. C. C. 539, 547.

(j) Hauls by motor truck from inland points to docks of a water carrier can not be said to be transportation over which commission has jurisdiction or a service that can be required of a common carrier. Trucking companies can not, under such conditions, be acting as agents for common carriers, and since they are not carriers subject to the act they are not proper parties to joint tariffs. Conf. Ruling 441. Motor-Truck or Wagon Transfer Service, 91 I. C. C. 539, 548.

(k) Motor-truck lines may not be shown as participating carriers in tariffs filed with commission. Motor-truck or Wagon Transfer Service, 91 I. C. C. 539, 549.

(l) The law does not prohibit either a rail or water carrier subject to the act from interchanging business with motor trucks and entering into proper arrangements to acquaint shipping public with total charges for full movement. But such arrangements are not required by law, and the fact that they may be entered into does not extend terms of the

act to include motor-truck service. Motor-Truck or Wagon Transfer Service, 91 I. C. C. 539, 548, 549.

(m) In interest of simplicity of tariffs, it has been commission's practice to discourage publication in tariffs of matter other than that necessary to comply with the act and the commission's regulations. However, in view of circumstances of instant case surrounding motor-truck service in connection with water and rail transportation, permission granted carriers to include in their tariffs charges of motor trucks for service from inland points of origin, such charges to be published separately from charges subject to the act; also to include combined charges for the two services from such inland points to ultimate destinations, motor-truck charges and combined charges to be clearly shown as being published for information only. Motor-Truck or Wagon Transfer Service, 91 I. C. C. 539, 549.

NARROW GAUGE LINES

ALL CITATIONS

Utah Gilsonite Co. v. A. T. & S. F. Ry. Co., 85 I. C. C. 557.

NAVIGABLE WATERS

See Car Ferry; Merchant Marine Act.

(a) It is immaterial to the power of Congress to regulate navigable waters whether they are wholly within the boundaries of one state or lie between or extend into two states. City of Newark v. Central R. Co. of New Jersey, 297 Fed. 77.

(b) Where Congress, pursuant to Act March 23, 1906 (Comp. St. §§ 9961-9968), authorized the construction of a railroad bridge over navigable waters within a state, though the state had refused its consent, it acted in the exercise of a power which is plenary, supreme, and exclusive, and which may not be interfered with by the state. City of Newark v. Central R. Co. of New Jersey, 297 Fed. 77.

(c) A state has plenary power to authorize the construction of a bridge over navigable waters within its borders until the dominant power given to Congress by the Constitution is exercised by appropriate legislation, but, when the power of the state and federal governments come in conflict the latter must control and the former yield. City of Newark v. Central R. Co. of New Jersey 297 Fed. 77.

(d) The constitutional power of Congress to regulate interstate and foreign commerce extends to the regulation of such commerce on both land and water, to the control of the navigable waters of the country and the erection of piers, bridges, and all other instrumentalities of commerce which in the judgment of Congress may be necessary or expedient for the exercise of such power. City of Newark v. Central Ry. Co. of New Jersey, 297 Fed. 77.

(e) Act March 2, 1827, granting land to Illinois in aid of canal to unite waters of Illinois river with those of Lake Michigan, did not vest in such state irrevocable discretion with regard to amount of water to be withdrawn. Sanitary Dist. of Chicago v. United States, 45 Sup. Ct. 176.

(f) Under Act March 3, 1899, §10 (Comp. St. §9910), prohibiting charge in condition or capacity of navigable water of United States, unless work has been recommended by Chief of Engineers and authorized by Secretary of War, and section 12 (Comp. St. §9917), making violation of misdemeanor, water in excess of amount authorized by Secretary of War, cannot be withdrawn from Lake Michigan. Sanitary Dist. of Chicago v. United States, 45 Sup. Ct. 176.

(g) The United States, in the exercise of its sovereign power to regulate commerce and to control navigable waters within its jurisdiction, and to carry out obligations under treaty with foreign nation providing against uses of water of Great Lakes affecting natural level or flow of boundary waters, may enjoin withdrawal of water from Lake Michigan in excess of that authorized by the Secretary of War under Act March 3, 1899, §10 (Comp. St. §9910), where effect of such diversion is to lower level of lake, though water is being used for removal of sewage of city of Chicago, under Act Ill. May 29, 1889 (Laws 1889, p. 125). Sanitary Dist. of Chicago v. United States, 45 Sup. Ct. 176.

(h) The power of the United States to remove obstructions to interstate and foreign commerce is superior to that of the states to provide for the welfare of necessities of their inhabitants, and in matters where states may act the acts

of Congress override what they have done. Sanitary Dist. of Chicago v. United States 45 Sup. Ct. 176.

(i) United States HELD not estopped to sue for injunction restraining withdrawal of water from Lake Michigan in excess of that authorized by the Secretary of War under Act March 3, 1899, §10 (Comp. St. §9910), because level of lake is being lowered thereby, by Act March 30, 1822, or by Act March 2, 1827, or by issuance by Secretary of War of permits authorized withdrawal of amount greater than that permitted at time suit is brought, and subsequently revoked. Sanitary Dist. of Chicago v. United States 45 Sup. Ct. 176.

(j) Permits to withdraw water from navigable waters, issued by Secretary of War under Act March 3, 1899, §10 (Comp. St. §9910), are in nature of revocable licenses. Sanitary Dist. of Chicago v. United States 45 Sup. Ct. 176.

(k) City of Chicago which had constructed canal for diversion of water from Lake Michigan into Mississippi river, for removal of sewage, and states bordering on Mississippi river, were not entitled to a hearing before the Secretary of War prior to determination as to amount which may be withdrawn under Act March 3, 1899, §10 (Comp. St. §9910) city having constructed canal and accompanying works subject to paramount power of Congress to control navigable waters, and such states having no right to increase in artifical flow Lake Michigan into river. Sanitary Dist. of Chicago v. United States 45 Sup. Ct. 176.

NOTICE

See Demurrage §4 (b), §16; Evidence §39; Facilities and Privileges §11; Loss and Damage §11; Procedure Before Commission §3; Reconsignment §5½; Tariffs §3 (3); Transportation §6, §6½.

ALL CITATIONS

Republic Coal Co. v. C. St. P. M. & O. Ry. Co., 85 I. C. C. 331.

ORDER NOTIFY SHIPMENTS

See Bills of Lading V; Demurrage §7, §13 (d).

OVERCHARGES

See Claims I, §1 (tt), V; Express Companies §27; Freight Charges; Procedure Before Commission §2 (q); Reparation §20½; Tariffs §14; Through Routes and Joint Rates.

(a) Rates on "Feed, prepared stock, poultry or pigeon, not medicated or condimental," found applicable on condensed buttermilk. Article shipped was intended for and used as animal food which appears to be its only use. The process of production does not involve medication or addition of condiments and thus comes clearly within description of prepared stock feed, "not medicated or condimental." Moreover, if carrier desired to except it from other prepared stock foods it could have done so by enumerating the commodities intended to be covered by the item, or by specific exclusion. Specific class B rating on condensed buttermilk found inapplicable and refund of overcharges directed. Consolidated Products Co. v. C., B. & Q. R. R. Co., 89 I. C. C. 103.

(b) Contention by director general that an assignment of a claim in respect of overcharges to be valid must either have been pleaded or introduced in evidence before the period of limitation provided by section 16 of the act had expired, found without merit, assignment in question having been so executed and pleaded within statutory period provided by section 206 (c) of the transportation act, 1920, as amended. McCloud River Lumber Co. v. Director General, as Agent, 89 I. C. C. 645, 649.

(c) Except as provided in the act, in so far as compensation is concerned, the parties powers to contract are limited by the tariffs and an amount collected and retained in excess of the amount named therein for the service performed in an overcharge above the legal tariff rate. Carpenter v. Director General, 98 I. C. C. 476, 478.

(d) An existing overcharge embraces only instances where a rate in excess of the legally published rate has been demanded, received and retained. Carpenter v. Director General, 98 I. C. C. 476, 478.

(e) Mere condition in carrier's tariffs that rates charged should apply only on shipments for manufacture, where finished product was to be shipped out over defendant's railroad, claimed to be authorized by Comp. Laws 1915, §8119, as to transit rates, HELD not to render

shipments interstate and deprive state courts of jurisdiction of action for overcharges, under Comp. Laws 1915, §8117; final destination of shipments being unknown. Gorham Bros. Co. v. Ann Arbor R. Co. (Mich., 1924) 200 N. W. 287.

(f) Carrier, making overcharge without malicious purpose or intentional misconduct, HELD not liable to shipper, who paid such overcharge without protest or complaint at the time for statutory penalty of double damages. Gorham Bros. Co. v. Ann Arbor R. Co. (Mich., 1924) 200 N. W. 287.

(g) Action to recover overcharge on shipments of logs and bolts between points within state HELD not to involve administrative question, which required submission to Railroad Commission before resort to courts. Gorham Bros. Co. v. Ann Arbor R. Co. (Mich., 1924) 200 N. W. 287.

(h) Overcharge claim on shipment moving during Federal control filed informally more than one year after termination thereof. Formal complaint subsequently filed brought in additional issue of misrouting. HELD. Overcharge claim, since filed within two years and six months after Federal control terminated, found not barred, but misrouting claim is barred because not filed within one year after that period had terminated. Empire Refineries v. Director General, 92 I. C. C. 59, 60.

(i) Shipments moved during Federal control on combination rates. Certain carriers carried in their tariffs the combination rule, which provided a method for constructing through rates made on combination. Other carriers participating in the movement neither participated in tariffs carrying the rule, nor carried a similar rule in their tariffs. HELD: Following Sligo case, 62 I. C. C. 643, 73 I. C. C. 551, rates charged on basis contrary to the rule found inapplicable. Reparation awarded. Bird v. Director General, 92 I. C. C. 494.

(j) No joint rates were in effect and shipments moved under a two-factor combination. Tariff of one participating carrier carried the combination rule which provided a method for constructing through rates made on combination, but did not specifically provide for its use in connection with first component of the through rate. Carrier publishing other factor made no reference to the rule not carried a similar one in its tariff. HELD: Following Sligo case, 62 I. C. C. 643 and 73 I. C. C. 551, rates constructed in conformity with the rule were legally applicable. Shipment found overcharged and reparation awarded. Minneapolis Steel & Machinery Co. v. Director General, 92 I. C. C. 603.

(k) Shipments moved under combination rates, both factors of which were increased under General Order No. 28 of director general. Tariffs publishing one factor carried the combination rule which provided for application of but a single increase to through rates made on combination. Tariffs of carriers publishing other factors contained no similar rule. HELD: Following Sligo case, 62 I. C. C. 643, 73 I. C. C. 551, where one tariff used in making combination rates on through shipments contains the combination rule there is a holding out to shipper of the rate so constructed which should be protected. Shipments found overcharged and reparation awarded. Romann & Bush Pig Iron & Coke Co. v. Director General, 92 I. C. C. 605; Nat. Supply Co. v. Director General, 92 I. C. C. 610.

(l) Shipment moved from Cushing, Okla., to Lawn Switch, a point within the Omaha, Nebr., switching limits. Carrier assessed a charge for movement from Omaha to Lawn Switch, in addition to charges to Omaha. HELD: Shipment found overcharged, as applicable tariff of line-haul carrier provided for absorption of connecting lines' switching charges at Omaha. Reparation awarded. Douglas County, Nebraska v. A., T. & S. F., 92 I. C. C. 717.

(m) Shipments of fuel oil, in tank cars, from certain Texas subports to Sulphur Mine, La., found to have been overcharged in that the applicable rate on crude and fuel oil from Texas subports, including the points of origin, to Sulphur Mine, was reduced during the period of movement. Refund directed. Union Sulphur Co. v. T. & N. O. R. R. Co. 98 I. C. C. 76.

(n) Rate assessed on two carloads of sugar at Sioux City, Iowa, during Federal control, found inapplicable and shipments found overcharged to extent charges collected exceeded those which would have accrued at basis herein found reasonable. Reparation awarded. Seavey & Flarsheim Co. v. Director General 98 I. C. C. 294.

(o) On further hearing, shipments of cotton, in bales, from Hackett, Ark., to Tacoma, Wash., for export, found to have been overcharged. Reparation awarded. Japan Cotton Trading Co. of Texas v. Director General, 98 I. C. C. 409.

(p) Shipments of compressed cotton from Brownsville, Tenn., to Seattle and Tacoma, Wash., for export, found to have been overcharged to extent that rate charged exceeded that constructed on combination bases in effect on June 24, 1918, plus the authorized increase on this commodity. Tariff naming the combination from Humboldt, Tenn., via which shipments moved, carried the rule providing for application of but a single increase to through rates made on combination, while tariff naming the factor from Brownsville to Humboldt contained no similar rule or reference to a tariff which did. See 73 I. C. C. 551. Reparation awarded. Southern Products Co. v. Director General, 98 I. C. C. 462.

(q) The fact that the measure of the overcharge set forth in the formal complaint is different from that in the informal complaint is immaterial, for the commission is not bound by the rate which a complainant before it may seek. It is the commission's duty to determine the applicable rate and the amount collected in excess of that rate. Southern Products Co. v. Director General, 98 I. C. C. 462, 463, 464.

(r) Refusal and failure of Director General of Railroads, as agent, to make refund on unused portion of a mileage book purchased during Federal control found to result in an overcharge above the legally published charges. Reparation awarded. Carpenter v. Director General, 98 I. C. C. 476.

(s) Except as provided in the act, in so far as compensation is concerned the parties' powers to contract are limited by the tariffs, and an amount collected and retained in excess of the amount named therein for the service performed is an overcharge above the legal tariff rate. Carpenter v. Director General, 98 I. C. C. 476, 479.

(t) Shipments of returned empty fruit boxes from Los Angeles, Calif., to various intrastate destinations, during Federal control, found overcharged to extent that charges assessed exceeded the lowest charges under tariff rules providing that the charge for a car fully loaded must not exceed the charge for same lot of freight if taken as a l. c. l. shipment subject to a minimum charge on each car. Reparation awarded. Klein-Simpson Fruit Co. v. Director General, 98 I. C. C. 547.

(u) Shipments of gasoline and other petroleum products moved from Sugar Creek, Mo., and El Segundo, Calif., to Blythe, Calif., during Federal control, the originating carrier having been under such control but the delivering carrier was not. The tariff of originating carrier provided that the combination rates applicable would be subject to one increase at 4.5 cents authorized by director general, but the tariff of delivering carrier did not carry a similar rule nor did the tariffs of that carrier and of the originating carrier carry reference to each other. FOUND, following 74 I. C. C. 188, shipments overcharged to extent such charges exceeded those accruing at rates constructed on basis held out by originating carrier. Reparation awarded. Standard Oil Co. (Calif) v. Director General 98 I. C. C. 587.

(v) Shipment of cedar posts from Noxon, Mont., to Rushville, Nebr., found overcharged, due to inadequate allowance having been made for snow on the load in weighing. Noll Lumber Co. v. C. & N. W. Ry. Co., 98 I. C. C. 589.

(w) Shipments of gasoline moving from Tulsa, Okla., to Rochester, Ind., found to have been overcharged to extent that rate charged was in excess of the combination rate applicable under rule 5 (b) of Tariff Circular 18-A. Cosden & Co. v. L. E. & W. R. R. Co. 98 I. C. C. 597.

(x) Informal claim alleged overcharges on imported shipments of potato flour, billed as potato starch in error, moving during Federal control from Seattle, Wash., to New York, N. Y., the rates applicable on potato starch being collected. Formal complaint filed more than one year after the termination of Federal control alleging the rate charged was unreasonable, found barred by statute since the issue in the informal complaint was solely one of legality. Lasker & Bernstein v. Director General 98 I. C. C. 624.

(xa) Shipment of pig iron from Thomas, Ala., to Iola, Kans., reconsigned to Okmulgee, Okla., found overcharged.

While route over which shipment moved is circuitous, the transporting carriers are shown as parties to tariff carrying the lower rate without restriction as to routing. Refund of overcharge directed. United Iron Works v. M. P., 102 I. C. C. 107.

(y) Complainant attacked sixth class rates charged on one car of slate slabs from East Bangor, Pa., to Harrison, Mont., on Oct. 27, 1922 as unreasonable. Shipment moved as routed by shipper over D. L. & W., N. Y. C. & St. L., Rock Island and N. P., charged $1.58 composed of sixth class 63c to Minnesota Transfer, Minn., and class E rate of 95c beyond. Contemporaneously there was a rate sixth class of 45.5c to Chicago and 68.5c beyond, via D. L. & W., and N. Y. C. & St. L., Rock Island and N. P. on natural stone. The slate was sand rubbed, but not carved, lettered, polished or traced. HELD, rate of $1.14 was applicable overcharge to be refunded, complaint dismissed. Crane Co. v. D. L. & W. Ry. 102 I. C. C. 119.

(z) Complainant attacked commodity rates charged on various cars of printing paper, between Jan. 30, 1922 and Feb. 24, 1923 from Lawrence, Mass., to Long Island City, N. Y., as illegal, and fifth class rates of 31c charged from Lawrence to Long Island City between August 14, 1923 and Jan. 15, 1924 as unjust and unreasonable to extent they exceed sixth class rate of 25.5c. During the period shipments moved there were no joint through rates in effect. HELD, charges illegal between Jan. 30, 1922 and Feb. 24, 1923 illegal to extent they exceeded sixth class to Long Island City Float Bridges, and Fresh Pond Junction and commodity rates beyond. Between August 14, 1923 and for future unreasonable to extent they exceeded sixth class contemporaneously in effect, reparation awarded. Merrimac Paper Co. v. B. & M. R. R. 102 I. C. C. 133.

(za) Formal complaint alleging overcharges on shipments moving during Federal control found not barred, the informal complaint having been filed with the commission within the statutory period of two years and six months after termination of Federal control. San Antonio Paper Co. v. Director General, 102 I. C. C. 243.

(zb) Defendant contends that neither informal nor formal complaint alleged an overcharge because in neither is it specifically stated that rates charged were in violation of section 6. Both complaints, however, alleged that charges collected were neither applicable nor lawful, and set forth rates complainant contends were applicable. HELD: This is sufficient allegation of an overcharge. San Antonio Paper Co. v. Director General, 102 I. C. C. 243, 244.

(aa) Complainant alleged overcharge on two cars of anthracite coal from Providence, Pa., to Matawan, N. J., thence reconsigned to Asbury Park, N. J. Shipments were made in February 1923, moved over D. & H., to Wilkesbarre, Pa., thence Pennsylvania to South Amboy, N. J., thence N. Y. & L. B. to Matawan, were there reconsigned and moved out over the later line to final destination. Charged joint rate of $3.15 per ton plus 19c per long ton additional charge, $6.30 per car for reconsignment, and $2 for demurrage. Reconsignment and demurrage charges are not attacked. It is the additional charge of 19c which is in dispute. The Pennsylvania connects with the N. Y. & L. B., at South Amboy, and at Sea Girt, N. J. The tariff naming the joint rate of $3.15 contains no routing restriction, but the customary route beyond Wilkesbarre is via South Amboy to Branchport, N. J., and points on the N. & Y. L. B., north thereof, including Matawan, and via Sea Girt to points on the N. Y. & L. B., south of Branchport, including Asbury Park. The distance from Wilkesbarre to Asbury Park is 311.4 miles via South Amboy and 305.1 via Sea Girt. HELD, rate illegal to extent it exceeded $3.15 per long ton reparation awarded. Hartwell & Lester v. D. & H. Co. 102 I. C. C. 703.

(bb) Complainant attacked combination rates charged on 9 cars of cement from Chapman and West Coplay, Pa., and Fordwick, Va., to Daytona, Cocoanut Grove, Key West and St. Augustine, Fla., between July 31, 1918 and Feb. 6, 1919 as unreasonable and unduly prejudicial. Charged combination on Jacksonville, Fla. These rates aggregated 4c higher than rates in effect on June 24, 1918; the increase of 2c provided in G O 28 having been applied to each factor of the combination. Complainant contended that the shipments were overcharged to extent of 2c per 100 pounds as Washburns tariff I. C. C. 267 provided that but one increase should be made

in the combination of rates in effect on June 24, 1918. HELD, rate charged inapplicable reparation awarded based on 2c increase to through rates. Lehigh Portland Cement Co. v. Director General 102 I. C. C. 617.

(cc) Complainant attacked commodity rates charged on matches carloads from Chico, Calif., to Pacific northwest between Jan. 1, 1918 and Jan. 23, 1922 as in violation of sections 1, 4 and 6 of the act. Chico is on the S. P. 186 miles north of San Francisco. Portland proper is on the west bank of the Willamette river. East Portland is on the opposite bank of that river and is served by the S. P., and O. W. R. R. & N. Albina and St. Johns, Ore., also on the east bank are about 2 and 6 miles north of East Portland, and are served by the O. W. These points are within the corporate and switching limits of Portland. Complainants case is based principally upon the use of a proportional rate of 29.5c from Chico to Portland or East Portland on shipments destined to points specifically named in Gomphs tariffs, plus a switching charge of 37.5c per ton, applicable between Portland and East Portland and St. Johns over the O. W. This proportional rate of 29.5c was restricted at time of movement to shipments destined to points other than the destinations here involved. The rate did not apply to Portland except on shipments destined to St. Johns and certain other points specified in the proportional tariff. The combinations sought were inapplicable on complainants shipments. Overcharges should be adjusted. HELD, rates attacked not unreasonable or otherwise unlawful, complaint dismissed. Diamond Match Co. v. Director General, 104 I. C. C. 147.

(dd) The shipper is entitled to repayment from the carrier that has collected the freight charges as soon as it appears than an overcharge has in fact been made. When the refund has been made it is then that carriers duty to see which of the carriers that participated in the movement is responsible and charge it accordingly. When the overcharge is discovered it should immediately be repaid by the carrier that collected the charges, and this should be done whether a demand has been presented by the shipper or not. Yellow Pine Co., of Phila. v. Director General 104 I. C. C. 371, 372.

(ee) A carrier that has collected an overcharge can not be excused from repayment of same because it has paid it to another carrier. Bowers Co. v. Director General 107 I. C. C. 305, 307.

(ff) The shipper is entitled to repayment from the carrier that has collected the freight charges as soon as it appears that an overcharge has in fact been made. When the refund has been made it is then that carriers duty to see which of the carriers that participated in the movement is responsible and charge it accordingly. When the overcharge has been discovered it should immediately be repaid by the carrier that collected the charges, and this should be done whether a demand has been presented by the shipper or not. Bowers Co. v. Director General 107 I. C. C. 305, 307.

(gg) Complainant attacked as illegal rates charged on 3 cars of brick shipped between Feb. 6 and May 22 1924 from Springfield, Ill., to St. Petersburg, Fla. Southern 133572 charged 45.7c, routed L. & N., S. A. L., at Montgomery, Ala., S. A. L, delivery, two other cars charged 42.5c. Complainant refers to a local rate of $2 per ton applicable from Springfield to Evansville, Ind. and local rate of 22.5c per 100 pounds from Evansville to Jacksonville, Fla., and 9.5c beyond. The tariff naming the latter rate provides that carload rates on brick are subject to rules for constructing combination rates, as provided in Kellys U. S. 1. HELD, applicable rate 38c, reparation awarded. Poston Brick Co. v. Ill. Traction 107 I. C. C. 507.

(hh) An overcharge, if proved, is a tort for which all participating carriers are jointly and severally liable. Poston Brick Co. v. Ill. Traction, 107 I. C. C. 507.

(ii) Complainant alleged it was charged more than the applicable tariff rate on one car of hickory lumber from Dicks Landing, Ky., to Thompson, Conn. on March 15, 1923. Rate charged 77.5c. The rate which complainant contended should have been applied was 61c constructed 15c to Burnside, 1c for transfer there from the boat to the rail line and 45c beyond Burnside. The shipment consisted of pieces of hickory 1 inch thick, 2 inches wide and from 40 to 48 inches long. Complainant stated

that they were billed as "hickory lumber" but that defendant changed the billing in transit to read "hickory golf stick material." There was no specific rate on golf stick material and defendant assessed rated on vehicle material as the rate on the most nearly analogous article. The description "lumber" would seem to cover the shipment. HELD, shipment overcharged to extent it exceeded rate on lumber, reparation awarded. Bush Bros. & Co. v. Cumberland Transportation Co., 107 I. C. C. 571.

(jj) Complainant attacked as illegal rates of 66 and 65.5c charged on two cars of lumber shipped Dec. 16 and 17, 1921 from Hillsboro, Ga., consigned to itself at Potomac Yard, Va., and diverted in transit to West End, Pittsburgh, Pa., and unjust and unreasonable to extent they exceeded 49.5c. Hillsboro is a local station on the C. of Ga., 33 miles north of Macon, Ga., on the Macon & Athens division. The shipments were originally billed by complainant to itself at Potomac yard. Three days after the first shipment was made, or Dec. 19, 1921, reconsignment orders were filed with the Southern at Lynchburg, Va. after the cars were on the rails of that carrier between Augusta, Ga.. and Potomac Yard, to divert to Dievold Lumber Co., West End, Pittsburgh, Pa., for West Side Belt Ry. delivery. The second car was reconsigned to Potomac yard, to the same consignee and designation as the first. Both cars, however, actually moved via Potomac Yard, thence B. & O., to Bruceton, Pa., P. & W. Va., West Side Ry. beyond. The tariffs indicate that there was no joint rate in effect at the dates of shipments between these points over the route of movement. Under the circumstances it is manifest from the tariffs that the lowest available combination over that route was applicable. Defendants acknowledge that the combination of intermediate rates made on Athens, Ga., of 8.1c to Athens, 48c beyond. By the application of Jones I. C. C. U. S. L for rules constructing combination rates, a through combination rate of 54.5c is made. HELD, rates charged inapplicable, reparation awarded on basis of 54.5c. Traffic Bureau, Lynchburg, Va. v. B. & O. R. R. 107 I. C. C. 573.

(kk) Where complainants alleged both in the informal and the original formal complaints that they have been overcharged or damaged because of the assessment of excessive charges the commission considers these statements sufficient to raise an issue as to the reasonableness of the charges assessed, but it should not be understood as condoning undue laxity in pleadings before it. The extent to which these informal and original formal complaints specifically bring in issue alleged violations of sections 4 and 6 need not be determined inasmuch as the commission has often awarded reparation to the basis of the lower aggregate of the intermediates or for direct overcharges under allegations of unreasonableness. The mere reference in the complaints to the alleged collection of charges in excess of the aggregate of intermediates, or collection of overcharges, does not confine the issue to alleged violations of sections 4 and 6, respectively, nor does such reference destroy the issue raised under section 1. Nash Spokane Co. v. Director General, 100 I. C. C. 223, 225.

(ll) Shipments of blackstrap molasses from certain points in Louisiana to Fort Calhoun, Nebr., found not to have been overcharged. On some of the shipments involved no value was declared, as required, while on those on which this requirement was met they were not of a value entitling them to a lower rate. Failure of the tariff to make reference to fact that the released rates applicable were approved by the commission, as required by law, was not vital. Crown Overall Mfg. Co. v. Director General, 100 I. C. C. 471.

(mm) Shipments of blackstrap molasses from Mobile, Ala., to Fort Calhoun, Nebr., found overcharged to extent that charges collected exceeded those which would have accrued at lower declared-value rate. Reparation awarded. Crown Overall Mfg. Co. v. Director General, 100 I. C. C. 471, 482.

(nn) Shipments of scrap iron, originally billed as such but assessed the iron-bar rate due to change in bills of lading made by inspector of the Southern Weighing & Inspection Bureau, found overcharged. Burden of proof to justify change in billing rested upon defendants and vague evidence of inspector as to condition of material found insufficient to justify change in billing. Refund directed. Knight Iron & Metal Co. v. G. M. & N., 101 I. C. C. 623.

(oo) Question of whether, as alleged, overcharges were collected by a Canadian carrier in Canada on shipments of chestnut lumber from Camden-on-Gauley, W. Va., after they were reconsigned from Montreal to Ste. Therese, Canada, found not to be within jurisdiction of commission. Under section 1 (2) of the act, commission's jurisdiction over transportation applies only to such transportation as takes place within the United States. Natl.-Amer. Wholesale Lbr. Asso. v. B. & O., 101 I. C. C. 741, 742, 743.

(pp) The Commission construes the decision of the Supreme Court on June 8, 1925 in Wm. Danzer & Co., considered in connection with 261 U. S. 133 as prohibiting common carriers subject to the act from paying straight overcharge claims which were barred by statute at or prior to the amendment June 7, 1924, to paragraph 3 of section 16 of the act, and as prohibiting the Commission from awarding reparation on any claim which was barred by statute at or prior to the date of that amendment. Calumet Baking Powder Co. v. A. & N. R. R. R. Co., 109 I. C. C. 249.

(qq) Complainant asked refund of alleged overcharge on a less carload of four barrels of old files shipped March 11, 1919 from Macon, Ga., to Anderson, Ind. The files, property of the C. of Ga., were shipped to complainant for resharpening. The bill of lading contained notation as follows: free over Co.'s line prepay beyond. Shipment moved as company material free over C. of Ga., to Atlanta, Ga., thence L. & N., to Cincinnati, O., and Pan Handle. Amount of prepayment was $6.43 less than the charges at the applicable combination rate but was later collected. If the director general is in possession of $6.43 to which complainant is rightfully entitled it would appear that that right did not arise from the exaction from the complainant of a rate in excess of that applicable, although it may have arisen from the failure of the C. of Ga., to comply with the terms of an implied contract to fully prepay the charges. HELD, charges collected applicable, complaint dismissed. Continental File Corp. v. Director General, 109 I. C. C. 403.

(rr) Common carriers are prohibited from paying straight overcharge claims which were barred by statute at or prior to the amendment of June 7, 1924 to paragraph 3 of section 16 of the act and prohibits the Commission from awarding reparation on any claim which was barred by statute at or prior to the date of that amendment. Moore Lawless Grain Co. v. M. P. R. R., 109 I. C. C. 588.

(ss) Complainant attacked charges collected on one car of dried lima beans shipped Aug. 2, 1918 from Santa Monica, Calif., to Tampa, Fla., as illegal. Claim was originally presented on July 24, 1922 in the form of an overcharge claim. The formal complaint contains additional allegations, predicated on the ground of misrouting. Aside from the question of overcharges the claim is barred from consideration on account of not having been filed with the Commission within one year after the termination of federal control. As there was no through rate shipper was entitled to the lowest combination. HELD, Shipment overcharged, reparation awarded. Harman & Hulsey v. Director General, 112 I. C. C. 275.

ALL OTHER CITATIONS

Mid-Continent Equipment & Machinery Co. v. M. Ry. Co., 88 I. C. C. 217; Crown-Cork Seal Co. v. Director General, as Agent, 88 I. C. C. 305; Japan Cotton Trading Co. v. Director General, as Agent, 88 I. C. C. 407; Swift & Co. v. T. & P. Ry. Co., 88 I. C. C. 610; General Electric Co. v. Director General, as Agent, 88 I. C. C. 643.

PACKAGE FREIGHT

See Facilities and Privileges, §10 (r).

PANAMA CANAL ACT

See Evidence §42; Facilities and Privileges §16; Water Carriers; Water Competition.

(a) Since return of ships to the Panama Canal route subsequent to the World War, traffic which is susceptible of water carriage has been moving from Atlantic seaboard to the Pacific coast over this route in large volume, and low rates offered have attracted traffic from points several hundred miles back in the interior. Reduced Commodity Rates to Pacific Coast, 89 I. C. C., 512, 517.

(b) The several applications before the Commission under section 5 of the act as amended by section 11 of the Panama Canal act, were made at various times between Feb. 11, 1914 and June 25, 1914 by railroad companies engaged in interstate commerce and subject to the acts mentioned. Of the applicants all except the Jersey Central and D. L. & W., aver that the operation of the marine equipment is not in violation of the act, and they seek an order from the Commission as to whether the continued operation of the marine equipment specified after July 1, 1914 would be in violation of that section. Each of the applicants is a heavy carrier of passengers and of property and reaches with its rails the shores of New York harbor. It seems obvious from the record that the facilities embraced in the application are embraced in the term railroad, as used in the act, and therefore are not any common carrier for water operated through the Panama canal or elsewhere with which said railroad does or may compete for traffic. The Commission has held that before its jurisdiction may be invoked, some probable and potential competition with some vessel carrying freight or passengers upon the water route must appear. No such competition appears here with respect to the services mentioned. The applicants compete between themselves, but their competition is in respect to rail service, as to which the water transportation is an incident, recognized by the act as embraced in the term transportation by railroad as applied to carriers by railroad and by instrumentalities in precise terms embraced in the term railroad. As the applicants have not brought the service within the terms of the act, the jurisdiction of the Commission to issue the order sought is lacking, and the applications must be denied. A different situation exists with respect to the service of the Jersey Central between Manhattan Island and Atlantic Highlands, N. J. The Jersey Central by means of rail lines which extend from Jersey City, N. J., through Elizabethport and Matawan, reaches various points located along the Atlantic Ocean south of Sandy Hook, to Point Pleasant, N. J. From points in the city of New York it is necessary to make use of the ferry to reach Jersey City as a part of the rail journey to the group of beach resorts mentioned. The railroad also operates two passenger steamers from piers on lower Manhattan Island through New York Bay, the Narrows, the Lower Bay and Sandy Hook Bay, to Atlantic Highlands Pier just west of Sandy Hook. The Sandy Hook water route is used as an alternative route for the ferry rail line. Tickets issued by the railroad between New York City and Atlantic beach points may be used interchangeably over the rail route through Jersey City and the ferry to Manhattan Island, or by rail to Atlantic Highlands and thence by way of the Sandy Hook route, or vice versa. This situation brings the Sandy Hook route within the provisions of section 5, 33 I. C. C. 700, 703. The Sandy Hook route of the Jersey Central finds a competitor in a privately owned excursion boat, which carries passengers between New York and Atlantic Highlands, and lands them at a pier adjacent to that of the Central. Passengers by the Mandalay do not commonly use the rail service of the Central; they are principally excursionists or else passengers destined to inland points, who use automobile or bus service from the Highlands pier. The rate of fare on the Mandalay is much cheaper than on the Central. The record indicates that the combination of the Sandy Hook water route and the rail lines from Atlantic Highlands pier to the New Jersey beaches is generally more popular than the ferry and rail route to the same points. No complaints have ever been lodged with the Commission which indicated any possible detriment to the public interest or the convenience of commerce and the people by reason of the continued operation of the Sandy Hook route. It is evident that the operation of the route has neither reduced nor prevented competition, for, as indicated competition has come about during the pendency of the instant application. HELD, the vessels carrying freight or passengers upon the Sandy Hook route by water, owned and operated by the Jersey Central, are being operated in the interest of the public, and that the service they afford is of advantage to the convenience of commerce and the people, and that an extension of the time during which such service by water may continue will neither exclude, prevent, nor reduce competition on the route by water under consideration. New York Harbor Facilities applications, 100 I. C. C. 383.

(c) Southern Pacific and Albion Lumber Co., applied for authority for installation of service by vessels for the transportation of lumber by the Albion Lumber Co., from Albion, Calif., to ports

in California south of San Francisco, Calif., and the west coast of Mexico, in connection with the lumber business of the lumber company. S. P., operates a system of railways with certain lines in California which extend from San Francisco to the ports of Santa Cruz, Port San Luis, Santa Barbara, Ventura and San Pedro, and other ports south of San Francisco. The S. P., is the owner of all the capital stock of the lumber company. There is no railroad connection between Albion and the S. P., or any other main line or trunk line railway. The lumber company operates a railway extending 26 miles from Albion to Christine, Calif., under a long term lease from the Northwestern Pacific. This line is not connected with any main or trunk line. In 33 I. C. C. 476 the Commission found that so long as the rail line between Albion and Christine was not extended so as to connect with a main line that the S. P., did not and could not compete with the Pasadena operating between Albion and San Francisco, and that the continued operation of that steamer by the lumber company between those points would not be in violation of section 5 of the act, as amended by the Panama Canal act. Lumber producers generally regard the transportation of lumber by water as more satisfactory than by rail, as there is more certainty of the time of arrival and better control of shipment. There is also less damage, less shortage, and the lumber is more rapidly and economically handled from yard to ship than to a car. The large quantities of lumber which can be moved at one time by a ship reduces the expense of handling. From the evidence it appears that the S. P., handles practically none of the lumber originating at Albion to ports south of San Francisco, and that if the lumber company did not ship its product by water from Albion to such ports the business would be diverted to competitors who operate their own steamers. HELD, so long as the railway line between Albion and Christine is not extended to connect with a main line of railway that the S. P., does not and can not compete in the transportation of lumber with steamers operated between the ports and Albion and ports in California south of San Francisco and on the west coast of Mexico within the meaning of the act, and that the ownership and operation of steamers by the S. P., through the lumber company for the transportation of lumber from Albion to such ports is not and will not be in violation of section 5 of the act, as amended by the Panama Canal Act. Application of S. P. Co., and Albion Lumber Co. 102 I. C. C. 170.

(d) In 34 I. C. C. 174 the Commission found the operation by the Southern Pacific, petitioner, of its boat line on the Sacramento river and connecting waters was in the interest of the public and of advantage to the convenience and commerce of the people and that its continued operation by petitioner would neither exclude, prevent nor reduce competition on the route by water, and permitted petitioner to continue the operation of its boats from and to points on the Sacramento river to and from points on the west side of San Francisco Bay. Petitioner asks that it be allowed to extend the operation of its boats in freight service to and from all public docks, wharves, and piers situated within or abutting on the corporate limits of Alameda, Berkley, Oakland and Emeryville, Calif., all of which points are on the east side of San Francisco Bay. No one appeared in opposition to the extension of the service. HELD, petitioners application granted. S. P. Co., boat line on Sacramento river, 102 I. C. C. 658.

(e) Upon application of railroad companies operating certain marine equipment in and about New York Harbor in states of New Jersey and New York for permission under section 5 of the act, as amended, to continue operation of such equipment, FOUND: That applicants, with one exception have not brought the service within the terms of the act in that facilities involved are embraced in the term "railroad," as used in the act, and therefore are not "any common carrier by water operated through the Panama Canal or elsewhere with which said railroad does or may compete for traffic." Accordingly, commission is without authority to enter the order sought. Applications denied. New York Harbor Facilities Applications, 100 I. C. C. 383.

(f) Existing service by vessels of C. R. R. of N. J. upon Sandy Hook water route between piers on lower Manhattan Island and Atlantic Highlands Pier, N. J., found, among other things, to be of advantage to public convenience, and

an extension of time during which it may continue will neither exclude, prevent, nor reduce competition on the route by water under consideration. Extension ordered. New York Harbor Facilities Applications, 100 I. C. C. 383.

(g) Consolidation of railroad lines in the South probably accelerated elimination of water competition on navigable rivers. Prior to era of consolidation the drastic rate cutting of paralleling rail lines made it difficult for steamboats to operate though they were aided in some instances by noncompetitive railroads that acted as feeders. Absorption of these feeders into larger systems deprived the boats of even this support and they gradually disappeared from the scene. Southern Class Rate Investigation, 100 I. C. C. 513, 526.

(h) Upon application of S. P. Co., and Albion Lumber Co., for authority to install vessel service for the transportation of lumber from Albion, Calif., to ports in California south of San Francisco, and the west coast of Mexico, in connection with business of the lumber company, FOUND: That so long as the railway line between Albion and Christine is not extended to connect with a main line of railway, the S. P. Co. does not and can not compete with steamers operated between the aforesaid ports within meaning of the act, and that ownership and operation of steamers by the S. P. Co. through the lumber company is not and will not be in violation of section 5 of the interstate commerce act as amended by the Panama Canal act. Moreover, the S. P. handles practically none of the lumber originating at Albion to ports south of San Francisco, and if the lumber company did not ship its products by water from Albion to such ports the business would be diverted to competitors who operate their own steamers. Application of S. P. Co. and Albion Lbr. Co., 102 I. C. C. 170.

(i) In connection with granting of authority to S. P. Co. to extend operation of its boat line in freight service on Sacramento River and connecting waters to and from public docks at certain points on east side of San Francisco Bay, all rates, schedules, and regulations appliable to such transportation required to be filed with commission and posted as required by the act and commission's rules and regulations. S. P. Co. Boat Line on Sacramento River, 102 I. C. C. 658.

(j) Upon application of S. P. Co. and Central Pacific Ry. Co., under section 5 of the act, for authority to extend operation of its boat line on Sacramento River and connecting waters, FOUND: Operation of a boat line in freight service to and from public docks, wharves, and piers situated within or abutting on corporate limits of Alameda, Oakland, Berkeley, and Emeryville, Calif., on east side of San Francisco Bay, will be in public interest and of advantage to convenience and commerce of the people, and will neither exclude, prevent, nor reduce competition on water routes. S. P. Co. Boat Line on Sacramento River, 102 I. C. C. 658.

PARTIES

See Courts §12½; Loss and Damage §17; Procedure Before Commission V; Reparation §6, §19; Routing and Misrouting §10.

PARTNERSHIP

(a) The Team Company, a copartnership of three partners, entered into contract with a private individual, the individual to receive in consideration of his services a specified percentage of net profits, without participating in losses. HELD: Such contract did not create a new copartnership but continued the old copartnership in effect. See 116 U. S. 461-472. To have created a new copartnership composed of the four men, a joint agreement would have been necessary to the effect that each copartner was to participate in both profits and losses. See 132 U. S. 539; 20 R. C. L. 825. Wichita Chamber of Commerce v. Director General, 102 I. C. C. 745, 747.

PASSENGER FARES AND FACILITIES

I. CONTROL AND REGULATION.

- §½. In general.
- §1. Jurisdiction of Commission.

II. REASONABLENESS AND DISCRIMINATION.

- §2. In general.
- §3. Basing fares.
  - (1) Combination on state fares.
  - (2) State fares.
- §3a. Caretakers.
- §4. Certificate plan.

§4½. Burden of proof.
§5. Commutation fares.
§5¼. Compartments and drawing rooms.
§5½. Excess fares.
§6. Mileage, excursion rates and scrip.
§7. Party rates.
§7¼. Reduced rates.
§7½. Roundtrip tickets.
§7¾. Special trains and services.
(1) Surcharges.
§7⅞. Transfers.
§8. Validation.

III. FACILITIES.

§9. Regulations in general.
§10. Baggage and baggage car service.
§11. Colored passengers.
§11½. Divisions.
§12. Free transportation and passes.
§13. Stations.
§13½. Stopovers.
§14. Through routes and rates.
§14½. Tourist cars.

IV. CLAIMS FOR DAMAGES.

§14¾. In general.
§15. Errors of ticket agents.
§16. Lost tickets.
§16½. Redemption of tickets.

V. OPERATION.

§17. In general.
§18. Publication and tariffs.

VI. EVIDENCE AND PROCEDURE.

§19. In general.

CROSS REFERENCES

See Caretakers; Crimes III; Electric Lines; Personal Injuries; Sleeping Car Companies.

I. CONTROL AND REGULATION.

See Control and Regulation.

§½. In general.

(a) At common law a common carrier of goods or passengers was under no obligation to treat all persons equally, but might grant one individual an unreasonably low rate or even carry for him without making any charge whatever. State Sorensen v. Chicago B. & Q. R. Co. (Neb. 1924) 199 N. W. 534.

§1. Jurisdiction of Commission.

See Interstate Commerce Commission I; Jurisdiction of Commission.

(a) Careful study of the Act convinces the Commission that Congress has not conferred upon it authority to require carriers to construct union passenger stations under conditions such as are here present. The Commission is not considering a case where prejudice or discrimination is involved. There is no language in the Act apt for the purpose. The provision in section 3 paragraph 4 for joint use of terminal facilities expressly covers only facilities existing when the requirement is made. The Supreme Court concedes this in 264 U. S. 331, and as warrant for the control which it states the Commission has over the larger and more important new terminal projects refers directly to paragraphs 18 to 21 of the act, sec. 1 Paragraph 18 forbids the extension, construction, acquisition, operation or abandonment of any line of railroad by any carrier subject to the act without first securing from the Commission an appropriate certificate of convenience and necessity. Paragraph 19 provides for the procedure upon application for certificate, and paragraph 20 for the issuance of certificates and the enforcement of paragraphs 18 and 19. Paragraph 21 empowers the Commission to authorize or require a carrier by railroad subject to the act to provide itself with safe and adequate facilities for performing as a common carrier its car service, and to extend its line or lines. The same paragraph also provides a penalty for noncompliance with orders made by the Commission in pursuance thereof. The term "car service" as used in the act relates to vehicles used in the transportation of property. The authority to require a carrier to extend its line may include authority to require it to construct stations necessary and incidental thereto. But assuming such authority, the Commission concludes that paragraph 21 does not empower it to order the construction of a union passenger station where, as here, the station would be the principal thing and the extension of lines the incident. Los Angeles Passenger Terminal cases, 100 I. C. C. 421, 426.

(b) Careful study of the interstate commerce act is convincing that Congress has not conferred upon the commission authority to require carriers to construct union passenger stations un-

der conditions such as are here present. Los Angeles Passenger Terminal Cases, 100 I. C. C. 421, 426.

(c) Section 1, paragraph 31 does not empower the commission to order the construction of a union passenger station where the station would be the principal thing and the extension of lines the incident. Los Angeles Passenger Terminal Cases, 100 I. C. C. 421, 426.

II. REASONABLENESS AND DISCRIMINATION.

§2. In General.

See Discrimination; Reasonableness of Rates.

(a) No increases will result from proposed cancellation of passenger fares, from, to, and between points in the Hattiesburg branch of the Mississippi Central. Passenger traffic on this branch is mostly intrastate. Cancellation of Rates and Routes via Mississippi Central, 100 I. C. C. 71, 74.

ALL OTHER CITATIONS

Arizona Corporation Commission v. A. E. R. R. Co., 85 I. C. C. 76; Alabama Passenger Fares and Charges, 88 I. C. C. 621.

§3. Basing Fares.

(1) Combination on State Fares.

ALL CITATIONS

Alabama Passenger Fares and Charges, 88 I. C. C. 621.

§3a. Caretakers.

See Caretakers.

(a) Proposal to restrict free transportation of attendants with race horses moving by express to two attendants, and to require any in excess of that number to pay full passenger fares, found not justified. Service accorded race-horse attendants is not comparable with that accorded passengers transported under published passenger fares, restrictions and duties require that such attendants remain continuously with the horses, resulting in rail carriers not being called upon to provide accommodations in their passenger coaches, and such attendants assume, by contract, all risks of accident or damage to themselves. Attendants with Race Horses, 89 I. C. C. 689.

(b) Complainant attacked failure of defendants to grant free return transportation to caretakers accompanying single carloads of livestock from Washington, Oregon, Idaho and Montana to points in Washington and Oregon, except to destinations on the Oregon Short Line as unjust, unreasonable and unduly prejudicial. A rule is requested granting return transportation at half fare. Prior to Dec. 27, 1919 there was no uniformity among western carriers with respect to the return of attendants accompanying single shipments of livestock. Some gave full free return transportation, others only half fare and many no return concession at all. The defendants generally granted half return fare between Washington, Oregon and Idaho. The undue prejudice alleged is between shippers of single cars and shippers of two cars but as much free transportation per loaded car mile is given a single caretaker as is accorded the caretaker accompanying two or more shipments. HELD, present rule not unreasonable or unduly prejudicial, complaint dismissed. Cattle & Horse Raisers Asso. v. A. T. & S. F. Ry. 102 I. C. C. 573.

(c) Complainant alleged collection of passenger fares by defendant for the transportation of attendants accompanying seven carloads of live poultry from points in various states to Hoboken, N. J., unreasonable. Shipments moved between Jan. 11 and Jan. 24, 1920. Fares were collected as provided by tariffs. Prior to Dec. 30, 1919 the official classification provided for the transportation of attendants with carload shipments of live poultry without charge in addition to the ordinary freight charges. On that date the charges here attacked were established by rule published in the classification, and were applicable in all cases except as otherwise provided. That rule is in effect at the present time. However, in tariff of Agent Kelly, I. C. C. 85, containing exceptions to the official classification, the charges were made inapplicable in connection with rates published in tariffs bearing reference thereto, effective Jan. 28, 1920. Defendants submitted no evidence in support of the unreasonableness of the rate attacked. HELD, fare charged unreasonable, reparation awarded. Werner v. Director General 107 I. C. C. 363.

§5. Commutation Fares.

(a) New Haven, respondent, proposed

to increase by 20% the present effective fares for 60 trip monthly commutation tickets for general interstate application between local points in Massachusetts, Rhode Island, Connecticut, and New York (not including New York City) and between New York and New Haven Brookfield Jct., Conn., and intermediate points, and also between Harlem River, N. Y., and Greenwich, Cos Cob, Riverside, Sound Beach and Stamford, Conn. Concurrently, respondent and other carriers operating in Massachusetts, Rhode Island and Connecticut filed schedules providing for like increases in their intrastate fares within those states. The increased intrastate fares, excepting those of the B. & A., in Massachusetts, were found justified, and likewise Connecticut. This had the effect of permitting all the fares named in the schedules under supervision at the time to become effective, except those proposed between Connecticut and New York. Apparently commutation traffic was established as an incident to regular or standard traffic on the theory of filling vacant seats in coaches or trains operated for regular or standard travel and for the further purpose of developing territory adjacent to the railroad by encouraging residence in the suburbs of the large cities. Unquestionably the large increase in respondents commutation traffic has diluted the passenger traffic revenue as a whole and has lessened the margin between the revenues and expenses of the passenger service. Commutation fares on N. Y. N. H. & H. R. R., 101 I. C. C. 703.

(b) This report will be confined to a consideration of the commutation fares of the Northwestern Ry. petitioner, on the record made following its petition for further hearing filed May 15, 1925. The matter in issue is, whether the Northwestern should increase its commutation fares within Illinois by amounts not exceeding 20% above the level of such fares in effect August 25, 1920. The Northwestern serves three main suburban districts, that west of Chicago along the line of its Galena division, that northwest of the same place along the line of the Wisconsin and that north of Chicago on the Milwaukee division. The basic charge for one way passenger fares interstate and intrastate in Illinois and Wisconsin is the same, 3.6c per mile. Commutation fares for travel between points in Illinois and points in other states, including Wisconsin, were increased 10% June 10, 1918, at the time that such fares applying intrastate in Illinois received a like increase, and 20% effective August 26, 1920, but no increase of 20% has yet been made in commutation fares between points wholly within Illinois. HELD, that there are no conditions within Illinois justifying the maintenance by petitioner of intrastate commutation fares and of charges for multiple trip commutation tickets therein lower than the corresponding fares and charges applicable to the interstate transportation of passengers by petitioner to, from, or through the state; and that the maintenance of such intrastate fares and charges lower than the corresponding just and reasonable interstate fares and charges established and maintained by petitioner pursuant to authority heretofore given by this Commission in Ex Parte 74 gives an undue preference and advantage to persons traveling in intrastate commerce on petitioners lines within said state. This undue prejudice should be removed by increasing the intrastate commutation fares to 20% higher than in effect August 25, 1920 subject to maximum of 2c per mile. Intrastate rates in Illinois 102 I. C. C. 479.

(ba) Maintenance by C. & N. W. of multiple-trip and commutation fares for transportation of passengers in intrastate commerce within Illinois lower than corresponding fares applicable to intrastate transportation of passengers to, from, or through the State, found unduly preferential of intrastate passengers, unduly prejudicial to interstate passengers, and unjustly discriminatory against interstate commerce. Intrastate Rates in Illinois, 102 I. C. C. 479.

(c) Proposed increased interstate commutation fares of the N. Y., N. H. & H. R. R., between points in Connecticut and New York, which will place those fares on same basis as applies generally over other lines in New England, found justified. In establishing the original bases of fares little or no consideration was given to possibility of the development of commutation traffic to such extent as to become a substantial portion of the entire passenger traffic, and a burden on the regular or standard traffic, or that there would be other avenues of transportation established especially affecting short-haul traffic which would materially reduce

the volume of regular or standard traffic. The large increase in respondent's commutation traffic has diluted the passenger revenues and expenses as a whole and has lessened the margin between revenues and expenses of the passenger service. Commutation Fares on N. Y., N. H. & H. R. R., 101 I. C. C. 703.

ALL OTHER CITATIONS

Alabama Passenger Fares and Charges, 88 I. C. C. 624.

§6. Mileage, Excursion Rates and Scrip.

See Distance Rates.

(a) In 77 I. C. C. 200, the Commission required certain carriers to establish, issue and maintain a nontransferable interchangeable scrip ticket in the denomination of $90, to be sold at a reduction of 20% from the face value. In 77 I. C. C. 647, the Commission specified rules and regulations to govern the issue and use of the ticket. This decision was appealed and in 263 U. S. 603 the case was remanded. The question for determination are (1) what will be the just and reasonable rates for the interchangeable scrip coupon ticket the Commission shall prescribe to be issued; (2) shall that portion of rule 12 prohibiting the payment in cash of the remainder of the fares in instances where the standard one way fare equals or exceeds $90 be modified; and (3) which carriers, if any, shall be exempted in whole or in part from the requirements of the order? It does not follow that since the improvement in the revenues leaves a possible margin for concessions in rates, the passenger business, and especially a fractional part of this business, is entitled to be the sole beneficiary of this financial improvement. It is, of course, not possible to appraise accurately the effects of Motor vehicle transportation on passenger business. With the increased transportation of persons by means of motor vehicles there has also unquestionably an increased use of such vehicles in the transportation of property. Similarly, it is impossible to determine how, if at all, general business depressions or revivals may affect freight traffic differently from passenger traffic. If it were demonstratable that passenger fares are so high that they have had the effect of curtailing passenger travel, it would probably follow that a reduction in all passeger fares rather than in the fares of a particular class of passenger traffic would be the proper remedy. It is obvious that the interchangeable scrip coupon ticket contemplated by the amendment differs from any of the mileage tickets heretofore in use, particularly in respect to its general interchangeability. The record indicates furthermore that the interchangeable tickets which were formerly in use were issued voluntarily by carriers prior to the time when regulation of their rates and fares became effective. The attention of the Commission has not been called to any instance where regulating authorities have required carriers to issue and sell such tickets at rates below the standard one way fares prescribed by such authorities. The Commission is required to direct the issuance of such tickets at just and reasonable rates, and it does not consider that the failure of carriers as a whole to earn a fair return would preclude it from fixing rates for interchangeable scrip coupon tickets at rates lower than the standard one way fares if it could find that such rates would be just and reasonable. The sale of the scrip ticket is in the first instance a transaction between one who purchases and one carrier which sells the tickets, but the delivery of the transportation service involves many transactions between the holder of the ticket and all other carriers which will be obliged to look to the carrier who sold the ticket for a redemption of the coupons which they collect. It is obvious that there are many circumstances in wholesale commercial transactions and in the granting of reduced rates for public utility services which differ widely from the circumstances surrounding the sale and use of scrip coupon tickets. HELD, the basic or standard rate of fare for one way tickets is, and for the future will be, a just and reasonable rate for the interchangeable scrip coupon ticket the Commission shall direct carriers to issue. Those class 1 carriers which are now issuing or honoring interchangeable scrip coupon tickets under rules and regulations they have already established will be directed to continue to issue or honor such tickets and to observe such established rules and regulations until or unless the Commission hereafter requires otherwise. These carriers will be directed to publish, file, and post all tariffs containing such rules and regulations in the manner prescrib-

ed by law. Samples of the tickets in use should accompany tariffs filed with the Commission. All class 1 railroads which have not already done so, excepting switching and terminal companies will be directed to establish, issue and maintain the interchangeable scrip coupon tickets herein prescribed, and to establish, publish, file, and post in the manner prescribed by law the rules and regulations to govern the issue, sale, and use of such tickets, on or before July 15, 1925 and thereafter to maintain the same in effect until or unless the Commission shall hereafter otherwise direct. Carriers should continue to issue them in $15, $30 and $90 denominations as heretofore. Interchangeable mileage ticket investigation, 98 I. C. C. 298.

(b) Complainant purchased a mileage book for 1,000 miles entitling her for transportation over the New Haven, the B. & M., and other New England carriers. She used the book but once, namely, at some time prior to June 10, 1918, for a journey from Boston to Portsmouth, N. H., distance 56.9 miles. The Director General declined to permit the use of such mileage books at reduced fares on and after June 10, 1918. Complainant did not present the unused portion of the book for redemption until July, 1922. New Haven tariff provided that mileage tickets will be redeemed on request for the difference between the amount paid for the ticket and the amount arrived at by charging at the rate of two and one half cents per one mile coupon for each coupon used. The time within which the ticket could be used was not limited; neither was there any limitation on the time within which the unused portion could be present for redemption. The fact that complainant waited over four years before presenting her claim has no bearing on the present issue. If the terms of the tariff fixing the compensation for a less distance than 1,000 miles had been voided by limitation to the effect that the unused portion must be presented within a fixed period in order to validate that charge, an extremely different situation would have been before the Commission. HELD, complainant overcharged the amount equal to the price paid and the legal charge for the distance traveled on a net basis proportionate to that which would have applied had the entire ticket been used according to its terms, reparation awarded. Carpenter v. Director General, 98 I. C. C. 476.

(c) Upon further consideration of former reports in 77 I. C. C. 200 and 77 I. C. C. 647, and upon further hearing, Class I steam railroads, excepting switching and terminal companies, required to issue for use in interstate commerce, interchangeable scrip coupon tickets in denominations of $15, $30, and $90, to be sold at the standard rate of passenger fare for one-way trips. Carriers which at present issue such tickets under rules and regulations they have established are required to continue the same, and carriers which do not issue such tickets are required to do so and to establish rules and regulations, and directed to publish, file and post tariffs containing the same in the manner specified by law. Proceeding held open to afford opportunity to travelers and carriers to apply for changes or modifications of rules and regulations governing the issue, sale, and use of such tickets and to afford opportunity to carriers to apply for exemption from the requirements of the order herein. Interchangeable Mileage Ticket Investigation, 98 I. C. C. 298.

(d) Upon contention that the fact that carriers have not received a fair return since the rate increases authorized by the commission in 1920 does not preclude the commission from requiring that interchangeable scrip coupon tickets be sold at rates below the standard one-way fare. FOUND, that the commission is directed to require the issue of such tickets at just and reasonable rates and it does not consider that the failure of carriers as a whole to earn a fair return would preclude it from fixing rates for interchangeable scrip coupon tickets at rates lower than the standard one-way fare if it could find that such reduced rates would be just and reasonable. Interchangeable Mileage Ticket Investigation, 98 I. C. C. 298, 307.

(e) Upon further consideration of former reports, 77 I. C. C. 200 and 77 I. C. C. 647, and upon further hearing it is found that if interchangeable scrip coupon tickets were sold at various percentages of reduction there are estimates of reductions in passenger revenues that would result, but for the most part these estimates are not founded upon exper-

ience or other reliable data. These are, however, to be considered side by side with estimates, founded upon no better bases, of the added revenues that would result from increased travel at reduced rates. Interchangeable Mileage Ticket Investigation, 98 I. C. C. 298, 308.

(f) As to the question of what will be just and reasonable rates for the interchangeable scrip coupon tickets, bearing in mind the admonition of the Supreme Court that in administering the amendment to section 22 the commission must exercise its own independent judgement. FOUND, that sound policy dictates that the basic fare should be the same for all classes of travelers and that the commission should require no departures from this rule, unless it can be clearly shown that it is dealing with a class of passenger business which can be so completely segregated that a rate for fare differing from the basic fare of one way should be applied, and that the basic or standard rate of fare of one-way ticket is and will be a just and reasonable rate for the interchangeable scrip coupon ticket which carriers are directed to issue. Interchangeable Mileage Ticket Investigation, 98 I. C. C. 298, 312.

(g) As to objections of the Southern Pacific Co. and affiliated companies to the requirement that photographs be used as a means of identification of lawful holders of scrip coupon tickets, FOUND, that inasmuch as photographs are not required to identify lawful holders of scrip coupon tickets now in use and would be necessary only in event that the commission required the issue of scrip coupon tickets at reduced rates the commission shall not require the use of such photographs in connection with the interchangeable scrip coupon ticket which is now prescribed. Interchangeable Mileage Ticket Investigation, 98 I. C. C. 298, 314.

(h) Refusal and failure of Director General of Railroads, as agent, to make refund on unused portion of a mileage book purchased during Federal control found to result in an overcharge above the legally published charges. Reparation awarded. Carpenter v. Director General 98 I. C. C. 476.

(i) In Conf. Ruling 208 (e) the commission stated that the provisions of section 6 with regard to publishing, filing, posting, and observing tariffs must be complied with in the issuance, sale, and use of mileage, excursion, or commutation passenger tickets and joint interchangeable mileage tickets. In Conf. Ruling 228 the commission said that the rules governing the sale, use, and redemption of mileage books should be a part of the tariff under which they are sold. When included in the tariff the provision for the redemption of tickets is of equal force with other provisions therein. Carpenter v. Director General, 98 I. C. C. 476, 478.

(j) Refusal and failure of the director general to make refund on unused portion of a mileage book found to have resulted in an overcharge. Tariff provided for refund upon presentation of unused portion of the mileage book, and this constituted a rule or regulation which determined the aggregate of the legal fare for the service performed and, being a part of the published tariff, could not therefore be disregarded. Previous findings in 98 I. C. C. 476, affirmed and reparation awarded. Carpenter v. Director General, 101 I. C. C. 333.

ALL OTHER CITATIONS

Alabama Passenger Fares and Charges, 88 I. C. C. 624.

§7½. Roundtrip Tickets.

(a) Complainant attacked the 1924 round trip summer excursion fares from eastern and southern points to Boulder, Colo., as unduly prejudicial to that city and unduly preferential of Pueblo, Colorado Springs, Denver, Longmont, Loveland and Fort Collins, Colo. Boulder is 29.6 miles north of Denver, and served by the C. & S., D. & I. E. L., and U. P. Longmont, Loveland and Fort Collins are on the C. & S. The principal prejudice and disadvantage of which Boulder complains is the fact that Colorado Springs and Pueblo are accorded the same fares as Denver from Chicago, Ill., Omaha, Neb., Kansas City and St. Louis, Mo., and intermediate points, while the fare to Boulder is, in each instance, $2.16 higher, the additional amount being the standard local fare from Denver to Boulder and return. The Colorado common point adjustment of freight rates has been in effect for 30 years. The socalled Colorado common points are Colorado Springs, Pueblo, Walsenburg and Trinidad. The distance in miles to these points from Denver are as follows: Colorado Springs, 75;

Pueblo, 119; Walsenburg, 170; and Trinidad 208 miles. These cities take the same freight rates from all eastern points. Boulder and some of the intervening cities are largely dependent upon the tourist travel for their continued growth and prosperity. Their situation is substantially similar to that of Colorado Springs and Pueblo, except that they are not intermediate between Denver and eastern point via the customary passenger routes. HELD, summer excursion tourist fares unduly prejudicial to Boulder and same basis of fares accorded to Boulder should be extended to intervening cities and Cheyenne, Wyo. Boulder Chamber of Commerce v. A. T. & S. F. Ry. 107 I. C. C. 49.

§7¾. Special Trains and Services.

(1) Surcharges.

See Special Rates and Services.

(a) Commission instituted an investigation into the propriety and reasonableness of the surcharge and of the rates of the Pullman Company for the accommodation of passengers in sleeping and parlor cars throughout the continental United States, with a view of determining the just and reasonable charges to be assessed for accommodations furnished passengers traveling in sleeping and parlor cars. The surcharge, computed for convenience at one half of the current Pullman charge for space occupied by the passenger, was established on August 26, 1920, following Increased Rates, 1920, 58 I. C. C. 220. The record fully substantiates the earlier conclusions that the surcharge has not had the effect of reducing travel in Pullman cars. At a time when whatever capacity the railroads may have for rate reduction should be utilized for the benefit of other forms of traffic the Commission ought to scrutinize with great care any proposal to collect less revenue from those who ride in sleeping cars or from those who are able to afford the luxury of parlor cars. They ought to meet the full cost and value of the service furnished and a reasonable return on property value. The surcharge, it should be said, ought not to be regarded as an independent third charge upon the passenger. It was devised as a simple and convenient method for computing an addition to the basic passenger fare for those who ride in Pullman cars, and is thus equivalent to an increase in the rate per mile. Where the basic fare is 3.6c per mile, the surcharge adds 10% and brings the fare up to about 3.96c per mile. Respondents furnish transportation. The Pullman Company furnishes a bed or special seat and service akin to that of innkeeper. The Pullman Company should collect charges sufficient to cover the cost of its service and a reasonable return on the value of the property devoted by it to the public use. Respondents should collect charges sufficient to cover the cost of their transportation service and a like reasonable return. The value of the service to the recipient should also be given due weight. It is said that when a passenger has paid for his railroad ticket and also for his Pullman ticket he has paid for everything he receives. But if he desires exclusive right to occupancy of a private car, a sleeping car, or a parlor car, the usual tariff requirement of 25 full railroad fares is generally conceded to be proper. If he wants a drawing room to himself he may pay two railroad fares, or, if a compartment, one and one half fares, in addition to the Pullman Company charges. Whether or not the total which is now paid by the passenger, including basic railroad fare, surcharge, and Pullman charge, is too great the Commission can not now determine. HELD, present surcharge accruing to the rail carriers in addition to the regular passenger fare for the transportation of passengers in sleeping and parlor cars is not unreasonable. Charges for passengers in sleeping and parlor cars, 95 I. C. C. 469.

(b) Upon investigation, FOUND That present surcharge accruing to rail carriers in addition to regular passenger fare for the transportation of passengers in sleeping and parlor cars is not unreasonable. Carriers earn less per car-mile on the average, from their Pullman busisess than from their coach business, even when surcharge collections and various financial benefits accruing from existing Pullman contracts are taken into consideration. The added cost to carriers and greater value to passenger of the Pullman service justify the additional charge; moreover, when the time comes for requiring railroads to accept less passenger revenue than they now receive, those who experience the relative discomforts of ordinary coach travel, rather than those who select the most expensive and luxurious form of transportation, are en-

titled to prior consideration. Charges for Passengers in Sleeping and Parlor Cars, 95 I. C. C. 469.

(c) The surcharge in addition to regular fare for transportation of passengers in sleeping and parlor cars as authorized in Increased Rates, 1920, 58 I. C. C. 220, has not had effect of reducing travel in Pullman cars. On the contrary, such travel has been increasing to a greater extent relatively than travel in coaches. Charges for Passengers in Sleeping and Parlor Cars, 95 I. C. C. 469, 472.

(d) The surcharge in addition to the regular passenger fare for the transportation of passenger in sleeping and parlor cars ought not to be regarded as an independent third charge upon the passenger. It was devised as a simple and convenient method for computing an addition to the basic passenger fare for those who ride in Pullman cars, and is thus equivalent to an increase in the rate per mile. Charges for Passengers in Sleeping and Parlor Cars, 95 I. C. C. 469, 478.

(e) Upon investigation pursuant to paragraph (1) of section 5 of the act, proposed contract providing for the establishment of joint passenger-train service between Seattle, Wash., Tacoma, Wash., and Portland, Oreg., and for division of earnings therefrom, found to be in the interest of better service to the public, to promote economy of operation, and not to unduly restrain competition, and the terms and conditions under which such division is proposed to be made are just and reasonable. Puget Sound Portland Joint Passenger Train Service, 96 I. C. C. 116.

(f) In 58 I. C. C. 220, the Commission authorized all steam railroads to establish a surcharge upon interstate passengers in sleeping and parlor cars amounting to 50% of the charge for space, same to accrue to the rail carriers. This became effective on August 26, 1920, and on intrastate in North Carolina, Sept. 15, 1920 and remained in effect on intrastate traffic until March 19, 1923 when it was abolished by Legislative Act of North Carolina. Carriers petitioned for reopening and for establishment of same basis intrastate as interstate in North Carolina. Intrastate passengers in North Carolina, usually riding in the same trains with interstate passengers, pay charges relatively less than those paid by interstate passengers for the same class of service, that there are no transportation or traffic conditions which justify the exemption of intrastate passengers from the surcharge, that it is possible to avoid full payment of the surcharge on journeys by paying combinations of the Pullman fares to and from border points. HELD, interstate charge of 50% above space charge found reasonable for an application in North Carolina intrastate. Surcharge for sleeping or parlor cars in N. C. 102 I. C. C. 537.

(g) Surcharges for the transportation of passengers in sleeping and parlor cars required by State authority to be maintained within North Carolina, and which are lower than the corresponding interstate charges authorized in Increased Rates, 1920, 58 I. C. C. 220, 241, 242, found to result in undue preference of intrastate passengers, undue prejudice of interstate passengers, and unjust discrimination against interstate commerce. Surcharge for Sleeping or Parlor Cars in N. C., 102 I. C. C. 537.

ALL OTHER CITATIONS

Coit-Albers Chautauqua Co. v. A. & S. R. R. Co., 85 I. C. C. 357.

III. FACILITIES.

See Facilities and Privileges.

§9. Regulations in General.

(a) On account of risk to passenger traffic, the New York Rapid Transit Corp. refused longer to permit petroleum oil, in tank cars, to be transported through its subway in Brooklyn, N. Y. Complainant was notified by the South Brooklyn Ry. that it would not transport such commodity to complainant's plant after June 1, 1924. Upon complaint requesting that commission require carrier to continue such transportation after June 1, HELD: Upon the record, made in March, 1924, the commission has before it no violation of the act in that regard. Huber v. C. R. R. Co. of N. J., 93 I. C. C. 539, 540.

§10. Baggage and Baggage Car Service.

(a) The duty placed upon the passenger by the requirements of the Interstate Commerce Commission to declare the value of baggage, and limiting the carrier's liability in case of loss to such declared valuation, applies only to baggage which the passenger has surrendered to the custody of the carrier for the purpose of being transported, as

when baggage is "checked," and does not apply to hand baggage taken into the coach by the passenger and generally retained in the passenger's possession, but only temporarily placed in the custody of the train officials for the passenger's accommodation and convenience when entering or leaving the train. As to such hand baggage there is therefore no duty resting upon the passenger to declare its value or the nature of its contents. Atlantic Coast Line R. Co. v. Barksdale (Ga. 1924) 124 S. E. 362.

(b) Applying the above ruling to this case, in which the railway company was sued in tort by one, who was traveling as an interstate passenger, against the railway company to recover for the alleged negligent loss of the passenger's hand bag and its contents, which occurred in another state, after the passenger had delivered the hand bag to the conductor in charge of the train, for the purpose of being carried by him from the coach for the passenger's convenience when alighting, the court had jurisdiction of the defendant, the petition set out a cause of action, and the evidence authorized the verdict found for the plaintiff for the value of the bag and its contents as personal baggage, and the court properly excluded from the evidence the regulations of the Interstate Commerce Commission limiting the carrier's liability for baggage (set out below), and also did not err in admitting evidence to the effect that the passenger, when delivering the hand bag to the conductor, informed him that it contained valuable papers (the loss of which was not sued for), since this statement was part of the res gestae, and was harmless to the defendant. Atlantic Coast Line R. Co. v. Barksdale (Ga., 1924) 124 S. E. 362.

(c) Respondents proposed to increase the rates for the transportation of daily, weekly, and semi-weekly newspapers and illustrated newspaper supplements in baggage cars on passenger trains between points on their respective lines in trunk line and central territories. None of the rates on newspapers was increased under G O 28 in 1918 and none was reduced following the general reduction of 10% in 1922. The system of flat charges applicable within radius of 500 miles, or within two territories, are departures from the ordinary method of grading rates according to distance and the justification for their existence is the fact that the service would be retarded if the charges were based upon separate rates and weights of individual shipments to widespread destinations in numerous distance zones. The baggage car service for newspapers is different from any other freight or passenger service rendered by the railroads in several important characteristics, and for this reason many of the ordinary tests used in determining reasonable rates for transportation services, such as comparisons with rates on other commodities for corresponding distances, can not be employed. There are no previous decisions with respect to this class of traffic to guide the Commission. HELD, respondents by a preponderance of the evidence, have justified the proposed schedules. Newspapers in baggage cars 104 I. C. C. 527.

(d) Commission's decision in 69 I. C. C. 90, to effect that where shippers failed to exercise their right of routing shipments same should be forwarded over the most expeditious route, even though in many instances longer routes are more expeditious because of passenger-train schedules, dealt with traffic moving wholly by express, but the same principle is applicable on traffic moving in baggage or baggage and express service. Kirschbraun & Sons, Inc., v. G. N. Ry. Co., 100 I. C. C. 28, 38.

(e) Charges assessed on milk and cream in 10-gallon cans, for single-line haul in baggage service from points in Iowa, to Omaha, Nebr., via circuitous routes, found not unreasonable, but new and more direct interline routes and reasonable maximum rates, constructed upon basis of specific joint-line distance scales, with the addition of drayage charges where drayage is necessary in order to transfer shipments between separate passenger depots of connecting rail carriers, prescribed for future. Kirschbraun & Sons, Inc., v. G. N. Ry. Co., 100 I. C. C. 28, 40.

ALL OTHER CITATIONS

Coit-Albers Chautauqua Co. v. A. & S. R. R. Co., 85 I. C. C. 357; Beatrice Creamery Co. v. L. & N. R. R. Co., 85 I. C. C. 377.

§11. Colored passengers.

(a) Complainant attacked fares charged for passengers from Charleston, W. Va., to Cincinnati, O., on March 21, 1922, as unlawful, unreasonable, unjustly discriminatory, unduly preferential and prejudicial. Complainant purchased a

ticket at Charleston, W. Va., entitling him to transportation to Cincinnati, O. No evidence was introduced with respect to the measure of the fare assessed. On those portions of defendants line in Kentucky and Virginia it has for a number of years required the segregation of the white and colored races. The segregation of the races is required by statute in Kentucky. When the train on which complainant was a passenger arrived at the West Virginia-Kentucky line, the porter passed through the train requesting all white passengers in the compartment to move back to the coaches and all colored passengers in the coaches to move forward to the compartment, at the same time posting a sign with the word "colored" in the compartment and signs with the word "white" in the coaches. It appears that all of the passengers affected except complainant complied with this request, whereupon at Ashland, Ky., complainant was arrested and evicted from the train. He was released by the judge of the municipal court and resumed his journey to Cincinnati on the next train, which left at 4:20 the following morning, riding in the compartment set aside for colored passengers. A regulation requiring the segregation of passengers according to color does not, if equal accommodations are furnished, change, affect or determine any part or the aggregate of the fare or the value of the service rendered. It does not appear that the accommodations are not equal. Moreover, on rare occasions, the number of colored passengers justifies the assignment of a coach instead of a compartment for their transportation. HELD, fare exacted not unreasonable or in violation of the Act, complaint dismissed. Evans v. C. & O. Ry., 92 I. C. C. 713.

(b) Where a carrier is required by law to provide separate coaches for the white and colored races and required to enforce the law, it must do so in a reasonable manner, and, if a conductor in enforcing the rule curses a passenger or acts in an offensive and insulting manner, the carrier is liable for substantial damages, and recovery is not limited to nominal damages. Illinois Cent. R. Co. v. Cox (Miss. 1924) 100 So. 520.

(c) Carrier's practices with respect to segregation of interstate passengers according to color, in compliance with State laws, found not unjust, unreasonable, or otherwise in violation of the act where like accommodations are furnished both white and colored passengers. Evans v. C. & O. Ry. 92 I. C. C. 713.

(d) Contention that regulation requiring segregation of passengers according to color, in order to be valid, must be published and filed with commission under section 6 of the act, not sustained. Under that section, it is only those "rules or regulations which in anywise changed, affect, or determine any part of the aggregate of * * rates, fares, and charges, or value of service rendered to passenger * * " which must be published and filed. A regulation requiring segregation of passengers according to color does not, if equal accommodations are furnished, change, affect, or determine any part of aggregate fare or value of service rendered. Evans v. C. & O., 92 I. C. C. 713, 715.

(e) Complainant alleged that between April 10, 1922 and Nov. 7, 1924 defendants failed to furnish him, and colored passengers in general, the same train and station accommodations and facilities as were furnished to white passengers, that Pullman accomodations were refused him on different occasions, and that in other ways he was subjected to unreasonable regulations and to unjust discrimination. While the evidence in this case is not sufficient to warrant the Commission in making definite findings of undue prejudice to complainant in particular, and to the colored race in general, nevertheless it strongly points to unsatisfactory conditions in several instances. The coach accommodations do not seem to be in all cases equal in appointment to those furnished the white patrons, and the indications are that some of the station facilities may not be all that should be provided in order to avoid the charge of undue prejudice. Complainant offered no proof in support of his claims for damages. HELD, complaint dismissed. Crosby v. St. L. S. F. Ry., 112 I. C. C. 239.

(f) While, therefore, the reasonableness of such regulation as to interstate passenger traffic is established it by no means follows that carriers may discriminate between white and colored passengers in the accommodations which they furnish to each. If a railroad provides certain facilities and accommodations for first class passengers of the white race, it is commanded by the law that like accommodations shall be pro-

vided for colored passengers of the same class. The principle that must govern is that carriers must serve equally well all passengers, whether white or colored, paying the same fare. Failure to do this is discrimination and subjects the passenger to undue and unreasonable prejudice and disadvantage. Crosby v. St. L. S. F. Ry., 112 I. C. C. 239, 243.

§12. Free transportation and passes.

See Crimes III; Express Companies §5; Free Transportation.

(a) Proposal to restrict free transportation of attendants with race horses moving by express to two attendants, and to require any in excess of that number to pay full passenger fares, found not justified. Service accorded race horse attendants is not comparable with that accorded passengers transported under published passenger fares; restrictions and duties require that such attendants remain continuously with the horses, resulting in rail carriers not being called upon to provide accommodations in their passenger coaches, and such attendants assume, by contract, all risks of accident or damage to themselves. Attendants with Race Horses, 89 I. C. C. 689.

(b) Free railway pass given to minor as one of family of carrier's employee, HELD mere gratuity without consideration. Pinnell v. St. Louis-San Francisco Ry. Co. (Mo. 1924) 263 S. W. 182.

(c) Stipulations on back of free railway pass given to minor and being used by him while searching for employment, if deemed to constitute contract, HELD one for his benefit and within the rule declaring infant's contracts beneficial to him binding on him. Pinnell v. St. Louis-San Francisco Ry. Co. (Mo. 1924) 263 S. W. 182.

(d) Stipulations on back of interstate free railway pass, relieving carrier from liability for injury, HELD valid and complete defense to action for user's death under Hepburn Act June 29, 1906. Pinnell v. St. Louis-San Francisco Ry Co. (Mo. 1924) 263 S. W. 182.

(e) Where relation of carrier and passenger existed between one accompanying interstate shipment of stock as caretaker and defendant, HELD, that right of caretaker to recover for personal injury and his duty to give notice of such injury was governed by the common law and not by federal statutes (such as U. S. Comp. St. § 8604a), relative to claims arising from interstate shipments of property. Edmondson v. Missouri Pac. R. Co. (Mo. 1924) 264 S. W. 470.

(f) In view of actual knowledge by carrier's agents of injury to plaintiff passenger and of action taken by carrier upon that knowledge, letters written by plaintiff to carrier's claim agent within 30 days after injury that he intended to assert claim for damages, and was willing to make settlement, HELD substantial compliance with his contract to give written notice within 30 days after injury. Edmondson v. Missouri Pac. R. Co. (Mo. 1924) 264 S. W. 470.

(g) As to clause in contract with shipper of cattle, allowing him free transportation as caretaker of the cattle, but requiring him to notify local agent in writing of injury to person within 30 days after such injury, action by carrier upon verbal notice to extent of making full investigation within 30 days HELD to amount to waiver of written notice; purpose of such clause being not to escape liability; but to afford carrier opportunity to make investigation, when facts are ascertainable. Edmondson v. Missouri Pac. R. Co. (Mo. 1924) 264 S. W. 470.

§13. Stations.

See Stations.

(a) A careful examination of the Transportation Act of 1920 discloses no authority or duty vested in the Interstate Commerce Commission, either expressly or by clear implication, to require the erection or improvement of passenger stations. State v. Seaboard Air Line Ry. Co. (Fla., 1925) 104 So. 602.

(b) Complainant, City of Los Angeles, asked that the Commission direct defendants to construct, operate and use a union passenger depot within a defined area in that city and to acquire land necessary therefor; to abandon main line passenger and freight service except local freight switching, on and along a portion of Alameda Street in Los Angeles., to eliminate and abandon certain railroad grade crossings in the city: and to construct or acquire such structures, tracks, and facilities, to construct or abandon such lines or facilities of operation, and to arrange for such joint or other use of existing tracks, or tracks to be constructed within Los Angeles, as

may be reasonably necessary and incidental as a part of and in furtherance of the foregoing. HELD, the Commission is not empowered to require the construction of a union passenger station as sought. To make the record clear, there is no question of discrimination or preference presented here; under the issue framed in the complaint the Commission will give no consideration to matters shown of record for the purpose of determining whether it should issue an order requiring the construction and use of a union station by any of the defendants. With respect to the remainmaining issues, it is authorized to find (1) whether the present or future public convenience and necessity permit of the proposed abandonments of line, (2) whether the proposed extensions of line are reasonably required in the interest of public convenience and necessity, and whether the expense involved therein will impair the ability of defendants to perform their duties to the public, and (3) whether such joint use of existing terminal facilities by other than the owning carrier, as would be necessary if a new union passenger terminal were established in the Plaza area, is in the public interest and practicable, without substantially impairing the ability of the owning carrier to handle its own business. The service afforded by each of the present passenger stations of the Salt Lake and the Santa Fe is unreasonable and inadequate, and those carriers are under the immediate necessity of, and contemplate, expending considerable sums of money in providing reasonable and adequate facilities in lieu of those now owned and used. The clearly established necessity of eliminating from Alameda St. all railroad train service, except industrial freight switching service, is undisputed. Such elimination of train service will force the S. P., to provide other means of access to its Arcade station or to abandon that station and provide other facilities in its stead. Either course will be attended by the expenditure of substantial amounts of money. The carriers named can provide reasonable and adequate station facilities and the expense involved will not impair their ability to perform their duties to public. HELD, the present and future public convenience and necessity permit the abandonment of operation of all passenger and freight train service, except freight switching service, on the main line of the S. P., on Alameda St. from College St., to East Fifteenth St., in Los Angeles; that neither the present nor future public convenience and necessity require or will require the construction or extension by applicants of new or existing main lines of railroad in Los Angeles; that the present and future public convenience and necessity require and will require the extension by defendants of their respective main lines of steam rail road in Los Angeles, so as to reach and properly serve any union passenger station and terminal within that portion of said city bounded by Commercial St., North Main St., Redondo St., Alhambra Ave., and Los Angeles river, which they or any of them may construct and establish in accordance with a lawful order of the California Commission, and the extension of their respective main lines so as properly to provide for the rearrangement of passenger and freight routes incidental to the convenient and proper operation of such union passenger station and terminal. That the extensions referred to in the preceding paragraph are reasonably required in the interest of the public convenience and necessity, and that the expense involved therein will not impair the ability of defendants to perform their respective duties to the public. That, in addition to the abandonment of service on Alameda St. as authorized, the present and future public convenience and necessity permit the abandonment by defendants of such portions of their respective main lines of steam railroad in Los Angeles, or of the operation of all or any portion of the present interstate train service thereon as may be incidental to the rearrangement of passenger and freight routes, of tracks, and of terminal facilities, made necessary or proper in connection with the construction and establishment by defendants, in accordance with a lawful order of the California Commission, of a union passenger station and terminal within that portion of said city as described. That the use by any defendant steam carriers of so much of the terminal main line track or tracks of any of the other defendant steam carriers in Los Angeles, as may be incidental, and necessary or convenient, to the proper operation of any such union passenger station and terminal as defendants or any of them, in accordance with a lawful order of the California Commission, may construct and establish in that portion of said city described, is in the public interest and is practicable, without substantially impairing the ability of the carrier or carriers own-

ing or entitled to the enjoyment of such track or tracks to handle its or their own business. An order will be entered denying the application in Finance Docket 3569. The Commission is not advised what action, if any, the California Commission will take in connection with these matters, and under the existing circumstances the Commission will issue no certificates or further orders at this time. It will retain jurisdiction of No. 14778 and Finance Docket 3556 for the purpose of making such further findings and orders and issuing such certificates as the record warrants. The findings and order now made are based upon the present record and upon the plants presented to the Commission. If, in the development of a union passenger terminal plan, the carriers of the California Commission evolve a plan considerably more extensive than, or materially different from, a plan for a station within the Plaza area as here considered to be in the public interest, the ultimate findings as to the public convenience and necessity, and as to impairment of the carriers ability to handle their own traffic and to perform their duties to the public, will of course be based upon a consideration of these facts rather than upon the present record. Los Angeles Passenger Terminal cases, 100 I. C. C. 421.

(c) Complainant alleged that the passenger station facilities of Santa Fe Rock Island, M. K. T., and Frisco are inadequate to serve the needs of the traveling public entering, leaving, and transferring at Oklahoma City; that the lines of these defendants which traverse and bisect the city at grade, interfere with inter-communication between the different sections of the city and constitute a menace, not only to pedestrians and vehicular traffic using the streets of the city but also to passengers utilizing and employees operating trains over grade crossings, and that public safety, convenience, and necessity require the erection of a union passenger station with proper appurtenances, to extend and abandon such lines as may be found necessary to eliminate dangerous grade crossings. The Rock Island station is situated between Broadway and the intersection of the Rock Island and Santa Fe. Santa Fe station is situated on the west side of the main line of the Santa Fe about four blocks south of the Rock Island and has been used by both the Santa Fe and Frisco. It is inadequate for both roads, but with some remodeling would meet the requirements of the Santa Fe. The M. K. T. station is adequate for the needs of itself and its tenants. It is clear that under paragraphs 18 to 21 of section 1 of the act, there is a means of control vested in the Commission over such projects where, as here, the providing of the station entails major expenditure and the extension, extensive arrangements, relocation, or joint use of main line and terminal tracks. The Commission has no jurisdiction to require the elimination of grade crossings. HELD, complaint dismissed but with the understanding that Commission will reopen the case, upon application of the state or the railroads, to consider such further plan or plans in the light of jurisdiction, as may be submitted after further study and more mature consideration of the problem by the interested parties. There remains for determination whether a certificate of public convenience and necessity should be issued in connection with the plans of the Frisco. Two plans were presented, one which would provide a station office building, and the other only a station. Neither of these plans would call for major expenditures on the part of the carrier, the extension of its main line tracks or extensive rearrangement or joint use of terminal tracks. In judgment of the Commission a certificate of public convenience and necessity from the Commission is not required in connection with either of the plans presented and its application will be dismissed. Oklahoma Corp. Commission v. A. T. & S. F. Ry., 101 I. C. C. 647.

(d) Measure of damages for failure of defendant railroad company to build a depot, within the time agreed in its contract with an adjoining owner, HELD to be the legal interest on the amount by which the value of land of such owner would have been enhanced by the erection of the building for the time its erection was delayed. Louisville & N. R. Co. v. Johnson's Adm'x (Ky., 1925) 270 S. W. 58.

(e) Railroad agreeing with property owner to build depot HELD required only to build station suitable for requirements of traffic conditions at that place. Louisville & N. R. Co. v. Johnson's Adm'x. (Ky. 1925) 270 S. W. 58.

(f) In action for damages for failure to construct and maintain depot, plea that station was operated at increasing losses HELD bad, in so far as it sought to vary defendant's written contract to

build depot near land of plaintiff's deceased, but HELD good against demurrer as setting up changed conditions since establishment of station. Louisville & N. R. Co. v. Johnson's Adm'x (Ky., 1925) 270 S. W. 58.

(g) A railroad company, which constructed and maintained a depot pursuant to its contract with plaintiff's deceased, which did not, by its terms, require it to maintain same for any particular period, HELD entitled to abandon the station when the public interests necessitated abandonment by reason of changed conditions of traffic. Louisville & N. R. Co. v. Johnson's Adm'x. (Ky., 1925) 270 S. W. 58.

(h) In action against railroad company for breach of contract to construct and maintain a depot near the land of plaintiff's deceased, evidence of a decline in the income from the station HELD admissible in support of plea that public interest necessitated abandonment by reason of changed conditions of traffic. Louisville & N. R. Co. v. Johnson's Adm'x. (Ky., 1925) 270 S. W. 58.

(i) Railroad is not responsible for failure to maintain depot during federal control. Louisville & N. R. Co. v. Johnson's Adm'x. (Ky., 1925) 270 S. W. 58.

(j) Termination of federal control of railroads revived railroad's obligation, if any, to construct and maintain depot improperly removed during federal control. Louisville & N. R. Co. v. Johnson's Adm'x. (Ky., 1925) 270 S. W. 58.

(k) Evidence of failure of defendant to construct depot within contract time required submission of question to jury with instructions defining damages Louisville & N. R. Co. v. Johnson's Adm'x. (Ky., 1925) 270 S. W. 58.

(l) This proceeding arises from a petition by the Missouri Kansas Texas R. R. Co., which seeks the entry of an order by the Commission, pursuant to the provisions of section 3, paragraph 4 of the act, according the petitioner the right to use, upon equitable terms, designated portions of the union passenger and freight terminals at Kansas City, Mo.-Kas., owned and operated by the respondent Kansas City Terminal Ry. Co. By service order 40 the Commission ordered that, effective April 1, 1924, and until further order, respondent permit petitioner to use the said terminals, including main line tracks for a reasonable distance outside, lying within the specified zones, upon the terms and provisions of the said operating agreement and for the compensation therein provided; payments in accordance therewith, however, not to be the final measure of compensation for use during the period the service order shall be in effect, the total compensation ultimately to be paid for that period to be upon such terms as the carriers may agree, or, failing such agreement, as the Commission may, after subsequent hearing, find to be just and reasonable. For some time prior to 1906 the Santa Fe, Rock Island, Milwaukee, Burlington, Frisco, Union Pacific, Missouri Pacific, Alton, Wabash and the former MKT Ry. had used for their passenger trains the socalled old union depot at Kansas City situated near the Missouri-Kansas boundry line, on the Missouri side. The K. C. S., then occupied its own station, situated elsewhere, with the Great Western as a tenant. June 12, 1909, an agreement was entered into by and between respondent, the aforesaid 10 lines, and the Illinois Trust & Savings Bank as trustee, with mutual covenants relating to the construction, maintenance, use, operation and management of the new union passenger station and other terminal facilties. This agreement was supplemented, Jan. 24, 1910 by the inclusion of the K. C. S., and C. G. W., on equal terms with the original proprietary lines. The original and supplemental agreements comprise what is known and herein referred to as the operating agreement. Among its various provisions, the respondent grants to each proprietary line the right to operate its trains upon and over the unified passenger and freight terminals for a period of 200 years. Petitioner approches Kansas City from the southwest, and operates from Paola, Kas., into the city a distance of about 40 miles, over the Frisco under a long time trackage contract. It owns and maintains extensive freight yards and facilities at Rosedale, Kas., known as its Glen Park yards, about 1.25 miles distant from the union station, and a freight station in the West Bottoms east of the state line. HELD, intervening petition of the K. C. S., Southern, Frisco, C. G. W., Wabash, Milwaukee and Alton dismissed. The Commission is of the opinion that this case strongly suggests the advisability of a reexamination by the respective participating carriers of terminal ar-

rangements which have been developed through past decades, including division of capital charges and adjustment of property interests. The subject is obviously of such importance to the public including the railroads, that a reappraisal should be voluntarily undertaken in the light of present conditions. Objections to the service order set up in the plea and motion, reiterated on exceptions are not well taken. What in the opinion of the Commission was an emergency requiring immediate action existed in the situation, brought to its attention by the petition, in which petition appeared to be faced with the alternatives of submission to the franchise ordinance and operating agreement, notwithstanding section 3 (4), or of exclusion from the terminals and consequent interference with its transportation service. The order prescribes for the time being petitioners use of the terminals in accordance with the terms and provisions of the operating agreement and for the compensation therein provided, and reserves the question of ultimate compensation for the effective period of the order to future agreement between the parties, or failing agreement, to determination by the Commission. If left to the Commission there will be opportunity to establish by competent evidence what the compensation should be. In either event respondents interests are safeguarded, and a revisory judicial ascertainment will not be foreclosed. That the petitioners future use of the terminal facilities, in furtherance of its transportation service, would be in the public interest and practicable, without substantially impairing respondents ability to handle its own business, is adequately demonstrated by practical experience; and upon all the facts of record the Commission finds it so to be. Upon determination of the cause pending in the courts, respondent or petitioner, as the case may be, may appropriately certify the result to the Commission. If the courts shall reverse their conclusion and hold petitioner bound by the operating agreement, respondent may move for a dismissal of the petition. On the other hand, if petitioner is finally adjudged not to be so bound, it may move for the entry of an order according it a right of user of the specified zones, upon such terms and for such compensation as the parties may then agree upon. If they are unable to so agree, the Commission may be petitioned to reopen the proceeding for further hearing looking to a determination and prescription of terms and compensation in accordance with the provisions of the act, subject to payment or security therefor as provided. Jurisdiction will be retained accordingly. Missouri Kansas Texas R. R. v. K. C. T. Ry. 104 I. C. C. 203.

(m) Extension by defendants of their main lines of steam railroad so as to reach and serve such union passenger depot as they may construct and establish in a described portion of city of Los Angeles, Calif., and extension of such main lines to provide for rearrangement of their passenger routes incidental to the convenient and proper operation of such union depot, found reasonably required in interest of public convenience and necessity. Los Angeles Passenger Terminal Cases, 100 I. C. C. 421.

(n) Section 1, paragraph 21, does not empower the commission to order the construction of a union passenger station where the station would be the principal thing and the extension of lines the incident. Los Angeles Passenger Terminal Cases, 100 I. C. C. 421, 426.

(o) Careful study of the interstate commerce act is convincing that Congress has not conferred upon the commission authority to require carriers to construct union passenger stations under conditions such as are here present. Los Angeles Passenger Terminal cases, 100 I. C. C. 421, 426.

(p) It is well established that the right of a carrier or the public authorities to make such change in the location of a railroad station as may be required to provide reasonable and adequate service can not be controlled or prevented by private contract or by the fact that private citizens in the expectation of the continuance of a station at a particular place have made donations of land or money. Los Angeles Passenger Terminal Cases, 100 I. C. C. 421, 449.

(q) Joint use by defendant steam railroads of such main-line tracks of each other as may be incidental, and necessary or convenient, to the proper operation of a union passenger depot established as indicated herein, found to be in public interest and to be practi-

cable, without substantially impairing the ability of the carrier or carriers owning or entitled to the enjoyment of such track or tracks to handle its or their own business. Los Angeles Passenger Terminal Cases, 100 I. C. C. 421, 460.

(r) Public convenience and necessity found to permit abandonment by defendants of such portion of their lines of steam railroad, or of all or any portion of the interstate service thereon, as may be incidental to the rearrangement of routes, tracks, and terminal facilities necessitated by the establishment of a union passenger depot in city of Los Angeles, Calif. Los Angeles Passenger Terminal Cases, 100 I. C. C. 421, 460.

(s) Public convenience and necessity found not to require the construction of new or extension of existing lines in city of Los Angeles, Calif., by Southern Pacific and Los Angeles & Salt Lake as described. Application denied. Los Angeles Passenger Terminal Cases, 100 I. C. C. 421, 459, 460.

(t) Extension by defendants of their main lines of steam railroad so as to reach and serve such union passenger station and terminal as they may construct and establish in a described portion of city of Los Angeles, Calif., and extension of such main lines to provide for rearrangement of their passenger and freight routes incidental to the convenient and proper operation of such union station and terminal, found reasonably required in the interest of public convenience and necessity, and expense involved therein found not to impair the ability of defendants to perform their respective duties to the public. Los Angeles Passenger Terminal Cases, 100 I. C. C. 421, 460.

(u) Upon complaint praying for an order requiring erection and maintenance of a union pasenger station at Oklahoma City, with attendant relocation of main line of C., R. I. & P., or such other rearrangement, relocation, or joint use of terminal tracks as will give certain carriers ingress and egress to and from such station, Found: Commission has no jurisdiction to require the building of a union station under conditions here present, and record herein does not show that public convenience and necessity, present or future justify commission lending its approval to present plans of complainants. Oklahoma Corp. Comm. v. A., T. & S. F., 101 I. C. C. 647.

(v) The commission has no jurisdiction to require the construction of union passenger stations where there is no issue of undue prejudice or preference and the providing of the union station and appurtenances constitutes the major consideration, and the extension, rearrangement, or joint use of tracks are incidental thereto. See Los Angeles Passenger Terminal Cases, 100 I. C. C. 421. Oklahoma Corp. Comm. v. A., T. & S. F., 101 I. C. C. 647, 650.

(w) Under paragraphs (18) to (21) of section 1 of the act, as construed by the Supreme Court in 264 U. S. 331, there is a means of control vested in the Commission over the construction of union passenger stations, i. e., where the providing of the station entails major expenditures and the extension, extensive arrangement, relocation, or joint use of mail-line and terminal tracks. Oklahoma Corp. Comm. v. A., T. & S. F., 101 I. C. C. 647, 650, 651.

(x) The commission does not consider it to be its duty under the law to make independent investigations in order to determine the feasibility and lawfulness of undefined plans for the erection or construction of union passenger station facilities. Under the law, the commission's jurisdiction in such matters is confined to the consideration of concrete plans presented by state or other local authorities having jurisdiction of such matters or by carriers. Oklahoma Corp. Comm. v. A. T. & S. F., 101 I. C. C. 647, 652, 653.

(y) Upon complaint praying for an order requiring carriers to erect and maintain a union passenger station at Oklahoma City, Found: That in determining whether public convenience and necessity exists the probable cost of the entire project must be weighed against the convenience which will inure to the public through the providing of the union station. Oklahoma Corp. Comm. v. A. T. & S. F., 101 I. C. C. 647, 655.

(z) Certificate of public convenience and necessity found unnecessary in connection with plan of St. L.-S F. Ry. Co. to erect a local union passenger station at Oklahoma City, with no extension of main-line tracks or expensive rearrangement or joint use of terminal tracks. Oklahoma Corp. Comm. v. A. T. & S. F. Ry., 101 I. C. C. 647, 656.

§14. Through Routes and Rates.

See Through Rates and Joint Rates.

(a) Upon application of N. P., G. N., and O. W. R. R. & N., for approval of a certain contract which provides for the establishment of a joint passenger train service between Seattle, Wash., Tacoma, Wash., and Portland, Ore., and for a divisions of earnings therefrom, the Commission instituted an investigation into the matter. The N. P. owns and operates a railroad between Seattle, Tacoma and Portland. Between Tacoma and Tenino, Wash., it has two lines, one called the Prairie line and the other the Point Defiance line. The G. N., has trackage rights over this railroad, with the exception of the Point Defiance line, under an agreement which grants to the G. N., for a period of 999 years equal joint possession and use in common with the N. P., and such others as it may admit thereto. The O. W. R. R. & N., also has trackage rights over the N. P., between Tacoma and Portland, with the exception of the Prairie line, under an agreement similar to that of the G. N. Between Seattle and Tacoma the O. W. R. R. & N., operates a line of railroad part of which is wholly owned by it and part of which is jointly owned with the C. M. & St. P. Because of the insistence of the public served, applicants decided that the most reasonable and economical thing to be done under the circumstances was to pool the earnings of all of the Portland-Tacoma-Seattle passenger trains and to operate them as a joint effort. The contract which the Commission is asked to approve would carry into effect that plan. The operation of passenger trains between Portland and Puget Sound points as a joint effort will enable carriers to arrange their schedules so as to result in greater convenience to the public in addition to the fast train, it will also be possible to operate the other trains on a somewhat shorter time schedule than is now done. By the pooling plan and division of earnings proposed will result the much greater saving of train miles and car mile incident to the operation of two trains in each direction daily. HELD, proposed contract approved. Puget Sound-Portland Joint passenger train service, 96 I. C. C. 116.

(b) Upon investigation pursuant to paragraph (1) of section 5 of the act, proposed contract providing for the establishment of joint passenger-train service between Seattle, Wash., Tacoma, Wash., and Portland, Oreg., and for division of earnings therefrom, found to be in the interest of better service to the public, to promote economy of operation, and not to unduly restrain competition, and the terms and conditions under which such division is proposed to be made are just and reasonable. Puget Sound Portland Joint Passenger Train Service, 96 I. C. C. 116.

(c) Northern Pacific and Soo have applied for approval of their proposal to establish a joint passenger train service between Minneapolis and St. Paul, Minn., and Duluth, Minn., and Superior, Wis., and to divide the earnings therefrom under the terms and conditions set forth in a certain contract between them. If applicants proposal is approved, the N. P., and Soo late night local trains will be discontinued and the Soo early afternoon nonstop trains will become late afternoon between the Twin Cities and Duluth. All other trains of applicants move interstate between those points. HELD, proposed division of earnings between the applicants will be in the interest of economy of operation and will not unduly restrain competition, and the terms and conditions under which such division is proposed to be made are just and reasonable. Joint passenger train service 107 I. C. C. 495.

IV. CLAIMS FOR DAMAGES.

§14¾. In general.

See Claims; Reparation.

(a) Under the common law, a carrier may waive a provision for written notice of injury to passenger. Edmondson v. Missouri Pac. R. Co. (Mo. 1924) 264 S. W. 470.

(b) While a carrier is liable for actual and punitive damages for insulting a passenger in the enforcement of the law or its rules, still the court will look to the whole case and consider the circumstances, and will restrain the award to reasonable limits. The facts of the case considered, a verdict in excess of $1,000 will be deemed excessive. Illinois Cent. R. Co. v. Cox (Miss. 1924) 100 So. 520.

§16½. Redemption of Tickets.

(a) Refusal and failure of the Director General to make refund on unused portion of a mileage book found

to have resulted in an overcharge. Tariff provision provided for refund upon presentation of unused portion of the mileage book, and this constituted a rule or regulation which determined the aggregate of the legal fare for the service performed and, being a part of the published tariff, could not therefore be disregarded. Previous findings in 98 I. C. C. 476, affirmed and reparation awarded. Carpenter v. Director General, 101 I. C. C. 333.

V. OPERATION.

§17. In General.

See Evidence §18.

(a) Upon investigation pursuant to paragraph (1) of section 5 of the act, proposed contract providing for the establishment of joint passenger-train service between Seattle, Wash., Tacoma, Wash., and Portland, Oreg., and for division of earnings therefrom, found to be in the interest of better service to the public, to promote economy of operation, and not to unduly restrain competition, and the terms and conditions under which such division is proposed to be made are just and reasonable. Puget Sound Portland Joint Passenger Train Service, 96 I. C. C. 116.

§18. Publication and Tariffs.

See Tariffs.

(a) Provisions of section 6 with regard to publishing, filing, posting and observing tariffs must be complied with in the issuance, sale, use of mileage, excursion, or commutation passenger tickets and joint interchangeable mileage tickets. The rules governing the sale, use and redemption of mileage books should be a part of the tariff under which they are sold. When included in the tariff the provision for the redemption of tickets is of equal force with other provisions therein. Carpenter v. Director General, 98 I. C. C. 476, 478.

VI. EVIDENCE AND PROCEDURE.

§19. In General.

See Evidence; Procedure Before Commission.

ALL CITATIONS

Arizona Corporation Commission v. A. E. R. R. Co., 85 I. C. C. 76; Beatrice Creamery Co. v. L. & N. R. R. Co., 85 I. C. C. 377.

PAST RATES

See Evidence §29, §43; Reasonableness of Rates §25.

PEDDLER CAR SERVICE

See Cars and Car Supply §9¾; Classification §17 (3e), §22 (x); Distance Rates §3 (4o).

(a) Rates on peddler-car quantities of fresh meat and packing-house products from Fort Worth, Tex., Oklahoma City, Okla., and Wichita, Kans., to points in Arizona, New Mexico, and Texas differential territory, found unduly preferential of packers at said points of origin and unduly prejudicial to complainant packer at El Paso. Bases for reasonable and nonprejudicial rates prescribed for the future. Peyton Packing Co. v. A. E. R. R. Co., 100 I. C. C. 4, 20.

PENALTY CHARGES

See Classification §16 (p), §16a; Demurrage §7½, §16 (a), §16½.

(a) Upon arrival of shipments at originally billed destination they "were placed in public delivery yard ready for delivery." Complainant's customers refused shipments and carrier's agents were notified by telegrams confirmed by letters to "reship" to new destination. HELD: Since definition of reconsignment clearly indicates that shipments must still be in custody of carrier and shipments here involved never left carrier's custody until they were delivered at ultimate destination, they were reconsignments and not reshipments and penalty charges accruing thereunder were not illegal. Stetson, Cutler & Co. v. N. Y., N. H. & H. R. R. Co., 91 I. C. C. 3.

PER CAR RATES

See Live Stock Shipments (o).

PER DIEM CHARGES

See Cars and Car Supply §11¾, §11⅞; Demurrage §2 (n), §18¼; Switch Tracks and Switching §9b; Tap Lines §12½.

PERCENTAGE RATES

See Advanced Rates §5 (2) (e), §7 (8), §17 (y); Class Rates §1 (e) (m), §2 (3k); Classification §1 (1); Evidence §43¼; Express Companies §23; Local Rates and Combinations (aa) (ff); Through Routes and Joint Rates §13 (4g).

(a) Rates on bedroom furniture from Nashville, Tenn., to eastern and Virginia cities found not unreasonable, but unduly prejudicial to complainant and unduly preferential of competitors at Chattanooga, Tenn., to extent that percentage relationship of rates to first-class rates from Nashville exceeds percentage relationship of contemporaneous rates to first-class rates from Chattanooga. Standard Furniture Co. v. N., C. & St. L. Ry., 91 I. C. C. 27.

(b) Considering difference in transportation conditions in western territory as compared with the East, volume of movement, distance traversed, and density of traffic, rates on wool and mohair in the grease from intermountain territory to Pacific coast terminals, for application on shipments moving locally or when destined beyond, found unjust and unreasonable. Reasonable basis of maximum percentage rates prescribed for future. Wool Rates Investigation, 1923, 91 I. C. C. 235, 272, 273.

(c) Considering volume of traffic, its seasonal nature, and expense of assembling and returning equipment, fourth-class rates on fresh tomatoes from points in Silver Creek district in New York, to Pittsburgh, Pa., found unreasonable to extent they exceeded 80 per cent of fourth class. Reasonable maximum rates prescribed and reparation awarded. Heinz Co. v. Director General, 91 I. C. C. 358.

(d) Sixth-class rate on imported flaxseed from New York Harbor points to Buffalo, N. Y., found unreasonable as compared with rate on flaxseed between same points in opposite direction, and to extent it exceeded 60 per cent of New York-Chicago rate less 2 cents. Reasonable rate prescribed and reparation awarded. American Linseed Co. v. E. R. R. Co., 91 I. C. C. 663.

(e) Complainant attacked class and commodity rates from Duluth, Minneapolis and St. Paul, Minn., Chicago, Ill., and points taking same rates, and all points east of the Mississippi river and north of the Ohio and Potomac rivers to Watertown, S. D., as unreasonable and unduly prejudicial to Watertown and unduly preferential of Sioux Falls and Aberdeen, S. D., Sioux City, Iowa, and Pipestone, Mankato, Minneapolis, and St. Paul, Minn., Watertown is 320 miles southwest of Duluth, 214 miles west to southwest of Twin Cities 593 miles northwest of Chicago and 103 miles north of Sioux Falls. It is served by the Northwestern, Rock Island, Great Northern and M. & St. L. **Rates From Duluth.** From Duluth the Watertown and Sioux Falls the short line is the G. N. From Duluth to Sioux City the short route is over the G. N., to Twin Cities and Omaha Line beyond, although the single line of the G. N., is only 12 miles longer. The short line to Aberdeen is the G. N. The rates to both Sioux Falls and Sioux City are the same, and are materially lower than to Watertown, although the distances to the latter point are shorter. The outbound class rates from Watertown, Sioux Falls and Aberdeen to points in South Dakota are all on basis of the South Dakota intrastate scale. This scale has also been extended by the carriers from Sioux City to points in South Dakota. Generally speaking, the level of the rates is, and properly should be, somewhat lower east than west of the Twin Cities and somewhat lower south of Sioux City than north and west of that point. The hauls for the short line distances from Duluth to Watertown, Sioux Falls and Aberdeen are in the territory in which the higher rate level prevails. HELD, class rates from Duluth and related points taking same rates to Watertown, S. D., are unreasonable to extent they exceed rates ranging from 121c first class to 22c class E; further that the class rates from Duluth and points taking same routes to Watertown are unduly prejudicial to Watertown and unduly preferential of Sioux Falls and Aberdeen to extent they exceed rates reflecting the following relationship to the contemporaneous rates from Duluth to Sioux Falls and Aberdeen; from Duluth to Watertown the reasonable maximum rates above prescribed, and from Duluth to the preferred points the following class rates which will be reasonable maximum rates: to Sioux Falls rates ranging from 129c first class to 23c class E; to Aberdeen 133c first class and 24c

class E. **Rates from Twin Cities.** HELD, class rates from St. Paul and Minneapolis and related points taking same rates to Watertown, S. D., are not unreasonable but are unduly prejudicial to extent they exceed rates to Sioux Falls by more than first class 7c class E. 1c. **Rates from Chicago.** In 1912 increased class rates from Chicago and St. Louis, Mo., to Watertown were found justified in 26 I. C. C. 635. In 1912 the average of the class rates to Watertown was 109% of the average of the class rates to Sioux Falls, while at present it is 122%. HELD, class rates from Chicago and points taking same rates to Watertown are not unreasonable but are unduly prejudicial to extent they exceed 107% of the rates to Sioux Falls. **Rates from Points East of Chicago.** The present basis of constructing rates from points east of the Indiana Illinois state line to Watertown is by applying the local or proportional rates from such points to Chicago, La Crosse or Mississippi river crossings and adding thereto the full local rates beyond. Watertown has a scale of proportional rates from the Mississippi river which are the same as the Aberdeen rates, but on all classes except on third class the local rates from the Mississippi river to Watertown are lower. The record leaves no doubt that the density of traffic is greater to Sioux Falls than to Watertown, and the Commission can not entirely lose sight of the fact that the rates to Sioux Falls are influenced to a greater extent than the rates to points beyond Sioux Falls by the lower rate level to the Missouri river cities. HELD, class rates to Watertown from points east of the Indiana Illinois state line are unreasonable to extent they exceed the rates from points of origin to Mississippi river and proportional rates from River crossings to Watertown rates ranging from 110c first class to 20c class E. **Commodity Rates to Watertown.** A large number of carload commodity rates are published from points of origin embraced in this complaint to Sioux Falls but comparatively few to Watertown, where such commodity rates are published to Watertown they compare favorably with rates in effect to Sioux Falls. The same general conditions affect the commodity rates to Watertown as affect the class rates. The commodity rates should be aligned somewhat on the basis of Sioux Falls commodity rates and should not exceed the ratio of the corresponding class rates to Watertown and Sioux Falls for the class in which the commodity is rated in the governing classification. Watertown Chamber of Commerce v. A. & W. R. R., 101 I. C. C. 427.

(f) Complainant attacked commodity rates charged on crude sulphur from Baltimore, Md., to Detroit, Mich., as unreasonable to extent they exceeded 78% of the rate from New York to Chicago less the port differential of 3c. Rate charged 31.5c prior to July 1, 1922 and 28c on and after Oct. 25, 1922. From July 1 to Oct. 25, 1922 rate was 25.5c. Short line distance is 594 miles. Rates from Baltimore are less than from New York by the port differential of 3c. From New York the rates to Chicago and Detroit are 36.5 and 31c, respectively, for short line distances of 896 and 693 miles. Between points in central territory crude sulphur takes 75% of sixth class by exceptions of the official classification. For movements within trunk line territory the Commission has found in numerous cases that 80% of sixth class is reasonable, 89 I. C. C. 383 and 87 I. C. C. 613. The 28c commodity rate under attack is 82.3% of the sixth class rate of 34c from Baltimore to Detroit. Defendants absorb the labor charge for loading from pier to car, which amounts to 32.5c per ton as import bulk freight. When the domestic rate on crude sulphur was established, this allowance was made the same as on import sulphur. No such allowance is made on other domestic traffic. Deducting this allowance from the 28c rate the net amount received by the carriers is 77.6% of the sixth class rate. HELD, rate attacked not unreasonable or unduly prejudicial, complaint dismissed. Detroit Chemical Works v. Canton R. R., 101 I. C. C. 671.

(g) Rates on steel billets from South Kearney, N. J., Baltimore, Md., and Philadelphia, Pa., to Huntington, W. Va., substantially 82 per cent of the New York-Chicago rate, which basis was established to Huntington following Jobbers' & Mfrs.' Bureau of Huntington, 57 I. C. C. 64, found not unreasonable or unduly prejudicial because not related to rate to Pittsburg as 82 is to 60. Earnings and transportation conditions are matters to be considered regardless of the percentage formula, and earnings under rates assailed compare favorably with those under rates to other c. f. a. territory destinations for similar distances.

West Virginia Rail Co. v. P. R. R., 93 I. C. C. 215.

(h) The commission can not accept the percentage formula as a measure of reasonableness of rates or as a criterion of their lawfulness in other respects, matters to be considered being rather earnings and transportation conditions. General Chemical Co., 83 I. C. C. 582. Toledo Cooker Co. v. N. & A. Ry., 93 I. C. C. 271, 273, 274.

(i) Fifth-Class rates on fabricated steel tank material from Haynesville, La., to El Dorado and Smackover, Ark., and from Couchwood, La., to Smackover, found unreasonable to extent they exceeded 60 per cent of fifth class prescribed in the Shreveport case, 48 I. C. C. 312, 354, and in Galveston Commercial Asso., 57 I. C. C. 390, for application on iron and steel articles between points in same territory. Reparation awarded. Parkersburg Rig & Reel Co. v. M. P., 93 I. C. C. 667.

(j) Upon contention that as lard substitute is but cottonseed oil, the commission should prescribe peddler-car rates on lard substitutes which are 130 per cent of the c. l. rates on cottonseed oil, FOUND, Contention ignores the refining process which cottonseed oil undergoes in its manufacture into lard substitute, difference in value between the two articles, and character of the containers. Interstate Cotton Oil Rfg. Co. v. A. T. & S. F., 95 I. C C. 171, 175.

(k) Rates on rig irons, in straight carloads, found unreasonable to extent they exceeded 85 per cent of the rates contemporaneously in effect on oil-well outfits and supplies. Reasonable rates prescribed and reparation awarded. Parkersburg Rig & Reel Co. v. C., R. I. & P., 95 I. C. C. 181.

(l) Proposed increased commodity rates on glucose products from Chicago, Ill., and certain points in Iowa, to South Dakota destinations north and west of Sioux Falls and east of the Missouri River, designed to make such rates approximately the same percentage of the contemporaneous fifth-class rates as obtain to Sioux Falls, Sioux City, Iowa, Minneapolis, Minn., and other destinations in the same general territory, found not justified, in view of the fact that the record does not disclose that the class rates afford a proper basis upon which to construct the commodity rates proposed to all of these destinations. Glucose Proucts to South Dakota, 96 I. C. C. 579.

(m) Rates on newsprint paper from points in New England, New York, and Canada, and from Philadelphia, Pa., to Baltimore, Md., substantially on the sixth-class basis applicable within trunk-line territory, found not unreasonable. While bases of rates in other territories are varying percentages of sixth class, the entire rate structure within and to trunk-line territory is in issue in a pending general investigation and no sufficient reason exists for selecting newsprint for advance consideration. The commission's decision in the Ontario Paper Co. case, 95 I. C. C. 66, upon which complaint relies, was made on consideration of newsprint rates and distances in evidence and not primarily on consideration of the relationship of newsprint rates to sixth class, although the basis found reasonable from Thorold Ontario, to New York, was approximately 80 per cent of sixth class. Washington Publishers' Asso. v. B. & O. R. R. Co., 98 I. C. C. 339.

(n) In judging rates to or from points in the percentage groups, it has been the practice of the commission to consider earnings and transportation conditions and not the mere relationship to sixth class. See General Chemical Co., 83 I. C. C. 582, and Grasselli Chemical Co., 89 I. C. C. 383. Washington Publishers' Asso., v. B. & O. R. R. Co., 98 I. C. C. 339, 344.

(o) Upon attempt to prove that the Buffalo-New York sixth-class rate on newsprint is unreasonable to the extent it exceeds 80 per cent of sixth class, and that rates from the other points of origin involved should be derived from the new Buffalo-Baltimore rate by means of present relationships. HELD, no question as to relationships of rates from other points of origin to Buffalo is pressed in this proceeding and commission's decision is without prejudice to any conclusion on that question which may be reached in other proceedings. Washington Publishers' Asso. v. B. & O. R. R. Co., 98 I. C. C. 339, 344.

(p) Class rates on paper tablets, paper bags and wrapping paper from Birmingham, Ala., and Atlanta, Ga., to Jackson, Miss., found not unreasonable or otherwise unlawful. No sound reason appears for prescribing rates on

these articles which reflect certain percentages of corresponding class rates, as sought by complainant. Rates published in 66 I. C. C. 571 and 64 I. C. C. 306 do not bear a uniform percentage relation to first class, and those to Jackson resulting from those cases do not reflect same percentage relationships to corresponding first-class rates. Commodity rates established pursuant to last cited case were not prescribed as reasonable maxima. The record is convincing that the class basis is reasonable and proper for these occasional carload shipments. Jackson Paper Co. v. A. G. S. R. R. Co. 98 I. C. C. 442.

(q) Rates on cement plaster from Plasterco, Plasterco Junction, and Hamlin, Tex., to destinations in Alabama, Florida, Georgia, Kentucky, Mississippi, and Tennessee, from and after July 1, 1922, found unreasonable to extent they exceeded by more than 20 per cent rates in effect August 25, 1920. Reparation awarded. Texas Cement-Plaster Co. v. A. & M. R. R. Co., 98 I. C. C. 519.

(r) In the first decision in the Certain-teed Products case, the commission did not find, as complainant here contends, 80 per cent of the contemporaneous fifth-class rate to be proper on roofing materials. The commission found undue prejudice to the extent that the percentage of the commodity rates to the fifth-class rates to interior jobbing point exceeded or might exceed by more than 20 per cent the percentage of the commodity rates to the fifth-class rates on like traffic to border points. Fargo Commercial Club v. A. & W. Ry. Co. 98 I. C. C. 691, 719.

(s) Class rates from Fargo N. Dak., to Malta, Melstone, and Myers, Mont., and to all points in Montana west thereof not more than 900 miles from Fargo over short-line routes, found unduly prejudicial to Fargo and unduly preferential of St. Paul and Minneapolis, Minn., to extent they exceed rates which are less than corresponding contemporaneous rates from St. Paul and Minneapolis to same destinations by 25 cents on first class, and on other classes by amounts ascertained by applying the same percentage to first-class rates so constructed as are reflected by corresponding contemporaneous rates from St. Paul and Minneapolis to same points. Fargo Commercial Club v. A. & W. Ry. Co., 98 I. C. C. 691, 727.

(t) The commission has repeatedly urged uniform class percentages where the same classification applies. The class rates here involved should accordingly be revised so as to reflect uniform class percentages. Fargo Commercial Club v. A. & W. Ry. Co., 98 I. C. C. 691, 728.

(u) In 95 I. C. C. 181 the Commission found rates attacked on rig irons, carloads, from Parkersburg, W. Va., to Louisiana, Arkansas, Oklahoma, Kansas, Montana and California as unreasonable to extent they exceeded 85% of the rates on oil well outfits, subject to minimum of 40,000 pounds and awarded reparation. Upon reconsideration, previous order affirmed as to rates for future but reparation denied. Parkersburg Rig & Reel Co. v. C. R. I. & P. Ry., 107 I. C. C. 182.

(v) Contention that rates on deciduous fruits which exceed rates in effect prior to June 25, 1918, by greater percentages than in the case of the corresponding rates on other transcontinental traffic and certain traffic within mountain-Pacific territory results in undue prejudice to shippers of deciduous fruit, not sustained. Defendant's witness testified that while rates used in complainant's comparisons were fairly representative, these rates were established because of competition with water lines operating through the Panama Canal, which competition has rapidly increased during the past few years, or to preserve carriers' tonnage, whereas deciduous fruits do not meet water competition, one experimental shipment by water having proved a failure, and conditions affecting rates used in complainant's comparisons are substantially different from those surrounding rates in issue. Calif. Growers & Shippers Protective League v. S. P. Co., 100 I. C. C. 79, 88, 90.

(w) Rates on fresh deciduous fruits, other than apples, from California points to eastern transcontinental groups, found not unduly prejudicial as compared with lower rates contemporaneously maintained on apples to and from same points. Apples load more heavily, which is a matter of considerable importance, and are subject to water competition which affects the all-rail rate, another feature which distinguishes them from other deciduous fruits. Calif. Growers' & Shippers' Pro-

tective League v. S. P. Co., 100 I. C. C. 79, 80, 105.

(x) Upon further hearing, original report 64 I. C. C. 477, and upon original hearing of consolidated cases, FOUND: Failure of defendants to provide and maintain from Paxton and Spring Garden, Calif., to Wabuska, Nev., on ores and concentrates, rates similar in all respects as to conditions under which such rates are applicable to those contemporaneously maintained on like traffic from Spring Garden to Garfield and International, Utah, but not in excess of 60 per cent thereof will be for the future unduly prejudicial to Wabuska and unduly preferential of Garfield and International. Mason Valley Mines Co. v. W. P. R. R. Co., 100 I. C. C. 180, 204.

(y) Upon further hearing original report, 80 I. C. C. 335, reversed, and rates on rig irons from Iola, Kans., to Tulsa, Okla., found not unreasonable. The present record does not substantiate the original finding that "there is a regular and substantial movement." In Parkersburg Rig & Reel Co., 95 I. C. C. 181, the commission found that rates on this commodity were unreasonable to extent they exceeded 85 per cent of the rates contemporaneously in effect on oil-well outfits, thus fixing the relationship between oil-well supplies and rig irons provided that the rate applicable on oil-well supplies is a reasonable maximum rate; while the present rate on oil-well supplies is 92 per cent of the Class A rate prescribed in Memphis-Southwestern Investigation, 55 I. C. C. 515, it has not been proven a reasonable maximum rate. Bradford Rig & Reel Co. v. Director General, 100 I. C. C. 261.

(z) Following Lissberger & Co., 78 I. C. C. 467; 81 I. C. C. 645, commodity rates on zinc dross from Middletown and Cincinnati, Ohio and Ashland, Ky., to Newport News, Va., which were less than 85 per cent of the contemporaneous sixth-class rates found not unreasonable but charges on like traffic from New York, N. Y., to same destination found to have been unreasonable to extent they exceeded 85 per cent of sixth class rate. Reparation awarded. Lissberger & Co. v. C. & O., 101 I. C. C. 23.

(aa) Rate on wood pulp from Thomson, N. Y., to Whippany, N. J., found unreasonable to extent it exceeded and exceeds rates equal in amount to 90 per cent of contemporaneous sixth-class rate from and to same points. Reasonable rate prescribed for future and reparation awarded. United Paperboard Co. v. G. & J. Ry., 101 I. C. C. 171.

(bb) Rates on feeder cattle from points in Arizona on defendants' lines, except the Tucson, Cornelia & Gila Bend and the Apache, to points in California, found unjust and unreasonable to extent they exceed 80 per cent of the rates on beef cattle from and to same points. Reasonable basis of rates prescribed. Arizona Cattle Growers Asso. v. A. Ry. Co., 101 I. C. C. 181.

(cc) Percentage rates on strawboard from and to points in central territory and from points in that territory to Canadian and trunk-line territories found not unreasonable, unjustly discriminatory or unduly prejudicial as compared with lower rates prescribed for application on certain papers and paper articles to and within western territory in Certain-teed Products Corp., 73 I. C. C. 82, and other cited cases. Lafayette Box Board & Paper Co. v. A., C. & Y. Ry., 101 I. C. C. 273, 275.

(dd) Rates on cedar pencil slats found unreasonable to extent they exceeded 120 per cent of the rates on lumber of same species. Reasonable rates prescribed for future and reparation awarded. Dixon Crucible Co. v. P. R. R., 101 I. C. C. 415.

(ee) Combination rates assessed on common unglazed doors, in straight or mixed carloads, from points in Oregon and Washington, to destinations in trunk-line and New England territories, found unreasonable to extent they exceeded 115 per cent of rates on lumber, prescribed in Anson, Gilkey & Hurd Co., 78 I. C. C. 495. Reparation awarded. Pacific Mutual Door Co. v. A. A. R. R., 101 I. C. C. 633.

(ff) Rate on imported newsprint paper from Houston, Tex., to Oklahoma City, Okla., found unreasonable to extent it exceeded rates based upon the distance scale prescribed in Memphis-Southwestern Investigation, 77 I. C. C. 473, 564, and the percentage relationship found reasonable in Minnesota & Ontario Paper Co., 66 I. C. C. 571. Reparation awarded. Oklahoma Publishing Co. v. A., T. & S. F., 101 I. C. C. 635.

(gg) Between points in c. f. a. terri

tory crude sulphur takes 75 per cent of sixth class by exception to the official classification. For movements within trunk line territory 80 per cent of sixth-class is a reasonable basis. See 89 I. C. C. 383; 87 I. C. C. 613. Detroit Chemical Works v. C. R. R. Co., 101 I. C. C. 671, 672.

(hh) Departure from the percentage formula in making commodity rate is not in and of itself a violation of section 1 of the interstate commerce act. In principle there is no more reason under section 3 than under section 1 for requiring either conformity to or equal departures from the percentage formula. The earnings and transportation conditions are matters for the exercise of judgment as much in the one case as in the other. Detroit Chemical Works v. C. R. R. Co., 101 I. C. C. 671, 673.

(hha) Commodity rates, reflecting 78 per cent of class basis, on helical springs from Chicago and Waukegan to New Orleans found not unreasonable when applied to occasional shipments. Crescent Bed Co. v. A. & V. Ry., 102 I. C. C. 419.

(ii) Complainant attacked rates charged on vegetables, carloads, from Florida to Wichita, Kas., as unreasonable, unjustly discriminatory and unduly prejudicial. Complainants receive from Florida carloads of cabbage, celery, potatoes, tomatoes and other vegetables and job in less carload quantities to points in Kansas and northern Oklahoma. In so doing they compete with Kansas City, Mo., Topeka, Kas., and Oklahoma City and Enid, Okla. Wichita is in the south central part of Kansas and is served by the Santa Fe, Rock Island, M. P., Frisco, K. C. M. & O., and Midland Valley. Rates from Florida points to destinations in Kansas and to Kansas City, as well as to destinations in various other western states such as Iowa, Nebraska, Minnesota and South Dakota, are joint through rates published in sectional tariffs and composed of separate factors as follows: (a) from points in Florida to Jacksonville, (b) from Jacksonville to Ohio and Mississippi river crossings, and (c) from those crossings to destinations. The factors to Jacksonville are not attacked. The factors from Jacksonville to Ohio and Mississippi river crossings in most cases are the same as the rates to those points on traffic destined thereto, but are lower than the rates which apply locally from Jacksonville. The distances to Wichita is 107% of that to Kansas City, 102% of that to Topeka, 98% of that to Enid, and 105% of that to Oklahoma City. The rates reflect the following percentage to Kansas City: cabbage 138%, tomatoes 136%, cabbage 124%, potatoes 130%, other vegetables 136%; the rates to Wichita reflect the following percentage of those to Topeka: celery 117%, tomatoes 120%, cabbage 110%, potatoes 110%, other vegetables 120%. Numerous routes are open for the movement of vegetables to Wichita, Kansas City, Topeka and other destinations. A Kansas City jobber can route a car from Jacksonville through Wichita to try the market there and later send it to Kansas City at a through rate lower than the rate to Wichita. HELD, rates on vegetables, carloads, from Florida to Wichita, Kas., unduly prejudicial to extent the factors from Jacksonville exceed 110% of rates to Kansas City; that rates on cabbage and potatoes not unreasonable, but rates on other vegetables unreasonable to extent the factor from Jacksonville to Wichita exceeded 159c prior to July 1, 1922 and 143c thereafter, reparation awarded. Wichita Chamber of Commerce v. A. & V. Ry., 109 I. C. C. 368.

ALL OTHER CITATIONS

Indiana Public Service Commission v. A. A. R. R. Co., 85 I. C. C. 533; Butterworth Judson Corp. v. Director General, as Agent, 88 I. C. C. 19; Mason City Brick & Tile Co. v. Director General, 88 I. C. C. 37; Hollingshead Co. v. A. & R. R. R. Co., 88 I. C. C. 191; Armour & Co. v. Director General, as Agent, 88 I. C. C. 568.

PERISHABLE FREIGHT

See Inspection; Protective Service.

(a) Complainant attacked commodity rate charged of $1.25 on cabbage, carloads, from Washington to St. Louis, Mo., between November 1919 and February 1920, as unreasonable and unduly preferential to extent it exceeded 94c. Shipments from Tacoma, Seattle, Kent, Thomas, North Puyallup, and Auburn, Wash., distance 2,377 miles. A commodity rate of 94c applied on onions and potatoes from and to the same points. This rate also applied on cabbage from California group points. HELD, rate

attacked unreasonable to extent it exceeded 94c, reparation awarded. Meyer Vasquez Produce Co. v. Director General, 89 I. C. C. 437.

(b) Considering volume of traffic, its seasonal nature, and expense of assembling and returning equipment, fourth-class rates on fresh tomatoes from points in Silver Creek district in New York, to Pittsburgh, Pa., found unreasonable to extent they exceeded 80 per cent of fourth class. Reasonable maximum rates prescribed and reparation awarded. Heinz Co. v. Director General, 91 I. C. C. 358.

(c) In reissuing a tariff carriers unintentionally increased arbitrary on fruit, vegetable, and grape packages over rates on lumber, to a basis higher than that authorized in Increased Rates, 1920, 58 I. C. C. 220. HELD: Burden of proof is upon carriers, and since they failed to justify the rates, as increased, unreasonableness found to extent that arbitraries exceeded those authorized in cited cases Reparation awarded. Package Sales Corp. v. U. P. R. R. Co., 91 I. C. C. 697.

(d) Complainant attacked commodity rates on fresh deciduous fruits other than apples, carloads, from California points to eastern transcontinental groups as unreasonable, and unduly prejudicial as compared with rates on apples, carloads, from and to the same points and by comparison with the level of the rates on other commodities in general. Deciduous fruits constitute the most important part of the perishable freight from California to the east, which traffic is by far the greatest of any handled by the transcontinental carriers serving California. Deciduous fruits constituted 29.3% of the total number of carloads of all kinds of freight handled eastbound by the Santa Fe, during the first 11 months of 1923. The S. P., handles more deciduous fruit than the Santa Fe. The S. P., and Santa Fe are the principal originating trunk lines, followed by the W. P. The Salt Lake handles a relatively small amount of the traffic. A considerable portion of the traffic originates on branches of these lines, but the bulk of it originates on their main lines. There is also a substantial movement from points on short line connections of these carriers. Shipments from points on the S. P., or its short line connections north of the Tehachapi are moved to Roseville, Calif, and assembled. These move to Ogden, Utah, where they are delivered to the U. P., and the latter handles them to Council Bluffs Transfer, Iowa. At this point the trains are broken up and the cars distributed, principally between the Northwestern and Milwaukee, although the I. C. receives a comparatively small portion of the traffic. Most of the traffic moves over these lines to Chicago. The S. P., assembles shipments from south of the Tehachapi at Colton, Calif., about 57 miles east of Los Angeles. The movement over the S. P., via El Paso, Tex., is light in comparison with the movement via Ogden. The bulk of the Santa Fe traffic originates in the southern part of the San Joaquin Valley, is assembled into trains at Bakersfield, Calif., and moves direct over that line to Chicago. The W. P., assembles its traffic at Sacramento. The bulk of it is delivered to the U. P., at Ogden, and the movement beyond is similar to traffic originating on the S. P. The Salt Lake traffic is assembled at San Bernardino, Calif., and is delivered to the U. P., proper at Ogden. Beyond Chicago the Erie system handles the bulk of the traffic to New York, the Pennsylvania delivers most of the traffic to Pittsburgh and Philadelphia, and the B. & O., delivers it at Washington, D. C., and Baltimore. The M. C., carriers most of the traffic to Detroit and Buffalo. The N. Y. C., delivers at Cleveland, and it turns over to the B. & M., the traffic from Boston. The traffic ordinarily moves in refrigerator cars under refrigeration must be stopped enroute for reicing at various points and expedited schedules are maintained. The present schedules are 154 hours from the assembling points to Chicago, the Erie schedule from Chicago to New York is 65.5 hours. These schedules are slower than those maintained prior to federal control, but they are faster than those for citrus fruit and other freight except fresh vegetables and cantaloupes. The rates are blanketed from all points in California to large destinations groups in the east. The rates attacked are higher than the rates in effect on June 24, 1918 by 41% from Group J and 50% to other groups. Complainant contended that the rate of $1.50 on apples compared with the rate of $1.73 on other deciduous fruits to most of the eastern groups results in undue prejudice and preference as between the shippers of the respective fruits. If the rates on apples from California were increased to $1.73, it would place the shippers of California apples at a disadvantage in competing with those from the north

coast territory, and it is doubtful whether it would be of any substantial benefit to the shippers of other deciduous fruits. The record in this case shows affirmatively that the deciduous fruits here under consideration are moving freely under the present rates, and that the volume of movement has increased greatly during recent years. Complainants prediction that unless lower rates are secured there will be a substantial reduction in tonnage may not be realized. The prediction is based upon the unfavorable financial return to the producers at the time of the hearing, and for a period prior thereto. But this record does not justify the conclusion either that this condition is likely to continue or that it is undue in great part to the rate structure. It is suggested in the record that the unfavorable financial results are chargeable in large measure to overproduction, to inability of the eastern market to absorb the supply. If this is so, economical laws, and not the rate adjustment, will sooner or later bring about a reduction in the movement, and such a reduction would be desirable. The record herein does not show the comparative levels in market value of the various commodities over a reasonable period of years. HELD, rates attacked not unreasonable or unduly prejudicial as a whole, complaint dismissed. Calif. Growers & Shippers Protective League v. S. P. Co., 100 I. C. C. 79.

(e) Complainant attacked commodity rates charged on a mixed carload of beets, carrots, turnips and cabbage, shipped May 26, 1921 from San Fernando, Calif., to St. Paul, Minn., as unreasonable. The beets, carrots and turnips were in bags and cabbage in crates, shipment moving via S. P., E. P. & S. W., Rock Island, C. G. W., 2,315 miles, charged $1.665. Contemporaneously defendants maintained rate of $1.255 on beets, carrots and turnips in mixed carloads and on cabbage in straight carloads, and effective April 24, 1922, this rate was reduced to $1.10 and made applicable on beets, carrots, turnips in bags and cabbage in crates. HELD, rate attacked unreasonable to extent it exceeded $1.255, reparation awarded. August Ammon v. S. P. Co., 101 I. C. C. 37.

(f) Complainant attacked commodity rates charged on bananas and cocoanuts, straight or mixed carloads, since Sept. 25, 1920 from New Orleans, La., Gulfport, Miss., and points taking same rates to Oklahoma and Arkansas City as unjust unreasonable and unduly prejudicial. In No. 14436 complainants attack rates charged on bananas and cocoanuts, straight or mixed carloads, since Nov. 3, 1920 from New Orleans and points taking the same rates and from Mobile, Ala., to certain points in Texas as unreasonable. Bananas and cocoanuts are not grown in commercial quantities in the United States but are imported from Central America principally through New Orleans and to some extent through other ports. The movement of bananas is steady and continues throughout the year. Cocoanuts move mostly during the Thanksgiving and Christmas season, and generally in small quantities in mixed carloads with bananas. Bananas are shipped in ventilated refrigerator cars, and except in the summer months, do not require icing. Prior to Sept. 25, 1921 the rates from Gulfport to the above named points, except Arkansas City were made on a combination basis, based on New Orleans, the factor up to New Orleans being 24c. Sept. 25, 1921 the same rates were published from Gulfport as from New Orleans. Destinations in 14436 are Dallas, Fort Worth, Wichita Falls, Sherman, Abilene, Stamford and Quanah, Tex. Movement from New Orleans is over the T. & P., or S. P., and connections. Prior to Jan. 1, 1922 the rates to these points was $1.215. On that date it was reduced to $1.095. Bananas are rated third class, carloads, minimum 20,000 pounds. Upon this record it is established that the rates attacked are too high, and that some reductions should be made, but the record shows that complainants proposal would result in rates unduly low. Defendants have equalized the port of Gulfport with New Orleans, but in prescribing rates from Gulfport the Commission can not disregard the greater distances therefrom. HELD, rates attacked unreasonable from New Orleans to extent they exceed $1.085 to Arkansas City and 97.5c to Wichita Falls, and other points related thereto, and rates from Gulfport 4c over New Orleans, reparation awarded. Dawson Produce Co. v. A. & V. Ry., 101 I. C. C. 196.

(g) Complainant attacked commodity rate charged on grape fruit, carloads, from Phoenix, Ariz., to San Francisco, Calif., as unreasonable. Distance over A. E., and S. P., is about 930 miles, over the Santa Fe 800 miles. Rate charged was $1.37 prior to and $1.235 from and

after Jan. 1, 1922. On April 12, 1922 the rate was reduced to $1.02 and on July 1, 1922 to 92c. The class C rate during the period of movement was $1.02 but on Jan. 1, 1922 class rates applicable to carloads of fresh fruits and vegetables were reduced 10%. HELD, rate attacked unreasonable to extent it exceeded $1.02 reparation awarded. Levy & Zenter v. A. T. & S. F. Ry., 101 I. C. C. 361.

(h) Rates on melons and cantaloupes, in straight or mixed carloads, and on melons, cantaloupes, and vegetables, in mixed carloads, from Imperial Valley points in California to Douglas, Ariz., found not unreasonable. Rates charged in no instance exceeded class C, the basis prescribed by commission on such traffic in Murray & Layne Co., 59 I. C. C. 552, and other cases, and present rates are the same as or lower than corresponding class C rates. Buxton-Smith Co. v. E. P. & S. W. 92 I. C. C. 227.

(i) With the possible exception of livestock traffic and such commodities as move in refrigerator cars, the record indicates that the vegetable traffic requires special services, equipment, and facilities that are not required by other commodities referred to, thereby increasing the difficulties and costs of transportation. Mississippi R. R. Commission v. A. & R. R. R. Co., 98 I. C. C. 55, 63.

(j) Respondents proposed to amend rule 630 H of perishable protective tariff by adding to the exception numbered 2 the further exception: carriers parties to this tariff will not furnish iced refrigerator cars for loading by the shippers with fruits and, or vegetables, less than carloads, moving between points governed by the Illinois classification. Rule 630 H, in connection with rule 600B provides, among other things, that no charge will be made for the service of icing, reicing, or refrigeration of less than carload shipments of perishable freight in straight or mixed lots, minimum 15,000 pounds, between points governed by the western classification, including Illinois and Iowa classification. The effect of the proposed amendment would be to withdraw the rule in so far as its application to fruits and vegetables between points in Illinois classification territory is concerned. The overlapping of the rules in so far as they apply to fruits and vegetables from Illinois classification points should be corrected, but the Commission is not persuaded that this should be accomplished by withdrawing a part of rule 630 H. HELD, schedules not justified. Refrigeration of L. C. L. perishable freight 107 I. C. C. 179.

(k) Imposition of charges provided in rule 240 (A) of perishable protective tariff No. 1, in addition to applicable freight rates, on fresh meats and packing-house products initially iced as by consignor and delivered to carrier with instructions not to reice in transit, from points in Washington, Oregon, California, and Nevada to interstate destinations, found to result in unreasonable total charges. Reparation awarded and revision of tariffs required. Frye & Co. v. G. N. Ry. Co., 88 I. C. C. 477.

PERSONAL INJURIES

See Employers' Liability Act; Safety Appliance Acts; Telephone and Telegraph Companies IV.

(a) Minor's right to disaffirm alleged contract composed of stipulations on back of railway pass issued to him, HELD limited to minor himself, his personal representatives or privies in blood, and not subject to be exercised by his widow seeking to recover for his death. Pinnell v. St. Louis-San Francisco Ry Co. (Mo. 1924) 263 S. W. 182.

(b) Plaintiff, seeking to recover for the death of her minor husband while using a free railroad pass, and alleging invalidity of stipulations contained in it relieving carrier from liability, HELD not entitled to assert first on appeal that conceding the validity of such stipulations defendant was nevertheless liable on ground of gross, wanton, or reckless negligence. Pinnell v. St. Louis-San Francisco Ry Co. (Mo. 1924) 263 S. W. 182.

(c) In action under federal Employers, Liability Act (U. S. Comp. St. §§8657-8665), it must be shown that defendant is common carrier by railroad engaged in interstate or foreign commerce. Southern Ry. Co. v. Dickson. (Ala 1924) 100 So. 665.

(d) Brakeman, injured when timber slid off ramp adjoining spur track where the brakeman was engaged in switching cars, HELD not entitled to go to jury on question of negligence of railroad under the federal Employers' Liability Act

(U. S. Comp. St. §§ 8657-8665), in view of failure to show that the timber was thrown down the ramp by an employee of the railroad or that railroad could have anticipated that employee would be injured by reason of proximity of tracks to ramps or manner of construction of ramps or use which had been made thereof by the lumber company, it being inferable that the timber was thrown by an employee of the lumber company or some intermeddler. New Orleans & N. E. R. Co. v. Penton (Miss. 1924) 100 So. 521.

(e) In an action against a railroad under the federal Employers' Liability Act (U. S. Comp. St. §§ 8567-8665), for injuries to railroad employee, the employee was required to prove negligence by railroad, since in such case there is neither a statutory nor a common-law presumption of negligence. New Orleans & N. E. R. Co. v. Penton (Miss. 1924) 100 So. 521.

(f) A railroad is not liable under the federal Employers' Liability Act (U. S. Comp. St. §§ 8657-8665), for injuries to an employee unless negligent, since a railroad is not a guarantor of the safety of the place of work, but is required merely to exercise ordinary care and prudence to the end that the place in which the work is to be done may be reasonably safe. New Orleans & N. E. R. Co. v. Penton (Miss. 1924) 100 So. 521.

(g) Where brakeman and railroad by which he was employed were both engaged in interstate commerce at the time of the accident, the brakeman's action for injuries was governed by the federal Employers' Liability Act (U. S. Comp. St. §§ 8657-8665). New Orleans & N. E. R. Co. v. Penton (Miss. 1924) 100 So. 521.

(h) Defendant railroad company brought into its yards a train of 16 cars, 2 of which contained interstate freight. Plaintiff, one of the switching crew distributing such cars, was injured when between 2 of the cars attempting to adjust an alleged defective coupling. HELD, that defendant was at the time engaged in interstate commerce; that the questions whether plaintiff was employed in such commerce and whether defendant was chargeable with violation of Safety Appliance Act §2, which contributed to the injury and brought the case within Employers Liability Act §3, 4, were properly submitted to the jury. Philadelphia & R. Ry. Co. v. Berman, 295 Fed. 658.

(i) As respects suits for personal injuries occurring in another state to employee of foreign railroad, who is not citizen of Minnesota, Gen. St. Minn. 1913, §7736, providing that any foreign railroad ticket or freight agent within state may be served with summons for corporation within county where action is brought, is unconstitutional, as unreasonably burdening interstate commerce, regardless of fact that railroad has trackage in Minnesota. Weinard v. Chicago, M. & St. P. Ry. Co. 298 Fed. 977.

(j) One employed in handling mail transported in interstate commerce, and injured while unloading it at its destination, is injured while engaged in interstate commerce within federal Employers' Liability Act (U. S. Comp. §§8657-8665). Missouri Pac. R. Co. v. Baldwin (Tex., 1924) 261 S. W. 418.

(k) A provision in a steamship ticket limiting the time for presenting a claim for personal injury to 10 days after landing is void as unreasonable, and is not authorized by anything in Shipping Board Act Sept. 7, 1916, §18 (Comp. St. §8146ii). Blackwell v. Alaska S. S. Co., 1 Fed. (2d) 334.

(l) Contract executed by person employed to inspect engine appliance on locomotives for manufacturer, which released railroad from all damages arising from his presence on locomotive, HELD to release railroad from liability for negligence, since, whatever his status, there would be no liability, except for negligence, and his agreement to observe railroad employes' rules did not affect validity of release. Allen v. Erie R. Co., 2 Fed. (2d) 712.

(m) Passenger suing agent appointed by president under Transportation Act 1920, §206 (U. S. Comp. St. Ann. Supp. 1923, §10071¼cc), for refusal of gatekeeper to permit him to pass through gate to train, accompanied by violence and insulting and threatening language, could recover compensatory damages for injuries to feelings, humiliating, and mental sufferings. Currie v. Davis, (S. C., 1923) 126 S. E. 119.

(n) The federal Employers' Liability Act (U. S. Comp. St. §§8657-8665) is exclusive, and a section hand engaged in interstate commerce must sue under it for personal injuries received. Louisville & N. R. Co. v. Brandenburg (Ky., 1924) 270 S. W. 1.

(o) Liabilities of interstate carriers for injuries to employees engaged in interstate commerce are regulated inclusively and exclusively by the federal Employers' Liability Act (U. S. Comp. St. §§8657-8665), and Illinois Workmen's Compensation Act (Smith-Hurd Rev. St. 1923, c. 48, §§138-172) is not applicable. Carter v. St. Louis, T. & E. R. Co., (Mo., 1925) 271 S. W. 358.

(p) Where cargo on train was being transferred from Tennessee through Kentucky to Ohio both the engineer and tower man, operating a semaphore when the train passed, were engaged in interstate commerce. Cincinnati, N. O. & T. P. Ry. Co. v. McWhorter (Ky., 1924) 262 S. W. 253.

(q) $1,800 damages for broken toe and prolonged suffering, sustained by Pullman car passenger from stumbling over suit case in aisle, HELD not excessive. Caldwell v. Pullman Co. (S. C. 1925) 128 S. E. 504.

(r) To be within federal Employers' Liability Act (U. S. Comp. St. §§8657-8665) employee must be engaged in work interstate in character or so nearly related thereto as to be practically part of it, as in repairing instrumentality then in use in interstate transportation. Brock v. Chicago, R. I. & P. Ry. Co. (Mo., 1924) 266 S. W. 691.

(s) While under Employers' Liability Act, §4 (U. S. Comp. St. §8660), contributory negligence is abolished as complete defense, if negligence of employee succeeds that of employer and is sole proximate cause of his injury or death, there can be no recovery. Sears v. Texas & N. O. Ry. Co. (Tex., 1924) 266 S. W. 400.

(t) Petition stating cause of action in favor of personal representative of flagman, employed in interstate commerce to protect trains engaged therein, HELD within federal Employers' Liability Act (U. S. Comp. St. §§8657-8665). Sears v. Texas & N. O. Ry. Co., (Tex., 1924) 266 S. W. 400.

PHYSICAL VALUATION

See Advanced Rates §10½; Evidence §43½a, §49, §50; Finance Dockets §8; Interstate Commerce Commission §8; Reasonableness of Rates §39½.

(a) Whatever may be the commission's action on underlying land, engineering, and accounting reports of its Bureau of Valuation, when making a determination of final value it is obvious that in dealing with the financial structure of a carrier the commission must consider and give proper effect to the existing financial structure with its attendant vested and contingent rights and obligations., D. & R. G. W. Reorganization, 90 I. C. C. 141, 148.

ALL OTHER CITATIONS

Arizona Corporation Commission v. A. E. R. R. Co., 85 I. C. C. 76; Depreciation Charges of W. Ry. & E. Co., 85 I. C. C. 126.

PIPE LINES

I. CONTROL AND REGULATION.
§1. In general.
§2. Constitutionality of legislation.
II. AS COMMON CARRIER.
§3. In general.
§4. As interstate carrier.
III. TARIFFS AND CONSTRUCTION.
§5. In general.
IV. RATES AND CHARGES.
§6. In general.
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§7. In general.

CROSS REFERENCES

See Equalization of Rates §4 (1½); Evidence §14 (2½); Gas and Electric Companies.

I. CONTROL AND REGULATION.

See Control and Regulation.

§1. In General.

(a) Oil in tanks, located on pipe lines extending from fields of production to refineries in another state, some of which had remained in storage for several months in the tanks, which were of greater capacity than required for continuous operation of the pipe lines and at all times contined a large quantity of oil, HELD not in course of interstate transportation, but to have a local situs, and to be subject to local taxation. Gulf Refining Co. of Louisiana v. Phillips, 5 Fed (2d) 514; Same v. Sandlin, 5 Fed. (2d) 514.

II. AS COMMON CARRIER.

§3. In General.

See Common Carrier.

(a) An oil company, using a pipe line for the purpose of conducting oil purchased by it in Illinois to its plant in New Jersey, was not a "common carrier," engaged in interstate traffic, so as to come under the Interstate Commerce Act (U. S. Comp. St. § 8563 et seq.) Tidewater Pipe Co. v. Board of Review of Crawford County (Ill. 1924) 143 N. E. 87.

(b) Oil purchased by an oil company in Illinois, for transportation by its own pipe line to its own plant in New Jersey, was not in transit in interstate commerce and was taxable locally where stored in tanks until needed, or until it could be conveniently taken care of in New Jersey; the mere fact of intention to ship being immaterial. Tidewater Pipe Co. v. Board of Review of Crawford County (Ill. 1924) 143 N. E. 87.

POOLING OF FREIGHT

See Divisions §1 (t).

PORT DIFFERENTIALS

See Differentials §8 (w); Percentage Rates (f).

(a) Export and coastwise rates on lumber from certain points in Texas and Louisiana on Kansas City Southern system lines and Gulf, Colorado & Santa Fe Ry. to Orange, Tex., also domestic rates from points in Louisiana on Kansas City Southern to Orange, found unduly prejudicial to Orange and unduly preferential of Beaumont, Tex., to extent they exceed, by more than a differential of 2 cents, contemporaneous rates on like traffic to Beaumont. Undue prejudice ordered removed and reasonable and nonprejudicial rates prescribed for future. Orange Chamber of Commerce v. A. & W. Ry. Co., 98 I. C. C. 101.

(b) Relationship of rates on certain commodities for export, import, or coastwise movements via Galveston, Tex., from or to points in Texas, Oklahoma, western Louisiana, Arkansas, and Kansas found unduly prejudicial to Galveston and unduly preferential of New Orleans, La. Such undue prejudice should be removed by establishing the same rates to or from New Orleans or Galveston, as the case may be, in instances where the differences in distance from and to the two ports are not greater than 100 miles, and by establishing rates to or from Galveston, as the case may be, certain prescribed differentials, under New Orleans, in instances where the differences in distance in favor of Galveston are greater than 100 miles. The record is not sufficiently complete to warrant the commission in prescribing relationships between the rates to or from Galveston and New Orleans on other commodities or from or to points other than those embraced in the foregoing findings. Relationships herein prescribed will serve as a guide to defendants in readjusting the rates on other export, import and coastwise traffic. Galveston Commercial Asso. v. G. H. & S. A. Ry. Co., 100 I. C. C. 110.

(c) The policy of the southwestern carriers serving New Orleans, La., has been, generally speaking, to apply the Galveston, Tex., rates to New Orleans on traffic moving from or to all points west of the Mississippi river except points in Texas south of a certain line. Such an adjustment necessarily disregards distance, and commercial instead of natural advantages control. The commission has consistently refused to condemn such an adjustment where it is shown to serve the best interests of the public, but where, as here, it builds up one port at the expense of another equally favored by natural advantages from the origin territory here considered, a line must be found beyond which distance may not be disregarded. Galveston Commercial Asso. v. G. H. & S. A. Ry. Co., 100 I. C. C. 110, 121, 122.

PORT HANDLING CHARGES

See Advanced Rates §14¾ (g).

PORT-TO-PORT RATES

See Barge Lines; Coastwise Traffic.

(a) As a part of the interstate transportation, the movement from the port is subject to the jurisdiction of this Commission. Schloss & Jahn Grocery Co. v. L. & N. R. R., 95 I. C. C. 618.

(b) Congress has not placed intercoastal-steamship lines under commission's jurisdiction to same extent as rail

carriers. Their port-to-port rates are exclusively under jurisdiction of United States Shipping Board, and water carriers are free to charge any rate so long as they do not exceed maximum schedules on file with that board. Wool Rates Investigation, 1923, 91 I. C. C. 235, 275.

(c) Local port-to-port service of a water line is not subject to commissions jurisdiction, nor is there anything in the the law which brings extension of such service to interior points by other than rail carriage under commissions jurisdiction. Commission has authority over transportation "wholly by railroad, or partly by railroad and partly by water when both are used under a common control, management, or arrangement or for a continuous carriage or shipment." Motor-Truck or Wagon Transfer Service, 91 I. C. C. 539, 548.

PORTO RICO

See Adjacent Foreign Country; Through Routes and Joint Rates.

PRECOOLING

See Refrigeration.

PREVIOUS DECISIONS OF COMMISSION

See Advanced Rates §14¾; Differentials §6; Discrimination §3½; Equalization of Rates §4; Evidence V, §44¼, §44⅞; Reasonableness of Rates §26½; Reparation §8½.

PRIVATE CARS

See Cars and Car Supply §4, §10½, §12½, §13, §31, §32, §32⅛; Demurrage §10; Tank Cars.

PROCEDURE BEFORE COMMISSION

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VIII. DEFENSES AND EVIDENCE.
- §20. In general.
- §21. Immunity.
- §22. Witnesses.

CROSS REFERENCES

See Advanced Rates VI; Allowances I; Blanket Rates VI; Cars and Car Supply VI; Claims; Classification §19; Courts VI; Crimes IX; Differentials VI; Discrimination IV, V; Divisions §10; Express Companies XIII; Interstate Commerce Commission III; Long and Short Hauls V; Reasonableness of Rates §1½; Reconsignment V; Rep-

aration V, §23; Routing and Misrouting §10½; Switch Tracks and Switching IV; Tap Lines V; Through Routes and Joint Rates §23.

I. PRACTICE.

§1. In general.

See Reasonableness of Rates §1½.

(a) The Commission is not bound by the technical rules of pleading, although complainants must state their cases with sufficient particularity to put defendants on notice as to the issues which they are called upon to meet. Mason By Products Co. v. Director General, 92 I. C. C. 646, 649.

(b) Decision rendered by commission at complainant's request without regard to outcome of a proceeding pending in the courts wherein an order of the commission involving similar issues is being contested. Wayne Coal Co. v. Director General, 92 I. C. C. 3, 4.

(c) In deciding a case the commission can not forecast what its decision will be in another proceeding pending before it. Cases at issue should be decided on facts of record and in light of present rather than prospective considerations. Rates to Southwestern Destinations, 95 I. C. C. 188, 196.

(d) Cases presented in accordance with the modified procedure under which parties submitted in writing the facts and arguments upon which they rely, oral hearing being had only with respect to such matters as were not agreed to or which were agreed to in part, the parties arguing the case before the examiner at the conclusion of the taking of testimony which was not briefed. McCormick Warehouse Co. v. P. R. R., 95 I. C. C. 301; American Sumatra Tobacco Co. v A. C. L., 95 I. C. C. 463.

(e) Upon contention that theory of port differentials violates the provision of clause 6, section 9, Article I, of the Constitution, which reads, "No preference shall be given by any regulation of commerce or revenue to the ports of one State over those of another." HELD: Complaints are brought before the commission under the interstate commerce act and invoke exercise of powers thereby delegated by Congress under the commerce clause of the Constitution. Clause 3, section 8, Article I. As an agency of Congress the commission must assume that in laying statutory duties upon it the Congress has not transcended its power. Maritime Asso., Boston Chamber of Commerce v. A. A. R. R., 95 I. C. C. 539, 542.

(f) The fact that all of the carriers over whose rails the shipments moved were not named in the original complaint can not act as a bar where the shipments moved during federal control wholly over federally controlled lines and only reparation is sought. Farrell v. C. M. & St. P. Ry. 102 I. C. C. 455, 456.

(g) The decision of the commission in each case necessarily is rendered on the facts of record in that case. Texas Co. v. K. C. S., 101 I. C. C. 345, 346.

§1a. Joint State Hearings.

(a) Similar complaint having been filed with State public utilities commission, but attacking intrastate rates, joint hearing was held, members of State commission sitting with this commission in oral argument and conferring on issues presented. Missouri Portland Cement Co. v. A., T. & S. F., 101 I. C. C. 454.

II. COMPLAINT.

See Blanket Rates §15; Claims §7: Discrimination §18; Long and Short Hauls §11; Reparation §21; Switch Tracks and Switching IV.

§2. Form and Issues Tendered.

(a) While the complaint is somewhat inartificially drawn and contains considerable unnecessary detail, the reasonableness of the through rates is clearly brought in issue therein. The Commission must look to the substance of a complaint rather than to its form. Kanawha Black Band Co. v. K. C. Ry., 98 I. C. C. 431, 432.

(bcd) Order reopening a case for further hearing governs scope of that hearing and not notice which sets forth date and place of further hearing. Livestock to, from, and between Points in the Southeast, 91 I. C. C. 292, 293.

(ef) Complaint alleged that rates charged were unjust and unreasonable, and also stated that a double increase was applied to each combination of separately established rates and that in each case tariff naming one factor contained a so-called combination rule providing for ap-

plication of a single increase to combination rates so constructed. HELD: Complaint contains sufficient matter to constitute an allegation that overcharges have been collected. National Supply Co. v. Director General, 92 I. C. C. 610.

(g) Complainant did not in terms allege a violation of section 1 of the act; but it set forth, among other things, that a through rate was applied; that contemporaneously defendant maintained a lower rate to a farther distant point, in violation of the long-and-short-haul clause of section 4 of the act; and that such lower rate also applied over an alternative route. HELD: Commission is not bound by technical rules of pleading, although complainants must state their cases with sufficient particularity to put defendants on notice as to issue which they are called upon to meet. Complaint found sufficient to put in issue reasonableness of the through rate which exceeded the aggregate of intermediate. Mason By-Products Co. v. Director General, 92 I. C. C. 646, 649.

(h) Counsel for defendants questioned right of opposing counsel to represent many shippers named as complainants, and also contended that many claims presented are barred by the statute of limitations. But as they admit that at least some shippers named are bona fide complainants and that some claims are not barred the commission may proceed to consider the issues without passing upon the jurisdictional question as to individual complainants and claims. Dickerson v. Director General, 93 I. C. C. 304, 305.

(i) Complaint, filed with commission within 90 days after institution of suit by carrier in courts for undercharges, found not barred by the statute of limitations. See Section 16 (3) of the act. Texas Co. v. A., T. & S. F., 93 I. C. C. 691.

(j) Original complaint requested establishment of corporate limits as the switching limits of Rochester, and reasonable and nondiscriminatory switching charges between industries located in State Street and connections of the New York Central with other railroads within corporate limits of Rochester. Amendment seeking inclusion of that portion of the State Street branch parallel with and close by but outside the Rochester city line and establishment of switching charges requested between main Rochester switching district and intermediate points, allowed. Amendment does not unduly broaden the issues since territory referred to therein is within corporate limits; and if charges originally sought were established, inclusion of territory requested in amendment and alignment of existing charges between various intermediate industrial sections would be necessary to obviate fourth-section departures. Rochester Switching Case, 95 I. C. C. 30, 36, 37.

(k) Original complaint made no definite division between origin and destination States but points of origin and destination were designated as those located in states named. Amended complaint setting forth detailed statement of shipments on which reparation is prayed included a number of shipments moving to specific points, some of which were located in States named in original complaint. FOUND: Specific destination covered by amended complaint which are located within States set forth in original complaint are within the issues but in order to present an issue with respect to points not located in those States, the unreasonableness of those rates must be expressly alleged. Western Newspaper Union v. A., T. & S. F., 96 I. C. C. 5, 6.

(l) Formal complaint returned for correction was received by commission after statutory period had run. Citing Rule III (g) of Rules of Practice carrier contended that complaint as originally received should be regarded as an informal complaint and that revised complaint does not bar the running of the statute since not received within six months after original complaint was returned. FOUND: Rule relied upon relates to complaints on the informal docket which can not be disposed of informally, are denied, or are withdrawn from further consideration by complainant. Quebracho Products Co. v. S. I. R. T. Ry., 96 I. C. C. 52, 53, 54.

(m) Upon contention of complainant that a prayer for future rates is included in a prayer for general relief, HELD: The commission does not so interpret the prayer. If relief for the future was sought it should have been specifically prayed for and evidence in support thereof should have been offered. Minnesota Steel Co. v. A., T. & S. F. Ry. Co., 96 I. C. C. 483.

(no) Motion that complaint be dismissed on ground that it can not be construed as an attack on the through rates, and that, even if it be so construed, it

cannot be entertained by commission under Rule III (s) of the Rules of Practice, denied. The reasonableness of the through rates is held to be clearly brought to issue in the complaint, and while the rule cited might have precluded complainants from seeking reparation in the instant case to basis of the joint rates prescribed in original proceeding, under the circumstances here presented it does not preclude them from seeking reparation to basis of the rates assessed at the time complaint in original proceeding was filed. Kanawha Black Band Coal Co., v. K. C. Ry. Co., 98 I. C. C. 431, 432, 433.

(p) Informal complaint alleged rates to be inapplicable; formal complaint referred to informal, but alleged rates to be unreasonable and in violation of the fourth section. Upon contention that claim of overcharges was thus abandoned, FOUND, that pleadings and record were sufficient to support a finding upon the issue of overcharge. Southern Products Co., v. Director General, 98 I. C. C. 462.

(q) Fact that the measure of the overcharge set forth in the formal complaint is different from that in the informal complaint is immaterial, for the commission is not bound by the rate which a complainant before it may seek. It is commission's duty to determine the applicable rate and the amount collected in excess of that rate. Pleadings and record found sufficient to support a finding upon the issue of applicability. Southern Products Co. v. Director General, 98 I. C. C. 462, 463, 464.

(r) Objection to consideration of claim based on the allegation of undue prejudice on ground that as it was not contained in informal complaint, and as formal complaint was not filed within one year after termination of Federal control, it was barred by statute of limitations, sustained. Conejos Cooperative Mills & Mfg. Co. v. Director General 98 I. C. C. 515.

(s) Informal complaint filed within statutory period alleging violation of the act in matter of tariff construction, and formal complaint filed more than two years after cause of action accrued further alleging that rates charged were unreasonable and unduly preferential. HELD, through filing of formal complaint the informal complaint was not broadened so as to include allegations of unreasonableness and undue preference, as contended by complainant, and formal complaint is barred by statute of limitations. St. Louis Fruit & Vegetable Asso. v. L. & N. R. R. Co., 98 I. C. C. 553, 554.

(t) Practice of the commission has been to look to the substance of a complaint rather than its form, and it has repeatedly found that complaints filed with it need not be technically pleaded. However, it is not at liberty to read into a complaint an issue which it plainly does not present. Informal complaint alleging overcharges found not to stay the statute of limitations as to issue of unreasonableness. Lasker & Bernstein v. Director General, 98 I. C. C. 624, 626.

(u) A mere reference to the shipments contained in the informal complaint does not incorporate them in the formal complaint under the rules of practice. Western Pine Mfrs. Asso. v. Director General, 102 I. C. C. 753, 755.

(v) It is not essential to specify by number or to use specific words of the section of the act which is alleged to have been violated if from the context of the complaint it becomes apparent that defendants are apprised of the nature of the violation they are called upon to answer. North Packing & Provision Co. v. Director General, 104 I. C. C. 607, 608.

(w) It is not essential to specify by number or to use the specific words of the section of the act which is alleged to have been violated if from the context of the complaint it becomes apparent that defendants are apprised of the nature of the violation they are called upon to answer. Nash Spokane Co. v. Director General, 100 I. C. C. 223, 224, 225.

(x) Where complainants alleged both in the informal and the original formal complaints that they have been overcharged or damaged because of the assessment of excessive charges the commission considers these statements ufficient to raise an issue as to the reasonableness of the charges assessed, but it should not be understood as condoning undue laxity in pleadings before it. The extent to which these informal and original formal complaints specifically bring in issue alleged violations of sections 4 and 6 need not be determined inasmuch as the commission has often awarded reparation to the basis of the lower ag-

gregate of the intermediates or for direct overcharges under allegations of unreasonableness. The mere reference in the complaints to the alleged collection of charges in excess of the aggregate of intermediates, or collection of overcharges, does not confine the issue to alleged violations of sections 4 and 6, respectively, nor does such reference destroy the issue raised under section 1. Nash Spokane Co. v. Director General, 100 I. C. C. 223, 225.

(y) Upon contention of defendants that as Midvale, Utah, was not specifically mentioned as a point of origin in either the informal or formal complaints no consideration should be given to the shipments from that point, FOUND: That Midvale takes the same rate as Murray, Utah, the other point of origin considered herein, and evidently no defense could be made to the rate from Midvale that is not now made respecting the rate to Murray. Defendant was the first to call attention to the Midvale shipments at the hearing and apparently prior thereto had known of their inclusion in the reparation statements. Upon the circumstances disclosed the defendant was "fairly informed" as to these shipments and they will be considered herein. Western Metals Co. v. Director General, 100 I. C. C. 314.

(z) Every shipper is entitled to a reasonable rate on his traffic, even on sporadic movements and where he attacks the reasonableness of a rate, whether class or commodity, that issue must be decided upon its merits. 88 I. C. C. 185, 187. Budding Co. v. P. R. R. Co., 100 I. C. C. 411, 413.

(aa) An issue of undue prejudice raised in an I. & S. proceeding need not be decided where it is admitted that the rates under suspension are unreasonable per se. Rates on Brick and Related Articles, 101 I. C. C. 297, 298.

(bb) Formal complaint alleging unreasonableness on shipments moving during Federal control, filed with commission within 90 days after institution of suit by carrier in the courts for collection of undercharges, but more than one year after termination of Federal control, found barred. The right of action under allegation of unreasonableness was not revived by court proceeding and is not properly before the commission under section 16 (3) of the interstate commerce act. The commission's jurisdiction to entertain complaints for reparation on account of the exaction of unreasonable rates on shipments moving during Federal control is derived solely from section 206 (c) of the transportation act 1920, under which such complaints must be filed within one year after termination of Federal control. See 264 U. S. 456. Cudahy Packing Co. v. Director General, 102 I. C. C. 598, 599, 600.

ALL OTHER CITATIONS

Northwestern Clay Mfg. Co. v. R. I. S. Ry. Co., 88 I. C. C. 131; Nebraska Bridge Supply & Lumber Co. v. Director General, as Agent, 85 I. C. C. 327; Smokeless Fuel Co. v. N. & W. Ry. Co., 85 I. C. C. 395; McGrew Coal Co. v. Director General, as Agent, 85 I. C. C. 735; International Harvester Co. v. N. Y. C. R. R., 88 I. C. C. 370.

§4. Amendment.

See Claims §5.

(a) Complaint as originally filed alleged unreasonableness in the rates on shipments moving between specified dates. At the hearing, complainants filed motion to amend to include additional shipments moving subsequently to date specified, defendants objecting on ground that such amendment would broaden the issues. HELD: Amendment allowed since it only puts in issue the reasonableness of rates subsequent to date named in the complaint as originally filed. Houston Cotton Exchange v. A. & S. Ry., 92 I. C. C. 363.

(b) Amendment of complaint to include an additional point of origin not allowed, since such an amendment would set up a new issue. Clark Equipment Co. v. C. B. & Q. R. R. Co., 98 I. C. C. 465.

(c) Upon motion of defendant to strike out amended complaints on the ground that the allegations in those complaints are equivalent to new causes of action which either are barred by the statute of limitations or must be considered to have been abandoned under Rule III (g) of the Rules of Practice, FOUND: That the original complaints were filed within six months after complainants were advised that informal adjustment had been declined by defendant and it would be necessary to file formal complaints within six months if they desired to press the matter further. The amended complaints were filed subsequent to the expiration of those six months and of statutory period, and

there is merit to defendant's motion. The amendments to the complaints are barred, and further consideration of these cases will be confined to the issues presented in the original formal complaints. Nash Spokane Co. v. Director General, 100 I. C. C. 223.

(d) Contention of defendant that formal complaint was barred because filed after the statutory period and more than six months after notification that claim could not be adjusted informally, not sustained. Notification was not properly mailed to complainant in accordance with the wording of Rule III (g) of the Rules of Practice, although received by him. Corley v. Director General, 100 I. C. C. 293, 296.

ALL OTHER CITATIONS

Piowaty & Sons v. Director General, as Agent, 88 I. C. C. 597; National Poultry, Butter & Egg Asso. v. A. A. R. R. Co., 88 I. C. C. 673.

§5. Hearing.

ALL CITATIONS

Michigan Traffic League v. A. A. R. R. Co., 85 I. C. C. 47; Cities of Marshall and Jefferson v. T. & P. Ry. Co., 85 I. C. C. 115; Cotton Mfrs. Asso. of S. C. v. C. C. & O. Ry., 85 I. C. C. 131; Midland Coal Co. v. F. S. & W.R. R. Co., 85 I. C. C. 146; West End Chemical Co. v. L. A. & S. L. R. R. Co., 85, I. C. C. 339; Germain Co. v. L. & N. R. R. Co., 85 I. C. C. 449; Brownell Improvement Co. v. B. & O. C. T. R. R. Co., 85 I. C. C. 461; Ridenour-Baker Mercantile Co. v. Director General, as Agent, 85 I. C. C. 463; Freidlander v. Director General, as Agent, 85 I. C. C. 465; Newport Milling Co. v. Director General, as Agent, 88 I. C. C. 17; American Woodpulp Corp. v. Director General, as Agent, 88 I. C. C. 277; Owens Bottle Co. v. Director General, as Agent, 88 I. C. C. 285; Milwaukee Grain Elevator Co. v. Director General, as Agent, 88 I. C. C. 287; McGarry & Co. v. W. Ry. Co., 88 I. C. C. 301; Central Pennsylvania Lumber Co. v. T. V. Ry. Co., 88 I. C. C. 303; Crown Cork & Seal Co. v. Director General, as Agent, 88 I. C. C. 305; Midland Linseed Products Co. v. N. Y. S. & W. R. R. Co., 88 I. C. C. 337; American Maise Products Co. v. Director General, as Agent, 88 I. C. C. 354; National Lumber Co. v. N. & W. Ry. Co., 88 I. C. C. 357; Santa Rose Mercantile Co. v. Director General, as Agent, 88 I. C. C. 753; Indiana Board & Filler Co. v. W. Ry. Co., 88 I. C. C. 754; Palmolive Co. v. C. M. & St. P. Ry. Co., 88 I. C. C. 756.

§6. Briefs.

(a) Request of counsel for parties outside the proceeding to file a brief as friends of commission, discussing principle of misrouting under consideration, granted. Petertyl v. N. Y., N. H. & H., 102 I. C. C. 693.

§8. Rehearing.

(a) A petition for rehearing filed more than 60 days after service of commission's report, but within 45 days after service of a corrected reprint thereof, found to have been filed within period prescribed by Rules of Practice for the filing of petitions for rehearing in cases relating to reparation. Donner Steel Co. v. D., L. & W., 92 I. C. C. 595, 597.

(b) Upon further hearing, original report 80 I. C. C. 335, reversed, and rates on rig irons from Iola, Kans., to Tulsa Okla., found not unreasonable. Bradford Rig & Reel Co. v. Director General, 100 I. C. C. 261.

ALL OTHER CITATIONS

Arizona Corporation Commission v. A. E. R. R. Co., 85 I. C. C. 76; Cotton Mfgrs. Asso. of S. C. v. C. C. & O. Ry., 85 I. C. C. 131.

III. MOTIONS.

§10. Dismissing Complaint.
(1) In General.

(a) Section 13 of the act provides that no complaint shall be dismissed because of absence of direct damage to complainant. Charleston Traffic Bureau v. A. G. S. R. R., 89 I. C. C. 501, 502.

(b) Complainant did not present proof of payment and bearing of freight charges due to its witnesses not being available. FOUND: That unless further hearing is requested within 10 days after service of report its complaint will be dismissed for want of prosecution. Jones Laughlin Steel Co. v. P. & L. E. 93 I. C. C. 637, 639.

§10 (3). Interveners.

See Interveners.

(a) Petitions in intervention toll the statute from the date on which they are received by the commission irrespective of the date of the order permitting intervention. Cotton Manufacturers' Asso. of S. C., 57 I. C. C. 584. Hopeman Ma-

terial Co. v. N. P. Ry. Co, 98 I. C. C. 361, 369.

ALL OTHER CITATIONS

Texas Farm & Ranch Publishing Co. v. A. & W. Ry. Co., 88 I. C. C. 417; National Poultry, Butter & Egg Asso. v. A. A. R. R. Co., 88 I. C. C. 673.

IV. ORDERS OF COMMISSION.

See Advanced Rates §21½; Interstate Commerce Commission §17.

§11. Modification, Validity, and Effect.

(a) Order reopening a case for further hearing governs scope of that hearing and not notice which sets forth date and place of further hearing. Livestock to, from, and between Points in the Southeast, 91 I. C. C. 292, 293.

(b) By Section 15 (2) of the act it is required that the orders of the commission, other than orders for the payment of money, shall take effect within such reasonable time, not less than 30 days, as may be prescribed in the order, and also authorizes the commission to modify its order whenever it deems it to be necessary. Northern Grain & Warehouse Co. v. O. S. L. R. R. Co., 100 I. C. C. 319, 321.

ALL OTHER CITATIONS

New England Divisions, 85 I. C. C. 328.

§12. Review.

See Courts §5.

(a) In 95 I. C. C. 430, the Commission found that the rates on animal manure, carloads, from Perth and Lovelock, Nev., to eastbound transcontinental groups B. to J inclusive and M since Jan. 2, 1921 had been unreasonable, but that the then existing rates to Groups B, C, D and E did not exceed maximum reasonable rates. Maximum reasonable rates to Groups F to J inclusive and M were prescribed for the future. HELD, no sufficient reasons for modifying the findings in that report. Pacific Manure & Fertilizer Co. v. A. & R. R. R. 109 I. C. C. 615.

V. PARTIES.

See Association; Crimes §24; Parties: Procedure Before Commission V.

§13. Necessary and Proper Parties.

See Loss and Damage §17.

(a) The rate attacked is a joint rate and, even if federal control had not intervened, it would not have been necessary to name all the carriers participating in the transportation as parties defendant. Consolidated Coal Co. v. Director General, 93 I. C. C. 53.

(bc) As the rates charged on the shipments delivered after the termination of federal control were joint rates, the nonjoinder of defendants of the other carriers participating in the transportation is not material. Stailey Lumber Co. v. P. R. R., 96 I. C. C. 175, 176.

(d) On shipments moving during Federal control objection to complaint was raised by director general because one participating carrier was not named as a party defendant; also that since another carrier named was not under Federal control, the commission's jurisdiction does not extend to that portion of the transportation over the latter's line. HELD: Rate attacked is a joint rate and, even if Federal control had not intervened, it would not have been necessary to name all carriers participating in the transportation as parties defendant. Moreover, under joint rates liability of defendants is joint and several. Consolidated Coal Co. v. Director General, 93 I. C. C. 53, 54.

(e) Where shipments move under joint rates, the nonjoinder of one of the participating carriers as a party defendant is immaterial. Gulf City Mfg. Co., 66 I. C. C. 763. Standard Mineral Co. v. N. S. R. R., 95 I. C. C. 704, 705.

(f) Upon complaint filed more than one year after the termination of Federal control assailing rates on shipments moving and delivered during the Federal control period, the director general was not named as a party defendant. FOUND: Such shipments are barred. Stailey Lbr. Co. v. P. R. R., 96 I. C. C. 175.

(g) Complaint failed to name preferred interests or localities, and did properly present the issue of undue prejudice Rule III, Rules of Practice. Carnegie Steel Co. v. Director General, 96 I. C. C. 527, 528.

(h) Contention that there was only one consignor and consignee on rebilled shipments because consignor, a creamery company was operated by consignee through ownership of a majority of the capital stock thereof not sustained, in law the two being separate entities.

Chapin-Sacks Corp. v. P. R. R. Co., 96 I. C. C. 706, 707.

(i) Defendant having sustained the burden of proof, it is unnecessary to decide whether there is a distinction between the director general and the corporate carriers in so far as the provision of the act which places the burden of proof on the carriers is concerned. International Harvester Co. v. N. Y. C. 101 I. C. C. 89.

ALL OTHER CITATIONS

Atlas Portland Cement Co. v. C. R. R. Co., of N. J., 85 I. C. C. 611; Pacific Mills, Ltd. v. Director General, as Agent, 85 I. C. C. 677; Missouri Portland Cement Co. v. Director General, 88 I. C. C. 496; Piowaty & Sons v. Director General, as Agent, 88 I. C. C. 597; Express Rates on Milk and Cream via C. & N. W., 88 I. C. C. 696.

VII. EFFECT OF EVIDENCE.

§14½. In General.

See Evidence.

(a) Upon objection, permission to make use of certain statistical matter taken from official reports covering a period subsequent to the making of the original record denied. Michigan Traffic League v. A. A. R. R. Co., 98 I. C. C. 660, 661.

§14½a. Evidence outside the record.

(a) A state commission cannot base a finding that existing rates of an interstate carrier are excessive, and an order reducing the same on intrastate shipments on schedules and other general information which it has in its files, unless they were introduced in evidence in the particular proceeding and opportunity was given the railroad company to be heard thereon. Illinois Cent. R. Co. v. Railroad Commission of Kentucky 1 Fed. (2d) 805.

(b) After the case was submitted defendant filed a motion to strike from complainant's exceptions or to disregard certain new evidence or statements of fact therein recited and the discussion thereon. Inasmuch as these statements of fact are not part of the record, they are not entitled to consideration. Hass & Co. v. Director General, 98 I. C. C. 619.

§15a. Moot Questions.

(a) Complainant attacking defendant's rule governing distribution of box cars for loading gypsum products, established during a period of acute car shortage, and which remained in effect only one month, dismissed as moot. Complainant does not seek damages or establishment of a rule for future, but merely asked that commission pass upon propriety of rule to determine whether it was in any way violative of the act so that in event of future car shortage defendants will not be in position to establish same or a similar rule. Empire Gypsum Co. v. B., R. & P. Ry. Co., 91 I. C. C. 719.

ALL OTHER CITATIONS

Alabama Passenger Fares and Charges, 88 I. C. C. 621.

§16. Judicial notice or other decision.

See Evidence III.

(a) Parties agreeing to abide by decision in another case involving similar issues such case followed in deciding instant case. Fairmont Creamery Co. v. Director General, as Agent, 89 I. C. C. 359.

§17. Res Adjudicata.

See Evidence V, §69.

(a) In deciding a case the commission cannot forecast what its decision will be in another proceeding pending before it. Cases at issue should be decided on facts of record and in the light of present rather than prospective considerations. Rates to Southwestern Destinations, 95 I. C. C. 188, 196.

(b) Fact that issues in a proceeding before the commission are the same as those involved in another case, already decided, does not prevent their consideration again upon a different record and possible changed conditions. Des Moines Board of Trade v. D. M. & C. I., 102 I. C. C. 186, 191.

§18½. Reparation Statements and Pleadings.

See Reparation.

(a) The date upon which the complaint was originally received by the Commission, although subsequently returned for correction and stamped as filed on a later date, is the date which tolls the statute. Hopeman Material Co. v. N. P. Ry., 98 I. C. C. 361, 369.

VIII. DEFENSES AND EVIDENCE.

See Evidence.

§20. In General.

ALL CITATIONS

Cotton Mfrs. Asso. of S. C. v. C. C. & O. Ry. Co., 85 I. C. C. 131.

§22. Witnesses.

(a) Before a witness can testify as an expert, it must be shown that he possesses the necessary qualifications; that on account of special knowledge, skill, or experience, possessed and enjoyed by him over others, his opinion on the subject of inquiry will aid the court or jury to a correct conclusion. Westinghouse Electric & Mfg. Co. v. Denver Tramway Co., 3 Fed. (2d) 285. Stenger v. City and County of Denver, 3 Fed. (2d) 285.

PROPORTIONAL RATES

I. APPLICATION.

II. DISCRIMINATION AND REASONABLENESS.

III. LEGALITY.

IV. EVIDENCE AND PROCEDURE.

V. CONTROL AND REGULATION.

§1. Jurisdiction of Commission.

VI. TARIFFS AND PUBLICATION.

VII. REPARATION.

VIII. RESTRICTED RATES.

CROSS REFERENCES

See Advanced Rates §9½; Evidence §13 (5), §14 (5); Rail and Water Rates (nn); Through Routes and Joint Rates §13½.

I. APPLICATION.

See Through Routes and Joint Rates §18.

(a) Complainant attacked proportional commodity rates charged on three cars of gasoline shipped in November 1920 from Big Heart, Okla., to West Eldred, Pa., as illegal in violation of section 6. Shipments moved over Midland Valley and Frisco to East St. Louis, Pennsylvania and P. S. & N. beyond, charged 74c, a combination of proportional commodity rates of 30.5c and 43.5c to and from East St. Louis. The through combination in effect June 24, 1918 was 49.5c composed of commodity rate of 20 and 29.5c to and from East St. Louis. By adding 4.5c under the combination rule published in one of the tariffs a combination of 54c would have been applicable. HELD, rate of 54c applicable, reparation awarded. Sloan & Zook Co. v. M. V. R. R., 91 I. C. C. 693.

(b) Proportional rates restricted as to application from certain originating points are not applicable on shipments originating beyond. Pacific Adjustment Co. v. O. W. R. R. & N. Co., 95 I. C. C. 669, 670.

(c) Complainant attacked proportional rates charged on grain and grain products, carloads, from points west of Buffalo, N. Y., to destinations on the Maine Central in Washington and Somerset Counties, Me., during federal control as inapplicable. Shipments were originally consigned to points on the Maine Central, usually to Bangor, Me., taking the Rockland, Me., basis of rates. They were milled in transit at Portland and the products were shipped out to points on the Maine Central. Rates assessed to final destination were combinations of the Rockland rates and certain proportionals beyond. Proportionals only are attacked. The proportionals were beyond and then only when there were no joint rates in effect from the points of origin. The points of origin were not disclosed of record. C. I. & L., tariff I. C. C. 2876 names rates from Chicago and refers to certain billing books which name arbitraries lower than the proportionals assessed. The effect of the tariffs said to be typical is to name joint rates from the points of origin to the final destinations, thus excluding application of the proportionals published in the Maine Central tariffs, except in certain instances where they are used to make the through rates under the billing books and the tariffs naming rates from points of origin. HELD, rates attacked inapplicable in so far as the proportionals named in Maine Central tariffs were applied, that the applicable rates were those named in the joint tariffs, reparation awarded. Thaxter & Co. v. Director General, 95 I. C. C. 693.

(d) Complainant attacked proportional combination charged on petroleum and its products from El. Dorado, Kans., to Detroit, Mich., between February 29 and Nov. 26, 1920 as unreasonable and illegal. Some moved via M. P., and Wabash and others via Santa Fe and Wabash. Charged combination or proportional rates to and from East St. Louis. The

socalled combination rule was published in the tariff of the carrier from East St. Louis to Detroit. On June 24, 1918 rate to East St. Louis was 15c beyond 20c, combination 35c. The rate increased 4.5c as provided for in the combination rule, made a rate of 39.5c. HELD, rate attacked inapplicable, legal rate being 39.5c, reparation awarded. Timken Detroit Axle Co. v. M. P. R. R., 96 I. C. C. 680.

(e) Charges assessed on wheat from Kansas City, Mo., to Memphis, Tenn., Hot Springs, Ark., and Deport, Tex., with transit at Leavenworth, Kans., and Marshall, Mo., found applicable and not unreasonable or discriminatory. While grain moving into Kansas City moves out to destinations here considered under proportional rates which are protected when transit is accorded at points in direct line of shipment and at points where specifically authorized, Marshall is not in direct line of shipment and complainant's shipments were back-hauled through Kansas City. Moreover, at time complainant's shipment moved, defendants' tariffs did not authorize transit at Leavenworth and Marshall on basis of proportional rates from Kansas City. Victor Milling Co. v. M. P. R. R. Co., 91 I. C. C. 58.

(f) Proportional rates ordinarily are somewhat lower than local rates. Grain from Western Trunk Line Points, 91 I. C. C. 632, 636.

(g) Rates assessed on grain and products moving from points west of Buffalo to destinations on Main Central in Washington and Somerset Counties, Me., via Washington Junction and Oakland during Federal control, found inapplicable in so far as proportionals for movements beyond Washington Junction and Oakland were applied. These proportionals were applicable only when there were no joint rates in effect from points of origin. Applicable rates were those under tariffs naming rates from points of origin and billing books to which reference was made in those tariffs. Shipments found overcharged and reparation awarded. Thaxter & Co. v. Director General, 95 I. C. C. 693.

(h) Following Williams Co., 50 I. C. C. 531, proportional rate from Cumberland, Md., to Manitowoc or Kewanee, Wis., found not an intermediate rate within the meaning of section 4, but the joint rate charged, while thus not in violation of section 4, found prima facie unreasonable under section 1. Borden Co. v. A. R. R. Co., 100 I. C. C. 153, 154.

(i) Fifth-class rates on sugar from Philadelphia, Pa., and New York, N. Y., to St. Louis, Mo., found inapplicable in that a lower commodity rate was contemporaneously in effect. The item in tariff publishing commodity rate contained a note restricting rates to proportional application only in so far as east Mississippi River crossings are concerned. It may have been the intention of carriers to so restrict application of the rate to all points listed in the item but the tariff does not effectuate that intention in so far as St. Louis is concerned. The language of the tariff rather than intention of the framers is controlling. Defendants state that use of rates on local shipments to St. Louis will result in fourth-section violations, but this does not constitute a ground for holding that they apply other than in accordance with the terms of the tariff. Refund of overcharges directed. National Candy Co. v. P. R. R., 101 I. C. C. 43.

(ia) Proportional rates on grain generally apply without regard to the territory in which the grain is produced. Such an adjustment differs from a transit arrangement in that it furnishes a constant balance. Under ordinary transit arrangements the traffic must move outbound over the same line at the balance of the through rate from point of origin to final destination, and varying inbound local rates produce varying outbound balances. As grain must be accumulated in elevators when it is moving in abundance and held until there is a demand for it, the dealer who stores his grain at a rate-breaking market has an advantage over one who stores at a transit market. Des Moines Board of Trade v. D. M. & C. I., 102 I. C. C. 186, 192.

(j) The proportional rate was unrestricted, and therefore an intermediate rate within the meaning of section 4. The through rate was thus in violation of the aggregate of intermediates provision of that section and was prima facie unreasonable. Hulsey Bessent Co. v. S. A. L. Ry., 109 I. C. C. 389.

(k) The conditions surrounding proportional and local rates are dissimilar. Nooney & Co. v. P. R. R. 112 I. C. C. 35, 36.

(l) Where interstate, proportional, or reshipping rates are named on ship-

ments originating beyond reshipping or transit points, such rates are applicable only in case the inbound charges are based on the inbound interstate rates. Montgomery Cotton Exchange v. L. & N. R. R., 112 I. C. C. 325, 327.

II. DISCRIMINATION AND REASONABLENESS.

See Across Lake Rates (b); Advanced Rates §5 (2) (c) (k), §8½a (y), §17 (p) (mm) (3c), §19 (b); Discrimination; Equalization of Rates §3 (h); Evidence §1½ (c); Long and Short Hauls §4½ (n); Reasonableness of Rates; State Rates and Regulations (n).

(a) Complainant attacked commodity rate charged on crude clay, carloads, from Dedrick, McIntyre and Dry Branch, Ga., to Niagara Falls and New Brighton, Pa., as unjust, unreasonable, unjustly discriminatory and unduly prejudicial. Clay shipping points in Georgia are within a radius of about 30 miles of Macon. New Brighton is on the Pennsylvania 28 miles north of Pittsburgh. Shipments moved over various routes through Cincinnati, except one over Southern through Potomac Yard and Pennsylvania beyond. This was misrouted and refund made to basis of rate applicable through Cincinnati. Charged $7.09. Complainants case is predicated primarily upon the lower proportional rate applying to the Ohio river which is restricted not to apply in constructing rates to Niagara Falls and New Brighton and upon the lower rate applying to Chicago. Defendants have explained the existence of the lower proportional rate and the existence of the lower rate to Chicago is insufficient to establish the unreasonableness of rates attacked. HELD, rates attacked not unreasonable or otherwise unlawful, complaint dismissed. Niagara Wallpaper Company v. M. D. & S. R. R. 92 I. C. C. 329.

(b) Proportional rates both from Missouri River and from St. Louis, Mo., to Memphis, Tenn., are among the lowest rates in the country on high grade traffic. Helena Traffic Bureau v. M. P. R. R. Co., 89 I. C. C. 405, 411.

(c) Burlington, respondent, proposed to restrict the application of proportional joint rates on grain and grain products, carloads, from the Missouri river cities to Cairo, Ill., for beyond, to shipments moving beyond Cairo via rail lines which would result in increased rates when the outbound movement is by water. Respondents maintain joint proportional rates of 20c to Cairo on traffic originat-Cairo proper and 16.5c on traffic originating beyond Omaha and destined to Cairo, for beyond, whether by rail or water. On wheat from Omaha to St. Louis the Burlington maintains a rate of 19.5c and, when the traffic originates beyond Omaha, a proportional rate of 13.5c. On wheat from St. Louis to Cairo the I. C., which is a party to the suspended schedules, maintains a proportional rate of 6.5c applicable to shipments originating beyond St. Louis, and a proportional rate of 3c applicable to shipments originating beyond St. Louis and destined beyond Cairo. The joint proportional rates of 20 and 16.5c are based upon these rates and are divided upon that basis. The Mississippi-Warrior service publishes a joint export rail and water rate of 25c on wheat from Omaha to New Orleans via Cairo applicable to traffic originating beyond. The record shows that the bulk of the move-leans for export and that about 95% of this movement is by water. Respondents have not established beyond doubt the necessity for differentiating between traffic moving beyond Cairo by water and that moving beyond via rail. The proportional 3c rate from St. Louis to Cairo is not restricted to traffic moving beyond via rail. If the suspended schedules were allowed to become effective the proportional joint rate of 20c would exceed the aggregate of these intermediate proportional rates and, in its application to shipments to Cairo for beyond by water, would thus violate the fourth section. HELD, proposed schedules not justified. Grain and grain products from Missouri river, 91 I. C. C. 865.

(d) Complainant attacked commodity local and proportional rates on petroleum and its products including refined, crude, fuel and lubricating oils from El Dorado, Ark., to Jackson, Miss., as unreasonable, unjustly discriminatory and unduly preferential of shippers at Memphis, Tenn., Natchez, Miss., and Baton Rouge and New Orleans, La. It is alleged that the failure of Rock Island to join in establishment of proportional rates to Vicksburg no higher than those maintained to Memphis, Natchez, Baton Rouge and New Orleans resulted in undue prejudice.

From El Dorado to Jackson over Rock Island to Ruston, Ia., or over M. P., to Monroe, La., and petitioners lines beyond, rates are 30.5c. From Shreveport to Jackson rate is 25c. All the carriers concede that the rates from El Dorado to Jackson should be no higher than the rates from Shreveport. Shall the Rock Island and M. P., be required to join in the publication of rates that would result in short hauling their lines? Present proportional rates from El Dorado to Natchez, Baton Rouge and New Orleans are 14c on refined oil and 12.5c on crude oil. From the same point to Vicksburg proportional rates of 17c apply on both refined and crude oils. Rates to points east of the Mississippi river are made by adding the rates from the crossing to destinations to the proportional rates from the point of origin to the crossings. To require the Rock Island and M. P., to join in proportional rates to Vicksburg the same as those in effect to the other crossings would subject these carriers to the possibility of having not only the traffic to Jackson and points on the A. & V., but traffic to all points to which the tariff applies, as far east as the coast, diverted from their lines at Ruston and Monroe. The distance from El Dorado to Vicksburg and points on the A. & V., over Rock Island to Ruston and petitioners lines beyond is 11 miles less than the distance from Shreveport to those points. The establishment of the Shreveport basis would remove any undue prejudice that may exist against the petitioners lines or against the receivers of oils at points on those lines. HELD, evidence does not justify the Commission in requiring either the Rock Island or M. P., to join in proportional rates to Vicksburg. Rates from El Dorado to Vicksburg proper and to Jackson unreasonable to extent they exceed rates from Shreveport. Jackson Traffic Bureau v. A. & V. Ry., 92 I. C. C. 89.

(e) Respondents proposed to cancel proportional commodity rate of 16c on strawboard, carloads, from Delphi and Lafayette, Ind., to East Burlington, East Clinton, East Dubuque and East Hannibal, Ill., leaving in effect a rate of 19.5c, 90% of the corresponding sixth class rate. Lafayette is served by the C. I. & L., Big Four, L. E. & W., and Wabash. The rate of the Wabash to East Hannibal was established on May 22, 1924 in order to meet the rate to the other crossings in connection with other lines, which in turn represents a rate of 8c established on June 25, 1907, to meet a like rate in connection with the Wabash from Delphi to East St. Louis. Respondents make no showing as to the resulting increases in the through rates. HELD, suspended schedules not justified. Strawboard from Delphi, 92 I. C. C. 113.

(f) Complainant attacked commodity rates charged between June 22, 1918 and Sept. 10, 1919 on grain in carloads from Illinois and Indiana to Chicago, for reshipment by vessel, as unjust, unreasonable and unduly preferential. Grain moving to Chicago is subject to the local rates from the country stations. Upon reshipment by rail to eastern destinations in accordance with certain provisions of the tariffs adjustment is made whereby the buyer at Chicago pays the difference between the joint all rail rate from point of origin to ultimate destination and the reshipping rate from Chicago. This difference, known as a "specific" is ordinarily less than the local rate to Chicago, resulting in a refund out of the original charges to that point. When shipments move out of Chicago over lake routes no provision is made for any balancing of the local rates to Chicago with the through rail and lake or rail lake and rail charges from points of origin to ultimate destinations. Consequently the movement of such grain to Chicago must be under either local or proportional rates from the country stations. Under the practice which has prevailed for a considerable time the grower of the grain pays only the amount of the "specific" in his settlement with the buyer in Chicago. As a result, if the amount ultimately paid for the movement to Chicago exceeds the amount of the "specific" the buyer at Chicago must bear that difference. Prior to June 22, 1918 the proportional rates applicable to Chicago on grain reshipped from that point over lake or lake and rail routes were the same as the specifics applicable on grain reshipped over all rail routes. On that date the C. & E. I., and one other carrier increased the proportional rates after the entry of supplemental order in 45 I. C. C. 303, decided a year earlier. The increased granted in that case applied only to the rail movement beyond Chicago and with the two exceptions referred to the lines reaching Chicago from the west made no increase in their proportional rates to Chicago. The parity between the proportional rates and the specifics was restored on Sept. 10, 1919. Shipments originated on the C. & E. I.,

and were reshipped from Chicago by lake on account of a car shortage during which shippers were urged to use the lake vessels when practicable in order to expedite the release of cars. HELD, rates attacked not unreasonable. No damage has been shown as the result of any undue prejudice or preference which may have existed. Complaint dismissed. Armour Grain Co. v. Director General, 92 I. C. C. 482.

(g) Complainant attacked local, proportional and reshipping rates on grain and grain products from Texas, Oklahoma, Kansas, Nebraska, Colorado, Iowa, Minnesota, Indiana, Illinois and Missouri to Mississippi as unreasonable, unjustly discriminatory, and unduly prejudicial. From certain territory of origin rates on all grain and grain products to Mississippi are the same. From other territory the rates on wheat and flour are somewhat higher than the rates on coarse grain. The factors of the through rates attacked are the same from Memphis south in either instance. The general basis for rates on grain from territory west of the Mississippi river to territory east of the Mississippi and south of the Ohio rivers is the combination of local and proportional rates on certain basing points, known as primary markets or reshipping points. Complainants attack is directed against the reshipping rates from Memphis to Mississippi points, considered as factors of through rates. The complaining jobbing points enjoy the privilege of disturbing grain and grain products from comparatively all fields of production to the consuming territory which they serve on a rate equality with Memphis and other rate breaking points, provided the consuming points are beyond in direct line of transit from the source of the grain. The circumstances and conditions under which reshipping rates are maintained at Memphis appear somewhat dissimilar from those which exist at jobbing points in Mississippi. HELD, rates attacked not unreasonable but rules at Memphis and Mississippi points create undue prejudice which should be removed, complaint dismissed. Mississippi Railroad Commission v. A. & V. Ry., 93 I. C. C. 435.

(h) Respondents proposed to revise by increases and reductions local and proportional rates on hay and straw, in carloads from Missouri river points and tributary territory to Cairo, Ill., Memphis, Tenn., Mississippi river crossings south of Memphis, and to Mobile, Ala., and also to establish joint through rates on these commodities to points in the interior Mississippi valley, to which the rates are now on combination basis. Burlington R. R., published increased proportional rates on hay, in carloads, from Omaha and Kansas City when originating beyond to Metropolis, and Cairo, Ill., and Evansville, Ind., when destined beyond, to bring its rates into alignment with those previously published by respondents. The origin territory includes Missouri river points, Omaha to Kansas City, eastern Kansas, southwestern Missouri and northeast Oklahoma. The destination territory includes the river crossings Cairo, Memphis, Greenville, Vicksburg and Natchez, Miss., and New Orleans and in addition thereto interior Mississippi and Mobile, Ala. The proportional rates apply on traffic originating beyond the Missouri river cities, most of which are important hay markets. Proposed rates from Omaha to Memphis would constitute a fourth section departure in that it would exceed the rate from Sioux City and it is disapproved for that reason. In at least some instances proposed increased rates are named separately for application to Memphis or Cairo proper and for application on traffic destined beyond. Whether or not expressly so published, the rates to these markets are intended to be used, and would be applicable, as components of combination rates to southeastern and Carolina territories. The increased components of through rates to points beyond Memphis and Cairo have not been justified. HELD, approval is given to proposed increased rates to Memphis and Cairo in so far as they would apply on shipments for local delivery. They have not been justified so far as they would apply on shipments destined to points beyond. Hay and Straw to Mississippi valley 95 I. C. C. 209.

(i) Respondents proposed to cancel proportional commodity rates of 45.5c applicable on cotton factory products from Natchez and Vicksburg, Miss., and Baton Rouge, La., to western Louisiana points, including Shreveport, which would result in making applicable the third class rate of 79.5c. These proportional rates apply on traffic from southeastern territory to points to which no

joint commodity rates are published. Respondents also proposed to cancel their present joint commodity rates from Carolina territory to Shreveport which would result in materially higher combinations becoming effective. Subsequently respondents canceled their proposed cancellation of joint commodity rates from Carolina territory to Shreveport so that the only remaining issue is the reasonableness of the proportional commodity rates from river crossings to western Louisiana. HELD, suspended schedules not justified. Cotton factory products between Shreveport and southern territory, 95 I. C. C. 289.

(j) Complainant attacked commodity rates charged as proportionals on bituminous coal, originating in Kentucky and West Virginia and barged to New Albany, Ind., as unreasonable. The coal is barged down the Ohio river from the mines to New Albany where complainant takes possession, elevates the coal, then ships it out to points in Indiana. The barge lines file no tariffs with the Commission. To destinations beyond Albany the coal is transferred directly from the barge through the elevator to the cars; to handle it otherwise is said to be too expensive. The rates attacked are on a group basis. There is no uniformity in the extent of the groups or the distances for which the rates apply, no two of the carriers conforming to the scale. Complainants traffic is entitled to reasonable rates. The fact must not be overlooked that the proposed rates are to apply on traffic which originates beyond New Albany. The Commission has found reasonable rates to be 45c for 10 miles and under, 60c for hauls over 10 miles and not over 30 and 70c for hauls over 30 miles in 66 I. C. C. 338, 68 I. C. C. 295, 73 I. C. C. 27 and 73 I. C. C. 601. HELD, rates charged unreasonable to extent they exceed rates ranging from 56.5c for 10 miles and under to $1.50 for 150 miles. Slider v. B. & O. R. R., 96 I. C. C. 65.

(k) Respondents proposed to increase the proportional or reshipping rates on grain and grain products, carloads, from Kansas City, Mo., to points on the C. & N. W. Ry. in Iowa. At present the proportional rates from Kansas City to the territory under consideration are 15.5c on wheat and 14c on corn. It is proposed to increase them both by 2c, from the Peoria to the Chicago basis. The destinations are on the Northwestern, which does not reach Kansas City but the Wabash does, and until Feb. 20, 1924 it had no joint rates with the Wabash to these destinations. Through some error in the tariff department present rates were established on that date. They are on the basis maintained to that territory by other lines for both single and joint line hauls. The present adjustment over respondents lines is in harmony with the equalization of Kansas City and Omaha and is on the same basis as that generally maintained from Kansas City to this territory. Respondents have not shown that the present adjustment is improper or that the present rates are too low, and have offered no justification for a different basis over their lines from Kansas City to the destination territory. HELD, suspended schedules not justified. Grain from Kansas City, 96 I. C. C. 154.

(l) Respondents proposed to increase from 89.5c to $1.55 the proportional commodity rate on chinaware and earthenware plumbers goods, carloads, to Oklahoma City, Okla., from upper Mississippi river crossings on traffic originating at Trenton, N. J. The proposed proportional rate would exceed the local rate on plumbers earthenware consisting of basins, hoppers, urinals, bowls and water closet tanks from St. Louis territory of $1.145. HELD, suspended schedules not justified. Plumbers goods from Mississippi river to Oklahoma City, 98 I. C. C. 403.

(m) Complainant attacked combination proportional rates charged on four cars of mussel shells from Hobbs Island, Ala., to Oswego, Kas., on Oct. 22, 1921 as unreasonable and unduly prejudicial. Mussell shells are generally loaded in bulk and either box or gondola cars may be used. Loss and damage claims are not heavy. Shipments moved over the N. C. & St. L., to Metropolis, Ill., Burlington to East St. Louis or Alton, Ill., and M. K. T., beyond charged $3.75 to Metropolis and $6.70 beyond, on fertilizer basis. Later the Burlington published from Metropolis a proportional commodity rate of $3.60 the fertilizer basis to destination. HELD, rate attacked not unreasonable or unduly prejudicial, complaint dismissed. Pioneer Pearl Button Co. v. N. C. & St. L. Ry., 98 I. C. C. 578.

(n) Complainant attacked proportional rates on canned goods carloads from Hayward and San Leandro, Calif., to

Oakland, Calif., for reshipment by water to interstate destinations as unjust and unreasonable. The interstate rates on canned goods to Oakland from San Leandro, 9.2 miles, and from Hayward, 14.5 miles, are 55c per ton and 7c per 100 pounds, respectively. There are intrastate rates on canned goods of 2.5c to Santa Clara from San Jose and Luther, 2.6 and 7 miles, respectively, and of 3.5c from Los Gatos to San Jose and Luther, 11 and 14 miles, respectively. The fifth class rate from Hayward and San Leandro to Oakland is 11c, which is the minimum for that class in this territory. This rate applies on canned goods from Burbank to Los Angeles, 9.7 miles, Lakershim to Los Angeles, 13.7 miles, Gridley to Marysville, 18.3 miles, and Ontario to Calton, 18.2 miles. There are also intrastate rates on canned goods of 8c to San Jose from San Francisco, 46.6 miles, and from Sunyvale, 8.1 miles and on canned beans and tomatoes of 8.5c from Mantesa to Stockton 13.3 miles. The 7c rate from Hayward to Oakland on intrastate movements of canned goods other than pickles and on interstate movements of all canned goods is blanketed over considerable territory and is a commodity rate substantially less than fifth class. Whether defendant is justified in maintaining a lower rate from Hayward to Oakland on intrastate movements of pickles can not be determined on this record. HELD, rates attacked not unreasonable, complaint dismissed. Prince & Co. v. S. P. Co., 98 I. C. C. 615.

(o) Proposed increased proportional rates on canned goods and iron and steel articles from Gulf ports to points on and north of Ohio River, applicable on traffic from Pacific coast through Panama Canal, for purpose of equalizing such rates with local rates applicable from New York, N. Y., to Chicago, Ill., found not justified. No similar increases are proposed in rates from south Atlantic ports, and undue prejudice in favor of such ports would result. Canned Goods and Iron and Steel Articles, 91 I. C. C. 623.

(p) Proposed proportional rates on grain and products from primary markets, and proposed through rates from stations in Iowa, Illinois, Missouri, South Dakota, and Minnesota, designed for purpose of equalizing various markets, gateways, and routes by bringing up one-factor through rates to basis of lowest combinations, found not justified. Proposed rates will not accomplish purpose for which designed for in many instances through rates lower than combinations are proposed. Moreover, where points of origin and markets are situated as are those here involved, it is extremely difficult—well-nigh impossible—to bring about combination adjustment without so greatly disregarding distance and transportation conditions as to make the rates of extremely doubtful propriety. Grain from Western Trunk Line Points, 91 I. C. C. 632.

(q) Proposed cancellation of local and proportional commodity rates on petroleum and products, from Pueblo and Walsenburg, Colo., to destinations on Denver & Rio Grande Western R. R., leaving fifth-class rates in effect, thereby resulting in substantial increases and in certain fourth-section violations, found not justified. Petroleum between Colorado, New Mexico, and Utah, 91 I. C. C. 734.

(r) Complainant attacked combination commodity rates charged of 53c on 21 tank cars of fuel oil shipped in Dec. 1920 and Jan., 1921 from Pryse, Ky., to Newport News, Va., as unreasonable. Shipments moved as routed by the consignor, L. & N., Cincinnati, O., C. & O., a distance of 784 miles, rate charged 18c to Cincinnati and proportional of 35c beyond. The contemporaneous local rate maintained by the C. & O., from Cincinnati, Louisville, Lexington and Winchester, Ky., was 43c, reduced to 39.5c on Jan. 1, 1922 and to 38.5c on July 1, 1922. Lexington is 18 miles west of Winchester. Effective Nov. 21, 1923 the rate from Pryse was made differentially 1c over the rate from Lexington to Newport News, which gave a joint rate of 39.5c from Pryse. Effective Feb. 15, 1924, the differential basis was canceled and a specific joint rate of 39.5c established. Contemporaneously there was in effect a proportional rate of 16.5c from Pryse to Cincinnati for beyond, but the application of this rate was limited to destinations north of the Ohio or west of the Mississippi and destinations in Pennsylvania and West Virginia. Effective Nov. 19, 1921 the application was extended to destinations in Virginia and all states north thereof. This proportional plus the proportional rate beyond Cincinnati made a through rate of 50.5c to Newport News. HELD, rate attacked unreasonable to extent it exceeded 50.5c, reparation awarded. Newport News Shipbuilding & Dry Dock Co. v. L. & N. R. R., 100 I. C. C. 1.

(s) Respondents, S. A. L., and A. C. L., proposed to increase the basing rates on paving brick, carloads, from Jacksonville, Fla., to destinations in Florida on their lines, only on shipments originating at Robbins, Tenn. Rates on brick from points in the south to points in Florida, south of Jacksonville, are made up of proportional rates from southern producing points to Jacksonville 3c lower than the rates to Jacksonville, proper, plus proportional rates from Jacksonville 1c lower than rates based on 88 I. C. C. 543. Prior to Mar. 4, 1925 the rates on paving brick from Robbins were 19.5c to Jacksonville proper, and 16.5c to Jacksonville when for beyond. By schedules filed to become effective on that date the C. N. O. & T. P., Southern, G. S. & F., proposed to reduce the proportional rate and likewise the rate to Jacksonville, proper, 1.5c, to 15c and 18c. The A. C. L., and S. A. L., proposed to increase the proportional rates applicable beyond Jacksonville on traffic originating at Robbins. Only, by the same amount. Although the same proportional rate beyond Jacksonville applied on traffic originating at other southern producing points, no change was proposed in the rates from Jacksonville on traffic originating at such points. The increased proportional rates from Jacksonville were suspended; but, although protested by the respondents, the rates to Jacksonville were allowed to become effective. The increase in the proportional rates beyond Jacksonville was solely for the purpose of maintaining existing rates from Robbins to points in Florida and preserving the relationship of rates on paving brick from the several producing points to points in Florida. HELD, proposed rates not justified. Basing rates on paving brick, 100 I. C. C. 390.

(t) Failure and refusal of the Rock Island and Missouri Pacific to join in establishment and maintenance of proportional rates on petroleum and products from El Dorado, Ark., to Vicksburg, Miss., no higher than those maintained to Memphis, Natchez, Baton Rouge, and New Orleans, found not unjustly discriminatory or unduly prejudicial. To require establishment of rates on basis sought would result in those carriers short hauling themselves. Jackson Traffic Bureau v. A. & V. Ry., 92 I. C. C. 89.

(u) Proposed cancellation of proportional commodity rate on strawboard from Delphi and Lafayette, Ind., to upper Mississippi River crossings, leaving in effect rates 90 per cent of sixth class, found not justified. Resulting increased through rates to points west of Mississippi River would not conform to relationship with rates from Chicago group to same destinations prescribed by commission in Indiana Public Service Commission, 88 I. C. C. 728. Strawboard from Delphi and Lafayette, Ind., 92 I. C. C. 113.

(v) Proportional rates on grain from Illinois and Indiana points to Chicago, for reshipment by vessel beyond, found not unreasonable as compared with lower so-called "specifics" applicable when grain is reshipped by rail. Formerly the proportionals and specifics were the same but in applying increases under The Fifteen Per Cent Case, 45 I. C. C. 303, this parity was disrupted and subsequently restored. It was shown that lake-vessel rates fluctuate from time to time and in many instances total charges from country origin points to final destinations were less than those applicable all rail, notwithstanding the higher proportionals; and that the proportionals were lower than Illinois intrastate rates and local rates in western territory for similar distances. Armour Grain Co. v. Director General, 92 I. C. C. 482.

(w) Proposed cancellation of proportional commodity rates on cotton factory products from Natchez, Vicksburg, and Baton Rouge, to Western Louisiana points, leaving in effect third-class rates found not justified. These proportionals apply from southeastern territory to points to which no joint commodity rates are published. Carriers urge that third class was authorized in 77 I. C. C. 473, as reasonable upon cotton-factory products moving in this territory, but in that proceeding no findings were made with respect to proportional rates. It is further urged that present proportional continues rates to Texas from the Southeast based on Shreveport combinations which are lower than joint rates, but no rate thus affected is brought to the commission's attention, nor is it shown that combination thus made is unduly low or that present joint rates from the Southeast to Texas should be deemed reasonable as minimum rates. Cotton Factory Products between Shreveport and Southern Territory, 95 I. C. C. 289.

(x) Proposed increases and changes in method of assessing gathering charges,

or proportional rates, on citrus, fruits from interior Florida points to Florida basing points, to be used as factors of through rates to certain transcontinental and intermountain territory, found not justified. Carriers attempted to justify proposed increases merely by explaining the change in method of determining freight charges. However, instead of promoting uniformity the proposed method of stating charges up to the basing points would further confuse a situation already so complex and disordered that shippers and carriers have difficulty in applying and understanding, or even explaining, the adjustment. Citrus Fruits between Points in Florida, 95 I. C. C. 532.

(y) There are no transportation or traffic conditions which would warrant higher proportional rates from interior Florida points to Jacksonville when destined to transcontinental territory than when destined to eastern territory. Citrus Fruits between Points in Florida, 95 I. C. C. 532, 536.

(z) Rates from New Albany to other points in Indiana on bituminous coal originating in Kentucky and West Virginia and barged to New Albany down the Ohio River, found unreasonable as compared with rates from Cincinnati, a competing point shipping to the same destinations and to which traffic moves under similar transportation conditions. Moreover, rates for the short intrastate movement are on too high a level as compared with intrastate rates on bituminous coal prescribed by the commission in 66 I. C. C. 338, and numerous other cases. Reasonable distance scale of rates prescribed for the future. Slider v. B. &. O., 96 I. C. C. 65.

(aa) Combination rates on fuel oil, from El Dorado, Kans., to Detroit, Mich., found inapplicable. The sum of the proportional factors in effect on June 24, 1918, plus an increase of 4.5 cents found applicable. Reparation awarded against defendant which carried the unrestricted combination rule in its tariff, following 81 I. C. C. 193. Timken-Detroit Axle Co. v. M. P. R. R. Co., 96 I. C. C. 680.

(bb) Following the principle announced in 83 I. C. C. 93, and 85 I. C. C. 40, proposed cancellation of proportional class rates applicable from Rock Island, Ill., and Davenport, Iowa, on shipments from points east of the Indiana-Illinois State Line to interior Iowa destinations, which would effect increase in rates on class traffic moving over the Peoria route, found not justified. The existing proportional class rates for service west of the Mississippi River were established without any condition that the carrier applying them should first have a haul east of the river. Proportional Rates from Upper Mississippi Crossings, 96 I. C. C. 715.

(cc) Complainant attacked carload rates on grain, proportional and local, from Des Moines to Texas, and the combination rates made over Des Moines to those destinations from territory north, east and west of Des Moines as unreasonable, unjustly discriminatory and unduly prejudicial against Des Moines and unduly preferential of Kansas City, Mo., and other Missouri river cities, Minneapolis, Minn., St. Louis, Mo., Chicago, Ill., Davenport, Iowa and Peoria, Ill. At hearing complainant modified the complaint to extent of asking for the establishment of proportional rates to Texas not greater than those contemporaneously maintained from Council Bluffs, Iowa, and Omaha, Neb. Des Moines is 154 miles west of the Misissippi river, 141 miles east of the Missouri river, on the Rock Island, C. G. W., Wabash, Burlington, C. & N. W., C. M. & St. P., M. & St. L., D. M. & C. I., and Ft. D. D. M. & S. The area from which grain is shipped to Des Moines extends for about 125 miles north and for short distances east and west of Des Moines. Rates on grain from Des Moines to Texas except Texarkana and points on the Rock Island are made by combinations of the proportional rates from Des Moines to St. Joseph or Kansas City and the proportionals beyond. Average distance Des Moines to Kansas City over direct lines is 234 miles, from Omaha to Kansas City 199 miles. Proportional rates Des Moines to Kansas City are 12c on wheat and 11c on corn, and from Omaha to Kansas City, 8c and 7c. The through proportional rates on corn from Omaha to Texas exceed the proportional rates from Kansas City by from 5.5c to 6c. To Texarkana the proportional rates on corn from Des Moines points in Texas the combinations of proportional rates from Des Moines are from 5 to 5.5c higher than the proportional rates from Omaha. Carriers established proportional rates from market points

by using the rate from Kansas City to Texarkana plus the rates beyond. The rates from St. Louis were made on the same basis, as the distance from St. Louis to Texarkana was about the same as from Kansas City. Proportional rates on grain generally apply without regard to the territory in which the grain is produced. Such an adjustment differs from a transit arrangement in that it furnishes a constant balance. Under ordinary transit arrangements the traffic must move outbound over the same line at the balance of the through rate from the point of origin to the final destination, and varying inbound local rates produce varying outbound balances. As grain must be accumulated in elevators when it is moving in abundance and held until there is a demand for it, the dealer who stores his grain at a rate breaking market has an advantage over one who stores his grain at a transit market. HELD, rates attacked unduly prejudicial to extent they exceed proportional rates from Council Bluffs or Omaha. Des Moines Board of Trade v. D. M. & C. I. Ry. 102 I. C. C. 186.

(cca) Proportional rates on grain from Des Moines, Iowa when originating beyond, to destinations in Texas found unduly prejudicial to Des Moines shippers and unduly preferential of shippers at Council Bluffs and Omaha to extent such rates from Des Moines exceed contemporaneous rates from Council Bluffs or Omaha to same destinations on traffic originating beyond. Des Moines Board of Trade v. D. M. & C. I., 102 I. C. C 186.

(ccb) Proposed restriction of proportional rates on cottonseed cake, meal, and other cottonseed products from various groups of origin in Arkansas, Missouri, and Oklahoma to Memphis, Cairo, Thebes, and East St. Louis, and of proportional rates on cottonseed meal, hulls, and cake from Blytheville, Jonesboro, Osceola, and intermediate Arkansas points to Memphis, under provision that rates named will only apply on traffic destined to points beyond to which no through rates are published, which would result in increased rates from Arkansas points to a large number of destinations north of Ohio River to which no joint rates are published and to which present combination on Memphis makes the lowest rate, found not justified. Cottonseed Products from Southwest, 102 I. C. C. 219.

(ccc) Proportional rates from Kansas City and through rates from origins in Nebraska and Kansas on grain and products to destinations in Arkansas, Louisiana, Mississippi Valley, and the Southeast, found not unreasonable or unduly prejudicial as compared with Omaha and other points. Complainant's case appears to be primarily based upon the prices of grain and the commercial practices in the buying and selling thereof, and it is desired to equalize the market prices at Kansas City and Omaha by reducing the rates from Kansas City in the amount of the proportional rate from Omaha to that point. Kansas City Board of Trade v. A. & W. Ry., 102 I. C. C. 285.

(dd) Complainant attacked proportional rates on grain and grain products from Kansas City to the Mississippi Valley as unjust and unreasonable, and unduly prejudicial to that point and unduly preferential of Omaha, Neb., Sioux City, Iowa, Des Moines, Ia., St. Louis, Mo., and Cairo, Ill., to southern territory, and that the through charges from the country points in Nebraska south of the Platt river and in Kansas on and north of the main line of the U. P., to the above named territory as unreasonable and unduly prejudicial. Territory generally north of Omaha, that is, that portion of northwestern Iowa, southwestern Minnesota, and southeastern South Dakota lying north of a line drawn from Omaha to Des Moines, west of the Northwestern, Des Moines to Mankato, Minn., and south of the line of that carrier, Mankato to Pierre, S. D., including north eastern Nebraska, is one of the principal surplus producing sections for corn and oats. This will be known as the north Omaha area. At present Omaha draws corn and oats from this territory at flat inbound rates, and reships to southern territory on proportional rates. The latter equalizes to the southeast through the various Mississippi and Ohio river crossings, Memphis to St. Louis, and Cairo to Cincinnati, O., inclusive; that is to say, the proportional rates from Omaha to any southeastern point are the same in amount through whichever gateway the grain may move. To the Mississippi valley they equalize through the Mississippi river crossings, Memphis to St. Louis, inclusive. Proportional rates are also in effect from Kansas City, which are in each instance, except over St. Louis, 1c less than the rates from Omaha. Basing on St. Louis they are the same as from Omaha. The inbound

rates from the north Omaha area to Kansas City in the majority of cases exceed the rates to Omaha by a uniform amount 7c, equal to the proportional rate on coarse grain from Omaha to Kansas City. Consequently the sum of the inbound flat rate to Kansas City plus the outbound proportional rate from that point is generally 6c higher than the sum of the rates into and out of Omaha. It appears that transit privileges are in force at Kansas City on grain moving proportional rates from Omaha to Ohio and Mississippi river crossings, St. Louis and south, under which the traffic moves out of Kansas City on the balance of the Omaha proportional rate. Therefore, on all grain from the north Omaha area routed into Kansas City via Omaha the through charges to destinations in southern territory are the same as the combinations of flat rates into Omaha and proportional rates out, thus giving the dealers at Kansas City the opportunity of merchandising grain and its products on an equality with Omaha so far as the total freight charges are concerned. The south Platte area is a heavy producer of both wheat and corn. The situation as to this territory is somewhat different from that with respect to the north Omaha area. From the south Platte area, generally speaking, the inbound rates to Kansas City are the same as or lower than these to Omaha except from portions of Nebraska in comparatively close proximity to Omaha. Consequently the through combination rates built on Kansas City are generally the same as or lower than those built on Omaha except from the portion of Nebraska indicated. In many instances there are joint through rates from this territory lower than the lowest combination. Apparently practically all of these rates apply via Kansas City and many of them also via Omaha, but the precise extent to which they apply via the two gateways is not clear. Speaking generally, it appears that from most of this area the through rates are the same or lower via Kansas City than via Omaha, with the exception noted. The through rates from both Kansas City and Omaha to the southeast are generally the same in amount through the various gateways. They are the combinations of proportionals to and from the Mississippi and Ohio river markets. Transit privileges are allowed at the various markets under which the grain may be stopped for storing, milling, and other commercial operations, and later reshipped without penalty. To both the Mississippi valley and the southeast, proportional rates are published from Kansas City on both wheat and corn via all gateways, except St. Louis, which are 1c less than from Omaha and Des Moines and 5c less than from Sioux City. Based on St. Louis the rates are the same as from Ohama. To the Mississippi valley the short line distances from Omaha via the Memphis gateway are, with few exceptions, 196 miles greater than those from Kansas City, the direct route being through the latter point. From Omaha to St. Joseph, the most northern point grouped with Kansas City, the distance is 132 miles. To the south east the short line distances from Omaha average about 150 miles greater than from Kansas City. The distances from Omaha to the southeast via Kansas City exceed the short line distances by some 26 to 65 miles. To Little Rock as typical of Arkansas destinations the proportional rates from Kansas City are 4c less than from Omaha and Des Moines; Sioux City is on a combination basis over Omaha; St. Louis is 3c under Kansas City and Cairo is 2.5c under St. Louis. To eastern Louisiana the relationship in the proportional rates are substantially the same as to other points in the Mississippi valley, the spreads gradully changing as the distance from New Orleans increases until to Shreveport, Kansas City takes 6c under Omaha, Des Moines 1c over Omaha, St. Louis the same rates as Kansas City and Cairo 2.5c under St. Louis. The local inbound rates from the south Platte area to Kansas City and Omaha do not appear to bear any fixed relationship one to the other, but, speaking generally, the rates to Kansas City, distance considered, are lower than to Omaha. Having in mind the respective distances from Kansas City and Omaha to Memphis and other Mississippi river crossings and to many points in southern territory, it appears that a difference of 1c, Kansas City under Omaha, is sufficient and does not adequately reflect the difference in distance. The varying inbound rates to Omaha and Kansas City, and varying distances and conditions encountered clearly indicate that no matter what difference may be determined upon be-

tween Omaha and Kansas City as to the proportional rates, the through rates will not break from all points on both. An equalization from all of the origin territory involved through these two points would, it seems, be impossible except by the use of through rates with transit. On the issues as presented and the record as made the Commission is not convinced that Kansas City is under any undue disadvantage as compared with Omaha and the other points alleged to be preferred. Nor does it appear that the rates under attack have been shown to be unreasonable, and on this record they are not unreasonable or otherwise unlawful. Complaint dismissed. INVESTIGATION AND SUSPENSION PROCEEDING. The rates under suspension in this proceeding are those on grain and grain products, and seed and seed products, from Colorado, Kansas, Nebraska, Missouri and Oklahoma to the Ohio river proper, and when for beyond, and to the lower Mississippi river crossings and points in the Mississippi valley. From points in Nebraska on the Burlington and M. P., the rates to the Mississippi valley will be the Missouri river combination, which is the basis at present in effect from points on other roads. From northern Kansas, the rates proposed are slightly less than the combination on the Missouri river. From central and southwestern Kansas no change is made in the rates to Memphis, but to the interior Mississippi valley, the proposed rates will result in substantial reductions. From Colorado points, no change is made in the rates to Memphis. Increases are proposed in the rates to New Orleans but because of the application of the New Orleans rates to a large territory in southern Mississippi, reductions will be brought about to points in that section. HELD, proposed rates not justified. Kansas City Board of Trade v. A. & W. Ry. 102 I. C. C. 285.

(dda) Proportional rates from Kansas City and through rates from origins in Nebraska and Kansas on grain and products to destinations in Arkansas, Louisiana, Mississippi Valley, and the southeast, found not unreasonable or unduly prejudicial as compared with Omaha and other points. Complainant desired to equalize the market prices at Kansas City and Omaha by reducing the rates from Kansas City in the amount of the proportional rate from Omaha to that point, but this could not be done without serious disturbances in rates, and there is no reasonable assurance that after such disturbance a more equitable or satisfactory adjustment would be reached. Kansas City Board of Trade v. A. & W. Ry., 102 I. C. C. 285, 300.

(ddb) Proportional rates are but factors of through rates and in many cases commission has declined to deal separately with one factor of a through rate where the through rate itself is not in issue. Kansas City Board of Trade v. A. & W. Ry., 102 I. C. C. 285, 302.

(ddc) Combination of proportional rates basing on East St. Louis or Kankakee, Ill., on petroleum and products moving from Coffeyville, Kans., and Tulsa, and Boynton, Okla., to destinations in Indiana, Ohio, Michigan, and Pennsylvania, found unreasonable to extent that components from basing points exceeded lower proportionals subsequently established. In complying with commission's decision in Reduced Rates, 1922, 58 I. C. C. 676, 720, carriers reduced proportionals from points in mid-continent fields to basing points, but similar reductions beyond were not effected until subsequent to shipments. Reparation awarded. Nat'l Petroleum Asso. v. C. & A. R. R., 102 I. C. C. 459.

(eé) Complainant attacked combination proportional rates charged on petroleum products in carloads from July 1 to 12, 1922 from Coffeyville, Kas., and Tulsa and Boynton, Okla., to Indiana, Ohio, Michigan and Pennsylvania as unreasonable. Rates were made by combinations of proportional rates basing on East St. Louis or Kankakee, Ill., whichever makes lower. In 68 I. C. C. 676, the Commission found approximately a 10% reduction of rates in effect August 26, 1920, should be made effective July 1, 1922. In compliance therewith the proportional rates from midcontinent fields to East St. Louis and Kankakee were reduced, but similar reductions in the rates beyond these basing points were not effected, although this was made on July 13, 1922. HELD, rates attacked unreasonable to the extent that components east of East St. Louis and Kankakee exceeded the proportional rates effective July 13, 1922, reparation awarded. National Petroleum Asso. v. C. & A. R. R. 102 I. C. C. 459.

(ff) Complainant attacked rates charged for that portion of the movement beyond Kansas City, Mo., rates

which were unreasonable and unduly prejudicial on wheat, carloads, originating May 18, 1920 at Beatrice, Neb., accorded transit at various points, ultimately moving to Pine Bluff, Ark. Shipment was moved via U. P., from Beatrice to Kansas City. After sale to complainant in that market it was rebilled in the same car to Leavenworth, Kas., and after storage at that point, was forwarded to Sweet Springs, Mo., for milling. An equal tonnage of shorts shipped out of Sweet Springs was stored at Charleston, Mo., and latter reshipped to Pine Bluff. Rates charged 4c to Leavenworth, proportional rate of 22.5c from that point to final destination, plus an out of line charge of 1.5c. It appears that the present transit tariff permits three transit services, but the tariff attacked may not be condemned on this account. In fact, it is doubtful whether the proportional rate from Kansas City could have been applied to complainants shipments if three stops had been authorized. HELD, rates attacked not unreasonable or unduly prejudicial, complaint dismissed. Moore Lawless Grain Co. v. M. P. R. R. 102 I. C. C. 465.

(ffa) Rates assessed on wheat from Kansas City, Mo., to Pine Bluff, Ark., with transit at Leavenworth, Kans., and Sweet Springs and Charleston, Mo., found not unreasonable or unduly prejudicial. A lower proportional rate applied for factor from Kansas City to Pine Bluff but complainant was denied its use because applicable tariff permitted only two stops for transit. While present tariff permits three transit services, tariff assailed may not be condemned on this account. Moreover, in Victor Milling Co., 91 I. C. C. 58, commission considered a somewhat similar situation and found rates not unreasonable or discriminatory, and in view of conclusions reached therein it is doubtful whether lower proportional from Kansas City could have been applied to complainant's shipments if three stops had been authorized. Moore-Lawless Grain Co. v. M. P., 102 I. C. C. 465.

(ffb) Upon further hearing, proposal to correct error in schedules originally published on Peoria basis, by increasing to Chicago group basis proportional rates on grain and products from Kansas City to points in Iowa on Chicago & North Western, found justified. While present rates are more in harmony with general adjustment than rates proposed, present rates sought to be increased are on a highly competitive basis and are less than maximum reasonable rates. Finding in former report, 96 I. C. C. 154, reversed. Grain from Kansas City, 102 I. C. C. 475.

(gg) In 96 I. C. C. 154, the Commission found the proposed increased proportional rates on grain and grain products, carloads, from Kansas City, Mo, to C. & N. W., stations in Iowa not justified. The rates which are sought to be increased were published by the Wabash in connection with the Northwestern, and through a misunderstanding were made 15.5c on wheat and 14c on corn, which is the Peoria, Ill., basis instead of 17.5c on wheat and 16c on corn authorized by the Northwestern, the Chicago basis. The Peoria basis is maintained to the destination territory by other lines for both single line and joint line hauls. The Northwestern has for a long time maintained joint rates from Kansas City to Chicago in connection with the M. P., via Omaha and C. G. W., via Marshalltown, to the same territory. From Minneapolis to Chicago the proportional rates are 13c on wheat and 11.5c on coarse grains. These rates apply to intermediate stations in Iowa over the Rock Island through Cedar Rapids and to stations on the Northwestern through Mason City and Belle Plaine, Iowa. To points west of these lines only local rates from Minneapolis apply. Distance has been largely disregarded in establishing these group rates. The Northwestern is the only line serving points in the socalled Peoria group in Iowa which maintains from Kansas City rates higher than the Peoria basis. The Northwestern can not be said to have voluntarily joined with the other carriers in establishing the Peoria basis of rates to points in Iowa. All of the rates, except those under suspension, to points on its lines in Iowa from Kansas City are on the Chicago basis. The Wabash, on the other hand, joins with a number of other lines in publishing the Peoria basis of rates from Kansas City to points in Iowa and is willing to maintain the same basis in connection with the Northwestern. While the Commission believes that the present rates are more in harmony with the general adjustment than the rates proposed, HELD, present rates are on a highly competitive basis and are less than reasonable maximum rates, schedules justified. Grain from Kansas City 102 I. C. C. 475.

(hh) Complainant attacked proportional rates on rough rice, carloads, shipped from certain producing points to Baton Rouge for cleaning and forwarding to interstate and foreign destinations since August 1, 1922 as unjust, unreasonable, unjustly discriminatory and unduly prejudicial to extent they exceeded rates prescribed in 69 I. C. C. 508, to Lake Charles, La. All of the producing points are served by the T. & P., and rough rice moves into Baton Rouge over N. O. & T. M., a two line haul. The rice is unloaded at the mill and undergoes a cleaning process. The hulls are knocked off, and the bran is removed. The clean rice is shipped outbound in different cars, and a large percentage is destined to interstate and foreign points. Most of the shipments included in complaints claims for reparation moved outbound from Baton Rouge over the Y. & M. V. as the initial line, which had not participated in the inbound movements. No joint rates were or are applicable from the producing points to these ultimate destinations, and none are sought in this proceeding, but to certain other territory of ultimate destination, California for example, the transit tariffs did and do provide for the application of the joint or through rates from the producing points. The claims are identical in character and principle with those on which reparation was awarded on rough rice in the Lake Charles case. The transportation conditions over the route of movement are practically the same as those from and to the points between which the prescribed distance scale applies. HELD, rates attacked unreasonable and unduly prejudicial to extent they exceeded rates prescribed in the Lake Charles case, reparation awarded. Baton Rouge Rice Mill v. N. O. T. & M. Ry. 102 I. C. C. 507.

(ii) Proportional rates are but parts of through rates and are in the nature of divisions rather than of rates. The Commission has repeatedly found that where joint through rates are reasonable and free from undue prejudice shippers are not concerned with whether the divisions up to or beyond a given gateway are higher on their traffic than on traffic of their competitors. Morrell & Company v. N. Y. C. R. R. 104 I. C. C. 104, 128.

(jj) Complainant attacked carload rates on wool, in the grease, in sacks, from Iowa and Missouri to Boston, Mass. the factor east of the Mississippi river, a proportional commodity rate of 101.5c minimum 24,000 pounds attacked as unreasonable, unjustly discriminatory and unduly prejudicial. In 77 I. C. C. 431, the Commission found the rate attacked not unreasonable but as to traffic from Iowa it should be made to apply from west bank crossings. On Page 433 it was stated "from points in Missouri the proportional fourth class rates apply to the east bank, and may, therefore, be used in combination with the proportional commodity rate beyond. The record does not disclose any conditions pertaining to Missouri wool that would require different treatment from that accorded Iowa traffic. HELD, rates on wool, in the grease, in sacks, from stations in Missouri to Boston are unreasonable to extent they exceed fourth class rates to the Mississippi river and proportional rate beyond. Boston Wool Trade Asso. v. B. & A. R. R. 107 I. C. C. 496.

(kk) Proposal to increase import, coastwise, and proportional rates on fertilizer materials, c. l., from New Orleans, La., and subports to points in Louisiana, effecting an adjustment of both domestic and import rates to the basis of rates prescribed in Memphis-Southwestern Investigation, 77 I. C. C., 473, found justified. Proposed schedules will correct the present lack of uniformity in minimum-weight provisions and in tariff descriptions of commodities accorded fertilizer rates and provide rates applicable from shipside to cars, handling charges being absorbed by carriers. Suspended schedules vacated and proceeding discontinued. Fertilizer to Louisiana points, 100 I. C. C. 64.

(ll) Relationship of rates on certain commodities, for export, import, or coast-wise movement via Galveston, Tex. from or to points in Texas, Oklahoma, western Louisiana, Arkansas, and Kansas found unduly prejudicial to Galveston and unduly preferential of New Orleans, La. Such undue prejudice should be removed by establishing the same rates to or from New Orleans or Galveston, as the case may be, in instances where the differences in distance from and to the two ports are not greater than 100 miles, and by establishing rates to or from Galveston, as the case may be, certain prescribed differentials, under New Orleans in instances where the

differences in distance in favor of Galveston are greater than 100 miles. The record is not sufficiently complete to warrant the commission in prescribing relationships between the rates to or from Galveston and New Orleans on other commodities or from or to points other than those embraced in the foregoing findings. Relationships herein prescribed will serve as a guide to defendants in readjusting the rates on other export, import, and coastwise traffic. Galveston Commercial Asso. v. G. H. & S. A. Ry. Co., 100 I. C. C. 110.

(mm) Proposed increased proportional rates on paving brick from Jacksonville, Fla., to points in Florida, on traffic originating at Robbins, Tenn., resulting in rates higher than rates between same points on shipments originating at other southern producing points, higher than rates for corresponding distances from Jacksonville to points in Florida on Florida East Coast Ry., and higher than rates on other articles included in uniform brick list, in violation of the order in National Paving Brick Mfrs. Asso., 68 I. C. C. 213, found not justified. Basing Rates on Paving Brick, 100 I. C. C. 390.

(nn) Rate on peanuts from points in Alabama, Florida, Georgia, South Carolina, and Tennessee to Chicago, Ill., Milwaukee, Wis., Canton and Cleveland, Ohio, South Bend, Ind., and Dubuque, Iowa, found unjust and unreasonable to extent that factors thereof north of Ohio River, representing in most instances proportional commodity rates, exceed those specified herein, which are prescribed as reasonable for future. United Fig & Date Co. v. A. C. L., 101 I. C. C. 138.

(oo) Proposal to increase local, proportional and reshipping rates on grain, grain products, and grain by-products from west-bank Lake Michigan ports across lake, upper Mississippi River crossings, St. Louis, Chicago and other Illinois basing points, to northeastern Ohio, to be effected by changing the rate basis of the destination area from the Cleveland to Youngstown, Ohio, group, found not justified, in that such a change would result in an unlawful rate situation and departures from the long and short-haul provision of section 4 of the act. Grain and Products Between C. F. A. Points, 101 I. C. C. 662.

(pp) M. & O., respondent, proposed to increase the rates on hay, carloads, from St. Louis, Mo., and East St. Louis, Ill., to certain destinations on its line in Mississippi south of Tupelo, Miss. Respondents proposed to establish a proportional rate of 33c on hay, carloads, from St. Louis and East St. Louis, when originating beyond, to all destinations on its main line in Mississippi valley territory south of Tupelo to and including Meridian, Miss. Respondents main line extends south from St. Louis, its northern terminus, to Mobile, Ala., its southern terminus, a distance of 657 miles. The present rate on hay from St. Louis and East St. Louis to Jackson over the I. C., 526 miles, and to Vicksburg, 537 miles, is 29c, to Greenville, Miss., 467 miles, 26c, and to Natchez, 613 miles, 31c. It is noted that the present rate to Meridan is the same as to Vicksburg and Jackson and somewhat lower than the rate to Natchez, Mobile and New Orleans. Under the proposed revision the Meridian rate would be increased to the level of the rate to Mobile and New Orleans, points 657 and 707 miles, from St. Louis. Respondent here proposes a general adjustment of rates on hay in the Mississippi valley, without cooperation with other carriers in the same territory, and upon an inadequate record. HELD, proposal not justified. Hay to Mississippi points 109 I. C. C. 36.

(qq) Factors of through rates on traffic destined beyond should be lower than the local rates except where the latter are shown to be depressed by special conditions to an extent which makes them reasonable for application as proportional rates. Wichita Chamber of Commerce v. A. & V. Ry. 109 I. C. C. 368, 376.

ALL OTHER CITATIONS

Proportional Commodity Rates, 85 I. C. C. 40; Tuscaloosa Cotton Seed Co. v. A. G. S. Ry. Co., 88 I. C. C. 258.

IV. EVIDENCE AND PROCEDURE.

See Evidence.

(a) Proportional rates are but factors of through rates and the Commission in many cases has declined to deal separately with one factor of a through rate where the through rate itself is not in issue. Comparison of proportional rates with proportional rates is

to a certain extent unsatisfactory because it is no different than comparing two different divisions of through rates and the only satisfactory way of making a comparison is to consider the total service involved. Kansas City Board of Trade v. A. & W. Ry. 102 I. C. C. 285, 302.

(b) The Commission is continually dealing with proportional rates without reference to the other factors with which they are used in the construction of through rates. Proportional rates on livestock 109 I. C. C. 417, 419.

VI. TARIFFS AND PUBLICATION.

See Discrimination §10 (a); Tariffs.

(a) Contention that proportional rate was not available as a factor in a combination rate because tariff restricted its use to points "where no through rates are published," not sustained, as no through rates were published in such tariff, and item carrying attempted restriction made no reference to any tariff in which through rates could be located. Joseph Iron Co., 37 I. C. C. 591; 40 I. C. C. 525. Ash Grove Lime & Portland Cement Co. v. M. P. R. R., 92 I. C. C 51, 52.

VII. REPARATION.

See Reparation.

(a) By note 2 of Glenns I. C. C. A-534 respondents proposed to restrict the application of rates published in that tariff on lumber, in carloads, between points in Florida, including Pensacola, in extreme western Florida, so as to prevent the use of such rates in constructing through interstate rates from or to points in Florida. The movement of lumber is into, rather than from, Florida, and the evidence related almost exclusively to rates into the state. For many years the general basis for constructing through rates to interior Florida in the absence of specific rates has been by combining rates to Jacksonville, Fla., with basing or proportional rates beyond. As the tariff contained no provisions against the use of the rates as components of through rates, it afforded lower combination rates on Pensacola than on Jacksonville in constructing through rates from a somewhat extensive territory. The effect of the suspended schedules would restore the Jacksonville combination. Generally the rates from the origin territory to Jacksonville do not apply via Pensacola, the route being through Georgia. HELD, schedule not justified. Lumber from or to Florida points 112 I. C. C. 133.

VIII. RESTRICTED RATES.

See Restricted Rates.

(a) Proposed restriction of proportional rates on grain and products from Missouri River points to Cairo, Ill., for beyond, to traffic moving beyond Cairo "via rail lines," which would result in increased rates when outbound movement is by water, found not justified. Respondents failed to establish beyond doubt necessity for differentiating between traffic moving beyond Cairo by water and that moving beyond by rail. Morover, if suspended schedules were allowed to become effective, proportional joint rate would exceed aggregate of intermediate proportionals and, in its application to shipments to Cairo for beyond by water, would thus violate fourth section. Grain and Products from Missouri River, 91 I. C. C. 365.

(b) Proposed proportional rates on, grain and products from primary markets, and proposed through rates from stations in Iowa, Illinois, Missouri, South Dakota, and Minnesota, designed for purpose of equalizing various markets, gateways, and routes by bringing up one-factor through rates to basis of lowest combinations, found not justified. Proposed rates will not accomplish purpose for which designed, for in many instances through rates lower than combinations are proposed. Moreover, where points of origin and markets are situated as are those here involved, it is extremely difficult—well-nigh impossible—to bring about combination adjustment without so greatly disregarding distance and transportation conditions as to make the rates of extremely doubtful propriety. Grain from Western Trunk Line Points, 91 I. C. C. 632.

(c) Respondents proposed to restrict the application of proportional and reshipping rates on grain and grain products from Argo and Blue Island, Ill., and North Hammond and Roby, Ind., stations in the Chicago switching district, to Boston, Mass., and other destinations in eastern Canada, applicable over the Northwestern and Milwaukee to Milwaukee, Wis., thence C. A. T., line so as to apply only from industries named at those stations. Interior Kansas ship-

ments through Milwaukee in connection with the C. A. T., line move over M. & P., to St. Louis, Mo., thence to these stations and beyond via Northwestern or Milwaukee. Usually the movement beyond St. Louis is over the Alton to Argo. The effect of the proposed restriction would be to make applicable to the described rail and water traffic through Milwaukee the combination on St. Louis. This is 2c higher than the existing basis through Argo. The M. P., participates in rates of 17.5c on the traffic described to Chicago by way of St. Louis and to Milwaukee by way of South Omaha, Neb., but not to Milwaukee through the St. Louis gateway. This carrier restricts to its route through St. Louis the movement of grain, originating on its line and milled in transit by protestants, which is destined to points east of the Indiana-Illinois state line. It makes no such restriction when the transit is at Kansas City. Because of the restriction of protestants traffic to the St. Louis gateway and the failure of the M. P., to maintain or participate in rates from Kansas City to Milwaukee through St. Louis on as low a basis as it now does through South Omaha, protestants would be unable to use the Milwaukee gateway on M. P., tonnage milled by them in transit and destined east over the C. A. T., line on as low a rate basis as is available from the same or other points on competing lines, in the same territory of origin if it were not for the rates now available from Argo and the three other stations named. The enforcement maintenance of the existing schedules would serve to perpetuate an unintended situation, apparently inequitable to the Chicago-Milwaukee rail lines and the C. A. T., line and unduly advantageous to the carrier which apparently should make the concession necessary to enable protestants to do business on an equality with their competitors. If under the proposed basis protestants should be unduly prejudiced by inability to reach Milwaukee on the Chicago basis of rates, they have an appropriate remedy. HELD, schedules justified. Grain and grain products from Argo, 101 I. C. C. 303.

(d) Proportional rates restricted in their application from specific points of origin are not applicable on shipments originating beyond. Weir Smelting Co., 74 I. C. C. 260, 262. Pacific Adjustment Co. v. O. W. R. R. & Nav. Co., 95 I. C. C. 669, 670.

(e) Respondents proposed to restrict the application of proportional rates on cottonseed cake, meal and other cottonseed products from various groups of origin in Arkansas, Missouri and Oklahoma to Cairo, Thebes, and East St. Louis, Ill., and Memphis, Tenn., and proportional rates on cottonseed meal, hull and cake from Blytheville, Jonesboro, Osceola, and intermediate Arkansas points to Memphis. The proposal is to restrict the application by publication of the following provision: Rates named will only apply on traffic destined to points beyond to which no through rates are published. The proposed change would increase the rates from Arkansas points to a large number of destinations north of the Ohio river to which no joint rates are published and to which the present combination on Memphis makes the lowest rate. HELD, schedules not justified. Cottonseed products from southwest, 102 I. C. C. 219.

(f) Following Joseph Iron Co., 37 I. C. C. 591, 40 I. C. C. 555, proportional rate found not so properly restricted as to make its application definite, clear, or ascertainable, and that the restriction thus failing, the rate found an intermediate within the meaning of section 4. Defendant attempts to distinguish the cited cases from the present one on the ground that here the through rate is published in a commodity tariff, which is a natural place to look for it. But the test is whether the restriction itself gives a definite reference by which the presence or absence of the through rate may be ascertained, thus the rates here are in violation of the aggregate-of-intermediate clause of section 4 and are prima facie unreasonable. Borden Co. v. A. R. R. Co., 100 I. C. C. 153, 154, 155.

(g) Proposal to restrict application of proportional or reshipping rates on grain and products from Argo, Ill., and other stations in the Chicago switching district, to Boston and destinations taking that rate and to destinations in eastern Canada, via Milwaukee, and make applicable to the rail and lake traffic through Milwaukee the higher combination of rates on St. Louis, found justified. Present Argo rates are being used on traffic for which they were never intended, resulting in disadvantages to certain carriers and avoidance of terminal charges at Chicago by certain lines. Proposed schedules would remedy such

disadvantages. Grain and Products from Argo, 101 I. C. C. 303.

PROTECTIVE SERVICE

See Facilities and Privileges §10½; Perishable Freight; Precooling; Refrigeration.

(a) Protective tariff rule governing l. c. l. shipments provided that carriers would furnish, or allow use of, refrigerator cars when aggregate weight of shipments was not less than 15,000 pounds, with no charge for refrigeration service unless specifically provided for in separate tariffs. Upon contention that shipments of lettuce were l. c. l. shipments entitled to benefits of the rule, Found: As each box was not marked as required by the classification to obtain benefit of the l. c. l. rate, cars used were ordered for c. l. shipments, bills of lading and shipping orders signed by or for shippers showed minimum weights applicable to c. l. shipments, and bore notations and instructions having application only to c. l. traffic under the protective tariff, the c. l. rates, minimum, and stated refrigeration charges applicable thereto were legally assessed. Martin v. P. R. R. 92 I. C. C. 639.

(b) Deciduous fruits usually move under refrigeration, in refrigerator cars considerably heavier in proportion to their loading capacity than box cars. The shipments must be stopped at various points en route for reicing and expedited schedules are maintained which are faster than those for citrus fruits and other freight, except fresh vegetables and cantaloupes, and necessitate a reduction in the tonnage of 20 to 50 per cent below that of "drag trains." Calif. Growers' & Shippers' Protective League v. S. P. Co., 100 I. C. C. 79, 96, 98.

QUARANTINE REGULATIONS

See Cars and Car Supply §32¼.

(a) Rate charged on two carloads of grapefruit from Largo, Fla., to Seattle, Wash., during period of Federal control, found unreasonable to extent it exceeded lower rates previously and subsequently in effect, which lower rates were under cancellation at time of movement owing to an existing California quarantine order. Reparation awarded. Ryan Fruit Co. v. Director General, 100 I. C. C. 237.

RAIL-AND-WATER RATES

See Bills of Lading §3; Classification §20 (o), §22 (4a); Equalization of Rates §4 (3); Evidence §13 (7), §14 (4); Lighterage; Panama Canal Act; Port-to-Port Rates; Routing and Misrouting §6½; Through Routes and Joint Rates; Water Carriers.

(a) Lake-and-rail and rail-lake-and-rail rates from eastern points to La Crosse, Wis., and Winona and Red Wing, Minn., found not unreasonable or unduly prejudicial as compared with similar rates to St. Paul and Minneapolis, Minn. To apply rates sought would disturb adjustments previously prescribed by commission in various cases, and would result in departures from requirements of the fourth section. La Crosse Chamber of Commerce v. G. L. T. Corp., 89 I. C. C. 386.

(b) Complainant attacked lake and rail and rail lake and rail rates from eastern points to La Crosse, Wis., Winona and Red Wing, Minn., as unjust, unreasonable, and unduly prejudicial as compared with rates to Eau Claire, Wis., and Twin Cities, Minn. Effective May 31, 1923 joint rates were published and the case was tried on the understanding that these joint rates are in issue because higher than rates to the Twin Cities. Prior to 1916 rates on lake borne traffic to complaining cities had been the same as to the Twin Cities for 10 years and more. Complainant cities are on the Mississippi river, north of Dubuque, Iowa, the northernmost points which, for transportation purposes, is classed as a Mississippi river crossing, and south of the Twin Cities. So far as all rail transportation from eastern points is concerned they are intermediate to the Twin Cities by one western trunk line and their rates may not exceed those to the Twin Cities. La Crosse, Winona and Red Wing are entitled to the benefits of their geographical location between Dubuque and the Twin Cities. But the competition between carriers which influences rates at Mississippi river crossings, and the proximity to Duluth in addition to carrier competition which controls the level of rates at the Twin Cities, are conditions which do not obtain at the complainant cities. HELD, rates attacked not unjust, unreasonable or unduly prejudicial, complaint dismissed. La Crosse Chamber of Com-

merce v. G. L. T. Corpn., 89 I. C. C. 386.

(c) Southern Pacific system, proposed to reduce the existing carload commodity rates as published in about 115 tariff items covering a varied list of articles. All purport to name rates from the piers of the Southern Pacific Company-Atlantic Steamship Lines (Morgan Lines) at New York, N. Y., by water to Galveston, Tex., thence by rail to destinations on the lines of the S. P., west of El Paso, Tex., in New Mexico, in Arizona, and in California except Searles and points thereof on the Owenyo branch, and points east of Colfax. The rates would also apply via New Orleans but respondent moves shipments over that route only in cases of emergency. Complainant, attacked as unduly prejudicial to Chicago, Ill., and vicinity, and unduly preferential of New York, existing rates on various commodities from respondents New York piers over the Sunset-Gulf route to the destination territory involved. The issues are: Will the suspended rates result in undue prejudice and preference? Are they high enough to cover the cost of rendering the service plus some return on the investment? Since the return of the ships to the Panama Canal route subsequent to the War, traffic which is susceptible of water carriage has been moving from the Atlantic seaboard to the Pacific coast over this route in large volume, and the low rates offered have attracted traffic from points several hundred miles back in the interior. It is fair to conclude that the proposed rates may draw some traffic away from the all rail lines, although the record leads to the conclusion that the volume so taken must necessarily be quite small. The canal competition is still severe, and in all probility will continue so. Respondent can not hope to attract business from the canal lines on Group A rates. The rates here proposed will doubtless obtain for respondent some traffic which is now moving through the canal, particularly to interior destinations. The fact that in meeting in a measure the competition of the canal lines it may at the same time draw some traffic from the all rail lines does not deprive it of its right so to compete, provided, of course, that it does not thereby create undue prejudice and preference or make rates so low as unduly to burden other traffic. The equating of 3 miles of water for 1 mile of rail transportation is certainly a fair basis for the proponents of these rates to assume. The equated distance of the Sunset-Gulf route to California terminals does not greatly exceed the average all rail distance from Chicago, an important Group D point. The service actually performed on traffic handled by respondent from Group D, from the standpoint of distance, exceeded in each instance the equated mileage of the Sunset-Gulf. With respect to the request that the Commission prescribe a definite, fixed relationship between respondents rates from New York piers on the one hand, and the all rail rates from Group D on the other, to the territory here considered: As to many of the commodities there is no specific evidence of the amount of difference in the rates which may exist without injuriously affecting protestants; and as to those commodities with respect to which evidence concerning competition was adduced, it is evident that the extent to which the difference between the rates might reasonably vary differs with the different commodities, the different points of destination, and market and other conditions. There is no sufficient evidence upon which a definite, fixed relation can be prescribed, either as to the commodities as a whole or any of them. The present rate adjustments are such that the canal lines secure practically all of the traffic not requiring expedited service, in commodities susceptible of water transportation, now moving from New York and vicinity to California ports and to considerable interior territory. Any benefits conferred under Section 500 of the transportation act, 1920, accrue as well to the Morgan Line as to other water carriers, regardless of the fact that it is owned by a rail carrier; and a rate adjustment which will secure to the Morgan Line only an equitable proportion of the available traffic is in line with the intent of this provision of the law. The rate adjustment here proposed appears to be a step in the direction of securing, as between the water carriers, a more equitable distribution of the available traffic, and as such its tendency will be toward attaining the ends designed by the law. HELD, suspended schedules justified, except item 1530 B in Supt. 29 to Counties I. C. C. 1114, Supt. 29 to Curletts I. C. C. A 90, and Supt. 29 to Jones I. C. C. 1333, which was published in error. Rates attacked not unduly prejudicial, complaint dismissed. Reduced commodity rates to Pacific coast, 89 I. C. C. 512.

(d) The Commission has heretofore adverted to the equating of the water

and rail hauls upon the basis of 3 miles of the former to 1 mile of the latter. In a comparison of water transportation with rail transportation, where a ratio is used for the water haul, the ratio used can not be supposed to be the exact equivalent of the water haul expressed in terms of rail mileage. A comparison of dissimilar services can not be made with mathematical accuracy. Reduced rates to Pacific coast, 89 I. C. C. 512, 524.

(e) Ratio of 3 miles of water haul to 1 mile of rail haul approved as a measure of rail and water rates. Reduced Commodity Rates to Pacific Coast, 89 I. C. C. 512, 524, 525.

(f) Fact that in meeting in a measure the competition of canal lines a carrier comprising a water-and-rail route may at the same time draw some traffic from the all-rail lines does not deprive it of its right to so compete, provided that it does not thereby create undue prejudice and preference or make rates so low as unduly to burden other traffic. Reduced Commodity Rates to Pacific Coast, 89 I. C. C. 512, 521.

(g) In a comparison of water transportation with rail transportation, where a ratio is used for the water haul, the ratio used can not be supposed to be exact equivalent of the water haul expressed in terms of rail mileage. A comparison of such dissimilar services can not be made with mathematical accuracy. Reduced Commodity Rates to Pacific Coast, 89 I. C. C. 512, 524, 525.

(h) The commission has no jurisdiction, in a proceeding involving proposed reduced rail-and-water rates, to initiate rates over all-rail routes, where such all-rail rates are not in issue. Nebraska Livestock Case, 89 I. C. C. 531, 537.

(i) The duty to furnish reasonable service while engaged in business as a common carrier is to be distinguished from the obligation to continue in business. The imposition of a duty upon a common carrier by water to furnish transportation upon reasonable request does not create an obligation to continue to operate boats on a particular route. The provision of subdivision 18 of the act is specifically limited to lines of railroad. This indicates legislative intention that carriers by water are not required to continue, and may cease to operate if they see fit. Routing between Texas and eastern territory, 91 I. C. C. 455, 456.

(j) International-Great Northern R. R., respondent, proposed to cancel its participation in rates on cotton and linters from the Southwest, via rail and water, to eastern points in so far as the same are applicable through the port of New Orleans, La. If permitted to become effective the proposed cancellation will result in substantial increases in rates on cotton and linters handled by respondent and moved by its rail connections to New Orleans for water and water and rail transportation beyond that port to eastern seaboard destinations. At present joint rail and water rates apply on cotton from the southwest to eastern mills under which concentration is provided at Houston, Galveston or New Orleans. Respondent serves Galveston and Houston and sought to increase its revenue from this traffic by preventing the movement to New Orleans, thereby increasing the volume of traffic through the Texas ports named. The record contains no justification for any increase in rates or total charges on cotton moving as described. Were the cancellations in issue permitted to become effective, all cotton handled by respondent, whether originating locally on its lines or handled by it as an intermediate carrier, would be subject to the combination of rates to and from New Orleans when moved through that port. HELD, schedules not justified. Cotton and cotton linters from southwest via rail and water to eastern points, 91 I. C. C. 717.

(k) Complainant attacked combination class rates charged on two less carload shipments of pulp paper on July 20, 1922 and March 30, 1923 from West Point, Va., to Saugerties, N. Y., as unreasonable and unduly preferential. West Point is 39 miles east of Richmond, Va., Saugerties is 42 miles south of Albany, N. Y. Shipments moved via Chesapeake Steamship Company, Baltimore, Md., and B. & O., and West Shore beyond through Jersey City, charged fifth class of 30.5c to Baltimore and third class rate of 47.5c beyond. A joint water and rail rate of 59c applied on pulp paper in less carloads from West Point to Ravena, N. Y., on the West Shore, 29 miles north of Saugerties, which was established over route of movement to Saugerties. No violation of the provisions of the fourth section existed because the rate to Ravena over route of movement was the same as that to Saugerties, and the 59c joint rate was restricted to the water and rail route of the Chesapeake Steamship

Company to Baltimore, the Pennsylvania to Newberry Junction, Pa., and N. Y. C., beyond. HELD, rate attacked not unreasonable or complainant damaged by the undue prejudice which may have existed, complaint dismissed. Smythe Company v. Chesapeake Steamship Co., 92 I. C. C. 95.

(l) Respondents proposed to withdraw from participation in through joint lake and rail and rail lake and rail rates from and via various Great Lakes ports to points on certain of respondents eastern connections. Respondents chiefly concerned in the changes are the D. L. & W., Erie, L. V., all of which have lines extending east from Buffalo. They each publish or concur in tariffs carrying rate bases for eastbound freight via lake ports and steamer lines to points in trunk line and New England territories. Lake lines affected are the Great Lakes Transit Corporation, C. & B. T. Co., and D. & C. Navigation Company. The western lake ports from which the traffic in question moves are Duluth, Minn., Milwaukee, Wis., Chicago, Ill., Detroit, Mich., and Cleveland, O., and ports of occasional call. Protestants are chiefly interested in the movement of grain and grain products. The chief arguments advanced in support of the suspended schedules are that the cost of handling at the docks reduces the revenue from this traffic to a dangerously low figure, and that the remaining routes are ample to handle the traffic without injuriously affecting the public. HELD, proposed cancellation of the routes has been justified. Lake and rail rates to eastern destinations, 92 I. C. C. 183.

(m) Complainant attacked water and rail rates charged on 10 cars of asphalt from San Francisco, Calif., to Great Falls and Billings, Mont., between August 12 and Oct. 17, 1916, as unjust and unreasonable. Shipments moved as routed over defendants. the rail movement being over the S. P. & S., and G. N. Tariffs of the Great Northern Steamship Company were on file with the Commission, charged at 49.5c to Great Falls and 67.5c to Billings based upon rate of 12.5c for water haul from San Francisco to Portland and 37c and 55c, respectively beyond. There was contemporaneously in effect a proportional rate of 10c from San Francisco to Portland on asphalt moving to these Montana points applicable over the Portland & San Francisco Steamship line to Portland and O. W. R. R. & N., and G. N., beyond. Rate of 12.5c admitted to be unreasonable by defendants. HELD, rates attacked unreasonable to extent the factor from San Francisco for haul by water exceeded 10c, reparation awarded. Warren Construction Co. v. G. N. P. S. S. Co., 92 I. C. C. 302.

(n) In 77 I. C. C. 317, the Commission laid down certain general principles to govern the division of joint rates between complainant, called the barge line, and the defendant rail carriers, and also to govern the establishment by the barge line and defendants of additional through routes and joint rates. In order that New Orleans sugar may reach the great consuming market of Chicago, in competition with the eastern supply, it has long been the policy of the I. C., to publish a rate from New Orleans to Chicago equal to the rail and lake rate from New York to Chicago. Inasmuch as the distance is somewhat longer and the movement through higher rated territory, this results in a relatively low or depressed rate from New Orleans. It is now 54c, all rail, and the barge line, in accordance with its policy of establishing a differential under the all rail basis to compensate for its slower and inferior service, has followed this with a barge and rail rate of 43.5c. Similar rates are published to other destinations in central and western trunk line territories. Formerly the all rail rates from interior refining points in Louisiana to northern destinations were made arbitraries higher than the rates from New Orleans, but since Jan. 1922, they have been the same. Apparently this parity was established to help the interior producers. A similar parity is maintained in the case of the differential joint rates in which the barge line participates. The barge line reaches none of the northern interior destinations and transfers its sugar at St. Louis or Cairo to the northern lines or to the I. C., or M. P. St. Louis is its preferred port of interchange because of the longer haul, but in the winter season it is often necessary to make the interchange at Cairo. On all rail sugar from New Orleans the northern lines receive percentages of the joint rates varying according to destination after deduction of 3c for the bridge crossing at Cairo. Apparently they receive the same divisions when the sugar moves by barge and rail. When the New Orleans rates were extended to Louisiana interior points, the northern

lines refused to shrink their divisions and insisted that any divisions accorded the Louisiana lines out of these new joint rates must be absorbed by the intermediate lines, such as the I. C., or M. P. HELD, just, reasonable, and equitable divisions to be received by the Louisiana lines out of the joint rail barge rail rates in question would be not to exceed 9c for 7) miles or less to 16c for 250 miles. Where the haul is over two or more lines not under common control or management the above amounts should each be increased by 2c. Where the rail haul includes a crossing of the Mississippi river, such constructive mileage as is contemporaneously used in making rates over the same route should be added to the actual distance in applying the foregoing scale. HELD, further where the Public Belt at New Orleans is used in interchange the burden of its charges should be divided evenly between the barge line and the Louisiana lines. HELD, the divisions accruing to the Louisiana lines should not exceed the mileage scale above set forth, with the understanding that if the parties prefer the divisions agreed upon at one stage of the negotiations, these may be substituted; the burden of charges levied by the Public Belt, where such charges are incurred in interchange at New Orleans, should be divided equally between the barge line and the Louisiana line; in determining the divisions accruing to the northern lines, there should be deduced from the corresponding all rail rate 3c for the bridge crossing at Cairo and also the division of the originating Louisiana line, but not to exceed 10c. To the remainder thus obtained should be applied the established percentages used in the case of all rail sugar traffic from New Orleans; the divisions of the Louisiana lines and of the northern lines having thus been determined, the division accruing to the barge line in each case should be the remainder of the joint rail barge rail rate. **Additional Routes and Rates.** The barge line desires the extension of through routes and joint rail barge rail rates to portions of Arkansas, Oklahoma, Missouri, Kentucky and Tennessee via Memphis, and to Kansas, Nebraska, a portion of Missouri, North Dakota, South Dakota, Montana, Wyoming and Colorado as well as central territory east of the Indiana Illinois state line via St. Louis and Cairo. **Central Territory.** From interior Louisiana to points in central territory east of the Indiana Illinois line rates on sugar are generally made by adding arbitraries to rates from New Orleans. From certain of the interior points New Orleans rates apply. HELD, establishment of through routes and joint rail barge rail rates on sugar from interior Louisiana points via New Orleans and St. Louis or Cairo from destinations in central territory east of the Indiana Illinois line to which there are now in effect joint all rail rates via New Orleans and St. Louis or Cairo from the same points of origin is desirable in the public interest; that nondiscriminatory joint rail barge rail rates will be the corresponding all rates maintained minus, in each case, 9.5c where the rail barge rail rate applies via either St. Louis or Cairo,, and 9c where it applies via Cairo alone; and that the joint rail barge rail rates thus established should be divided in general accordance with the plan outlined in the first part of this report, with the exception that where the all rail rate includes an arbitrary over the New Orleans rate, such arbitrary should be added to the 10c in determining the maximum amount to be deduced from the all rail rate on account of the division of the Louisiana line before computing the division to be accorded the northern line. **Kentucky and Tennessee.** From Gramercy and Reserve there are joint all rail rates to a large number of points in Kentucky and Tennessee on the L. & N., which are the same as the rates from New Orleans. From Albania, Jeanerette, and a few other interior points, joint rates all rail are in effect to Nashville, Tenn., and Lexington, Ky., but they are higher than the rates from New Orleans. With these exceptions, there are not any joint all rail rates on sugar now published from interior Louisiana to Kentucky and Tennessee. HELD, the establishment of through routes and of joint rail barge rail rates on sugar from interior Louisiana points via New Orleans and Memphis or Cairo, as indicated above, to destinations in Kentucky and Tennessee to which there are now in effect joint all rail rates via New Orleans and Memphis or Cairo from the same points of origin is desirable in the public interest; that nondiscriminatory joint rail barge rail rates will be the corresponding all rail rates maintained, minus, in each case, 7.5c via Memphis or 9c via Cairo, as the rate may apply; and that the joint rail barge rail rates thus established should be divided in proportion to the local first class rate applicable, respectively, over each of the rail

portions and over the barge line portion of the route, with the proviso that the division accruing for either of the rail hauls or for the barge line haul shall not be less than 25% of the entire rate. **Western Territory.** To northern Arkansas, northern Oklahoma, southern Missouri, and southeastern Kansas, the barge line proposes the establishment of joint rail barge rail rates via Memphis 7.5c lower than the all rail rates. To northern Kansas, northern Missouri, Nebraska, North Dakota, South Dakota, and Colorado east of and including Pueblo, Colorado Springs, and Denver it proposes rates via either St. Louis or Cairo 10.5c lower than the all rail rates. HELD, the establishment of through routes and joint rail barge rail rates on sugar from interior Louisiana points via New Orleans and Memphis to destinations in northern Arkansas and southern Missouri to which there are now in effect joint all rail rates via New Orleans and Memphis from the same points of origin is desirable in the public interest; that nondiscriminatory joint rail barge rail rates will be the all rates maintained minus, in each case, 7.5c; and that the joint rail barge rail rates thus established should be divided in proportion to the local first class rates; for the rail proportion and barge line portion of the haul, with the proviso that the divisions accruing for either of the rail hauls or for the barge line haul shall not be less than 25% of the entire rate. HELD, further, that the establishment of through routes and joint rail barge rail rates on sugar from interior Louisiana points via New Orleans and St. Louis or Cairo to destinations in northern Kansas, northern Missouri, Nebraska, South Dakota, and North Dakota, to which there are now joint all rail rates via New Orleans and St. Louis or Cairo from the same points of origin is desirable in the public interest; that nondiscriminatory joint rail barge rail rates will be the all rail rates maintained minus, in each case, 9.5c; and that the joint rail barge rail rates thus established should be divided in accordance with the plan outlined in the first part of this report. U. S. War Department v. A. & S. Ry., 92 I. C. C. 528.

(o) Where the connecting rail lines participate from and to the points in question in an all rail through route and joint rate in which an intermediate rail carrier operating between the barge lines ports also participates, the Commission has the power to require the establishment of a through route in connection with the barge line and to prescribe a joint railbarge rail rate which is differentially lower than the corresponding all rail rate, provided the differential fairly reflects the lower cost and value of the barge lines service. U. S. War Department v. A. & S. Ry., 92 I. C. C. 528, 547.

(p) In 87 I. C. C. 392 the Commission found it was desirable and in the public interest that the defendants should establish joint rail and water and rail water and rail rates on cotton from Oklahoma points to points in New England territory, and that the rates would be unreasonable to extent they exceeded rates constructed by the deduction of 4c from the all rail rates. HELD, original findings affirmed. Houston Cotton Exchange v. A. & A. R. R., 93 I. C. C. 268.

(q) The Commission construes paragraph 13 B of section 6 to confer upon the Commission power to establish through routes and maximum joint rates between and over the rail and water lines and with respect to the transportation referred to in the opening paragraph 13 of section 6. Houston Cotton Exchange v. A. & A. R. R. 93 I. C. C. 268, 270.

(r) Complainant attacked rail and water and rail water and rail rates charged on cotton from Oklahoma points to destinations in the northeastern part of the United States and in eastern Canada, based on New Orleans, La., combinations, as unreasonable. The movement of cotton from Oklahoma to northeastern states and Canadian points at present is chiefly over all rail routes through the gateways of Memphis, Tenn., St. Louis, Mo., or Chicago, Ill., in connection with which joint rates are in all instances applicable. Oklahoma cotton may also be moved to the Northeast via New Orleans thence Morgan Line to New York and by rail lines beyond. The purpose of this complaint is to obtain joint rates over these rail and water routes. The all rail rates from Oklahoma apply on any quantity; the combination rates over the rail and water routes apply any quantity to the Gulf port, and beyond subject to minimum of 20,000 pounds. Joint rates are not maintained from Texas common point territory to the east through Galveston and New Orleans. These joint

rates are generally 7c under all rail rates. Cotton fabrics are among the few commodities for which joint through commodity rates via rail and water route have been provided. These rates apply via both Galveston and New Orleans. HELD, it is desirable in the public interest that defendants should establish joint rail and water and rail water and rail rates on cotton from Oklahoma to the Northeast and existing rates unreasonable to extent they exceeded 4c less than the all rail rates. New Orleans Joint Traffic Bureau v. A. A. R. R. Corp., 95 I. C. C. 77.

(s) Respondents proposed a readjustment of ocean and rail and rail ocean and rail rates on classes and commodities from Atlantic seaboard territory to interior points west of the Mississippi river in Louisiana, Arkansas, Oklahoma, Texas, Kansas and Missouri, and all rail rates from Virginia cities, St. Louis, Mo., Memphis, Tenn., New Orleans, La., and related points to certain southwestern points. Some of the ocean and rail rates apply through the south Atlantic ports, Hampton Roads and south, and others through the Gulf ports. Consideration will first be given to class rates operating through the Gulf. The proposed class rates from interior points in seaboard territory range generally from 70 to 80% of the combinations of locals from points of origin to New York, from New York to Gulf ports, and from New Orleans, Baton Rouge, La., or Vicksburg, Miss., to destination, plus transfer charges at New York. However, there are published through rates from the interior points to the Gulf ports avoiding the rate break at New York, and combinations made of these rates, plus the rates from the Gulf ports. The proposed through rates apparently bear a considerably higher percentage relation to these rates than they do to the rates made on the two point combinations, and in some instances are only slightly less than the combinations on the Gulf ports. The Gulf lies also propose to cancel all their published through rates to points in the states north and northeast of Texas, except those points near the Texas border, and thus practically withdraw from the traffic, leaving it to the all rail and south Atlantic port lines. Via the south Atlantic port lines increased class rates are proposed to points in Arkansas, Louisiana, Oklahoma and points in southern Kansas. There are no rates at present via these routes to Texas. South Atlantic port lines also proposed to cancel their published through rates to points in Louisiana south of the V. S. & P., which extends west of Vicksburg, Miss., across the northern section of the state through Monroe and Shreveport. The reason assigned for desiring to withdraw from this territory is that the traffic via south Atlantic ports is light, most of the business moving via the Gulf ports. Cancellation of the rates in question would remove any fourth section departures in Louisiana. A somewhat different adjustment is proposed to Arkansas than applies to Mississippi river points. Rates via the south Atlantic port lines to the Mississippi river points are at present based differently over the rates from Baltimore, Md., and at present they are so made to Arkansas points but apply only from a strip of seaboard territory lying within 100 miles or so of the north Atlantic ports. The rates named in the suspended schedules apply from practically all points east of the Buffalo-Pittsburgh line and accord all points of origin a common rate. Respondents proposed to publish through rates to certain points in Arkansas which at present are charged the combination of locals. Due to these changes in the origin and destination adjustments, numerous departures from the fourth section would be cured. It is the view of the Commission that the southwest should be served by the Gulf port lines, that they should maintain through rates to that territory in general, and that the rates to a great part of the southwest via their lines, rather than those via the south Atlantic port lines, should set the standard. Considerable traffic from seaboard territory originates at inland points. That via south Atlantic ports moves by rail to the north Atlantic ports, thence by steamship and finally over southern and southwestern rail lines to destination. For these hauls the proposed rates as a rule are lower than the all rail rates. Apparently, it is only from points far inland, near the Buffalo-Pittsburgh line, that the proposed rates approximate the all rail rates, and in such instances the rail ocean and rail haul is, of course, more expensive than that from points nearer the ports. HELD, proposed rates based largely on present rates to Marshall and Jefferson, do not meet the tests of reasonableness.

HELD, proposed class rates via Gulf ports not justified, but rates not in excess of the following from seaboard territory, which shall include marine insurance, may be maintained pending determination of the consolidated southwestern cases: First class to Wichita $3.10 Fort Smith, $2.70, other points of destination related thereto. Classes lower than first to be made according to the percentages found reasonable in 45 I. C. C. 254. HELD, proposed class rates of the south Atlantic port lines not approved. The commodity rates proposed are much lower than proposed class rates, but are not on the proper basis. As the class rates hereinbefore prescribed on the carload classes are considerably lower than those proposed, the new class rates, in a number of instances, may well be applied to the moving traffic. In others the basis for reasonable rates may, for convenience, be designated by percentages of first class or by classes lower than those provided by the classification as set out. The establishment of rates on this basis insures a proper alignment as among the various points of destination. HELD, Gulf port lines have not justified the proposed commodity rates. The findings herein are without prejudice to future action in the consolidated southwestern cases. Rates to southwestern destinations, 95 I. C. C. 188.

(t) Carriers parties to joint rail lake and rail rates between eastern and western points in the United States by routes which are in part over Canadian rail lines in connection with the Northern Navigation Co., a Canadian owned and operated steamship line are respondents. The Commission instituted an investigation on its own motion for the purpose of inquiring into the facts and circumstances surrounding the establishment of these through rail lake and rail rates and routes, having under consideration the matter of their recognition. The Commission deems it unnecessary to set forth at length the contentions of the parties in respect of recognition of these routes. Nowhere is the acts which is administered by the Commission is it empowered to recognize one route and to deny recognition to another. The meaning and purpose of recognition is nowhere stated. If, as the Northern Company and the shippers contend, the receipt and placing in its files of tariffs constitutes recognition, it has recognized those routes. If, as the Transit Corporation and the shipping board contend, something more is necessary to constitute recognition, the Commission is nowhere advised what that something more is, or provided with a test or criterion by which to determine under what circumstances and in what cases recognition may be accorded, denied or revoked. HELD, under section 27 of the merchant marine act, 1920, recognition by the Commission merely operates to stay the application of the section to merchandise transported in such manner as otherwise to be subject to the penalty of forfeiture thereof. That section apparently provides that merchandise transported over the routes here considered would in the absence of recognition by the Commission of these routes, be subject to forfeiture. Whether such merchandise is exempt from the penalty because the Commission has recognized the routes is a question of fact to be determined by the court in which enforcement of that forfeiture may be sought. The duty of administering the merchant marine act, 1920, does not rest upon the Commission, and it is not within its providence to construe its provisions. Rail lake and rail rates via Canada, 96 I. C. C. 633.

(u) Complainant attacked combination rates charged on two cars of canned tomatoes shipped in Sept. and Nov., 1922 from Berlin and Conoqingo, Md., to Monroe, La., as unreasonable. Shipments moved as routed by shipper over Pennsylvania to New York, Morgan Line to New Orleans, La., S. P., to Alexandria, La., L. & A., to Sibley, La., and V. S. & P., to destination, applicable rate 68.5c to Sibley plus 30.5c beyond. A joint commodity rate of 68.5c was available over other rail water and rail lines. HELD, rate attacked unreasonable to extent it exceeded 68.5c undercharges waived. Sugar Bros Co. v. Pennsylvania R. R., 98 I. C. C. 613.

(v) It is policy of Congress as declared in section 8 of merchant marine act, 1920, and section 500 of transportation act, 1920, to promote, encourage, and develop transportation by water and to foster and preserve in full vigor both rail and water transportation. Wool Rates Investigation, 1923, 91 I. C. C. 235, 248.

(w) Proposed restriction of proportional rates on grain and products from

Missouri River points to Cairo, Ill., for beyond, to traffic moving beyond Cairo "via rail lines," which would result in increased rates when outbound movement is by water, found not justified. Respondents failed to establish beyond doubt necessity for differentiating between traffic moving beyond Cairo by water and that moving beyond by rail. Moreover, if suspended schedules were allowed to become effective proportional joint rate would exceed aggregate of intermediate proportionals and, in its application to shipments to Cairo for beyond by water, would thus violate fourth section. Grain and Products from Missouri River, 91 I. C. C. 365.

(x) Proposed change in routing of traffic between Texas and southwestern territory and eastern and New England territories, by cancellation of all class and commodity rates applicable as proportionals from or to Port Arthur, Tex., and as joint rates in connection with rail lines, Transmarine Corporation, a water carrier, and proposed institution of Beaumont, Tex., for Port Arthur as a port of call for its vessels, found justified. Routing on through traffic will only be changed from "via Port Arthur" to "via Beaumont," and only change in rates will be cancellation of rates to or from Port Arthur, and substitution of increased rates to or from that point applicable via Beaumont, when in connection with Transmarine Corporation. Routing to and from Eastern and New England Territories, 91 I. C. C. 455.

(y) Ocean-and-rail rates on cotton piece goods, l. c. l., from New York, N. Y., and Boston, Mass., rate points to Kansas City, Mo. via Memphis Tenn., found unreasonable to extent they exceeded aggregate of intermediates to and beyond Memphis, Tenn., contemporaneously in effect. Reparation awarded. Lee Mercantile Co. v. Director General, 91 I. C. C. 618.

(z) Proposed increased proportional rates on canned goods and iron and steel articles from Gulf ports to points on and north of Ohio River, applicable on traffic from Pacific coast through Panama Canal, for purpose of equalizing such rates with local rates applicable from New York, N. Y., to Chicago, Ill., found not justified. No similar increases are proposed from south Atlantic ports, and undue prejudice in favor of such ports would result. Canned Goods and Iron and Steel Articles, 91 I. C. C. 623.

(aa) Proposed cancellation by International-Great Northern R. R. Co. of its participation in rates on cotton and cotton linters from the Southwest, via rail and water, to eastern points, when moving through New Orleans, La., which would result in substantial increases, prevent movement to New Orleans, and thereby increase movement through Texas ports, found not justified. Only justification offered is that respondent serves Texas ports more directly than it serves New Orleans, that there is an additional haul beyond its lines to move cotton through New Orleans, and that it desires to retain all revenues accruing out of joint rates for rail haul from points of origin to ports. Cotton and Linters from Southwest, 91 I. C. C. 717.

(bb) In 91 I. C. C. 27, the Commission found rates on bedroom furniture, carloads and less carloads, from Nashville, Tenn., to destinations in New England territory not unreasonable but unduly prejudicial. In purported compliance with this order respondents proposed a general revision of the all rail and rail and water rates on all kinds of furniture, including chairs and mattresses, in carloads and less carloads, from practically all southern manufacturing points to trunk line and New England territories, including the Virginia cities, and from certain manufacturing points to Buffalo-Pittsburgh territory. The long continued policy of the southern carriers has been to maintain on articles manufactured in the south rates which would enable southern manufacturers to reach the large consuming markets in the north. Generally speaking, such articles have always moved within official territory on class rates. These carriers say that when the furniture industry in the south was in its infancy they established, in line with that policy, rates below normal to important consuming points in eastern territory. The southern manufacturers encountered the competition of manufacturers in official territory. The present rates are said to be the original subnormal rates subjected to the general increases and reduction. Originally these rates to the east were more nearly upon the basis maintained from central territory, but the latter rates have been subjected to increases greater in amount and percentage than have

those from southern territory and are now relatively much higher than from southern territory. Carload and less carload commodity rates are now maintained on furniture, including mattresses, from southern manufacturing points to the east. Generally the rates on mixed furniture are applicable also to mattresses, with somewhat lower rates on chairs except from Nashville. Because furniture rates from Nashville reflect the official classification basis its less than carload rates vary with the article, whereas the other southern manufacturing points a single rate applies to all articles of furniture in less carloads. Rail and water commodity rates, generally lower than the all rail rates, are also maintained. Respondents admit that many substantial increases would result under this revision. HELD, proposed schedules justified. They fail, however, to provide for the application to Buffalo-Pittsburgh territory of the proposed rates from Atlanta to Pittsburgh and Buffalo proper. The present rates from Atlanta apply to points generally in Buffalo-Pittsburgh territory, and this is also true of the present and proposed rates from the Virginia-Carolina group. No reason appears why the proposed rates from Atlanta should be restricted to apply only to Pittsburgh and Buffalo proper, and respondents will be expected to effect application of the proposed rates from Atlanta to Buffalo-Pittsburgh territory in season to take effect at the same time as the suspended schedules. Furniture from southern points, 100 I. C. C. 127.

(cc) Complainant attacked rail and water and rail water and rail rates on lard substitutes, green salted hides, and refuse grease carloads from Houston, Tex., via Galveston, Tex., to New York, as unreasonable. The three commodities are rated fifth class in the western classification, and the present rate therefrom from Houston to New York is made by adding the fifth class differential of 5c to the commodity rates from Galveston of 38.5c on green salted hides, 43.5c on lard substitutes, and 29.5c on refuse grease. The fifth class rates to New York are 63.5c from Galveston and 68.5c from Houston. Houston is 52 miles from Galveston. HELD, rate of 76.5c on refuse grease to Newark unreasonable to extent the factor from Houston to New York exceeded 45.5c but other rates attacked not unreasonable, reparation awarded. Houston Packing Co. v. B. & M. R. R., 100 I. C. C. 345.

(dd) Complainant attacked commodity rates charged on wood pulp moving from Camas, Wash., and West Linn and Lebanon, Ore., to Floriston and Los Angeles, Calif., between July 1, 1918 and Dec. 29, 1919 as unreasonable. Camas is on the Columbia river 24 miles east of Portland, Ore. West Linn is on the Willamette river about 12 miles south of Portland. Lebanon is on a branch of S. P., 85 miles south of Portland. Floriston is on the main line of that carrier 223 miles east of San Francisco. The shipments from West Linn moved to Portland by water. Those from Camas moved to Portland either by water or over the S. P. & S. From Portland the shipments to Los Angeles and some of the shipments to Floriston moved over the S. P., direct, and the other shipments to Floriston through Portland moved by water to San Francisco thence S. P., to destination. All of the shipments from Lebanon moved over S. B. Water rates not in issue. Combination rates charged. Subsequent to movement lower joint rail rates were established to Floriston. In connection with the water routes to San Francisco the rail factor from that point to Floriston has been reduced from the class C rate to the intrastate commodity rate previously in effect. In 78 I. C. C. 273 the rates on this commodity were found not unreasonable from these points of origin to Los Angeles but to Floriston they were found unreasonable on shipments moving prior to July 1, 1918 to extent the factor beyond San Francisco or Oakland exceeded rates on like traffic to Los Angeles. In 87 I. C. C. 51 the rate from Camas to Floriston was found unreasonable to the same extent on shipments moving during the period between Dec. 7, 1918 and Jan. 18, 1919. HELD, rates attacked to Los Angeles not unreasonable but to Floriston unreasonable to extent the components beyond San Francisco or Oakland exceeded contemporaneous rates on like traffic from San Francisco to Los Angeles, reparation awarded. Crown Williamette Paper Co. v. Director General, 100 I. C. C. 397.

(ee) In 77 I. C. C. 417, certain general principles were laid down to govern the division of joint rates between complainant, the barge

line, and the defendant rail carriers; also to govern the establishment of additional through routes and joint rates. The barge line and the L. & N., while agreeing upon many joint rates and the points from and to which such rates should apply, have not been able to compose their differences with respect, to the divisions thereof, and they now come before the Commission for a determination of this matter. The Warrior service of the barge line is operated between New Orleans, La., Mobile, Birmingham and Tuscaloosa, Ala. It has direct connections with the L. & N., at Mobile and at Tuscaloosa, but via Birmingport it reaches the L. & N., through the Ensley Southern to Ensley, Ala., and the Southern Ry. to Birmingham, 38 miles in all. At present joint class rates and certain joint commodity rates apply from and to New Orleans via Birmingport to and from destinations in that territory circumscribed, roughly speaking, by a line running through West Point and New Albany, Miss., to the Mississippi-Tennesse state line, thence eastward to the Alabama-Georgia state line, thence southeastwardly to Atlanta, Ga., and thence westward through Helene, Ala., to Birmingport. Similar joint rates from New Orleans are published via Tuscaloosa. although that route is not at present in operation, to all of the above territory, and to points south thereof as far as Montgomery, Ala. Via Mobile joint rates are now in effect to points in a territory beginning at Pensacola, Fla., and running north along the L. & N., to a point just south of Montgomery, thence northwesterly just south of Demopolis, Ala., and thence south just west of Meridian, Miss. to Mobile. The barge line seeks to add as territory served by its Warrior River division under joint rates from and to New Orleans all points on the L. & N., not now so served, except points on the Memphis division west of Guthrie, Ky., and including certain points north of the Ohio river and as west as St. Louis, Mo. From and to Mobile it seeks to serve additional territory south of the Ohio river. No serious objections are interposed by defendant to the establishment of such through routes and joint rates so long as they are governed by the rules laid down in the original decision. and with this understanding the Commission can see no reason why such through routes and joint rates should not be established. The record is too indefinite to warrant an order to this effect; but if it proves impossible to secure their voluntary establishment, the proceeding will be reopened. With the exceptions noted below, HELD, divisions of joint class and commodity rates between New Orleans and Mobile, on the one hand, and interior points on the L. & N., on the other hand, interchanged either at Mobile or Tuscaloosa will be just and reasonable both to the barge line and to the L. & N., if divided upon a rate pro rata basis, using as factors (1) 80 per cent of the first class rate under the proposed report scale in docket No. 13494 for the short line rail distance between the ports, and (2) the similar first class rate for the short line distance between the port of interchange and the inland point, these short line distances in all cases to be actual mileages over workable routes embracing not more than three carriers not under common control or management; the percentages which these respective factors bear to the whole to be used in arriving at divisions of the joint barge and rail rates which shall accrue to the barge line and to the L. & N., respectively. Exceptions: to and from points in the Birmingham district via Tuscaloosa 25 per cent of the joint barge and rail commodity rates between New Orleans and Mobile, on the one hand, and points in the Birmingham district, on the other hand, when the traffic is interchanged at Tuscaloosa, will result in just and reasonable divisions to the L. & N., and barge line. The joint barge and rail class rates should not be subject to this limitation. With respect to traffic through Birmingport interchanged with the L. & N., at Birmingham, the barge line proposes a division, arrived at by using as the factor on traffic to and from New Orleans 87.6 per cent of the first class rates under the proposed report scale for the short line distance between New Orleans and Birmingham, and as the factor on traffic to and from Mobile 89.7 per cent of the first class rate for the short line distance between Mobile and Birmingham. HELD, this special proposal is fair, and will result in just, reasonable and equitable divisions to the barge line and its intermediate connections, on the one hand, and to the L. & N., on the other, on traffic moved via Birmingport

and interchanged at Birmingham. Just what divisions are to be accorded the Ensley Southern and the Southern the record does not disclose. With respect to transit arrangements on cotton, there appears to be no dispute that the compress charge should first be deducted from the through rate and accorded to the L. N., before the balance of the rate is to be divided. HELD, the just and reasonable amount which the L. & N., should receive for its transit service should not exceed 3c per 100 pounds, minimum $3 per car. HELD, just and reasonable and equitable divisions will result to the barge line and to the L. & N., on cotton traffic if from the gross barge and rail rates there are first deducted 15c to cover the compress charge and 3c to cover the transit charge of the L. & N., and if the balance is then divided upon the general basis hereinbefore approved, subject, however, to a minimum division to the L. & N., of 50 per cent of the net rate after deduction of the compress charge. HELD, the minimum division to either the barge line or defendant should not be less than 25 per cent. Should joint rail and barge rates be established which reflect substantially greater differentials than 20 per cent under the all rail rates the division percentages resulting from the basis herein approved would require modification. It is reasonable that the originating or delivering carrier assume its own terminal disabilities, and where a charge is made for handling, wharfage, storage or other terminal service in addition to the line haul rate, such charge is to accrue to the carrier performing the service. U. S. War Dept. v. A. & S. Ry., 100 I. C. C. 491.

(ff) The law now authorizes the Commission to require the establishment of through rail and water routes and joint rates which short haul a rail carrier and the reasons are evident. If a water route were dependent upon feeders upon rail lines which can deliver traffic to it without shorthauling themselves, it would draw little traffic from the interior except at ports, like St. Louis, which happen to be a meeting point of rail lines serving different territories. Carrying this thought to its logical conclusion, if the rail lines of the country were owned by a great many independent companies, the water route would have a liberal supply of feeders; but if the rail lines were all one consolidated system, it would be wholly deprived of feeders. Yet its status as a useful and economical means of transportation would be the same in the one event as in the other. Clearly the usefulness of water routes to interior points ought not to be dependent upon the extent to which rail lines are consolidated and Congress has wisely recognized this in the law. It follows, whatever may be the case as between rail lines, that joint rates over rail and water routes ought to be divided without regard to the extent to which rail carriers may be shorthauled, and not upon a plan designed to discourage or render impracticable the use of such joint rates. Southern class rate investigation, 100 I. C. C. 513, 661.

(gg) The Commission has adopted the ratio of 3 miles of water haul to 1 mile of rail. Southern class rate investigation, 100 I. C. C. 513, 688.

(hh) Complainant attacked commodity rate of 66.5c charged on 334 less carloads of cotton fabrics or cotton piece goods in the original piece from New England points to Lynchburg, Va., between July 11, 1922 and May 9, 1923 as unreasonable, unjustly discriminatory and unduly prejudicial to extent it exceeded fourth class of 53.5c, subsequently made applicable from and to the same points. Shipments moved all water or rail and water. HELD, rate attacked unreasonable to extent it exceeded 53.5c, reparation awarded. Traffic Bureau Chamber of Commerce v. M. & M. T. R. R. 101 I. C. C. 424.

(ii) Joint fourth-class rates on matches moving from Oswego, N. Y., to New York City, by rail, thence by water to Charleston, S. C., Brunswick, Ga., and Jacksonville, Fla., found unreasonable to extent they exceeded the aggregate of the contemporaneous fourth-class rates from Oswego to New York and the commodity rates by water beyond. Reparation awarded. Diamond Match Co. v. Director General, 92 I. C. C. 68.

(jj) Rates on l. c. l. shipments of pulp paper moving from West Point, Va., to Baltimore by water, thence by rail to Saugerties, N. Y., found not unreasonable as compared with lower point water-and-rail rate to Ravena, N. Y., a farther distant point, which lower rate was subsequently established at Saugerties to meet rates maintained by competing lines. Such subsequent reduction

does not warrant a finding that the prior rate was unreasonable, and no damage was shown by reason of any undue prejudice which may have existed. Smythe Co. v. C. S. S. Co., 92 I. C. C. 95.

(kk) Proposal to comply with commission's order denying fourth-section relief with respect to rates from New York, by reducing class and commodity rates from points on the Central Vermont Ry. in New England, to points in c. f. a. and western trunk-line territories, applying via differential rail-and-lake route through Depot Harbor, Ontario, and boat line of the Canada Atlantic Transit Co., found not justified. Present rates from New York are reasonably compensatory and to permit removal of fourth-section departures by reducing the intermediate rates would necessitate reductions over other routes at competitive points, result in a chaotic condition of rates throughout New England, and further aggravate financial difficulties of New England lines. Rail-and-Lake Rates from New England, 92 I. C. C. 106.

(ll) Proposed withdrawal of D., L. & W., Erie, and Lehigh Valley from participation in through joint lake-and-rail and rail-lake-and-rail rates from and via various Great Lakes ports to points on certain of their eastern connections, which will result in increased rates via such routes, found justified except as to routes the continuance of which is necessary and desirable in the public interest. Purpose of proposed withdrawal is to throw burden of handling traffic upon carriers who are able to handle it most expeditiously and economically, and proposed restrictions will not leave any destination territory without a practicable route. Lake and Rail Rates to Eastern Destinations, 92 I. C. C. 183.

(mm) Rates on asphalt from San Francisco to Great Falls and Billings, Mont., found unreasonable to extent that water factor, San Francisco to Portland, exceeded a lower proportional rate contemporaneously in effect on same commodity between same points via line of another water carrier, which lower rate was subsequently made applicable over route of movement. Reparation awarded. Warren Construction Co. v. G. N. P. S. S. Co., 92 I. C. C. 302.

(nn) Proportional rates on grain from Illinois and Indiana points to Chicago, for reshipment by vessel beyond, found not unreasonable as compared with lower so-called "specific" applicable when grain is reshipped by rail. Formerly proportionals and specifics were the same but in applying increases under The Fifteen Per Cent Case, 45 I. C. C. 303, this parity was disrupted and subsequently restored. It was shown that lake-vessel rates fluctuate from time to time and in many instances total charges from country origin points to final destinations were less than those applicable all rail, notwithstanding the higher proportionals; and that proportionals were lower than Illinois intrastate rates and local rates in western territory for similar distances. Armour Grain Co. v. Director General, 92 I. C. C. 482.

(oo) The commission is directed "to foster and preserve in full vigor both rail and water transportation." But water transportation can not enjoy full vigor if it is confined to traffic which moves from port to port. If water lines are to thrive they must be able to draw traffic from interior points. U. S. War Dept. v. A. & S. Ry., 92 I. C. C. 528, 538.

(pp) Where rail carriers join with a water line in rates which are less than maximum reasonable rates, fair and equitable divisions must be determined with little regard to strategic advantages which any carriers might enjoy if divisions were to be fixed without the commission's intervention, and a dominant consideration must be relative amount and cost of services performed by various participating carriers. U. S. War Dept. v. A. & S. Ry., 92 I. C. C. 528, 538.

(qq) Rates on steel grinding balls moving water-and-rail from Chrome, N. J., to Ada, Okla., via Galveston, found not unreasonable or in violation of aggregate-of-intermediates clause of section 4 of the act. Tariffs in effect provided for alternative application of maximum rates whereby rates to Deming, N. Mex., and Clifton, Ariz., would apply if lower than rate to Ada. The Clifton and Deming rates, however, were restricted to routes other than route of movement, and application of the alternative rule was contingent upon specific reference being made to it in connection with rates to destinations in the tariff, and no such reference was made in connection with rate to Ada. Moreover, rate from point of origin to Deming was higher than rate to Ada. Oklahoma Portland Cement Co. v. A., T. & S. F., 93 I. C. C. 203.

(rr) The commission has power under

section 6 (13-b) of the act to establish through routes between rail and water carriers and prescribe maximum rail-and-water and rail-water-and-rail rates over rail and water lines even though water line is not used under a common control, management, or arrangement for continuous carriage or shipment. Houston Cotton Exchange v. A. & A. R. R. Corp., 93 I. C. C. 268.

(ss) Contention that section 15 (3), and section 6 (13), (13a) and (13b) of the act are qualified by section 1 (1a) so that they relate to transportation partly by rail and partly by water only when both are used under a common control, management, or arrangement for a continuous carriage or shipment, not sustained. This would lead to absurd conclusion that commission is enabled to establish a physical connection at a dock between a rail and water carrier only where water carrier already has an arrangement for continuous service with the rail line. Houston Cotton Exchange v. A. & A. R. R. Corp., 93 I. C. C. 268, 270.

(tt) Ordinarily expression "rail-lake-and-rail route" is used to describe a rail-and-water break-bulk route. Bergstrom Paper Co. v. Director General, 93 I. C. C. 591, 592.

(uu) Following Houston Cotton Exchange, 87 I. C. C. 392, the establishment of joint rail-and-water and rail-water-and-rail rates on cotton from Oklahoma points, via New Orleans, to points in New England, found desirable in the public interest and existing combination rates found unreasonable to extent they exceeded rates constructed by deducting 4 cents from present all-rail rates. Similar rates to other points in northeastern portion of the United States found not unreasonable. New Orleans Joint Traffic Bureau v. A. & A. R. R. Corp., 95 I. C. C. 77.

(vv) Upon complaint, the N. Y. C. ordered to furnish a transportation service between the Erie Basin barge-canal public terminals, Buffalo, N. Y., and points located on its line and lines of its connections, and perform upon terminal tracks the operating service necessary to an interchange of traffic with barge-canal lines at the terminal, all with motive power and other equipment of the N. Y. C., the services to embrace all traffic, interstate and intrastate, that may be transported to or from the terminal over that rail carrier's line. State of N. Y. v. N. Y. C., 95 I. C. C. 119.

(ww) Jurisdiction of the commission to order an interchange of traffic between rail and water carriers under various sections of the act, discussed. State of N. Y. v. N. Y. C., 95 I. C. C. 119, 126, 130.

(xx) Proposed readjustment of ocean-and-rail and rail-and-ocean rates on classes and certain commodities from points in Atlantic seaboard territory and all-rail class rates from Virginia cities to southwestern points, found not justified. Readjustment of all-rail rates from St. Louis, Memphis, New Orleans, and related points to certain southwestern points found justified, with certain modifications in the rates from New Orleans to Marshall and Jefferson, Tex. Rates to Southwestern Destinations, 95 I. C. C. 188.

(yy) It is the commission's view that the Southwest should be served by the Gulf port line, that they should maintain through rates to that territory in general, and that rates to a great part of the Southwest via their lines, rather than those via the south Atlantic port lines, should set the standard. Rates to Southwestern Destination, 95 I. C. C. 188, 199.

(zz) Rate on canned goods from Mobile to Montgomery, when used as a factor in constructing rates moving by water from interstate points of origin found unreasonable as compared with distance rates prescribed in Memphis Southwestern Investigation, 77 I. C. C. 473, and with Alabama intrastate rates contemporaneously in effect from Mobile to Montgomery. Reasonable rate prescribed and reparation awarded. Schloss & Kahn Grocery Co. v. L. & N., 95 I. C. C. 618.

(3a) Where shipments move interstate by water to a port of entry thence by rail to inferior intrastate destinations the commission has jurisdiction over the intrastate rail factor since it is part of the through interstate movement. Du Pont de Nemours & Co., 74 I. C. C. 191. Schloss & Kahn Grocery Co. v. L. & N., 95 I. C. C. 618.

(3b) Rates from New Albany to other points in Indiana on bituminous coal originating in Kentucky and West Virginia and barged to New Albany down the Ohio River, found unreasonable as compared with rates from Cincinnati, a

competing point shipping to the same destinations and to which traffic moves under similar transportation conditions. Moreover, rates for the short intrastate movement are on too high a level as compared with intrastate rates on bituminous coal prescribed by the commission in 66 I. C. C. 338, and numerous other cases. Reasonable distance scale of rates prescribed for the future. Slider v. B. &. O., 96 I. C. C. 65.

(3c) Shipment from Chester, Pa., to Tulsa, Okla., originally routed via rail to Philadelphia, and water and rail beyond was diverted at Philadelphia, upon shipper's request, to all-rail route, and upon arrival at Tulsa, was diverted to Wynona, Okla. Charges collected found inapplicable to extent they exceeded a lower combination, plus diversion charges, from Chester, Pa., via St. Louis, to Wynona although factor of rate found applicable was restricted to shipments "consigned through" from Chester to Wynona "via all-rail routes." Reparation awarded. Tidal Osage Oil Co. v. Director General, 96 I. C. C. 112.

(3d) Facts and circumstances surrounding the establishment of through routes between points in the United States partly over Canadian rail lines in connection with the Northern Navigation Co., Ltd., a Canadian owned and operated steamship line, covered by tariffs on file with the commission, and the matter of recognition of these routes under section 27 of the merchant marine act, 1920, considered. Proceeding discontinued. Rail-Lake-and-Rail Rates via Canada, 96 I. C. C. 633.

(3e) Sixth-class rate on potatoes, moving from Hightstown, Cranbury, Jamesburg, Plainsboro, Prospect Plains, and Windsor, N. J., to New York by rail, thence by Water to Jacksonville, Fla., found unreasonable to extent it exceeded the aggregate of contemporaneous fifth-class rate from points of origin to New York and a proportional rate beyond. Reparation awarded. Chamberlin & Barclay v. C. S. S. Co., 98 I. C. C. 7.

(3f) By the route shipments of secondhand refrigerators from Camp Dix (Wrightstown), N. J., to Sheffield, Ala., actually moved a car-ferry transfer from Cape Charles to Norfolk, Va., was necessary, which in complainant's opinion is equivalent to a rail-and-water movement. This contention not sustained, Conf. Ruling 316, and in absence of specific instructions for rail-and-water route defendants were only under the obligation to protect the rate applicable over route specified by shipper. Florence Chamber of Commerce v N. S. R. R. Co., 98 I. C. C. 594, 595.

(3fa) Proposed cancellation of exceptions to southern classification, under which certain commodities l. c. l. moving water and rail from north Atlantic ports to Lynchburg and other Virginia points take ratings one class lower than those provided in southern classification, and restoration of such ratings to the full southern classification basis applying all-rail, found not justified. Respondents offered little justification other than a statement that exceptions were erroneously published, no evidence concerning reasonableness of the rates proposed being adduced, or justification for fourth-section departures which would result thereunder offered. Moreover, a considerable volume of business has developed under the present rates which have been in effect approximately two years. Exceptions to Southern Classification, 102 I. C. C. 205.

(3fb) Shipments of bottle caps moving from New Orleans via Morgan Line to New York, thence rail via B. & O. to Highlandtown, Baltimore, found not misrouted. When delivered to the Morgan Line at New Orleans shipping ticket contained no routing instructions but bill of lading issued by that carrier showed routing as "B. & O." While a lower all-water rate applied to and from New York in connection with the Clyde Line, the latter's terminal at Baltimore is not at Highlandtown, and delivery at that terminal would not have been in accordance with bill of lading. Conf. Ruling 509. Also another lower water-and-rail rate cited by complainant was shown not to apply from the Clyde's Line at Baltimore. Moreover, notation on bill of lading "B. & O." indicated that a line haul by that carrier was desired, and bill of lading signed by complainant's representative on its behalf is binding on the parties. See Unrep. Op. 2224; 52 I. C. C. 671, 681; 82 Fed. 681. Crown Cork & Seal Co. v. S. P. Co., 102 I. C. C. 331.

(3fc) Complaint alleging unreasonableness of intrastate rates on fuel oil previously transported via tank steamers from interstate points of origin dismissed for want of jurisdiction, no common control, management, or arrangement for continuous carriage or shipment existing

between rail carrier and tank steamers, the latter being owned and operated exclusively for transportation of its own commodities. Washington Dehydrated Food Co. v. G. N. Ry., 102 I. C. C. 363.

(3fd) Establishment of through routes and joint rates on rail-and-water traffic from lower Michigan points via Detroit to Cleveland and Buffalo, by restoring differentials under all-rail rates previously in effect and which are now maintained in opposite direction, found not necessary or desirable in public interest. While interested shippers testified that if differential should be restored they would use boat lines because of savings in transportation charges, practically no evidence was offered tending to show that all-rail service was inadequate or unsatisfactory. Detroit & Cleveland Nav. Co. v. M. C. R. R., 102 I. C. C. 607.

(3fe) Refusal of defendant rail carriers to establish through routes and joint rates on rail-and-water traffic from lower Michigan points via Detroit to Cleveland and Buffalo found not unjustly discriminatory or unduly prejudicial. No showing has been made that rail carriers participate in through routes and joint rates with a water carrier in competition with complainant, thereby establishing the allegation of undue prejudice, nor do facts of record support allegation of unjust discrimination. Detroit and Cleveland Nav. Co. v. M. C. R. R., 102 I. C. C. 607.

(3g) Complainant attacked refusal of defendants to join in the establishment of lower rates than apply all rail on freight traffic from points on defendants lines in Lower Peninsula of Michigan to Cleveland and Buffalo via Detroit and complainants lines beyond as discriminatory and prejudicial to complainant. Complainants lines of steamers have been plying between Detroit and Cleveland and between Detroit and Buffalo for a number of years. The season of operation on the Cleveland line commences April 4 and continues throughout Nov. while the boats on the Buffalo line are operated from May 15 to Nov. 1. For about 25 years prior to federal control defendants maintained joint rail and water rates with complainant between points in the Lower Peninsula of Michigan and Cleveland based on differentials under the all rail rates between the same points of 2c per 100 pounds on the first, second and third classes, and 1c on the fourth, fifth and sixth classes. On traffic to and from Buffalo or beyond the differentials were 3c on first three classes, 2c fourth class, 1c on fifth and sixth. In the later part of 1917 these differentials were abolished and the rates placed on the all rail basis. In Oct. 1918 the differential rates on traffic from Buffalo and Cleveland to points in Lower Peninsula of Michigan were restored by the Director General but on east bound traffic the all rail basis of rates is still in effect. HELD, establishment of through routes and joint rail and water rates sought not necessary or desirable in the public interest under section 15 paragraph 3 of the act, complaint dismissed. Detroit, Cleveland Navigation Co. v M. C. R. R. 102 I. C. C. 607.

(3ga) The difference in quality of service and in nature and liabilities of participating carriers is not as great where a differential route is optional as in that where a rail-and-water route is the alternative. In latter situation marine insurance and transfer of freight from car to vessel, among other things, must be taken into consideration. Petertyl v. N. Y., N. H. & H., 102 I. C. C. 693, 696.

(3h) Complainant attacked combination rates charged on one carload of corn sirup jelly and of jelly and preserves, in glass containers, shipped Sept. 19, 1924 from St. Louis, Mo., to Miami, Fla., based on a combination rate of $1.43 composed of a commodity rate of 81c to Jacksonville, Fla., and fifth class rate of 62c beyond, as unreasonable, unjustly discriminatory, and unduly prejudicial to extent that the 62c rate factor exceeded 28c. Shipment moved over M. P., and Southern to Jacksonville thence Clyde Steamship Line to Miami. The rate of 28c from Jacksonville to Miami, on the basis of which complainant sought reparation, was maintained by the Clyde Steamship Company on various kinds of canned goods in tin cans, including fruits. On July 12, 1924 the Clyde Steamship Company announced that within the following week it would amend its canned goods item naming the rate from Jacksonville to Miami to embrace all items in the standard list of articles taking canned goods rates, as published by agent Speiden, from Ohio and Mississippi river crossings and other points to the south. Effective Feb. 16, 1925 the rate of 28c was made applicable on the commodities here considered, whether ship-

ped in metal or glass containers. HELD, rates attacked unreasonable and unduly prejudicial to extent the factor from Jacksonville to Miami exceeded 28c, reparation awarded. Zaring & Co. v. C. S. Co., 102 I. C. C. 724.

(3i) Complainant attacked commodity rates charged on soft coal, carloads, to Sterling, Conn., from Allyns Point, Conn., South Providence and Harbor Junction Wharf, R. I., as unreasonable. Reparation to basis of $1.14 is sought. This coal is mined in Virginia and moves by rail to Newport News, Va., thence by water to Allyns Point, South Providence or Harbor Junction Wharf and thence by rail over the N. Y. N. H. & H. to Sterling. HELD, rate attacked from Allyns Point not unreasonable but from the other two points unreasonable to extent it exceeds $1.26, reparation awarded. United States Finishing Co. v. N. Y. N. H. & H. R. R. 107 I. C. C. 412.

(3j) Complainant attacked commodity rates charged on newsprint paper, carloads, from Livermoore Falls, and Millinocket, Me., and Corinth, N. Y., and Ottawa, Ont. Can., to San Antonio, Tex., subsequent to Sept. 7, 1920, as unreasonable. Complainant attacked rates charges on carloads of newsprint paper from Augusta, Me., and Ottawa received at El Paso, Tex., subsequent to Sept. 30, 1920 as unreasonable. Complainant attacked as unreasonable rates on papers and wood pulp boards subsequent to Oct. 9, 1920 from eastern seaboard points to Dallas and Houston, Tex., and Oklahoma City, Okla., over rail water and rail routes. Previous decision, 96 I. C. C. 5. The shipments moved by rail to New York, Boston or Philadelphia and with the exception of the shipments to Oklahoma City thence by water to Galveston, Tex., and by rails beyond. The shipments to Oklahoma City moved by water from New York or Boston to Savannah, Ga., and by rail through Memphis, Tenn., to destination. For a number of years class rates from eastern seaboard territory and the Fox River territory of Wisconsin to Texas common points have been substantially on a parity. In 66 I. C. C. 571 a rate of 82c was prescribed on newsprint from Fox River territory to Texas common points. Existing rates on newsprint from eastern seaboard and Fox River territories to San Antonio and Dallas are equal. Prior to April 28, 1917 the rates on newsprint paper to El Paso from Fox River territory and the seaboard were equal. On that date, because of war conditions relating to ocean shipping the 80c rate from the seaboard was increased to 97.5c, while no increase was made in the rate from Fox River territory. The earlier parity of rates was not maintained during the period from August 26, 1920 to June 15, 1922 but since the latter date they have been identical. HELD, rates attacked to San Antonio, Dallas and Houston since June 1, 1922 not unreasonable; rate attacked on woodpulp board from Bellows Falls to Oklahoma City not unreasonable, but present rate unreasonable to extent it exceeds the lowest combination; from Aug. 26, 1920 to May 31, 1922 rates attacked unreasonable to extent they exceed 90c to San Antonio and Dallas on newsprint paper, and 79.5c to Houston and $1.08 to El Paso; on printing paper to Dallas unreasonable to extent they exceeded 99c; and on bristol board and printing paper from Holyoke to Oklahoma City unreasonable to extent they exceeded $1.185, reparation awarded. Express Publishing Co. v. A. S. R. R. 107 I. C. C. 528.

(3k) Complainant attacked rail and water rate charged on 400 cases of canned fruit in tins, shipped Nov. 16, 1922 from Red Creek, N. Y., to Jacksonville, Fla., as unreasonable and in violation of the fourth section. Shipment moved N. Y. C., to New York, thence Clyde Steamship to Jacksonville, charged 97c. Rate was 38c to New York, 9c transfer charge, plus 39.5c beyond. Effective Feb. 12, 1924 a joint rail and water rate of 83.5c was published from Red Creek to Jacksonville. HELD, rate attacked unreasonable to extent it exceeded 86.5c, reparation awarded. Smith Richardson & Conroy v. N. Y. C. R. R. 107 I. C. C. 553.

(3l) It is important that all ports be kept open and in as vigorous a condition as possible so that water lines may be attracted thereto and the public given the cheapest and most efficient service, both by water and by rail. Galveston Commercial Asso. v. G., H. & S. A. Ry. Co. 100 I. C. C. 110, 122.

(3m) Proposed general revision of all-rail-and-water rates on furniture, including chairs and mattresses, c. l. and l. c. l., from southern manufacturing points to eastern territory, which would result

in both increases and reductions, found justified. Proposed schedules purport to comply with findings in original report, 91 I. C. C. 27; are designed to restore rates from southern manufacturing points to the East to a basis comparable with central-territory basis; and to bring about a greater uniformity in rates and carload minima. Findings in original report affirmed and order of suspension vacated. Furniture from Southern Points, 100 I. C. C. 127.

(3n) Rail-water-and-rail rate applicable on refuse grease from Houston, Tex., to Newark, N. J., found to have been unreasonable to extent that factor from Houston to New York exceeded amount specified herein. Reparation awarded. Houston Packing Co. v. B. & M. R. R. 100 I. C. C. 345.

(3o) Rail-and-water and rail-water-and-rail rates on lard substitutes, green, salted hides, and refuse grease from Houston, Tex, to New York, N. Y., and other eastern points, found not unreasonable as compared with contemporaneous rates on like traffic from same origin point to other destinations and from and to other points for comparable distances. Houston Packing Co. v. B. & M. R. R., 100 I. C. C. 345.

(3p) Water transportation is not easily comparable with rail transportation, nor is it easy to prescribe maximum rates for the one which will be fairly in harmony with maximum rates for the other. Southern Class Rate Investigation, 100 I. C. C. 513, 678.

(3q) Upon general investigation, on commission's own motion, of interstate class rates and l. c. l. commodity rates within southern territory and between southern and official territories, Found: That joint rail-water-rail class rates between interior points in eastern territory and interior points in southern territory are necessary and desirable in public interest and should be established, in lieu of present nonconcurrence rates, in all cases where maximum reasonable rail-water-rail rates are herein prescribed. Southern Class Rate Investigation, 100 I. C. C. 513, 683.

(3r) Commission has no power to prescribe minimum water-rail rates, except where the water lines are controlled by rail carriers. Southern Class Rate Investigation, 100 I. C. C. 513, 686.

(3s) Proposal to restrict application of proportional or reshipping rates on grain and products from Argo, Ill., and other stations in the Chicago switching district to Boston and destinations taking that rate and to destinations in eastern Canada, via Milwaukee, and make applicable to the rail and lake traffic through Milwaukee the higher combination of rates on St. Louis, found justified. Present Argo rates are being used on traffic for which they were never intended, resulting in disadvantages to certain carriers and avoidances of terminal charges at Chicago by certain lines. Proposed schedules would remedy such disadvantages. Grain and Products from Argo, 101 I. C. C. 303.

(3t) In 100 I. C. C. 127 the Commission found that respondents had justified a proposed general revision of the all rail and rail and water rates on all kinds of furniture, including chairs and mattresses, in carloads and less carloads, from practically all southern manufacturing points to eastern territory and affirmed findings in original report, 91 I. C. C. 27. The origin grouping, with minor exceptions if the adjustment be viewed as a whole, was not only unchallenged by protestants but was retained by respondents at the request of manufacturers, many of whom are now before the Commission as protestants. Whether these groups are defensible is question which is neither proper nor possible to determine upon this record. No evidence tending to show undue prejudice in the grouping was offered. If shippers in the Virginia-Carolina group or in any other group are of the view that the group rates result in undue prejudice to some of them the affected shippers are at liberty to take up with respondents the matter of regrouping, with appropriate readjustment of the rates or to bring that situation to the attention of the Commission in a proper proceeding. HELD, increased rates justified. Furniture from southern points, 112 I. C. C. 302.

ALL OTHER CITATIONS

Michigan Traffic League v. A. A. R. R. Co., 85 I. C. C. 47; North Carolina Pine Asso. v. A. C. L. R. R. Co., 85 I. C. C. 270; Germain Co. v. L. & N. R. R. Co. 85 I. C. C. 449; Trojan Powder Co. v. Director General, as Agent, 88 I. C. C. 447; Sisal from Gulf Ports, 88 I. C. C. 704.

RAILROAD COMPETITION

See Differentials; Discrimination §8 (3), §8 (4); Equalization of Rates §4 (2); Evidence §14 (3); Long and Short Hauls §4, §4¼, §9; Rail and Water Rates; Reasonableness of Rates §8 (2); §27½; §37; Through Routes and Joint Rates.

RAILROAD YARDS

(a) Railroad yards leased by Hay and Grain Exchange for exclusive benefit of its members held "private yard" of such exchange and not general "railroad facility," though switching railroad collected inspection charge for privilege of partially unloading and examining, at such yard, cars consigned to them, and though members had agreed to accept notice of arrivals by bulletin. Granger v. Davis, 2 Fed (2d) 695.

REASONABLE RATES

See Absorption of Charges IV; Advanced Rates §17; Allowances V; Any Quantity Rates I; Basing Points and Lines III; Bills of Lading VII; Blanket Rates §11, §12, IV; Branch Lines I; Bridges and Tolls I; Class Rates II; Compress Companies and Charges II; Demurrage §10½; Differentials IV; Distance Rates II; Divisions V; Export Rates and Facilities VI; Import Traffic II; Long and Short Hauls §6⅞; Passenger Fares and Facilities II; Pipe Lines §6, IV; Proportional Rates IV; Reconsignment III; Reduced Rates §4½; Refrigeration III; Released Rates IV; Switch Tracks and Switching; Terminal Facilities §5; Through Routes and Joint Rates IV; Water Carriers II.

REASONABLENESS OF RATES

I. CONTROL AND REGULATION.
- §1. In general.
- §1½. Procedure in general.

II. ELEMENTS DETERMINING REASONABLENESS.
- §2. In general.
- §2½. Absorption.
- §3. Actions of state commissions.
- §4. Attractiveness of traffic.
- §5. Capitalization.
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- §7½. Comparisons.
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  - (1) In general.
  - (1½) Market competition.
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- §8½. Concerted action.
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- §9. Cost of service and operation.
- §10. Distance.
- §10½. Divisions.
- §11. Earnings.
- §12. Economical management.
- §12½. Equalizing commercial conditions.
- §13. Equipment furnished.
- §13a. Erroneous rate.
- §14. Investment relying on rate.
- §15. Investment of carrier.
- §15½. Loading.
- §16. Long continued adjustment.
- §16½. Low prior rate.
- §17. Manufactured product.
- §18. Mineral lands owned by carrier.
- §18½. Motive of carrier.
- §19. Natural advantages.
- §20. Need for revenue.
- §21. Obsolescence.
- §22. Origin of traffic.
- §23. Ownership or use of commodity.
- §24. Paper rate.
- §25. Past rates.
- §26. Permanent improvements.
- §26½. Prior adjudication.
- §27. Profit of shipper.
- §27¼. Public interest.
- §27½. Rate via competing line.
- §27¾. Rate in opposite direction.
- §28. Relativity of the rate.
- §29. Reproduction value of road.
- §30. Revenues from facilities.

§30½. Risk.
§31. Special service.
§32. Standard for carriers.
§32½. Subsequent reduction.
§33. Surplus.
§34. Terminal facilities.
§35. Time of changing rate.
§36. Ton-mile revenue.
§37. Two-line haul.
§38. Value of commodity.
§39. Value of service.
§40. Volume of traffic.
§41. Weight.

CROSS REFERENCES

See Classification §16 (x); Evidence; Express Companies §10; Long and Short Hauls §2½ (a); Minimums §7; Proportional Rates II, IV; Reconsignment III; Reduced Rates §4½; Refrigeration III; Released Rates IV; Storage §2; Switch Tracks and Switching III; Terminal Facilities §5; Through Routes and Joint Rates IV.

I. CONTROL AND REGULATION.

See Control and Regulation.

§1. In general.

(a) The commission has denied requests for the establishment of rate breaking adjustments at grain handling points of far more importance than Helena, Ark. Helena Traffic Bureau v. M. P. R. R., 89 I. C. C. 405, 516.

(b) Commission has consistently found that it is not its function to equalize, by means of rates, natural or commercial advantages of location. Young v. C., I. & L. Ry. Co., 89 I. C. C. 428, 436.

II. ELEMENTS DETERMINING REASONABLENESS.

§2. In general.

(a) In determining the reasonableness of cotton rates the commission must consider not only the various common elements generally taken into account in arriving at a conclusion as to reasonableness of rates, such as value, loss-and-damage claim expense, volume of tonnage, effect on equipment, and other elements regarded as of a determinative character in the average case, but in addition the expensive and unusual service that cotton must be accorded which distinguishes it from all other traffic. Mississippi R. R. Commission v. A. & V. Co., 88 I. C. C. 47, 65.

(b) Commission instituted upon its own motion to determine to what extent, if any, the rates, charges regulations, and practices of carriers subject to the act, in respect of the transportation of grain and grain products in interstate or foreign commerce, are or for the future will be unjust, unreasonable, or otherwise unlawful, and, if so found, to prescribe just, reasonable and lawful rates, charges, regulations and practices thereafter to be observed. Complainant attacked and reasonableness and propriety of the present level of interstate rates for the transportation of grain, grain products and hay, in carloads, between the territory embraced in the western group. **Western Group.** The rates on wheat and its products, as well as hay, in this group are now 117.5%, the rates on coarse grains 105.75%, and the rates on all other commodities 121.5% of the rates in effect at the end of federal control. Compared with the pre-war period, the rates on wheat, its products, and coarse grains are now generally about 45% above the rates then in effect. In reaching this percentage the Commission has given consideration to the 6c maximum increase made under G. O. 28. The rates on hay are about 47% above the pre-war level. Rates on other commodities stand on a level 52% higher than pre-war. Grain products usually move on the remainder of through rates. Transit arrangements are of value to the farmer as well as to the miller and the market, in that the farmer is thus afforded wider marketing opportunities. **Duty of the Commission under the act and the General Principles that Govern.** Agriculture is a basic industry. It creates new wealth. If the farmer for an extended period fails to get a fair wage for his labors and a return upon his investment, his adversity must be reflected in other activities in agricultural regions, including the railroads, and, to some extent, in the country as a whole. The Commission recognizes the importance of agriculture and are in entire sympathy with any lawful measures that may be adopted for its permanent good, but it believes that the part of freight rates in the present economic condition of agriculture has been overemphasized by many. Complainants recognize that the freight rate from the farm to the primary market is no more than one of the elements considered by the country elevator in fixing grain prices to the farmer. Of prime import-

ance to the agricultural industry and to the country in general is an adequate and efficient transportation service. The extent to which a marked rate reduction would disable the carriers generally or particular carriers in the performance of this service is of great consequence. Upon the flourishing condition of these two industries, agriculture and transportation, depends largely the country's permanent prosperity. To assist one of them unduly at the expense of the other at a time when neither is in an ideally prosperous condition, merely because one may be in a worse condition economically than the other, would be of doubtful value to the assisted industry or to the country, assuming for the moment that it is within the power of the Commission arbitrarily to render this assistance. The carriers as a whole in the western group have yet to make a fair return on the value of their properties over any considerable consecutive period of time. There has been, nevertheless improvement in service, but, if further substantial revenue losses are to be sustained by respondents at the present time, the public interest would be directly affected through a further weakening of railroad credit and a lowering of the standard of railway service. **Summary and Conclusion.** It appears that rates on grain, grain products and hay, generally speaking, are now on a somewhat lower basis compared with pre-war freight rates than are the carload rates on other traffic. That the earnings per car, per car mile, and per ton mile on grain and grain products, compared with other classes of traffic and with all carload traffic, do not show that grain and its products are now contributing more than their fair share to the revenues of the carriers in this group, considering the value of the traffic, the average hauls, the relative services performed, and the ratio of revenue produced by grain and grain products to total carload revenue compared with former years. That there has been an increase in the average loading of grain and its products in recent years as well as in the average loading of all carload traffic, although not to the same extent in the case of all carload traffic. That there has been slow but progressive improvement in the economic condition of agriculture in the western group since 1921, though the improvement in grain raising areas is less than with respect to other classes of agriculture. That the present adjustment of rates on grain and its products from the element of value standpoint, compared with the other heavy loading commodities moving in volume, pointed to by complainants, as profiting by the disturbance in relative values, is not unfavorable to grain and grain products. That despite a peak year in 1923 from the standpoint of traffic handled, it does not appear that respondents made a fair return, after giving due consideration to the complainants contentions as to abnormal expenditures for maintenance of equipment, and to the aggregate valuation. That the Commission has no assurances on this record that there will be such further increases in tonnage or such reductions in operating expenses in the immediate future as to enable respondents to earn an excess over a fair return. Any further reduction in revenue would increase the shortage in the fair return of carriers in the western group. That large additions to capital must continually be made by carriers in this group for needed additions and betterments, which can not be done if the credit of the carriers is seriously affected by undue impairment of their net revenues from operation. That the benefit which would accrue to the average farmer in case of a reduction in rates is small compared with the aggregate disastrous effect on certain of respondents revenues and on their credit, and there is serious doubt whether farmers would not in many instances lose from impaired railroad service more than they would possibly gain from a reduction in rates, even if the farmers would get the entire benefit of any reduction made. The present rate structure is largely the result of commercial and transportation conditions, and under it the trade and commerce of the country have grown up. Any material disturbance therein will have a tendency to cause disruption of business conditions generally to the detriment of an orderly conduct of commerce and with possibly serious effects upon large sums of invested capital and upon the steady employment of labor. Any marked readjustment might mean the moving of industries from points now near the source of supply of raw materials to points farther distant. A revision involves an undertaking of magnitude and requires a large expenditure of funds not at present at disposition of the Commission. Many of the rates here attacked were prescribed by the Commission and, over a long period of time, the Commis-

sion has been constantly engaged in readjusting and prescribing rate schedules on these and many other commodities. Since the act was enacted, and probably during a much longer time, traffic conditions and commercial conditions have been adjusting themselves to the existing relation of rates. It is not enough that the present conditions may not be ideal; it must appear that something better is obtainable. HELD, the general basis of rates, charges, regulations and practices of carriers subject to the act for the transportation of grain, grain products and hay in interstate or foreign commerce, brought in issue in these proceedings, are not unreasonable or otherwise unlawful. Complaint dismissed. Rates and charges on grain and grain products, 91 I. C. C. 105.

(c) The Commission would not be warranted in announcing any rule of general application as a basis for determining the reasonableness of rates exacted on shipments moving before or after June 25, 1918, or any other date. The Commission is equally convinced that in proceedings against the director general, as in all others, it must adhere to the sound and salutory principle that whether and to what extent a rate was or is unjust or unreasonable in a particular case is a question of fact, to be determined by the exercise of good judgment, informed by experience, in the light of all the pertinent facts of record in that case. Diamond Match Company v. Director General, 92 I. C. C. 373, 374.

(d) The Commission has frequently found that the matters to be considered were rather the earnings and transportation conditions, regardless of the percentage formula. West Virginia Rail Co. v. P. R. R., 93 I. C. C. 216, 219.

(e) The Commission has repeatedly found that it can not accept the percentage formula as a measure of the reasonableness of rates or as a criterion of their lawfulness in other respects, the matters to be considered being rather the earnings and transportation conditions. Toledo Cooker Company v. N. & A. Ry., 93 I. C. C. 271, 273.

(fgh) The possible effect of the findings upon other rates should not deprive complainants of a reasonable basis for the transportation of their particular products. Carnation Milk Products Co. v. A. & W. Ry., 96 I. C. C. 208, 211.

(i) Shippers are entitled to reasonable rates upon whatever traffic they ship. Omaha Cold Storage Co. v. C. & N. W. Ry., 98 I. C. C. 437, 441.

(j) Upon consideration of usual tests of reasonableness, commercial and economic aspects of situation, earnings as compared with those on other traffic, and fact that carriers in western group have not made fair return on value, the general basis of rates, charges, regulations, and practices of carriers subject to the act, on grain, grain products, and hay, found not unreasonable or otherwise unlawful, and such commodities found not to be contributing more than their fair share of transportation burden. Rates and Charges on Grain and Products, 91 I. C. C. 105.

(k) Shippers' safeguard against exaction of exorbitant charges is found in section 1 of the act, and if persons advocating reductions on certain commodities meet usual tests of reasonableness approved by experience and valid in law, and rates on such commodities are unreasonable, it is commission's duty to prescribe just and reasonable rates thereon for future. Rates and Charges on Grain and Products, 91 I. C. C. 105, 153, 154.

(l) Commercial and economic conditions affecting a particular industry are matters which commission may take into consideration, but they are not controlling in making of reasonable rates. Wool Rates Investigation, 1923, 91 I. C. C. 235, 249, 252.

(m) Proper rate making secures to every shipper performance of transportation service for more than a reasonable charge and requires that all shippers pay a reasonable charge for every service rendered. Wool Rates Investigation, 1923, 91 I. C. C. 235, 280.

(n) The law places burden upon carriers to prove that a proposed adjustment of rates is just and reasonable, and mere fact that they are attempting to make readjustment because some participating carriers desire that they do so, or that it may help to remove a complaint of discrimination pending before commission, is not sufficient evidence or proof of reasonableness of rates proposed under adjustment, or that present rates are unremunerative or unreasonably low. Boots and Shoes from New York Points, 91 I. C. C. 591, 596.

(op) Contention by carriers that establishment of a specific rate on manganese-steel scrap would disrupt entire rate structure on other scrap iron or steel, HELD: A shipper is entitled to a reasonable rate on its traffic, even though maintenance of such a rate would lead to other readjustments. Arizona Corp. Comm., 87 I. C. C. 271, 274. Chicago Heights Mfrs. Asso. v. P. R. R., 92 I. C. C. 194, 195.

(q) Reasonableness of any rate can not be measured solely by comparing its earnings with average earnings on all traffic. If it could be, inevitable results would be to bring all rates to a common level. Indiahoma Refining Co., 74 I. C. C. 392. Chicago Heights Mfrs. Assn. v. P. R. R., 92 I. C. C. 194, 196.

(r) Rate level necessary to move a commodity is an element to be considered together with other elements in determining a reasonable rate on the commodity. Chicago Heights Mfrs. Asso. v. P. R. R., 92 I. C. C. 194, 198.

(s) Fact that rates prescribed by commission will result in reductions in other rates, and thus bring about a material loss of revenue to carriers, is not in itself proof that rates prescribed are unreasonably low. Utah State Automobile Asso. v. A., T. & S. F., 92 I. C. C. 376, 383.

(t) Fact that some movement can be shown under a rate is no proof that it is reasonable. It would be a singular doctrine to hold that no rates are unreasonably high except those which actually stifle the movement of freight. Utah State Automobile Asso. v. A. T. & S. F., 92 I. C. C. 376, 383.

(u) Rates on salt from and to various points of production and consumption found unreasonably low in some instances and reasonable minimum rates for future prescribed. Salt Cases of 1923, 92 I. C. C. 388.

(v) Present rates on salt from Louisiana mines to Chicago found unreasonably low. Their continuation would force reductions in rates on lines of other carriers and would probably result in rate wars, injurious to carriers as a whole and to public, and would thereby tend to cause increases in rates on other traffic. Reasonable minimum rates for future, which will protect the salt-rate structure, prescribed. Salt Cases of 1923, 92 I. C. C. 388, 408, 412.

(w) Present rates on salt from Louisiana mines to Chicago were designed for purpose of promoting financial success of the salt mines in disregard of measure of revenue which carriers are entitled to receive for services rendered. Retaliatory reductions have been established from other fields resulting in a salt-rate war and rates from all fields to highly competitive points have reached so low a level that many shippers are asking that it be raised in order that revenue may be sufficient to make the tonnage attractive to carriers, and in order that service may be improved. Salt Cases of 1923, 92 I. C. C. 388, 411.

(x) Measure of rates on a specific commodity such as salt from and to particular points or within narrowly defined areas can not fairly be determined by fluctuations in aggregate earnings of carriers as a whole. Salt Cases of 1923, 92 I. C. C. 388, 437.

(y) In absence of differentiating transportation conditions competitive articles should be accorded a parity in rates and ratings. Edlund Broom Corp. v. B. & M. R. R., 92 I. C. C. 749, 752.

(z) A rate just and reasonable when prescribed may become too low, unreasonable, and confiscatory. Barton, Dist. Atty. of County of N. Y. v. Belt Line Ry. Corporation, 45 Sup. Ct. 534.

(aa) An individual miller is a shipper and entitled to reasonable rates, rules, and regulations measured in light of business and transportation practices in the industry in which he is engaged. Flory Milling Co. v. C. N. E. Ry., 93 I. C. C. 129, 133.

(bb) Reasonableness of rates charged, and not strict conformity with prescribed method of making percentage increases or reductions in their predecessors, is the controlling consideration. Anaconda Copper Mining Co., 57 I. C. C. 723, and other cited cases. N. Y. Stable Manure Co. v. Director General, 93 I. C. C. 349, 351.

(cc) Rates on cabbage from Charleston, S. C., to New England eastern trunk line and central territories, in 1-bushel packages found unreasonable to extent they exceed the present rates per 100 pounds on cabbage in 1.5 and 3 bushel packages from and to the same points. South Carolina Produce Assn. v. A. & R. R. R., 96 I. C. C. 107, 110.

(dd) The commission has frequently said that each community is entitled to reasonable rates by whatever name they may be known and that carriers may not, through the medium of special adjust-

ments to particular territories, establish restricted rate areas. Indiana State Chamber of Commerce v. A., T. & S. F. Ry. Co., 96 I. C. C. 485, 495.

(ee) A contract between carrier and shipper contemplating the establishment of a certain rate for a particular service is not conclusive in determining the maximum reasonable rate for the service. Union Sulphur Co. v. T. & N. O. R. R. Co., 98 I. C. C. 76, 81.

(ff) Even where the movement is of a temporary character the shipper is entitled to a just and reasonable rate consistent with those charged others under similar conditions and one that will meet the usual tests of reasonableness. Utah-Idaho Sugar Co. v. Director General, 98 I. C. C. 541, 543.

(gg) Regardless of who complains about the rates or who would use them, shippers are entitled to reasonable rates. Oregon Cattle & Horse Raisers Asso. v. N. P. Ry. 104 I. C. C. 51, 60.

(hh) Rates proposed must be shown to be not only reasonable but otherwise lawful. South Dakota R. R. Commissioners v. C. & N. W. Ry. 107 I. C. C. 35, 47.

(ii) Natural disadvantages under which the growers in one district may operate in getting their products to markets are not such matters as the commission may consider in determining the propriety of rail rates from competitive producing territories. Potatoes and Onions, from Colorado, Utah, and Wyoming to California, 100 I. C. C. 49, 53.

(jj) Delay in the publication of reduced rates is not determinative of the unreasonableness of the rates in effect prior thereto. Crown Williamette Paper Co. v. Director General, 100 I. C. C. 397, 400.

(kk) Every shipper is entitled to a reasonable rate on his traffic, even on sporadic movements, and where he attacks the reasonableness of a rate, whether class or commodity, that issue must be decided upon its merits. 88 I. C. C. 185, 187. Budding Co. v. P. R. R. Co., 100 I. C. C. 411, 413.

(ll) Rates on pianos, c. l. and l. c. l., from Hammond, Ind., and Steger and Oregon, Ill., to Birmingham, Ala., found not unreasonable or unlawful. Complainant contends that some of the shipments were misrouted depending upon his interpretation of the tariffs contemporaneously in effect naming lower rates from the same points to Mobile, Ala., claiming that such rates were applicable to Birmingham under the so-called intermediate rule contained in those tariffs. It is found that complainant paid the higher rates charged without protest for a long period, did not present his complaint until more than six months after the charges on the last shipment were paid and one day after the intermediate rule was changed so as to preclude his contention, and presented no request to the commission for suspension of the new rule which, under the construction contended for, effected increased rates on his traffic. This tends to show that complainant was not misled to his damage by the intermediate rule under consideration and no evidence as to unreasonableness was presented. Forbes & Sons Piano Co. v. A. G. S. R. R., 101 I. C. C. 74.

(lla) Rate on coal from mines in western Kentucky on the L. & N. to Franklin, Tenn., found unreasonable to extent it exceeded lower specific rate under which the yield of ton-mile earnings compare favorably with those yielded under contemporaneous rate on like traffic from same mines to Nashville. Reasonable rate prescribed and reparation awarded. Lillie Mill Co. v. L. & N., 102 I. C. C. 67.

(llb) Rate assessed on wheat moving from Chappell, Nebr., to Wichita, Kans., there stored and later reshipped to San Diego, Calif., found not unreasonable. While tariff carrying rate claimed was applicable over circuitous route of movement because unrestricted in its application, on other hand, tariff of carrier moving the shipment into transit point did not authorize storage at that point where outbound movement is made over other lines, as was the case here. Moreover, shipment here moved out of direct route to such extent as to entail wasteful transportation of the nature objected to by commission in 73 I. C. C. 116. Wallingford Bros. v. C., R. I. & P., 102 I. C. C. 239.

(llc) In passing upon the reasonableness of any particular rates or charges, it is necessary always to consider the special circumstances and conditions surrounding the situation under review. Continental Oil Co. v. Director General, 102 I. C. C. 338, 342.

(lld) Fact that a carrier's net railway operating income is not as high as that which carriers as a group may earn under section 15a of the act does not prohibit commission from fixing a just and reasonable rate on a particular commodity between particular points on its line. Furthermore, in establishment of rates on a single commodity fact that carriers are operating at a loss or on a narrow margin of profit should not be given too much weight, unless it clearly appears that the particular commodity constitutes bulk of traffic transported. See 60 I. C. C. 687, 702. United Paperboard Co. v. G. & J. Ry., 102 I. C. C. 502, 506.

(mm) It is well established that the unfavorable financial condition of a defendant is not a justification for the continuance of unreasonable rates on a particular commodity. Richmond Radiator Co. v. N. Y. H. & H. R. R. 109 I. C. C. 497, 499.

(nn) The mere fact that application for a specific rate was not made in advance of movement is no justification for charging an unreasonable rate. Tamms Silica Co. v. C. & N. W. Ry. 109 I. C. C. 618, 620.

ALL OTHER CITATIONS

Cleveland Provisions Co. v. A. G. S. R. R. Co., 88 I. C. C. 161; Armacost & Co., v. M. & M. T. Co., 88 I. C. C. 185; Arizona Egyptian Cotton Co. v. Director General, as Agent, 88 I. C. C. 263; Southern Cotton Oil Co. v. Director General, as Agent, 88 I. C. C. 280; Valley Camp Coal Co. v. B. & O. R. R. Co., 88 I. C. C. 682.

§3. Actions of State Commissions.

See State Rates and Regulations.

(a) The Commission takes into consideration the level of intrastate rates in reaching a conclusion as to the reasonableness of interstate rates in the same general territory, but it is not bound to adopt the intrastate level of rates as proper for application on interstate traffic. Hopeman Material Co. v. N. P. Ry., 98 I. C. C. 361, 366.

§6. Car-Mile or Train-Mile Revenue.

See Evidence §6, §8.

(a) Probative force of car-mile earnings in considering rate level to be applied to a heavy-loading, low-grade commodity is well recognized. Chicago Heights Mfrs. Asso. v. P. R. R., 92 I. C. C. 194, 195.

(b) Earnings of 17.53 mills per ton-mile, 59.84 cents per car-mile, and $587.04 per car on caustic soda are comparatively high for such low-grade traffic. Refinite Co. v. C. & N. W., 92 I. C. C. 266, 269.

(c) The commission has frequently observed that car and car-mile earnings afford a more reliable guide than ton-mile earnings. Furniture from Southern Points, 100 I. C. C. 127, 136.

§7¼. Combination of rates.

See Evidence §10.

(a) Combination rate to and from Vicksburg, Miss., on staves and heading from Holly Ridge, La., to Savannah and Brunswick, Ga., and Jacksonville, Fla., found not unreasonable as compared with rate from Vicksburg to same destinations. Comparisons introduced by defendants show that both factors composing rate assailed are not out of line and are comparable with rates for similar distances in same general territory. Moreover, shipments from Holly Ridge require additional service of crossing the river by ferry at Vicksburg. Jackson Traffic Bureau v. A. & V. Ry. Co., 89 I. C. C. 399.

(b) Complainant attacked combination rate of 38.5c on rough staves and headings from Holly Ridge, La., to Savannah and Brunswick, Ga., and Jacksonville, Fla., as unjust and unreasonable. Holly Ridge is on the V. S. & P., 47 and 91 miles west of Vicksburg and Jackson, Miss. The rate from Holly Ridge to the ports named is 38.5c composed of 11c to Vicksburg and 29.5c beyond, subject to the combination rule. A joint rate of 27c applied from Jackson, and complainant contended that a 2.5c arbitrary over this rate would produce a reasonable rate from Holly Ridge. Average distance is 791 miles. HELD, rate attacked not unreasonable, complaint dismissed. Jackson Traffic Bureau v. A. & V. Ry., 89 I. C. C. 399.

§7½. Comparisons.

See Blanket Rates §18; Classification §20; Comparative Rates; Evidence §11, §12, §13; Through Routes and Joint Rates §15.

(a) Complainants sought to demonstrate intrinsic unreasonableness by comparing rates and revenues derived from cotton with rates and revenues derived from other commodities, but well-

settled rule is that most helpful evidence in determining reasonableness of rates is to compare them with rates on like traffic, moving under like circumstances, in same general territory. Mississippi Railroad Commission v. A. & V. Ry. Co., 89 I. C. C. 47, 61.

(b) In comparative rate adjustments consideration may and should be given to economic conditions surrounding the traffic, so that an adjustment may result which will reflect as high a degree of uniformity as is practicable and at the same time accord to all interested the fair opportunity to which the law entitles them. Southwestern Coal Operators' Asso. v. A. & W. Ry. Co., 89 I. C. C. 73, 82.

(c) Rate on copper bullion from Clarksdale, Ariz., to San Pedro and East San Pedro, Calif., found unreasonable as compared with rates from Montana, Nevada, and Utah copper producing points to Pacific Coast ports and with rates prescribed in Phelps Dodge Corp., 57 I. C. C. 714, from Douglas, Globe and Clarkdale, Ariz., to Galveston, Tex. Reasonable rate for future prescribed. United Verde Extension Mining Co. v. A., T. & S. F. Ry. Co., 89 I. C. C. 95.

(d) Rates on peanuts, in bulk, found unreasonable to extent they exceeded lower rate on "peanuts, unshelled, in bags or boxes." Reparation awarded. Southern Cotton Oil Co. v. Director General, as Agent, 89 I. C. C. 154.

(e) Maintenance of fertilizer basis of rates on nitrate of soda intrastate in Louisiana and Texas is not of itself a reason for requiring extension of that basis to movements of nitrate of soda from New Orleans, La., to Arkansas. New Orleans Joint Traffic Bureau v. A. & V. Ry. Co., 89 I. C. C. 223, 226.

(f) Fact that carriers in the Southeast have accorded to nitrate of soda the fertilizer basis of rates does not establish that in the Southwest rates on nitrate of soda higher than on fertilizer are unreasonable. New Orleans Joint Traffic Bureau v. A. & V. Ry. Co., 89 I. C. C. 223, 227.

(g) Rate on stoneware and tile, broken, found unreasonable as compared with rates on brick, other than common, and to extent it exceeded rate found reasonable in National Paving Brick Mfrs. Asso., 68 I. C. C. 312, modified to reflect the general rate level in effect when shipments moved. Present rates conforming to case cited found not unreasonable. Reparation awarded. Northwestern Terra Cotta Co. v. P., C., C. & St. L. Ry. Co., 89 I. C. C. 257.

(h) Mere statement of rate comparisons without a showing of conditions under which rates were established, volume of movement thereunder, or that transportation circumstances and conditions are substantially similar, are not very helpful in determining the reasonableness of rates. New York Commission of Highways, 55 I. C. C. 619, 623. Atlantic Refining Co. v. A., B. & A. Ry. Co., 89 I. C. C. 279, 280.

(i) Mere comparison of rates without a showing of conditions under which such rates were established or of the volume of movement thereunder; are of slight probative value in determining the reasonableness of rates. Buxton-Smith Co. v. A. T. & S. F. Ry. Co., 89 I. C. C. 373, 376.

(j) An average rate arrived at by use of rates for hauls of less than 100 miles has little, if any, probative force in determining the reasonableness of a rate for a haul of 450 miles. Atlantic Refining Co. v. Director General, as agent, 89 I. C. C. 391, 393.

(k) Rate on cabbage, found unreasonable to extent it exceeded rate on onions and potatoes. Reparation awarded. Meyer-Vasquez Produce Co. v. Director General, as Agent, 89 I. C. C. 437.

(l) Differences in transportation and traffic conditions must be taken into account in considering comparisons of intrastate rates in different states. Nebraska Livestock Case, 89 I. C. C. 444, 451.

(m) Rates on draintile found not unreasonable as compared with rates on brick, transportation characteristics of draintile justifying somewhat higher rates. Post Bros. Tile Co. v. Director General, as Agent, 89 I. C. C. 544.

(n) Rates on salt found unreasonable as compared with lower rate on soda ash, which is twice the value of salt and of lighter loading. Reparation awarded. Boston Wool Trade Asso. v. Director General, as Agent, 89 I. C. C. 589, 599.

(o) Upon an extensive investigation as to what rates, as applied to a particular class of traffic to be offered, will be likely to produce a fair return hereafter, past or present statistics of operation and earnings are serviceable only

as they illuminate the future. Rates and Charges on Grain and Products, 91 I. C. C. 105, 122.

(p) Rates on cotton seed from points in western Kentucky and Tennessee to Cairo, found not unreasonable or unduly prejudicial. Rates sought were compared with lower rates for like distances in Mississippi Valley and southeastern territory but such rates reflect low levels of intrastate rates required by State authorities. Carriers instanced many higher rates under which cotton seed moves between points in South and Southwest and also rates found reasonable by commission in various cases which compare favorably with those assailed. Considering differences in distance and relative levels of rates, adjustment can not be said to be unduly preferential of Tiptonville and Dyersburg, Tenn. Cairo Cotton Oil Mill v. I. C. R. R. Co., 91 I. C. C. 765.

(q) Rates on metallic and woven-wire mattresses found not unreasonable as compared with rates on metallic springs, metallic beds, davenports, metallic cribs, and similar articles. Madden, Son & Co. v. Director General, 92 I. C. C. 48.

(r) Rate on l. c. l. shipments of pulp paper moving from West Point, Va., to Baltimore, by water, thence by rail to Saugerties, found not unreasonable as compared with lower joint water-and-rail rate to Ravena, N. Y., a farther distant point, which lower rate was subsequently established to Saugerties to meet rates maintained by competing lines. Such subsequent reduction does not warrant a finding that prior rate was unreasonable, and no damage was shown by reason of any undue prejudice which may have existed. Smythe Co. v. C. S. S. Co., 92 I. C. C. 95.

(s) Rates assessed on sporadic shipments of broken plaster molds from Chicago to Hannibal found not unreasonable as compared with lower rate on brick, which lower rate was subsequently made applicable on broken plaster molds. While there was no rate or rating applicable on shipments here involved, earnings under rates charged compare favorably with earnings on same commodity and on brick from Chicago to other points in Michigan and Indiana. Atlas Portland Cement Co. v. Director General, 92 I. C. C. 171.

(tu) Reasonableness of any rate can not be measured solely by comparing its earnings with average earnings on all traffic. If it could be, inevitable result would be to bring all rates to a common level. Indiahama Refining Co., 74 I. C. C. 392. Chicago Heights Mfrs. Asso. v. P. R. R. 92 I. C. C. 194, 196.

(v) Rate on cullet (broken glass) found not unreasonable as compared with rates on junk and other low-grade commodities. Liberty Glass Co. v. St. L.-S. F., 92 I. C. C. 199.

(w) Rates on linters, munition, found unreasonable to extent they exceeded those contemporaneously in effect on cottonseed-hull fiber or shavings. Reparation awarded. Cotton By-Products Co. v. S. Ry., 92 I. C. C. 201.

(x) Rates on coke, reilly carbon, found unreasonable to extent they exceeded rate on coal-tar pitch, of which Reilly coke is a residuum or refuse, after more valuable products are drawn off. Reparation awarded. Acheson Graphite Co. v. Director General, 92 I. C. C. 215.

(y) Rate on boilers found unreasonable to extent it exceeded lower rate on machinery and machines. Reparation awarded. National Supply Co. of Texas v. C. C., C. & St. L. Ry. 92 I. C. C. 295.

(z) Rates on alkali salts, so-called potash, found not unreasonable as compared with rates on beet-sugar residuum, Hartsalz, or double manure salt, and kainit. These salts are competitive commodities in the manufacture of fertilizers and are sold on basis of number of units of potash they contain. Complainant's product contains more units of potash than most of the other potash salts named, and hence is considerably more valuable. Standard Potash Co. v. Director General, 92 I. C. C. 337.

(aa) Rate on creosote oil, in tank-car loads, from Ensley, Ala., to De Ridder, La., during Federal control, found unreasonable as compared with lower rates contemporaneously in effect from Ensley and from New Orleans, La., to various destinations. Reparation awarded. Shreveport Creosoting Co. v. L. & P. Ry., 92 I. C. C. 519.

(bb) Rate on broom handles known to the trade as handles "in the rough" or "not further finished," found unreasonable to extent it exceeded lower rate on "handle timber, in the rough, sawed or turned to shape, not further finished." Reasonable rate for future prescribed and reparation awarded. Wichita Board of Commerce v. C., R. I. & P. 92 I. C. C. 574.

(cc) Rate on clay found unreasonable to extent it exceeded rate on brick and other products of higher value manufactured therefrom. Clay and products formerly were rated the same, but due to application of increases and reductions this parity was disrupted and subsequently restored following General Brick case, 68 I. C. C. 213. Reparation awarded. Midland Terra Cotta Co. v. P., C., C. & St. L. Ry., 92 I. C. C. 601.

(dd) Rates on bars, copper found not unreasonable as compared with rates on copper wire, the manufactured product of copper bars. Former report, 64 I. C. C. 691, affirmed. Raritan Copper Works v. Director General, 92 I. C. C. 671.

(ee) Rates on feldspar found unreasonable as compared with rates on poultry grit, lime, limestone, chrome ore, phosphate rock, and rough granite. Reasonable rates and minimum weights prescribed and reparation awarded. Ceramic Traffic Asso. v. M. C. R. R., 92 I. C. C. 675.

(ff) Rates on phosphate, acid found unreasonable as compared with lower rates on phosphate rock, agricultural limestone, coke, draintile, rock gypsum, shells, and wood pulp. Buhner Fertilizer Co. v. B. & O., 92 I. C. C. 756, 757.

(gg) Mere rate comparisons without a showing of conditions under which rates were established, volume of movement, or that transportation circumstances and conditions are subsequently similar, are not helpful in determining the reasonableness of rates on particular commodities. Salt Lake Potash Co., 87 I. C. C. 695. Chevrolet Motor Co. v. Director General, 93 I. C. C. 544, 546.

(hh) Comparisons based upon distance alone have little probative value in measuring the reasonableness of rates. This is particularly true where rates compared are group rates in establishment of which element of distance must be subordinated to other considerations. Louisville Cooperage Co. v. L. & N., 93 I. C. C. 593, 594.

(ii) Rates on hollow building tile from Alberhill, Calif., to Saticoy, Edfu, and Santa Paula, Calif., moving during Federal control, found unreasonable to extent they exceeded the rate contemporaneously in effect on fire and wire-cut face brick between the same points following National Paving Brick Mfrs. Asso. 68 I. C. C. 213, and the Memphis-Southwestern Investigation, 77 I. C. C. 474. Reparation awarded. Los Angeles Pressed Brick Co. v. Director General, 98 I. C. C. 45.

(jj) On artificial silk, in carloads, from Roanoke, Va., to Marcus Hood, Pa., complainant seeks a commodity rate which is the same as that applicable on artificial-silk waste, based on released value, in lieu of the first-class rate, any quantity, based on released value. FOUND, that the first-class rate assailed is not unreasonable and that there is no justification for requiring the same rate on artificial silk as on artificial-silk waste. Artificial silk is a high-grade article and the freight charges bear a small ratio to its value and the present rates are not shown to discourage the movement or to impose an undue burden on traffic, which is of a special character, between two of complainant's plants. The fact that the rate assailed is an any-quantity rate does not in itself prove that it is unreasonable as applied to carload shipments. U. S. Farm Sales Co., 92 I. C. C. 19. Viscose Co. v. P. R. R. Co., 98 I. C. C. 97.

(kk) Mere rate comparisons without showing a similarity of traffic or transportation conditions is not sufficient to warrant a finding of unreasonableness. Somerville Iron Works v. C. R. R. Co. of N. J., 101 I. C. C. 683, 684.

(ll) Rate on metal-cushion or seat-spring assemblies found not unreasonable, discriminatory, or unduly prejudicial in past but for future found unreasonable to extent it exceeds rate on davenport assemblies. Reasonable rate prescribed for future. Ft. Smith Couch & Bedding Co. v. B. & O., 102 I. C. C. 726.

(mm) In considering the reasonableness of group rates comparisons of distances and ton-mile earnings as between selected points can not be regarded as controlling. The reasonableness of such rates must be judged by average conditions. See 83 I. C. C. 591; 57 I. C. C. 714. Wortham-Carter Publishing Co. v. Director General, 102 I. C. C. 729, 734.

(nn) Mere showing of rates on other articles, without also showing that they are comparable in other respects, such as value, average loading, and risk of loss and damage, is not convincing in determining reasonableness of rates. Jackson Traffic Bureau v. St. L. S. F. Ry. Co., 88 I. C. C. 188, 190.

(oo) Neither rates on beverages nor on canned goods can be accepted as a

proper measure of the rates on grape juice. The value of grape juice greatly exceeds that of most of the beverages and it is not subject to same competitive conditions that have influenced the commodity rates on either beverages or canned goods. Armour & Co. v. Director General, as Agent, 88 I. C. C. 569, 577, 578.

ALL OTHER CITATIONS

Lehigh Lime Co. v. A. C. & Y. Ry. Co., 85 I. C. C. 341; Boldt Glass Co. v. C. B. & Q. R. R. Co., 85 I. C. C. 412; Germain Co. v. L. & N. R. R. Co., 85 I. C. C. 449; Indiana Public Service Commission v. A. A. R. R. Co., 85 I. C. C. 533; California Grain Co. v. Director General, as Agent, 85 I. C. C. 680; Manglesdorf Seed Co. v. A. T. & S. F. Ry. Co., 88 I. C. C. 120; Cohen v. A. T. & S. F. Ry. Co., 88 I. C. C. 143; American Maize-Products Co. v. Director General, as Agent, 88 I. C. C. 354; International Harvester Co. v. N. Y. C. R. R. Co., 88 I. C. C. 368; Lackawanna Steel Co. v. P. R. R. Co., 88 I. C. C. 759.

§8. Competition.

(1) In General.

See Competition; Long and Short Hauls §4¾.

(a) There may be a marked difference in the measure of rates voluntarily established by one carrier to meet competition, and rates prescribed by the commission as reasonable over the lines of other carriers for similar distances. United Verde Extension Mining Co. v. A., T. & S. F. Ry. Co., 89 I. C. C. 95, 100.

(b) The policy of competitive rate making, together with a purpose to develop the country, has resulted in lower rates than would otherwise exist. Nebraska Livestock Case, 89 I. C. C. 444, 447.

(c) The meeting of cross-country competition has been carried to unreasonable extremes in the past. Nebraska Livestock Case, 89 I. C. C. 444, 459.

(d) A locality has no inherent right to demand that rates break thereon. Nashville Lumbermen's Club, 40 I. C. C. 59, 61. Points on the banks of rivers or lakes in this country which are now accorded a rate-breaking arrangement have it because they play an important part in some industry as a whole, or because the force of competition has gradually brought about such an adjustment. Helena Traffic Bureau v. M. P. R. R. Co., 89 I. C. C. 405, 415.

(e) Carriers may for competitive or other reasons establish rates which the commission could not initiate for them; and equality of distance from competing markets is not an absolute test of whether an equality of rates results in undue prejudice and preference. Reduced Commodity Rates to Pacific Coast, 89 I. C. C. 512, 524.

§8 (2). Railroad Competition.

See Railroad Competition.

(a) Rate charged on sugar from Brigham and Spanish Fork, Utah, to Breckenridge, Tex., found not unreasonable. While rate was subsequently reduced because of compelling carrier competition based on average length of haul, rate charged yielded ton-mile and car-mile earnings which do not appear excessive. Utah-Idaho Sugar Co. v. C. & N. E., 102 I. C. C. 388.

§8 (5). Wagon or motor competition.

See Motor Truck Service.

(a) Question of meeting motor-truck competition is more a matter for carriers than for commission to settle. Nebraska Livestock Case, 89 I. C. C. 444, 457.

§9. Cost of service and operation.

See Advanced Rates §7 (2); Evidence §6, §17, §18.

(a) Cost study covering only the more expensive part of through transportation can not be considered a fair test of the reasonableness of joint rates. Cost studies are at best only estimates, the accuracy of which could be tested only in practice, with possibility of harmful results. Adriatic Mining Co., 78 I. C. C. 611, 632. Limestone from Illinois Points, 89 I. C. C. 11, 14.

(b) Director general submitted evidence to show that, due primarily to retroactive application to January 1, 1918, of increase in wages of railway employees under General Order No. 27, operating costs were as great during first six months as during second six months of 1918, and contended that no lower basis of rates should be found reasonable on shipments made prior to June 25, 1918, than on shipments made on and after that date. HELD: While operating conditions prior to June 25, 1918, including retroactive application of wage

award, are important factors, they are not necessarily controlling in determining reasonableness of rates after January 1 of that year. Macbeth-Evans Glass Co. v. B. & O. R. R. Co., 91 I. C. C. 758, 760, 762.

(c) In passing upon reasonableness of rates or in determining whether or not undue prejudice and preference exist, cost of service is a factor which must be taken into consideration. There are other factors which have weight, but cost of service is one of the most important. Maritime Asso., Boston Chamber of Commerce v. A. A. R. R., 95 I. C. C. 539, 565.

§10. Distance.

See Infra §36; Blanket Rates §9; Differentials; Distance Rates; Evidence §20, §58.

(a) An average rate arrived at by use of rates for hauls of less than 100 miles has little, if any, probative force in determining the reasonableness of a rate for a haul of 450 miles. Atlantic Refining Co. v. Director General, as Agent, B. & O. R. R. Co., 89 I. C. C. 391, 393.

(b) In complying with commission's order in 87 I. C. C. 207, wherein rates on mixed feeds from Beaumont and Orange, Tex., to destinations in Louisiana were found unreasonable to extent they exceeded or might exceed contemporaneous rates for similar distances between Natchez, Miss., and points in Louisiana, carriers published a distance scale under which rates were to be computed on actual distance plus 20 miles for service of crossing Mississippi River. FOUND: Since no corresponding crossing service is required on shipments from Beaumont and Orange, addition of this constructive mileage is contrary to spirit of the order. Original finding affirmed and clarified by excluding any constructive mileage in computing rates from Beaumont and Orange. Josey-Miller Co. v. B. R. R. & C. Co., 91 I. C. C. 213.

(c) The commission's conclusions in a particular case involving reasonableness of constructive mileage at particular points can not conclude a future decision made upon a record which may show in detail, and more comprehensively, the general practice of carriers as to making additional charges because of expensive bridges, trestles, tunnels, ferry operations, fills, and cuts, or other like devices against obstacles or barriers to transportation. Mileage for Mississippi Crossings, 93 I. C. C. 462, 464.

(d) Method of employing arbitraries is more reasonable, and less likely to result in undue or unreasonable prejudice or disadvantage to persons, localities, or descriptions of traffic, than method of adding 20 constructive miles to actual distance in computing charges for car ferry service at lower Mississippi River crossings. Mileage for Mississippi Crossings, 93 I. C. C. 462, 475.

(e) Rates on cement from Cape Girardeau (Gulf Junction), Mo., to points in Illinois found unreasonable and unduly prejudicial as compared with rates from competing Illinois mills to same destinations and to extent they exceeded those which would result under the distance scale of rates prescribed in Atlas Portland Cement Co., 81 I. C. C. 1. Reasonable and nonprejudicial rates prescribed for future. Cape Girardeau Portland Cement Co. v. B. & O., 95 I. C. C. 632.

(f) While origin points nearer to destination points must not be unduly deprived of the benefit of their locations and more distant origin points unduly favored, distance alone frequently is not controlling and must not be given undue weight, particularly where, as in this case, considerations which are largely determinative of the rates from the farther-distant point exist in a markedly less degree from the nearer point. Galloway Coal Co., 40 I. C. C. 311. Oakland Chamber of Commerce v. S. P. Co., 100 I. C. C. 55, 62.

(g) The policy of the southwestern carriers serving New Orleans, La., has been, generally speaking, to apply the Galveston, Tex., rates to New Orleans on traffic moving from or to all points west of the Mississippi River, except points in Texas south of a certain line. Such an adjustment necessarily disregards distance and commercial instead of natural advantages control. The commission has consistently refused to condemn such an adjustment where it is shown to serve the best interests of the public, but where, as here, it builds up one port at the expense of another equally favored by natural advantages from the origin territory here considered, a line must be found beyond which distance may not be disregarded. Galveston Commercial Asso. v. G., H. & S. A. Ry. Co., 100 I. C. C. 110, 121, 122.

ALL OTHER CITATIONS

International Harvester Co. v. N. Y. C. R. R. Co., 88 I. C. C. 368; Jeremy Fuel & Grain Co. v. Director General, as Agent, 88 I. C. C. 397.

§11. Earnings.

See Infra §36; Evidence §5, §51.

(a) Shippers are entitled to reasonable rates upon whatever traffic they ship. But in a situation of the kind here involved, where the packing specifications were not compiled with, resulting in a higher rate and rating than would otherwise have obtained, the earnings are not necessarily controlling. Omaha Cold Storage Co. v. C. & N. W. Ry. Co., 98 I. C. C. 437, 441.

(b) Fact that a carrier's net railway operating income is not as high as that which carriers as a group may earn under section 15a of the act does not prohibit commission from fixing a just and reasonable rate on a particular commodity between particular points on its line. Furthermore, in establishment of rates on a single commodity fact that carriers are operating at a loss or on a narrow margin of profit should not be given too much weight, unless it clearly appears that the particular commodity constitutes bulk of traffic transported. See 60 I. C. C. 687, 702. United Paperboard Co. v. G. & J. Ry., 102 I. C. C. 502, 506.

(c) Where a carrier is not earning a fair return on value of property used in service, it does not follow that any and every method advanced by it to increase its revenues must receive stamp of commission's approval merely because of its financial needs. Fort Smith, S. & R. I. R. R. v. A. & V. Ry., 102 I. C. C 708, 712.

ALL OTHER CITATIONS

Cotton and Linters to Louisiana and Texas Ports, 85 I. C. C. 5; Boldt Glass Co. v. C. B. & Q. R. R. Co., 85 I. C. C. 412; Boher & Hosfeld v. B. & M. R. R., 88 I. C. C. 449.

§13a. Erroneous Rate.

See Erroneous Rates.

(a) Proposed establishment by M. & O. R. R. of new rates and charges on uncompressed cotton from Meridian, Miss., to Carolina territory, for purpose of restoring the normal differential relationship between rates on uncompressed cotton with carrier's privilege of compressing, and cotton compressed at shipper's expense, found justified. The disrupted relationship was published in error only by the M. & O. and applied only on shipments delivered to it at Meridian, whereas from surrounding points the normal differential was maintained. Moreover, the commission's tariff rules require changes in rates to be specified in tariffs containing them, either as advances or reductions, but tariff here referred to published increases as though they had been mere continuations of rates previously in effect. Cotton to Carolina Territory, 92 I. C. C. 125.

(b) Rates on coal screenings, shipped from Contrall, Springfield, and Pana, Ill., to Lyons, Iowa, during Federal control found not unreasonable although lower rates on same commodity were contemporaneously applicable from same points to Clinton, Iowa, within the switching limits of which Lyons is located. Lower rates to Clinton were established through error. Complaint dismissed. Ford Roofing Products Co. v. Director General, 96 I. C. C. 471.

(c) Applicable rate on dried beans from Mills, N. Mex., to Rockdale, Tex., found unreasonable to extent it exceeded lower contemporaneous rate on like traffic from and to same points over other available routes and to contiguous points, which lower rate was not made applicable to Rockdale over route of movement until subsequent to movement here involved through error on part of carriers. Reparation awarded. Waco Chamber of Commérce v. E. P. & S. W., 102 I. C. C. 105.

(d) Rate on fuel wood from Baca, Perea, and Thoreau, N. Mex., to El Paso, found applicable but unreasonable to extent it exceeded lower rate published in tariff supplement by special permission, but which was rejected and returned as being in transgression of General Order No. 28 of director general. The rejection may have been in error but the fact remains that the schedules were returned, and it must be concluded they never took effect. Kaseman v. A., T. & S. F., 102 I. C. C. 315.

ALL OTHER CITATIONS

Crown Willamette Paper Co. v. Director General, as Agent, 85 I. C. C. 657; Doniphan Brick Works v. Director General, as Agent, 88 I. C. C. 436; Keystone Roofing Mfg. Co. v. Director General, as Agent, 88 I. C. C. 707.

§16. Long Continued Adjustment.

See Evidence §29, §43, §66.

(a) Fact that a rate has been voluntarily maintained by a carrier for a period of years is evidence tending to show that it is reasonably high. See also 32 I. C. C. 361. Boots and Shoes from New York Points, 91 I. C. C. 591, 595, 596.

(b) One test of the reasonableness of a rate is its relation to whole rate structure of which it is a part. News Corp. v. M. P., 93 I. C. C. 381, 383.

(c) Proposed rates on paper boxes between points in the Southeast, found justified in part. Complaint against maintenance of commodity rates from Nashville to interior southern points, while class rates apply from Chattanoga, Atlanta, and Birmingham, and in order to satisfy insistent demands for an immediate adjustment on a more consistent and relative basis, and at the same time correct existing fourth-section departures, is given as reason for the revision. The proposed rates are intended only as a temporary measure to take care of the situation until such time as all rates on paper and paper articles between points in the Southeast may be revised on a more comprehensive scale. Paper Boxes between Southeastern Points, 93 I. C. C. 559.

(d) The fact that other rates were not voluntarily reduced by carriers and that such rates as were reduced caused a temporary disruption of a former rate relationship is not sufficient basis for a finding that the rates complained of were unreasonable. Risser v. A., T. & S. F. Ry. Co., 96 I. C. C. 513, 515.

§16½. Low prior rate.

See Supra §16.

(a) The reduction to meet the lower rate of other lines does not warrant a finding that the prior rate was unreasonable. Smythe Company v. Chesapeake Steamship Co., 92 I. C. C. 95, 96.

§17. Manufactured product.

See Evidence §31.

(a) Rule that manufactured articles ought generally to pay a higher transportation charge than the raw material is by no means inflexible, as facts and circumstances surrounding movement of the raw materials may be such as to warrant a higher rate. East St. Louis Cotton Oil Co., 20 I. C. C. 37, 40. Mississippi R. R. Commission v. A. & V. Ry. Co., 89 I. C. C. 47, 67.

(b) Ordinarily, manufactured products take a higher rate than raw material from which made. Young v. C., I. & L. Ry. Co., 89 I. C. C. 428, 436.

(c) The spread in rates between manufactured products and the raw materials from which made is not governed by the percentage of waste between the raw material and the finished product, but by comparative transportation characteristics of the two articles, such as average loading, value, liability to loss and damage in transit, terminal expenses, etc. Young v. C. I. & L. Ry. Co. 89 I. C. C. 428, 436.

(d) Upon complaint alleging that rate on Reilly carbon coke in unreasonable to extent it exceeds rate on coal-tar pitch, defendant asserts that there is no similarity between them, and refers to fact that bituminous coal takes lower rate than coke produced from it and that rates on flour, lime, pig iron, and glass are generally higher than materials from which they are produced. HELD: Commodities named are principal product of manufacturing processes, while Reilly coke is only a residuum or refuse left after more valuable products are drawn off. Acheson Graphite Co. v. Director General, 92 I. C. C. 215, 219.

(e) Reasonable rates on crude oil should be relatively lower than on refined oil. Barnett Oil & Gas Co. v. Director General, 93 I. C. C. 85, 87.

(f) Although commission has condemned rates on raw materials higher than on products manufactured therefrom, that fact, in and of itself, does not demonstrate that higher rates on raw materials are unreasonable. Crown Willamette Paper Co., 78 I. C. C. 273. Minnesota & Ontario Paper Co. v. Director General, 93 I. C. C. 105, 108.

(g) The fact that the rates on the products of livestock are higher, even materially higher, than the rates on livestock does not warrant a finding that the rates on the products are unreasonable. Ogden Packing & Provision Co. v. D. & R. G., 101 I. C. C. 258, 269.

ALL OTHER CITATIONS

Diamond Match Co. v. Director General, as Agent, 88 I. C. C. 435.

§23. Ownership or Use of Commodity.

See Classification §10; Discrimination §6; Evidence §41½.

(a) Various lines serving same points of origin and destination maintained different rates on coal. Complainant attempted to prove unreasonableness by showing that class rates of all lines on miscellaneous commodities from and to these points are identical. HELD: Competitive and transportation elements are vastly different as between coal and commodities moving on class rates, the former being made without regard to class-rate structure. Chapel v. P. R. R., 92 I. C. C. 662, 664.

§24. Paper Rate.

(a) While fact that shipment was isolated is to be considered, it is not controlling in determining the reasonableness of a rate; such issue must be decided upon it merits. Armacost & Co., 88 I. C. C. 187; Meigs Pulpwood Co., 78 I. C. C. 473. Chattanooga Bottle & Glass Mfg. Co v. S. Ry., 93 I. C. C. 71, 72.

ALL OTHER CITATIONS

Armacost & Co. v. M. & M. T. Co., 88 I. C. C. 185.

§25. Past Rates.

See Supra §16; Evidence §29, §43, §66; Passenger Fares and Facilities §7.

(a) The contention that a rate found reasonable as of June 25, 1918, must be considered reasonable prior thereto is without merit. Delta Beet Sugar Corp. v. Director General, 93 I. C. C. 551, 554.

ALL OTHER CITATIONS

Cleveland Provisions Co. v. A. G. S. R. R. Co., 88 I. C. C. 161.

§26½. Prior adjudication.

See Classification §17; Evidence §43½, V; Previous Decision of Commission; Reparation §8½.

(a) Complainant attacked commodity rate charged on sand, carloads from Guion, Ark., to Sapulpa, Okla., as unreasonable. Guion is on the M. P., 177 miles west of Aurora, Mo. Shipments moved via M. P., Aurora and Frisco, distance 344 miles, charged 15c prior to July 1, 1922 and 13.5c thereafter. The commodity is glass or silica sand and is considerably more valuable than common river sand. The rate attacked, subject to the horizontal increases and reductions since effective, was prescribed by the Commission in 60 I. C. C. 736. HELD, rate attacked not unreasonable, complaint dismissed. Liberty Glass Company v. M. P. R. R., 89 I. C. C. 362.

(b) Rates based upon a prior decision of the commission can not be found unreasonable in a subsequent proceeding, in absence of any showing of changed conditions or of facts not previously considered, unless it be clearly shown that the commission erred in its decision. Lake Dock Coal Cases, 89 I. C. C. 170, 178.

(c) Upon further consideration of the original report, 87 I. C. C. 740, adjustment of rates on naval stores from points in the Southeast and Mississippi Valley to various destination territories, modified to permit application of rates to Milwaukee, Wis., which do not exceed rates found reasonable to Chicago, Ill., by more than 2 cents on rosin from both New Orleans and Jacksonville groups and 4 cents on turpentine from New Orleans group and 3 cents from the Jacksonville group. Naval Stores from Southern Points, 89 I. C. C. 634.

(d) Rates on grain from Humboldt to St. Louis, Mo., found not unreasonable or unduly prejudicial as compared with rates from Salem and Verdon, Nebr., from which points defendant maintains lower rates in order to compete with Missouri Pacific. Rates assailed are considerably less than that prescribed by commission in South Dakota R. R. Comrs., 73 I. C. C. 347, from points in South Dakota to points in Iowa, and in Oklahoma Corporation Commission, 80 I. C. C. 607, between points in Oklahoma and points in Arkansas, for single-line hauls for the distance involved in this case. Cooper Co. v. C., B. & Q. R. R. Co., 91 I. C. C. 50.

(e) Rates on rosin from southeastern points to Kalamazoo and Grand Rapids, Michigan found not unreasonable or unjustly discriminatory as compared with rates from same points to Chicago, Ill., Milwaukee, Wis., and Detroit, Mich. At time this case was submitted defendants had in course of preparation a general readjustment of rates and in Naval Stores from Southern Points, 87 I. C. C. 740, commission fixed reasonable rates for future. New adjustment will result generally in removal of existing fourth-section departures and of any undue prejudice to complainants. Western Paper Makers Asso. v. Director General, 91 I. C. C. 223.

(f) Rates on slack barrels from St.

Joseph, to points in Oklahoma found not unreasonable, unduly prejudicial, or otherwise unlawful as compared with rates from Dallas and Fort Worth, Tex., which latter points take rates based on distance scale prescribed in Shreveport case, 48 I. C. C. 312. Complainant's position is that alleged discrimination should be ordered removed by reductions from St. Joseph rather than by increases from alleged preferred points, but there are no facts of record which would justify extension of so low a scale as Shreveport scale from St. Joseph and other points to Oklahoma. Hollingshead Co. v. M., K. & T. Ry. Co., 91 I. C. C. 654.

(g) Rate on hollow building tile from Kankakee, Ill., to Chicago, Ill., during Federal control found not unreasonable. Rate assailed compares favorably with rates prescribed by commission in National Paving Brick Mfrs. Asso., 68 I. C. C. 213, for interstate short hauls on articles in uniform brick list, including hollow building tile, for application within c. f. a. territory, including all points in Illinois. Illinois Fire-Proof Construction Co. v. Director General, 91 I. C. C. 753.

(h) Rate on roofing paper from Madison, Ill., to Oklahoma City, Okla., found unreasonable to extent it exceeded rate prescribed by commission in Minnesota & Ontario Paper Co., 66 I. C. C. 571, and related cases cited therein, which rate became effective subsequent to movement of shipments here involved. Reparation awarded. Turner Sheet Metal Co. v. C. R. I. & P. Ry. Co., 91 I. C. C. 763.

(i) Rates as increased to basis higher than that authorized in the Fifteen Per Cent case, 45 I. C. C. 303, and subsequent general advances, and subsequently reduced to basis reflecting proper authorized advances, found not unreasonable. Complainant offered no evidence to indicate that earnings under rates attacked were excessive, but merely urges that rate was unreasonable per se. Moreover, the subsequent reduction of a rate is insufficient to establish unreasonableness. General Chemical Co. v. Director General, 93 I. C. C. 193.

(j) Following Hale-Halsell Co. 83 I. C. C. 313, fifth-class rate charged on toilet paper from Green Bay, Wis., to Muskogee, Okla., found unreasonable to extent it exceeded lower rate subsequently established pursuant to Minnesota & Ontario Paper Co., 66 I. C. C. 571. Reparation awarded. Hale-Halsell Co. v. K., O. & G., 93 I. C. C. 205.

(k) Rates on newsprint paper, wrapping paper and paper napkins, from Little Falls, Minn., and Port Edwards, Nekoosa, Rhinelander, and Green Bay, Wis., to San Antonio, found unreasonable to extent they exceeded rates found reasonable in Minnesota & Ontario Paper Co., 66 I. C. C. 571. Reparation awarded. San Antonio Paper Co. v. S. A. & P. Ry., 93 I. C. C. 352.

(l) Fact that a rate somewhat lower than rate charged was prescribed by the commission for the future does not necessarily show that the former rate was unreasonable. Especially is this so where the new rate is a part of an extensive readjustment. News Corp. v. M. P. 93 I. C. C. 381, 383.

(m) Rates prescribed in the Mississippi Valley case, 64 I C. C. 306, were not prescribed as standards of reasonable maximum rates, but primarily to bring about an adjustment in harmony with requirements of section 4 of the act and at the same time conserve revenues of carriers. Nor may such rates be used as a measure of the rates between points in the Southeast. Paper Boxes between Southeastern Points, 93 I. C. C. 559, 563.

(n) Rates on cement from Cape Girardeau (Gulf Junction), Mo., to points in Illinois found unreasonable and unduly prejudicial as compared with rates from competing Illinois mills to same destinations and to extent they exceed those which would result under the distance scale of rate prescribed in Atlas Portland Cement Co., 81 I. C. C. 1. Reasonable and nonprejudicial rates prescribed for the future. Cape Girardeau Portland Cement Co. v. B. & O., 95 I. C. C. 632.

(o) Following Lakewood Engineering Co., 88 I. C. C. 588 commodity rate on portable railway track from Tullytown, a transcontinental Group A point, to Pheonix, found not unreasonable as compared with rates on rail and crosstie fastenings, and on various iron and steel articles. In the cited case the commission found not unreasonable the commodity rate applying from transcontinental Group B points to Pheonix and Pacific coast points and record herein fails to show that level of the Group A rate is im-

proper as compared with that from Group B. State of Arizona v. A. E. R. R., 95 I. C. C. 658.

(p) Rates on paper bags and wrapping paper from Marinette, Wis., to Fort Worth, Dallas, and San Antonio, Tex., found unreasonable to extent they exceed rate prescribed in Minnesota & Ontario Paper Co., 66 I. C. C. 571. Reparation awarded. Victory Bag & Paper Co. v. A., T. & S. F., 95 I. C. C. 677.

(q) Rates on wrapping paper from Port Edwards and Nekoosa, Wis., and Otsego, Mich., on paper bags from Decatur, Ill., and on printing paper from Neenah, Wis., to Pueblo, Colo., found unreasonable to extent they exceeded rates prescribed in Minnesota & Ontario Paper Co., 66 I. C. C. 571, from Wisconsin and related points to Colorado common points. Reparation awarded. Colorado Paper Co., v. A., T. & S. F., 96 I. C. C. 73.

(r) Rates on lumber, box shooks, and articles taking lumber rates from Williams, Flagstaff, and Holbrook, Ariz., to Naco, Ariz., destined to Cananea, Mexico, found unreasonable to extent they exceed or may exceed rates prescribed in 80 I. C. C. 487, on same commodities from same points of origin, via Nogales, when destined to Cananea. Arizona Lumber & Timber Co. v. A. E., 96 I. C. C. 203.

(s) Upon further hearing, modification of original order entered in this proceeding, 60 I. C. C. 337, as to rates on coal from points in Indiana to Crawfordsville, Sheridan, Logansport, Monticello, Anderson, and Fort Wayne, Ind., denied. The rates established were not relatively excessive, and it is apparent, because of competitive conditions, that the relation between the intrastate rates and the interstate rates between the same points and from Illinois and other States to these destinations was so close that the failure to increase the intrastate rates pursuant to Increased Rates, 1920, 58 I. C. C. 220, would have had a direct effect upon interstate rates and traffic. Indiana Rates, Fares, and Charges, 96 I. C. C. 644.

(t) Rates on clean rice and rice flour from points in Arkansas, interior Louisiana, and Texas to Salina, Kas., found unreasonable and unduly prejudicial, following 93 I. C. C. 517 and other cases cited. Reasonable and non-prejudicial rates prescribed for future and reparation awarded. Salina Chamber of Commerce v. A. & W. Ry. Co., 98 I. C. C. 290.

(u) Rates on certain iron and steel articles from various points in Ohio, Kentucky, Indiana, Alabama, Illinois, Pennsylvania, New York, and Missouri, to Dallas, Fort Worth, and Harrys, Tex., found unreasonable to extent that the factors from St. Louis, Mo., and points taking the same rates exceeded, prior to the effective date of the general reductions in rates, a certain amount, and from and including that date to extent they exceeded rates for similar distances as prescribed in Memphis-Southwestern Investigation, 77 I. C. C. 473. The rates from the other points of origin were and are unreasonable to extent they exceeded or may exceed the rates herein prescribed from St. Louis plus the established differentials. Bases for award of reparation and reasonable rates for the future prescribed. Atlas Metal Works v. A., C. & Y. Ry. Co., 100 I. C. C. 173.

(v) Rates on cottonseed from points in Oklahoma to Dallas and Fort Worth Tex,, found unreasonable to extent indicated in 80 I. C. C. 18, involving same territory; after effective date of order therein, to extent they exceed or may exceed distance rates prescribed in 98 I. C. C. 183, and applied in manner indicated therein. Reparation awarded. International Vegetable Oil Co. v. A. T. & S. F., 100 I. C. C. 240.

(w) Upon further hearing original report, 80 I. C. C. 335, reversed, and rates on rig irons from Iola, Kans., to Tulsa, Okla., found not unreasonable. The present record does not substantiate the original finding that "there is a regular and substantial movement." In Parkersburg Rig and Reel Co., 95 I. C. C. 181, the commission found that rates on this commodity were unreasonable to extent they exceeded 85 per cent of the rates contemporaneously in effect on oil-well outfits, thus fixing the relationship between oil-well supplies and rig irons provided that the rate applicable on oil-well supplies is a reasonable maximum rate; while the present rate on oil-well supplies is 92 per cent of the Class A rate prescribed in Memphis-Southwestern Investigation, 55 I. C. C. 515, it has not been proven a reasonable maximum rate. Bradford Rig & Reel Co. v. Director General, 100 I. C. C. 261.

(x) Claim of carriers that the use of a rule such as that in Western Cement Rate case, 52 I. C. C. 225, with respect to determination of mileages where a distance scale of rates, as herein prescribed, has been employed, is contrary to law, upon the ground that it is, in effect, an infringement of the provision which protects them against being short-hauled, not sustained. Southern Class Rate Investigation, 100 I. C. C. 513, 656.

(y) Upon further consideration, original report, 96 I. C. C. 195, wherein relationship between rates on wheat and flour from certain points in Oklahoma to Galveston, New Orleans, and other Gulf ports, for export, was found not unduly prejudicial or discriminatory as compared with relationship of rates on same commodities for export from other points in Oklahoma and other States, affirmed and complaint dismissed. No reason is seen why relationship between rates on wheat and flour for export should be different from that prescribed in respect of domestic traffic, and if carriers should fail to so realign their export rates on these commodities from affected territory complainant may bring that situation to commission's attention. Oklahoma Millers' Asso. v. A. & V., 102 I. C. C. 1.

(z) Proposed readjustment of rates on grain and grain products and seed and seed products from points in Colorado, Kansas, Nebraska, Missouri, and Oklahoma to the lower Mississippi River crossings, and to points in Mississippi Valley, resulting in both decreases and increases, the latter predominating, found not justified. Present rates compare more favorably than those proposed with rates on like traffic prescribed between points in Oklahoma and Arkansas in 80 I. C. C. 607, and between points in Oklahoma and Texas prescribed in 101 I. C. C. 116. Kansas City Board of Trade v. A. & W. Ry., 102 I. C. C. 285, 304.

(aa) Rate on liquefied petroleum gas from Burkburnett, Tex., to West Tulsa, Okla., found unreasonable to extent it exceeded lower rate found reasonable in Western Petroleum case, 66 I. C. C. 426, for application on refined oil from the Burkburnett group to points in Oklahoma Group 3, which includes West Tulsa. Reparation awarded. Tidal-Western Oil Corp. v. M., K. & T., 102 I. C. C. 322.

(bb) Rates on iron and steel pipe from points in Texas to points in Oklahoma, and from points in Oklahoma to points in Texas found unreasonable to extent they exceeded rates for like distances computed under the scale prescribed on iron and steel pipe in the Memphis Southwestern Investigation, 77 I. C. C. 473. Reparation awarded. Texas-Pacific Coal & Oil Co. v. C., R., I. & P., 102 I. C. C. 369.

(cc) Combination rates on furniture from certain points in Indiana, Michigan, New York, and West Virginia to Little Rock, Pine Bluff, and Fort Smith, Ark., found not unreasonable as compared with rates subsequently established pursuant to Memphis-Southwestern Investigation, 77 I. C. C. 473, and which resulted in removal of fourth-section departures protected by appropriate applications and in a reduction in general level of rates on this traffic. Combination basis was maintained on furniture and numerous other commodities from origins in question to all points in Arkansas, except to those located in the Arkansas-Louisiana group. Moreover, earnings under rate found justified in 25 I. C. C. 299 compare favorably with those here assailed. Eads Bros. Furniture Co. v. B. & O., 102 I. C. C. 381.

(dd) Rates on vegetable oils from points in Oklahoma to Houston found unreasonable to extent they exceed rates for like distances under the scale for like traffic prescribed in Oklahoma Corp. Comm., 98 I. C. C. 183. Reasonable rates prescribed for future and reparation awarded. Houston Packing Co. v. A. T. & S. F., 102 I. C. C. 385.

(ee) Following 87 I. C. C. 310, rates on corn and oats from points in Iowa and Nebraska to Ogden and other Utah points found unreasonable to extent they exceeded lower contemporaneous rate to farther distant points, which lower rate was subsequently established to Ogden and other intermediate points. Reparation awarded. Farrell v. C., M. & St. P., 102 I. C. C. 455.

(ff) Combinations of proportional rates basing on East St. Louis or Kankakee, Ill., on petroleum and products moving from Coffeyville, Kans., and Tulsa and Boynton, Okla., to destinations in Indiana, Ohio, Michigan, and Pennsylvania, found unreasonable to extent that components from basing points exceeded lower proportionals subsequently established. In complying with commission's

decision in Reduced Rates, 1922, 58 I. C. C. 676, 720, carriers reduced proportionals from points in mid-continent fields to basing points, but similar reductions beyond were not effected until subsequent to shipments. Reparation awarded. Nat'l. Petroleum Asso. v. C. & A. R. R., 102 I. C. C. 459.

(gg) Rates on rice from certain points in Louisiana to Baton Rouge, destined to interstate and foreign points after cleaning in transit, found unreasonable and unduly prejudicial to extent they exceeded, in addition to transit charge, rates under a distance scale prescribed in 69 I. C. C. 508. The claims are identical in character and principle with those on which reparation was awarded in cited case and transportation conditions over route of movement are practically same as those from and to points between which prescribed scale applies. Reasonable rates prescribed and reparation awarded. Baton Rouge Rice Mill v. N. O., T. & M., 102 I. C. C. 507.

(hh) Rates on salt from Anse La Butte, Avery, Salt Mine, Weeks Island, and Jefferson Island, La., to points in Mississippi and from Baldwin, La., to Jackson, Miss., found unreasonable and unduly prejudicial as compared with rates from Memphis and New Orleans, competing points. Distance scales were prescribed in 77 I. C. C. 473 and other cases where rates between points in southern territory were considered and a similar basis is appropriate here since it would be less likely to create difficulties in subsequent readjustments. Distance rates with a 45,000-pound minimum prescribed for future and reparation awarded. Miss. R. R. Comm. v. A. & V., 102 I. C. C. 540.

(ii) Upon contention that the rate relationship prescribed in the Paper case, 66 I. C. C. 571, between various origin groups and points in Fox River and related groups is improper, particularly on long-haul traffic to Texas, and that the 5-cent differential prescribed from International Falls and other points over Fox River group rate is excessive and should be reduced, FOUND: Relationships were established after careful consideration on a comprehensive record, and should not be changed. Wortham-Carter Publishing Co. v. Director General, 102 I. C. C. 729, 743.

(jj) Carload minima on lumber and rules in connection therewith from points in Oregon, Washington, Idaho, and Montana to transcontinental territory, prior to reductions ordered in Lumber Carload Minima, 56 I. C. C. 318, 68 I. C. C. 98, found not unreasonable or otherwise unlawful. Evidence offered by complainant found too meager to justify application of minima and rules prescribed, and proof of payment and bearing of charges found insufficient to support an award of reparation. Furthermore, cited cases embraced a widespread readjustment of rates under which no reparation is ordinarily awarded on shipments moving prior thereto. Western Pine Mfrs. Asso. v. Director General, 102 I. C. C. 753.

(kk) Rates on wrought-iron and steel pipe and fittings and on oil-well supplies from certain points in Texas to Haynesville, La., found unreasonable to the extent they exceeded specific commodity rates fixed on basis of distance scale prescribed in Memphis-Southwestern Investigation, 77 I. C. C. 473, with addition of a differential to compensate for an extra line haul. Reasonable rates prescribed and reparation awarded. Humble Oil & Refining Co. v. L. & N. W. R. R., 102 I. C. C. 761.

ALL OTHER CITATIONS

Interstate Rice Milling Co. v. L. W. Ry. Co., 85 I. C. C. 606; Wadhams Oil Co. v. C. & N. W. Ry. Co., 85 I. C. C. 705; Prairie Pipe Line Co. v. Director General, as Agent, 88 I. C. C. 167; Boher & Hosfeld v. B. & M. R. R., 88 I. C. C. 449; Barker Produce Co. v. S. P. Co., 88 I. C. C. 385; Great Western Paper Co. v. M. St. P. & S. S. M. Ry. Co., 88 I. C. C. 582.

§27½. Rate via competing line.

See Evidence §30, §47; Routing and Misrouting §5; Through Routes and Joint Rates §15½.

(a) Existence of lower rates over routes other than a particular route of movement and subsequent reduction of the rate over the particular route are not sufficient to establish that the previous rate was unreasonable. American Stores Co. v. P. R. R. Co., 89 I. C. C. 41, 43.

(b) The existence of a lower rate over other routes does not of itself warrant a condemnation of the rate charged. Goodrich Bros. Hay & Grain Co. v. C. C. C. & St. L. Ry., 95 I. C. C. 5, 6.

(ba) No evidence bearing upon unreasonableness of rate assailed was offered by complainant other than that lower combination applied over another route. HELD: Maintenance of a lower rate by

a route other than route of movement does not, in and of itself, warrant a finding of unreasonableness. Midland Coal Co. v. St. L. S. F. 92 I. C. C. 283, 284.

(c) Rates on anthracite coal from Shamokin district, Pa., to Elmira, N. Y., via the Pennsylvania direct, found not unreasonable as compared with lower single-line haul rates maintained by other carriers from and to same points. Such rates compare favorably with those approved in Anthracite case, 35 I. C. C. 220, from anthracite field to various New York destinations for comparable distances. Chapel v. P. R. R., 92 I. C. C. 662.

(d) Fifth-class rate on return movement of copper bars, rejected by vendee, from Rome, N. Y., to Perth Amboy, N. J., found not unreasonable as compared with lower commodity rate from Perth Amboy to Rome, which lower rate was made applicable in both directions subsequent to movement. Those here involved were only shipments ever made from Rome to Perth Amboy, the heavy movement being in opposite direction, and it was not shown that the higher rate was intrinsically unreasonable. Moreover, rates assessed are not out of line with copper-bar rates in general from New York Harbor points. Former report, 64 I. C. C. 691, affirmed. Raritan Copper Works v. Director General, 92 I. C. C. 671.

(e) Fifth-class rate on structural steel from Carnegie, Pa., to Richmond, Va., found unreasonable to extent it exceeded lower joint commodity rate contemporaneously in effect from Pittsburg proper and other competing points in same rate group to same destination, which lower rate carriers subsequently established from Carnegie. Reparation awarded. McClintic Marshall Steel Supply Co. v. P., C. & Y., 95 I. C. C. 459.

(f) Existence of lower rate over other routes and the subsequent reduction to that basis of the rate over a particular route of movement are not sufficient to establish unreasonableness of the previous rate. National Supply Co. v. N. Y. C., 95 I. C. C. 461.

(g) Rates from New Albany to other points in Indiana on bituminous coal originating in Kentucky and West Virginia and barged to New Albany down the Ohio River found unreasonable as compared with rates from Cincinnati, a competing point shipping to the same destination and to which moves under similar transportation conditions. Moreover, rates for the short intrastate movement are too high a level as compared with intrastate rates on bituminous coal prescribed by the commission in 66 I. C. C. 338 and numerous other cases. Reasonable distance scale of rates prescribed for the future. Slider v. B. & O., 96 I. C. C. 65.

(h) Rate on shipments of sisal from Indianapolis, Ind., to North Kansas City, Mo., during Federal control, found unreasonable as compared with rate contemporaneously in effect from Indianapolis to St. Paul, Minn., and with import commodity rate in effect from New Orleans, La., to both St. Paul and North Kansas City. Reparation awarded and reasonable rates prescribed for the future. Capital Warehouse Co. v. Director General, 96 I. C. C. 293, 301.

(i) Commission has uniformly found that the existence of a lower rate over a competing route does not of itself establish the unreasonableness of the rate actually charged. Rudolph & Co. v. P. R. R., 101 I. C. C. 111, 112.

ALL OTHER CITATIONS

Focke v. G. H. & S. A. Ry. Co., 85 I. C. C. 137; Midland Coal Co. v. F. S. & W. R. R. Co., 85 I. C. C. 146; Staley Mfg. Co. v. Director General, as Agent, 85 I. C. C. 418; Portland Flouring Mills Co. v. G. N. Ry. Co., 88 I. C. C. 94; Shafer Lumber Co. v. Director General, as Agent, 88 I. C. C. 472; Consolidated Coal Co. v. M. P. R. R. Co., 88 I. C. C. 523.

§27¾. Rate in Opposite Direction.

See Classification §17; Differentials; Evidence §30, §56, §66; Relative Rates; Through Routes and Joint Rates §8.

(a) Complainant attacked class rates charged on seed envelopes less carloads from San Francisco, Calif., to Sabetha, Kas., between Sept., 1921 and Nov. 1922 as unreasonable. Distance 1,589 miles, charged first class $4.665 prior to July 1, 1922 and $4.20 thereafter. Reparation is sought to basis of $3.335 on shipments prior to July 1, 1922 and to $3 thereafter, these rates being applicable in the opposite direction. On July 10, 1923 the latter rate was established from San Francisco to Sabetha. Present rate is $2.41 established after defendants attention was called to the fact that seed envelopes in less carloads were

shipped from Rochester, N. Y., to points as far west as Denver, Colo., 1,621 miles, at rate of $2.81. HELD, rate attacked unreasonable to extent it exceeded rate in opposite direction, reparation awarded. Galloway Lithographing Co. v. S. P. Co., 95 I. C. C. 11.

(b) Complainant attacked commodity rates charged on scrap brass and brass ingots or pigs, carloads, between New York, Pittsburgh and Meadville, Pa., and between New York, Philadelphia and Baltimore as unjust and unreasonable. Rates from New York to Pittsburgh exceeded those in the opposite direction. Meadville is intermediate to East Liberty on the route to New York over the Erie and application of fifth class was in violation of the fourth section. HELD, rates attacked from New York to Pittsburgh, East Liberty and Meadville, Pa., unreasonable to extent they exceeded rates in the opposite direction, reparation awarded. Union Smelting & Refining Co. v. C. R. R. of N. J., 95 I. C. C. 104.

(c) Complainant attacked commodity rates on fresh meats and packing house products, carloads, from Duluth to St. Paul, Minn., as unreasonable, unjustly discriminatory and unduly prejudicial in comparison with rates on the same commodities over the same routes in the reverse direction. Present rates are Duluth to St. Paul 42c on fresh meats, 25.5c on packing house products; St. Paul to Duluth 23c on fresh meats and 15.5c on packing house products. The treatment accorded Duluth on traffic to St. Paul is conspicuously out of harmony with the general adjustment in this territory. HELD, rates attacked from Duluth to St. Paul unreasonable to extent they exceed 28c on fresh meats and 23c on packing house products and unduly prejudicial to extent they exceed rates on like traffic from St. Paul to Duluth. Duluth Chamber of Commerce v. C. St. P. M. & O. Ry., 98 I. C. C. 352.

(d) Sixth-class rate on imported flaxseed from New York Harbor points to Buffalo found unreasonable as compared with rate on flaxseed between same points in opposite direction, and to extent it exceeded 60 per cent of New York-Chicago rate less 2 cents. Reasonable rate prescribed and reparation awarded. American Linseed Co. v. E. R. R. Co., 91 I. C. C. 663.

(e) Difference in transportation conditions in opposite directions may justify a difference in rates, provided the higher rate is not intrinsically unreasonable. Raritan Copper Works v. Director General, 92 I. C. C. 671, 672.

(f) Rates assessed on seed envelopes from San Francisco to Sabetha, Kans., found unreasonable to extent they exceeded lower rates contemporaneously applicable in the reverse direction. Class as well as commodity rates on various other articles are the same in both directions and eastbound rates here in issue should have been no higher than those westbound. Reparation awarded. Galloway Lithographing Co. v. S. P., 95 I. C. C. 11.

(g) Rates on scrap brass and brass ingots or pigs from New York rate points, including Bush Docks, Brooklyn and Newark to Pittsburg, East Liberty, and Meadville, Pa., found unreasonable to extent they exceeded lower rates contemporaneously applicable in opposite direction. Reasonable rates for future prescribed and reparation awarded. Union Smelting & Rfg. Co. v. C. R. R. Co. of N. J., 95 I. C. C. 104.

(h) Rate on wet brewers' grain from Philadelphia to Newark found unreasonable to extent it exceeded lower rate subsequently established, which lower rate was contemporaneously in effect over another route and in the reverse direction over defendants' own route. Reparation awarded. Penn Grains & Feed Co. v. R. Co., 102 I. C. C. 100.

ALL OTHER CITATIONS

International Paper Co. v. Director General, as Agent, 88 I. C. C. 211.

§28. Relativity of the rate.

See Advanced Rates §3 (r), §17 (y); Blanket Rates §10½ (t); Class Rates §2; Classification §17; Commodity Rates §5 (7d); Differentials; Discrimination; Evidence; Export Rates and Facilities §6 (bba) (cca); Relative Rates; Through Routes and Joint Rates §8.

(a) Where it is proposed radically to change within a limited area the system of rates which has been long in effect and generally recognized as essential, the evidence should be convincing of the justification for such a change. It is the commission's duty to consider, among

other things, not only such benefits as might be realized by those who urgently request the change, but also what the probable effect would be upon a large body of producers who would not be in a position to avail themselves of benefits of the change requested. Mississippi Railroad Commission v. A. & V. Ry. Co., 89 I. C. C. 47, 59.

(b) Rates on bituminous lump and slack coal from the Rich Hill and Appleton, Mo., Pittsburg, Kans., Arkansas-Oklahoma, and Spadra, Ark., groups to Atchison, Kans., found unreasonable for future to extent they exceed the contemporaneous rates to St. Joseph, Mo. Southwestern Interstate Coal Operators' Asso. v. A. W. Ry. Co., 89 I. C. C. 73.

(c) Rate on copper bullion from Clarkdale, Ariz. to San Pedro and East San Pedro, Calif., found unreasonable as compared with rates from Montana, Nevada, and Utah copper-producing points to Pacific coast ports and with rates prescribed in Phelps Dodge Corp., 57 I. C. C. 714, from Douglas, Globe, and Clarkdale, Ariz., to Galveston, Tex. Reasonable rate for future prescribed. United Verde Extension Mining Co. v. A., T. & S. F. Ry. Co., 89 I. C. C. 95.

(d) Rates assessed on green coffee from New Orleans, La., to Wichita, Kans., found not unreasonable or discriminatory as compared with lower rate contemporaneously in effect to Kansas City, Mo., or with lower rate subsequently established following the general readjustment of coffee rates in 58 I. C. C. 716 and 64 I. C. C. 26, when Wichita and Kansas City were placed upon a rate parity. Continental Coffee Co. v. A., T. & S. F. Ry. Co., 89 I. C. C. 159.

(e) Rate on dressed poultry from Springfield, Mo., to Key West, Fla., for export to Cuba, found unreasonable to extent it exceeded the rate on like traffic from Kansas City, Mo. Ordinarily traffic from Kansas City would move through Springfield, and class and commodity rates, generally, from Springfield to the Southeast are not higher than from Kansas City. Reparation awarded. Armour & Co. v. A. C. L. R. R. Co., 89 I. C. C. 162.

(f) Rates on apples from Chelan, Wash. to San Francisco, Calif., found unreasonable as compared with lower rates from many important apple-shipping points in same general territory to same destination. Reparation awarded. Jacobs, Malcom & Burtt v. G. N. Ry. Co., 89 I. C. C. 173.

(g) Rate on green-salted hides from Milwaukee, Wis., to Whitehall, Mich., found unreasonable to extent it exceeded lower rate contemporaneously applicable on like traffic to Grand Haven, Grand Rapids, Muskegon and Mill Creek, Mich., points in the general vicinity of Whitehall, and made applicable to Whitehall subsequent to movement. Reparation awarded. Eagle-Ottawa Leather Co. v. Director General, as Agent, 89 I. C. C. 233.

(h) Rates on cotton seed from Broseley, Mo. to Cairo, Ill., found unreasonable as compared with lower rates to Cairo from other Missouri and Arkansas points for greater distances and to extent it exceeded rates found reasonable from Broseley to Cairo in Memphis Southwestern Investigation, 77 I. C. C. 473. Reparation awarded. Roberts Cotton Oil Co. v. B. C. R. R. Co., 89 I. C. C. 255.

(i) Rates on crude sulphur from Sulphur Mine, La., to Jackson, Miss. found unreasonable to extent they exceed rate to Hattiesburg, Miss. The distance to Jackson and Hattiesburg is the same, and no valid reason is shown why rate to Jackson should be higher than to Hattiesburg. Maximum reasonable rate prescribed and reparation awarded. Jackson Traffic Bureau v. B. R. R. & C. Co., 89 I. C. C. 282.

(j) Rates on secondhand steel rails and angle bars, in mixed carloads, from Sault Ste. Marie, Mich., to Duluth, Minn., found unreasonable to extent they exceeded lower rates from Sault Ste. Marie, Ont., a farther distant point, which lower rates were published in accordance with Rule 77 of Tariff Circular 18-A and were subsequently established from Sault Ste. Marie, Mich. Reparation awarded. Duluth Iron & Metal Co. v. Director General, as Agent, 89 I. C. C. 343.

(k) Rate on silica sand from Guion, Ark., to Sapulpa, Okla., found not unreasonable as compared with rates from Guion to other manufacturing points in Oklahoma for similar distances. General level of rates in the southwest is higher than in c. f. a. territory, but measured by relative ton-mile earnings, the present level of rates prescribed by commission in 33 I. C. C. 8; 57 I. C. C. 259; and 85 I. C. C. 412, between certain points in

c. f. a. territory is higher than rate from Guion to Sapulpa. Moreover, rate complained of, subject to horizontal increases and reductions since effective, was prescribed in Odell-Daly Material Co., 60 I. C. C. 737. Liberty Glass Co. v. M. P. R. R. Co., 89 I. C. C. 362.

(l) Rates on fresh fruits and vegetables from Los Angeles and San Francisco, Calif., to Douglas and Bisbee, Ariz., found unreasonable to extent they exceeded the contemporaneous class C rates, which basis was found reasonable and prescribed by commission in Murray & Layne Co., 59 I. C. C. 552, and various other cases. Rates equivalent to class C were subsequently established by carriers. Reparation awarded. Buxton-Smith Co. v. A., T. & S. F. Ry. Co., 89 I. C. C. 373.

(m) Rate on gasoline from Porters Falls, W. Va., to Philadelphia, Pa., found unreasonable to extent it exceeded lower rate contemporaneously applicable on petroleum products, including gasoline, from points in all directions around Porters Falls. Reparation awarded. Atlantic Refining Co. v. Director General, as Agent, 89 I. C. C. 391.

(n) Combination rate to and from Vicksburg, Miss., on staves and heading from Holly Ridge to Savannah and Brunswick, Ga., and Jacksonville, Fla., found not unreasonable as compared with rate from Vicksburg to same destinations. Comparisons introduced by defendants show that both factors composing rates assailed are not out of line and are comparable with rates for similar distances in same general territory. Moreover, shipments from Holly Ridge require additional service of crossing the river, by ferry at Vicksburg. Jackson Traffic Bureau v. A. & V. Ry. Co., 89 I. C. C. 399.

(o) The rates on coal from eastern Kentucky have never borne a definite relationship to those from southern Illinois, and there is general recognition that geologically, and to a considerable extent commercially, the coals from the two districts are different. Cancellation of Coal Rates to Minnesota, 89 I. C. C. 573, 586.

(p) Rates on petroleum and products from Lawrenceville, Ill., found not unreasonable as compared with lower rates to the Virginia cities. Rates to Bristol do not appear to have been unreasonable when considered either upon basis of earnings thereunder or in comparison with rates to the Virginia cities which have been recognized as being low. They also compare favorably with rates for comparable and shorter distances to other points. Indian Refining Co. v. Director General, as Agent, 89 I. C. C. 657.

(q) Rate on apples from Chelan, Wash., to San Francisco, Calif., found unreasonable as compared with lower rates from many important apple-shipping points in same general territory to same destination. Reasonable rate for future prescribed and reparation awarded. Jacobs, Malcom & Burtt v. G. N. Ry. Co., 89 I. C. C. 723.

(r) Applicable combination rate assessed on coke from Cascade, W. Va. to Monessen, Pa., found unreasonable as compared with lower rate contemporaneously in effect from points in West Virginia and Pennsylvania to other Pennsylvania destinations for substantially similar distances, and to extent it exceeded lower rate established subsequent to movement and upon short notice under authority from the commission. A general strike of coal miners made it necessary for complainant to procure coke from whatever sources available in order that its plants might be kept in operation. Reparation awarded. Pittsburgh Steel Co. v. B. & O. R. R. Co., 89 I. C. C. 749.

(s) A shipper is entitled to a reasonable rate and one of the tests of a reasonable rate is its relationship to other rates on the same or analagous commodities between points in the same general territory for similar distances. Barrett Company v. St. J. & L. C. R. R., 91 I. C. C. 9, 11.

(t) It is true that in determining the reasonableness of rates, due consideration of their relation to other rates of the various carriers serving the same or competing localities should be given. In other words, section 1 of the act contemplates that rates to be just and reasonable must be relatively fair as between localities similarly situated, as well as reasonable per se. Delta Beet Sugar Corp. v. Director General, 93 I. C. C. 547, 549.

(u) It is true that in determining the reasonableness of rates, due consideration of their relation to other rates of the various carriers serving the same or competing localities should be given. In other words, section 1 of the act con-

templates that rates to be just and reasonable must be relatively fair as between localities similarly situated, as well as reasonable per se. Wyoming Coal Co. v. V. Ry., 96 I. C. C. 359, 367.

(v) A shipper is entitled to a reasonable rate and one of the tests of a reasonable rate is its relationship to other rates on the same or analogous commodities between points in the same general territory for similar distances. Wyoming Coal Co. v. V. Ry., 96 I. C. C. 359, 367.

(w) It is true that in determining the reasonableness of rates, due consideration of their relation to other rates of the various carriers serving the same or competing localities should be given. Section 1 of the act contemplates that rates to be just and reasonable must be relatively fair as between localities similarly situated as well as reasonable per se. Wyoming Coal Co. v. Virginian Ry., 98 I. C. C. 488, 497.

(x) A shipper is entitled to a reasonable rate and one of the tests of a reasonable rate is its relationship to other rates on the same or analogous commodities between points in the same general territory for similar distances. Wyoming Coal Co. v. Virginian Ry., 98 I. C. C. 488, 497.

(y) Charges collected on shipments of tanning extract from Andrews, N. C., to Mariner's Harbor, N. Y., found unreasonable to extent they exceeded those which would have accrued at rate applicable to New York City and points in vicinity thereof. Mariner's Harbor is within free-lighterage limits of New York Harbor; for many years practice has been to accord points within such lighterage limits same rates as apply to New York City; and, at time shipments moved, specific commodity rates were in effect on tanning extract from Carolina points to many eastern consuming points, but, as there had been no prior movement to Mariner's Harbor, that point was not named among New York City rate points accorded lower rate. Reparation awarded. Haley-Hammond Co. (Inc.) v. S. Ry. Co., 91 I. C. C. 1.

(z) A shipper is entitled to a reasonable rate and one test is its relationship to other rates on same or analogous commodities between points in same general territory for similar distances. Nagase & Co., 62 I. C. C. 422, 426, Barrett Co. v. St. J. & L. C. R. R. Co., 91 I. C. C. 9, 11.

(aa) Rate on lumber and products from Oakland, Calif., to Cactus, Ariz., found unreasonable to extent it exceeded rate to Tucson, Ariz., which point is generally maintained on a parity with Phoenix and Cactus. Reparation awarded. Pacific Tank & Pipe Co. v. S. P. Co., 91 I. C. C. 24.

(bb) Rates on bedroom furniture from Nashville, Tenn., to eastern and Virginia cities found not unreasonable, but unduly prejudicial to complainants and unduly preferential of competitors at Chattanooga, Tenn., to extent that percentage relationship of rates to first-class rates from Nashville exceeds percentage relationship of contemporaneous rates to first-class rates from Chattanooga. Standard Furniture Co. v. N., C. & St. L. Ry., 91 I. C. C. 27.

(cc) Rates on phosphate rock from Mount Pleasant, Columbia, and Siglo, Tenn., to New Albany, Ind., found unreasonable and unduly prejudicial to extent they exceed rates to Evansville, Ind., and Cincinnati, Ohio, competing points. Reparation awarded. Calumet Fertilizer Co. v. L. & N. R. R. Co., 91 I. C. C. 31.

(dd) Rates on phosphate rock from Mount Pleasant, Columbia and Siglo, Tenn., to New Albany, a north-bank Ohio River point, found unreasonable and unduly prejudicial in favor of Louisville, Ky., a south-bank Ohio River point, to extent that they exceeded or exceed rates to Louisville by more than differential subsequently established, and which resulted in removal of undue prejudice herein found to exist. Reparation awarded. Calumet Fertilizer Co. v. L. & N. R. R. Co., 91 I. C. C. 31.

(ee) Sixth-class rate on coal tar, in tank-car loads from Fairmont, to Everett (East Boston), Mass., found unreasonable as compared with lower commodity rates contemporaneously in effect from Dunbar, Pa., and other points to same destination, and to extent it exceeded lower commodity rate subsequently established. Complainant made application for establishment of commodity rates more than five months prior to movement of shipments but, due to inconsistencies in commodity rates on coal tar, carriers delayed their establishment. Re-

paration awarded. Barrett Co. v. B. & O. R. R. Co., 91 I. C. C. 53.

(ff) Rate on cotton seed from Memphis, Tenn., to Altheimer, Ark., found unreasonable as compared with lower rates contemporaneously in effect between Memphis, Tenn., and Little Rock, and from points in Oklahoma and Louisiana to points in Arkansas for similar distances, and to extent it exceeded rate from Memphis to Pine Bluff, Ark., which latter rate was published in accordance with rule 77 of Tariff Circular 18-A, application for publication thereof to Altheimer not having been made prior to shipments, and was not subsequently established thereto by carriers. Reparation denied for lack of proper parties complainant. Russell-Heckle Seed Co. v. Director General, 91 I. C. C. 63.

(gg) Interstate rates on fertilizer and fertilizer materials from Wilmington, N. Car. to points in North Carolina found unreasonable and unduly prejudicial to extent they exceeded rates, distance considered, from Norfolk, Va., and Charleston, S. C., to points in North Carolina. Reasonable and nonprejudicial distance rates prescribed and reparation awarded. Goldsboro Chamber of Commerce v. A. C. L. R. R. Co., 91 I. C. C. 315.

(hh) Carload minimum weight on coiled elm hoops from Mississippi River territory to San Francisco and other California terminals found not unduly prejudicial as compared with lower c. l. minimum maintained to Seattle, Wash., and other north Pacific coast terminals. Ozark Cooperage & Lumber Co. v. A. & R. R. R. Co., 91 I. C. C. 329.

(ii) Rates on bituminous coal from Kanawha district, Group 3, W. Va., to New Boston (Yorktown) Ohio, found unreasonable as compared with rates to Ironton, Ohio, and East Ashland and Ashland, Ky., competing points. Lack of uniformity in applying certain increases in rates to these destinations resulted in widening spread formerly existing between rates to these points, to disadvantage of New Boston, and to advantage of competing points. Reparation awarded. Whitaker-Glessner Co. v. C. & O. Ry. Co., 91 I. C. C. 339.

(jj) Rates on corrugated strawboard and fiber-board boxes, knocked down flat, and fillers, in straight or mixed carloads, from Carthage, Ind., to Sand Springs, Sapulpa, and Blackwell, Okla., found unreasonable as compared with rates from Chicago Ill., Chippewa Falls, Wis., St. Louis, Mo., Keokuk, Iowa, Kansas City, Mo., Lawrence, Kans., and Chattanooga, Tenn., competing points shipping to same Oklahoma destinations. Reparation awarded and reasonable rates prescribed. American Paper Products Co. v. A., T. & S. F. Ry. Co., 91 I. C. C. 383.

(kk) Rates on lumber and forest products from points on Puget Sound & Cascade Ry. in Washington to eastern destinations, higher than coast-group basis of rates contemporaneously maintained on like traffic from competing points in Washington and Oregon situated on defendants' own branch lines, proprietary branch lines, or independent short-line connections, found not unreasonable, but unduly preferential and prejudicial. Reparation awarded for undue prejudice found to have existed prior to subsequent establishment of coast-group basis from points on Cascade Ry. Puget Sound & Cascade Ry. Co. v. Director General, 91 I. C. C. 467.

(ll) Rates on printing paper from Hamilton, in Cincinnati, Ohio, rate group, and on strawboard from Peoria, in Chicago, Ill., rate group to San Antonio, Tex., found unduly prejudicial as compared with rates from Fox River, Wis., group. Rates from these groups to Texas common points have always been based upon differentials under Fox River rate. San Antonio Paper Co. v. C. & A. R. R. Co., 91 I. C. C. 589.

(mm) Rate on bird's eye anthracite coal from Winton, to North Adams, Mass., found unreasonable as compared with rates from Wilkes Barre, Pa., to various interstate destinations, and to extent it exceeded rate from mines in Wyoming district to North Adams. Reparation awarded. Weston Dodson & Co. v. N. Y., O. & W. Ry. Co., 91 I. C. C. 659.

(nn) Rates on pig iron from South Chicago, Ill., to Acme, (Peoria), Ill., during Federal control, found unreasonable as compared with lower rate from South Chicago to Keokuk, Iowa, a farther distant point, which lower rate was subsequently established from South Chicago to Acme, thereby re-

moving any fourth-section departures that may have existed. Reparation awarded. Keystone Steel & Wire Co., v. Director General, 91 I. C. C. 741.

(oo) Rate on acid phosphate from New Orleans and Gretna, La., to Camden, Ark., found unreasonable to extent it exceeded lower rate contemporaneously applicable to Little Rock and Pine Bluff, Ark., to which Camden is intermediate. Such lower rate, which previously also applied to Camden, was canceled under assumption that it was obsolete and there was no necessity for its continuance. Carrier, however, made provision in its tariff for its restoration should any movement take place within one year from date of cancellation and shipments here involved moved within "one year." Moreover, complainant made request for its republication but carrier failed to comply with such request. Reparation awarded. Ouachita Cotton Oil Co. v. M. P. R. R. Co., 91 I. C. C. 750.

(pp) Rates on glass sand from Berkeley Springs, W. Va., to Charleroi, Pa., found unreasonable and unduly prejudicial to extent they exceeded lower rates contemporaneously maintained to Glassport, Monaca, Pittsburgh, Caraopolis, and Rochester, Pa., and to Wheeling, W. Va. and Steubenville, Ohio, competing manufacturing points. Reparation awarded. Macbeth-Evans Glass Co. v. B. & O. R. R. Co., 91 I. C. C. 758.

(qq) Rates on cotton seed from points in western Kentucky and Tennessee to Cairo, Ill., found not unreasonable or unduly prejudicial. Rates sought were compared with lower rates for like distances in Mississippi Valley and southeastern territory but such rates reflect the low levels of intrastate rates required by State authorities. Carriers instanced many higher rates under which cotton seed moves between points in the South and Southwest and also rates found unreasonable by commission in various cases which compare favorably with those assailed. Considering differences in distance and relative levels of rates, adjustment can not be said to be unduly preferential of Tiptonville and Dyersburg, Tenn. Cairo Cotton Oil Mill v. I. C. R. R. Co., 91 I. C. C. 765.

(rr) Rate on slack coal from Spadra, Ark., to Chanute, Kans., found unreasonable as compared with lower rates to various other competing points for like or greater distances, including Iola and Independence, Kas., which lower rate was subsequently established to Chanute. Reparation awarded. Ash Grove Lime & Portland Cement Co. v. M. P. R. R., 92 I. C. C. 51.

(ss) Fifth-class rate on toilet paper from Northumberland to New Hartford and South Utica, N. Y., found not unreasonable as compared with lower commodity rate from Groveton, N. H., a farther distant point to which Northumberland is intermediate. Sauquoit Paper Co. v. Director General, 92 I. C. C. 61.

(tt) Class rates on matches from Oswego, N. Y., to Philadelphia, Pa. found not unreasonable as compared with lower commodity rate to a more distant point is lower than on same commodity to an intermediate point is not proof that rate to intermediate point is unreasonable. Diamond Match Co. v. Director General, 92 I. C. C. 68, 69.

(uu) Rates on petroleum and products from El Dorado, Ark., to Vicksburg and Jackson, Miss., found unreasonable to extent they exceed rates from Shreveport, La., to same points, which basis is prescribed for future. Jackson Traffic Bureau v. A. & V., 92 I. C. C. 89.

(vv) While carriers may succeed in justifying a proposed new level of rates, a proper rate relationship as between competing points on certain commodities often is of greater importance to shipping public than measure of rates themselves. Spelter from Arkansas, 92 I. C. C. 136, 140.

(ww) Rates assessed on sporadic shipments of broken plaster molds from Chicago to Hannibal, Mo., found not unreasonable as compared with lower rate on brick, which lower rate was subsequently made applicable on broken plaster molds. While there was no rate or rating applicable on shipments here involved, earnings under rates charged compare favorably with earnings on same commodity and on brick from Chicago to other points in Michigan and Indiana. Atlas Portland Cement Co. v. Director General, 92 I. C. C. 171.

(xx) Fifth-class rates assessed on raw sugar from Brooklyn, New York, Weehawken, and Philadelphia to Marine City found not unreasonable as compared with lower commodity rates to farther distant Canadian points to which there is a substantial movement. Circumstances governing application of commodity rates to the Canadian points sub-

stantially differ from those surrounding movement of raw sugar to Marine City; the former are not acceptable as a measure of reasonableness on the latter; nor is the subsequent publication of the lower commodity rates to Marine City sufficient ground for a finding of unreasonableness in absence of other proof. Garcia Sugars Corp. v. N. Y. C., 92 I. C. C. 239.

(yy) Fifth-class rates assessed on fresh apples from Fort Sumner, N. Mex., to Omaha, Nebr., found unreasonable to extent they exceeded lower commodity rate contemporaneously in effect from the Roswell group, which lower rate was subsequently extended to Fort Sumner. Reparation awarded. Gilinsky Fruit Co. v. Director General, 92 I. C. C. 242.

(zz) Rate on bituminous coal from Wayco, Ohio to Randolph, N. Y., found unreasonable to extent it exceeded lower rate from Avella, Pa., and other grouped points, which lower basis of rates the commission approved in 62 I. C. C. 759. Reparation awarded. Randolph Furniture Works v. E. R. R., 92 I. C. C. 245.

(3a) Rate on lumber from Ranger, Tex., to Drumright, Burbank, Capon, Deer Creek, and Temple, Okla., found unreasonable to extent it exceeded lower group rate contemporaneously in effect from various points in the vicinity of Ranger to same Oklahoma destinations, which lower rate was subsequently made applicable from Ranger. Reparation awarded. Prairie Oil & Gas Co. v. A., T. & S. F., 92 I. C. C. 248.

(3b) Rate on dressed yellow-pine lumber from Mobile, Ala., to College Park, Ga., found unreasonable to extent it exceeded lower rate from Pensacola, Fla., and other points in general vicinity of Mobile to same destinations, which lower rate carriers subsequently established from Mobile. Reparation awarded. Watters-Tonge Lbr. Co. v. A. & W. P. R. R. 92 I. C. C. 251.

(3c) Rates on wrought-iron pipe from Columbia to Howard, Kans., found unreasonable to extent it exceeded lower rate contemporaneously in effect from Lake Charles and Alexandria, La., and from Houston and Temple, Tex., to destinations in Oklahoma and Missouri for similar and greater distances. Reparation awarded. Transcontinental Oil Co. v. A., T. & S. F., 92 I. C. C. 285.

(3d) Fifth-class rate on fresh tomatoes from St. Louis, Mo., to Pueblo, Colo., found unreasonable to extent they exceeded lower commodity rate contemporaneously in effect from New Orleans. Distance from St. Louis is comparatively less than from New Orleans, and a greater tonnage moves from former named point. Moreover, carriers subsequently established a commodity rate from St. Louis 1 cent lower than the New Orleans rate. Reasonable rate for future prescribed and reparation awarded. Pressey Fruit Co. v. M. P. R. R., 92 I. C. C. 287.

(3e) Rates on cotton, uncompressed and compressed in transit, from certain points in Louisiana to Galveston, Tex., found unreasonable as compared with rates from same points of origin to New Orleans; from points in Arkansas to New Orleans, from points east of Mississippi River to New Orleans; and from Arkansas points to Memphis for similar distances. Reparation awarded. Harriss, Irby & Vose v. B., S. L. & W. R. R., 92 I. C. C. 304.

(3f) Rates on paper stock (waste paper and rags) from points in the harbor of New York to points in New York, New Jersey, and New England, and to Niagara Falls, Canada, found not unreasonable or otherwise unlawful as compared with rates from New York (Manhattan Island) stations. Chase & Norton v. A. A. R. R., 92 I. C. C. 322.

(3g) Rates on crude clay from Dedrick, McIntyre and Dry Branch, Ga., to Niagara Falls, N. Y., and New Brighton, Pa., found not unreasonable as compared with lower proportional rate applying to the Ohio River which is restricted so as not to apply in constructing rates to Niagara Falls and New Brighton, or as compared with lower rate to Chicago. Niagara Wallpaper Co. v. M., D. & S. R. R., 92 I. C. C. 329.

(3h) Upon further hearing, original report, 78 I. C. C. 413, affirmed and rate on muriate of potash from Wilmington to Bay City, Mich., and Niagara Falls, N. Y., found unreasonable as compared with rates from Searles, Calif., and certain points in Utah to eastern destinations. Diamond Match Co. v. Director General, 92 I. C. C. 373.

(3i) When the commission has been called upon to adjust maximum reasonable rates on a specific commodity from different points of origin to a common destination, it has always given special consideration to comparisons of going rates on the same commodity in the same or similar territories, in relation to dis-

tances, revenue per car, per car-mile, and per ton-mile, variations in traffic density, and peculiarities in transportation which affect transportation costs in general. No practical reasons appear why these same standards should not be applied in fixing minimum reasonable rates. Salt Cases of 1923, 92 I. C. C. 388, 410, 411.

(3j) Present rates on salt from Louisiana mines to Chicago found unreasonably low. Their continuation would force reductions on lines of other carriers and would probably result in rate wars, injurious to carriers as a whole and to the public, and would thereby tend to cause increases in rates on other traffic. Reasonable minimum rates for future, which will protect the salt-rate structure, prescribed. Salt Cases of 1923, 92 I. C. C. 388, 408, 412.

(3k) Upon reconsideration, rates assessed on sporadic shipments of pipe from Gahagan, South Mansfield, and Harmon, La., and on oil-well supplies from Gahagan and Mansfield, to El Dorado, Ark., found excessive as compared with numerous rates fixed by commission on these commodities for application in the Southwest, and unreasonable to extent those on the pipe exceeded rates prescribed in 77 I. C. C. 473, and on the oil-well supplies to extent they exceeded those prescribed in 58 I. C. C. 610, for similar distances. Reparation awarded and former report, 85 I. C. C. 753, reversed. Crawford & Sebastian v. C. R. I. & P., 92 I. C. C. 453.

(3l) Rates on hogshead staves and headings from Helena to points in Kentucky found not unreasonable as compared with numerous rates applying from points in southern States to points in c. f. a. territory, for comparable distances. Forbes Mfg. Co. v. Y. & M. V. R. R., 92 I. C. C. 465.

(3m) Rates on fertilizer and fertilizer compounds, l. c. l., from Little Rock to points in Oklahoma found not unreasonable or otherwise unlawful as compared with rates on like traffic from Shreveport. Arkansas Fertilizer Co. v. A. & S. Ry., 92 I. C. C. 504.

(3n) Following Swift Lumber Co., 61 I. C. C. 485, rates on lumber, timber, and other forest products from Frost, Ala., a local point on the Garyville Northern R. R., to destinations in official and western trunk-line territories, and in Oklahoma, Texas, Kentucky, and Tennessee, found unreasonable to extent they exceeded by more than certain differentials the corresponding blanket rates contemporaneously maintained from Livingston and Garyville, La. Reparation awarded. Fleming Bros. v. G. N. R. R. Co., 92 I. C. C. 582.

(3o) Interstate rates on sulphuric, nitrating, and muriatic acid from Kansas City (Argentine), Kans. to destinations in Kansas and Texas found not unreasonable or otherwise unlawful as compared with rates from St. Louis and Chicago to same destinations. Ton-mile earnings yielded by Kansas City rates do not appear unduly high in comparison with those yielded by rates from St. Louis and Chicago, when difference in distance is considered. National Zinc Co. v. A., T. & S. F., 92 I. C. C. 587.

(3p) Rates on anthracite coal from Shamokin district, Pa., to Elmira, via the Pennsylvania direct, found not unreasonable as compared with lower single-line haul rates maintained by other carriers from and to same points. Such rates compare favorably with those approved in Anthracite case, 35 I. C. C. 220, from anthracite field to various New York destinations for comparable distances. Chapel v. P. R. R., 92 I. C. C. 662.

(3q) Fifth-class rate on return movement of copper bars, rejected by vendee, from Rome, N. Y., to Perth Amboy, found not unreasonable as compared with lower rates from Rome to other points for greater distances, or as compared with rates between various other points in c. f. a. territory. Fifth-class rates are not out of line with rates in general from New York Harbor on copper bars. Former report, 64 I. C. C. 691, affirmed. Raritan Copper Works v. Director General, 92 I. C. C. 671.

(3r) Rates on lumber from Flinn, Va., a local point on the Warm Springs Valley branch of the C. & O., to destinations in c. f. a., trunk-line, and New England territories, found not unreasonable, but unduly prejudicial to extent they exceeded or exceed contemporaneous rates from Marlinton, W. Va., and other competing points on the Greenbrier division. Reparation denied. Freehold Lumber Co. v. C. & O. Ry. Co., 92 I. C. C. 699.

(3s) Rates on coal from Leesburg, Pa., to Conneaut Harbor proper, or for reshipment by lake beyond, found unreasonable as compared with rates contemporaneously in effect from other

Pennsylvania and Ohio points to other Ohio lake ports in same general territory, and to extent they exceeded lower rates subsequently established. Reparation awarded. Pittsburgh & Conneaut Dock Co. v. P. R. R., 92 I. C. C. 719.

(3t) Rates on manure spreaders from Coldwater, Ohio, to destinations in Wisconsin intermediate to Winona, Minn., found unreasonable to extent they exceeded rates to Winona, or points in Winona group, which lower basis was subsequently established to Wisconsin points here involved. The Winona basis was in effect on commodities generally from certain other points in Ohio and c. f. a. territory to Wisconsin points here in issue, and was also applicable on all classes from these destinations in reverse direction to Coldwater. Reparation awarded. New Idea Spreader Co. v. Director General, 92 I. C. C. 742.

(3u) Rates on bituminous coal from mines in Illinois and western Kentucky to Ladysmith found not unreasonable or unduly prejudicial as compared with lower rates to the Twin Cities and Eau Claire, Wis. Rates from origin groups to Ladysmith are lower than scale rates for like distances prescribed in Holmes & Hollowell Co., 69 I. C. C. 11; moreover, in Lake Dock Coal Cases, 89 I. C. C. 170, the commission expresses its opinion that rates from southern Illinois fields to Minnesota and Wisconsin points were depressed. Great Western Paper Co. v. C. & E. I., 93 I. C. C. 95.

(3v) Rates on wet wood pulp from International Falls to certain destinations in c. f. a. territory found not unreasonable as compared with lower rates established subsequent to movement, with rates from Fox River district, Berlin, N. H., and Three Rivers, Quebec, with rates on newsprint from International Falls, or with rates found reasonable by commission in United Paperboard Co., 62 I. C. C. 59 and various other cases. Minnesota & Ontario Paper Co. v. Director General, 93 I. C. C. 105.

(3w) Rates on fuel wood from certain Idaho points to Spokane, Wash., found not unreasonable because in excess of rates found reasonable for corresponding distances in Wood Rates between North Pacific Coast Points, 61 I. C. C. 151. Neither the voluntary nor compulsory reduction of a rate by a carrier necessarily entitles shippers under the unreduced rate to reparation; moreover, the commission has long adhered to policy that in the public interest reparation should be denied when rates reduced by its orders have been in effect for long periods and when those orders require readjustments throughout an extensive territory and effect shippers at many points. See also 40 I. C. C. 517; 77 I. C. C. 683. Hawkeye Fuel Co. v. S. & E. Ry. & P. Co., 93 I. C. C. 157.

(3x) Rates on grapefruit, in straight carloads or in mixed carloads with oranges, from Jacksonville to Montana points, found not unreasonable. Complainant contended for a rate on oranges established by Director General when a group rate applicable on commodities in general from north Atlantic coast was extended to include Florida. But no special thought was given to reasonableness of the rate on oranges from Florida when that basis was established, and since no oranges move from Florida to Montana such group rate is in effect a paper rate and can not be accepted as a reasonable basis on grapefruit and oranges from Jacksonville. Devine & Asselstine v. A. C. L., 93 I. C. C. 174.

(3y) Rates on concrete sewer pipe from Knoxville, Tenn., to South Carolina points found not unreasonable as compaper rate and can not be accepted as a Chattanooga. Rates assailed compare favorably with rates from c. f. a. territory to the South generally for similar distances; earnings on sewer pipe are less than on other lower-grade commodities; and a readjustment of rates on sewer pipe is now in progress throughout southern territory. Shearman Concrete Pipe Co. v. S. Ry., 93 I. C. C. 179,

(3z) Rates on concrete sewer pipe from Knoxville, Tenn., to Oakley, S. C., found unreasonable to extent they exceeded contemporaneous rate from Chattanooga, which rate was subsequently made applicable from Knoxville. Reparation awarded. Shearman Concrete Pipe Co. v. S. Ry. 93 I. C. C. 179.

(4a) Rates on wheat from various points in Kansas and Colorado, to Leavenworth, Fort Leavenworth, and Atchison, Kans., and St. Joseph, Mo., milled in transit at Kansas City, Mo.-Kans., found unreasonable and unduly prejudicial to extent they exceeded contemporaneous through rates from and to same points on which milling in transit is allowed at points west of Kansas City. Reasonable rates prescribed and reparation awarded.

Rodney Milling Co. v. M. P., 93 I. C. C. 200.

(4b) Rate on tanbark from Ross Spur (Wild Cat Spur), Wis., to Sheboygan, Wis., during Federal control, found not unreasonable as compared with lower rates contemporaneously applicable from Star Lake group points in same general vicinity. Shipments were sporadic, request for a through rate was not made until movement had ceased, and traffic moved during period when operating conditions on the branch were rendered difficult by heavy snowfall. Moreover, rate assailed compares favorably with those found unreasonable on similar traffic in 58 I. C. C. 217 and 87 I. C. C. 322. American Hide & Leather Co. v. Director General, 93 I. C. C. 265.

(4c) Rate on lumber from Big Fork, Minn., to Horicon, Wis., found not unreasonable as compared with rates to other points in Wisconsin, Iowa, South Dakota, and Nebraska for similar distances, or as compared with lower rates subsequently established to remove fourth-section departures. Cotton v. M. & R. R. Ry. Co., 93 I. C. C. 275.

(4d) Rates on rice bran from Wheatley, Ark., to Jackson and Meridian, Miss., found unreasonable to extent they exceeded lower rates contemporaneously in effect to New Orleans and other Louisiana points. Reasonable rate for future prescribed and reparation awarded. Jackson Traffic Bureau v. A. & V., 93 I. C. C. 322.

(4e) Combination fifth-class rates based on Ohio River crossings assessed on sporadic shipments of canned meats (surplus Army Stock) moving from Atlanta to Chicago, found unreasonable as compared with lower commodity rates on other canned goods, or with rate on the complete canned goods list, including meats, vegetables, fruits, etc., southbound from Ohio River crossings to Atlanta. The probability of any traffic northbound other than sporadic shipments is remote, and a northbound commodity rate south of the Ohio on these shipments as low as that applicable in the reverse direction, under which traffic moves regularly, does not seem justified. Armour & Co. v. L. & N., 93 I. C. C. 360.

(4f) Rate on newsprint paper from Saulte Ste. Marie, Ontario, Canada, to St. Joseph, Mo., found not unreasonable as compared with lower rate subsequently established in connection with an extensive readjustment of rates prescribed in the Paper case, 66 I. C. C. 571. News Corp. v. M. P., 93 I. C. C. 381.

(4g) Fact that a rate somewhat lower than the rate charged was prescribed by commission for the future does not necessarily show that former rate was unreasonable. Especially is this so where the new rate is part of an extensive readjustment. News Corp. v. M. P., 93 I. C. C. 381, 383.

(4h) Rates on oranges from Grand Bay, Irvington, Bay Minette, Loxley, Silver Hill, and Foley, Ala., to destinations in c. f. a. and western territories, found unreasonable to extent they exceeded lower rates contemporaneously in effect from Mobile and New Orleans to same destinations and subsequently established from Alabama points subsequent to movement. Reparation awarded. Gulf Coast Citrus Exchange v. L. & N., 93 I. C. C. 432.

(4i) Rates on broken stone or chatts from Joplin, Webb City, and Oronogo, Mo., to destinations in Crawford County, Kans., over the Missouri Pacific, found unreasonable to extent they exceeded rates prescribed in Memphis-Southwestern Investigation, 77 I. C. C. 473, for similar distances, involving single-line hauls. Reasonable rates prescribed for the future. Crawford County Commrs. v. St. L. S. F., 93 I. C. C. 502.

(4j) Rates on clean rice from milling points in Arkansas to certain destinations in c. f. a., southern, and western territories, to western termini of trunk-line territory, and to points in Oklahoma, found unreasonable and unduly prejudicial in some instances as compared with corresponding rates from New Orleans, Memphis, and interior Louisiana points. Carriers in making rates have largely ignored distances in an effort to somewhat equalize conditions. Right of complainants to natural advantages of their location can not be taken away by rate adjustments and wide differences in distance between the various fields to common destinations must be recognized. Reasonable and nonprejudicial rates and bases prescribed. Stuttgart Rice Mill Co. v. A. & V., 93 I. C. C. 517.

(4k) Rate on petroleum oil, in tank cars, for Bayonne, N. J. to complainant's plant in Brooklyn, found not unreasonable or otherwise unlawful as compared with lower rate from same point of origin to New York Harbor points and to

Boston, and from Philadelphia to Brooklyn and Portland. Buber v. C. R. R. Co. of N. J., 93 I. C. C. 539.

(4l) Applicable class rates assessed on electrical heating and cooking appliances from Marion, Ind., to San Francisco, found not unreasonable, discriminatory, or unduly prejudicial as compared with lower commodity rates subsequently established at complainant's request to assist it in competing with Pacific coast manufacturers. Rutenber Electric Co. v. C., C., C. & St. L., 93 I. C. 541.

(4m) Applicable rate on petroleum coke from Casper, Wyo., to Delta, Utah, found unreasonable to extent it exceeded lower rate to numerous competitive points in Idaho and Utah for distance approximately the same as that to Delta. Transportation conditions effecting movements to Delta were not shown to be less favorable than those encountered between Casper and the competitive points, several of which are located on branch lines farther distant from Casper than Delta. Reparation awarded. Delta Beet Sugar Corp. v. Director General, 93 I. C. C. 547.

(4n) Rate on coke from Segundo, Colo., to Delta, Washington, found unreasonable to extent it exceeded lower rate to numerous competitive points in same general territory for substantially similar distances. No substantial difference was shown between transportation conditions encountered from Segundo to Delta and to the other competitive points to which the lower rates applied. Reparation awarded. Delta Beet Sugar Corp. v. Director General, 93 I. C. C. 551.

(4o) Considering rates in connection with recognized principle that ton-mile earnings decrease as distance increases, and in further connection with rates to points in southeastern territory for longer distances instanced by carrier, rate on green coffee from New Orleans to Montgomery, Ala., found not unreasonable as compared with rates from same point of origin to Nashville, Louisville, St. Louis, and other farther distant points. Fletcher-Wilson Coffee Co. v. L. & N., 93 I. C. C. 555.

(4p) Rate on bituminous coal from Harrisburg, Ill., to Lafayette, Ind., found not unreasonable as compared with rates to Chicago, Indianapolis, and other points in Illinois and Indiana, or with rates found reasonable by commission in 63 I. C. C. 215, 68 I. C. C. 479, and 64 I. C. C. 555, for similar and greater distances in same general territory. Lafayette Box Board & Paper Co. v. C., C., C. & St. L., 93 I. C. C. 579.

(4q) Rate on rough oak and gum staves and headings from Bonita, La., a local station on the Missouri Pacific, to Louisville found not unreasonable or otherwise unlawful as compared with lower group rate appplicable on lumber, staves, and heading, from various points to Louisville for comparable distances, and later established from Bonita via route of movement, or with rate contemporaneously applicable on yellow-pine and cypress lumber from Missouri Pacific junction points. Louisville Cooperage Co. v. L. & N., 93 I. C. C. 593.

(4r) Class rates assessed on mussel shells from Marked Tree, Pocahontas, and Clarendon, Ark., to Oswego, Kans., found unreasonable as compared with rates applicable to same commodity from and to numerous points of origin and destination in same general territory which had been established prior to movement of shipments here involved, and to extent they exceeded commodity rates subsequently established, request therefor having been made by complainant approximately 60 days prior to movement of first shipment. Reparation awarded. Pioneer Pearl Button Co. v. St. L. S. F., 93 I. C. C. 599.

(4s) Rates on wooden agricultural-implement, sleigh and vehicle material from Fort Smith, Ark., to points in Idaho, Oregon and Montana found unreasonable and unduly prejudicial to extent they exceeded rates from St. Louis, a competing point, to same destinations. Reparation awarded and reasonable and nonprejudicial rates prescribed. Ft. Smith Rim & Bow Co. v. K. C. S., 95 I. C. C. 1.

(4t) Class rates on automobile wheels without hubs, tires, or ball or roller bearings, from Portland to Los Angeles, San Francisco, Tacoma, and Seattle, found not unreasonable, discriminatory, or unduly prejudicial as compared with lower commodity rates contemporaneously maintained and from other points in transcontinental Group C to Pacific coast destinations which lower rate was subsequently etablished from Portland. Complainant failed to show that any point accorded the lower rate was in direct competition with Portland, or that there was any movement under lower rates

from the alleged preferred points. Bimel Spoke & Auto Wheel Co. v. L. E. & W., 95 I. C. C. 9.

(4u) Combination rates on coal from points in the Meyersdale district of Pennsylvania and Fairmont district of West Virginia to New Castle, Del., a local point on the Pennsylvania, found not unreasonable or otherwise unlawful as compared with joint rates maintained by carriers other than Pennsylvania from these districts to numerous eastern and New England destinations. Shipments moved during abnormal periods of car shortage, and the Pennsylvania defends its policy of refusing to join with other coal-originating lines in publishing joint rates to local points on its line on ground that it is unable to find consumers on its own rails for all coal which it originates, and to maintain such joint rates would cause crosshauling or substitution of two-line for one-line hauls with resulting reduction of transportation efficiency. Moreover, in 62 I. C. C. 49, the commission refused to condemn similar combinations. Chicago Heights Mfrs. Asso. v. B. & O., 95 I. C. C. 83.

(4v) Rates on scrap brass and brass ingots or pigs from East Liberty and Meadville, Pa., to Bush Docks, Brooklyn, N. Y., and Newark, N. J., found unreasonable to extent they exceeded rates contemporaneously applicable from Pittsburgh to New York. Reasonable rates prescribed and reparation awarded. Union Smelting & Rfg. Co. v. C. R. R. Co. of N. J., 95 I. C. C. 104.

(4w) Rate on sweet potatoes from Dardanelle, Ark., to Spokane, Wash., found unreasonable to extent it exceeded the contemporaneous Group E commodity rate applicable over another route, and subsequently established via route of movement. Reparation awarded. Ft. Smith Commission Co. v. Director General, 95 I. C. C. 149.

(4x) Rate on sugar from California points to Pheonix, Ariz., found not unjustly discriminatory or unduly prejudicial, but such rate found unreasonable as compared with rates from California to points in the Middle West and from Sugarland, Tex., New Orleans, La., and Colorado points to El Paso and Pheonix. Reasonable rates prescribed and reparation awarded. Pheonix Chamber of Commerce v. A., T. & S. F., 95 I. C. C. 244.

(4y) Rates on fresh meat from Sioux Falls, S. D., to Lincoln, Nebr., found unreasonable and unduly prejudicial as compared with rates from Kansas City, Minneapolis, Duluth, and Chicago, competing points. Reasonable rates prescribed and reparation awarded. Morrell & Co. v. C., B. & Q., 95 I. C C. 255.

(4z) Rates on bituminous coal from southern Illinois fields to St. Genevieve and Mosher, Mo., found not unreasonable or otherwise unlawful as compared with rates to Crystal City and Cape Girardeau, Mo., except as to certain fourth-section violations which have been corrected. Peerless White Lime Co. v. C. & E. I., 95 I. C. C. 260.

(5a) Rates on prepared roofing, asphalt shingles, building and roofing paper, roofing cement, and related articles from East St. Louis and Kansas City to Oklahoma, Texas, and Eastern New Mexico, found unreasonable as compared with rates from New Orleans, La., and Port Neches, Tex. Reasonable rates prescribed for the future. Certain-Teed Products Corp. v. A. & L. M. Ry., 95 I. C. C. 273.

(5b) Fifth-class rates on wrought-iron pipe from Goose Creek and Docbrown, Tex., to Oliver, La., and from Goose Creek to Anse La Butte, La., found unreasonable as compared with lower commodity rates contemporaneously in effect in reverse direction, with lower commodity rates which have been in effect for many years in same general territory for similar distances, and to extent they exceeded the normal rate on this traffic, based differentially under St. Louis. Reasonable distance rates based upon the scale approved in Memphis-Southwestern Investigation, 77 I. C. C. 473, prescribed and reparation awarded. Humble Oil & Rfg. Co. v. D. G. C. Ry., 95 I. C. C. 435.

(5c) Rates on coal from Marshall, Colo., to Stanhope, Iowa, and from Frederick, Colo., to Fredericksburg, Iowa, found unreasonable as compared with lower rates between various other points in same general territory for comparable distances and to extent they exceeded lower rates subsequently established. Reparation awarded. National Supply Co. v. Director General, 95 I. C. C. 445.

(5d) Rate on casing-head gasoline from Burkburnett, Texas to Hutchinson, Kans., found unreasonable to extent it exceeded rate contemporaneously

in effect to Wichita and Eldorado, Kans. These points all formerly took the same rate but carriers reduced the rate to Wichita and Eldorado but not to Hutchinson. Moreover, in 66 I. C. C. 426, the commission prescribed the same rates for application on crude petroleum from the Burkburnett group to all points in Kansas Group 2 within which Hutchinson, Wichita, and Eldorado are located. Reasonable rate prescribed and reparation awarded. Frontier Refining Co. v. A., T. & S. F., 95 I. C. C. 454.

(5e) Rate on wrapping paper from Orange, Tex., to Hutchinson, Kan., found unreasonable as compared with rate to Kansas City. Reasonable rate prescribed and reparation awarded. Hutchinson Paper Co. v. T. & N. O., 95 I. C. C. 457.

(5f) Upon a stipulation of record between the parties, rate on tobacco from Savannah, Ga., to Havana, Fla., found unreasonable to the extent it exceeded a lower rate equal to the Georgia scale for a distance similar to that here involved. Reparation awarded. American Sumatra Tobacco Co. v. A. C. L., 95 I. C. C. 463.

(5g) Rates on manure salts from Savannah, Ga., to Laurel, Miss., found not unreasonable or otherwise unlawful as compared with rates on fertilizer and fertilizer materials from Savannah to Meridian and points in other States in same general territory as Laurel. Nor do such rates appear excessive when measured by the distance scale of rates prescribed on fertilizer in Blackshear Mfg. Co., 87 I. C. C. 654. Laurel Oil & Fertilizer Co. v. Director General, 95 I. C. C. 522.

(5h) Rate on wrought-iron and steel pipe from Ranger, Tex., to Taylor, Louann, and Smackover, Ark., found unreasonable to extent it exceeded relatively lower rate on iron or steel pipe between points in the Southwest. Reasonable rate prescribed and reparation awarded. Texas-Pacific Coal & Oil Co. v. T. & P., 95 I. C. C. 627.

(5i) Fifth-class rates on gasoline, in tank cars, from Hubball and Alkol, W. Va., to Point Breeze, Philadelphia, Pa., found unreasonable as compared with rates from Leach, Ky., and other near-by points to Philadelphia, and to extent they exceeded lower commodity rates subsequently established. Request for establishment of commodity rates was made prior to movement but such rates were not made effective until subsequent thereto due to congestion in carriers' general offices. Reparation awarded. Atlantic Rfg. Co. v. C. & O., 95 I. C. C. 629.

(5j) Rates on steel wire from Monnessen to Economy, Pa, during Federal control, found not unreasonable or unduly prejudicial as compared with other short-haul rates on iron and steel articles in the Pittsburgh district. Rates attacked are lower than fifth class, the basis found reasonable by the commission in a number of cases cited for application on iron and steel articles for hauls of similar and greater distances. Pittsburgh Steel Co. v. Director General, 95 I. C. C. 637.

(5k) Rates on pig iron from Youngstown, Leetonia, and Warren, Ohio, to Huff, Pa., found unreasonable to extent they exceeded rates contemporaneously maintained from the Youngstown group to points approximately the same distance in immediate vicinity of Huff. Reparation awarded. Kelly & Jones Co. v. P. R. R., 95 I. C. C. 640.

(5l) Rates on clean rice from points in Arkansas, Louisiana, and Texas to points in Oklahoma found unreasonable. The rice adjustment presents many incongruities, rates from producing territories to Oklahoma points being higher than to more distant points in practically all directions, in violation of the fourth section. Jobbers located at points in Arkansas and Texas near the Oklahoma border are able to purchase rice in carloads and distribute in less than carloads to Oklahoma points at transportation charges substantially lower than rice can be similarly handled by Oklahoma jobbers. Reasonable scale of distance rates, which will give to each distributing point the benefit of its location, prescribed. Alton Mercantile Co. v. A. & W. Ry., 95 I. C. C. 645.

(5m) Class C rates on prepared roofing from Port Neches, Tex., to Couchwood, Cotton Valley, and Haynesville, La., and state Line and Emmerson, Ark., found unreasonable as compared with rates from St. Louis and Kansas City to same destinations, from Port Neches to Shreveport, Monroe, New Orleans, Vicksburg, and Memphis, and to extent they exceeded lower commodity rates subsequently established equal to the basis prescribed in Memphis Southwestern Investigation, 77 I. C. C. 437, 562, for distances the same as those between

points here involved. Reparation awarded. Texas Pipe Line Co. v. L. &. A., 95 I. C. C. 674.

(5n) Rates on cotton piece goods between Philadelphia, Pa., and Bridgeton, N. J., found not unreasonable or otherwise unlawful as compared with lower rates between Philadelphia and Millville, and Mays Landing, N. J. Berkman v. P. R. R., 95 I. C. C. 685.

(5o) Rate on bituminous coal from Panhandle, Ohio, to Mingo Junction, Ohio, during Federal control, found unreasonable as compared with rates between other points in Ohio for like distances, and to extent it exceeded lower rate requested by complainant prior to movement and established subsequent thereto. Reparation awarded. Beacon Coal Co. v. Director General, 95 I. C. C. 687.

(5p) Rates on talc from Hemp, N. C., to Jacksonville, Fla., York and Philadelphia, Pa., Manville, N. J., and East St. Louis and Vandalia, Ill., found not unjustly discriminatory or unduly prejudicial, but unreasonable as compared with rate from Hemp to Chicago and other Illinois points for greater distances. Reparation awarded. Standard Mineral Co. v. N. S. R. R., 95 I. C. C. 704.

(5q) Rates on wrought-iron and steel pipe from points in Texas common-point territory to points in Little Rock-Fort Smith territory found unreasonable. Reasonable rate prescribed based upon Memphis Southwestern scale approved in 77 I. C. C. 473, 595, and reparation awarded. Humble Oil & Rfg. Co v. M. P., 95 I. C. C. 709.

(5r) Rates on sugar from New Orleans, to Kansas City, Omaha, and Atchison, found not unreasonable as compared with rates to Chicago, St. Louis, and the Twin Cities, but such rates to Omaha, in so far as they exceed those contemporaneously maintained to the Twin Cities, found to result in undue prejudice. Omaha Chamber of Commerce v. A., T. & S. F., 95 I. C. C. 713.

(5s) Rate on cement from Richard City, Tenn., to Normal, Tenn., moving via an interstate route, found unreasonable to extent it exceeded lower rate from cement-producing points in Alabama to the same destination for equal and greater distances. Reparation awarded. Dixie Portland Cement Co. v. N., C. & St. L., 96 I. C. C. 47.

(5t) Rate on liquid tanning extract from Mariners Harbor, N. Y., to Millville, Pa., found unreasonable to extent it exceeded rate from and to other points within limits of city of New York. Mariners Harbor is within New York City limits, has generally been accorded the New York basis of rates, and subsequent to movement on that basis was established from Mariners Harbor. Reparation awarded. Quebracho Products Co. v. S. I. R. T. Ry., 96 I. C. C. 52.

(5u) Rates from New Albany to other points in Indiana on bituminous coal originating in Kentucky and West Virginia and barged to New Albany down the Ohio River, found unreasonable as compared with rates from Cincinnati, a competing point shipping to the same destinations and to which traffic moves under similar transportation conditions. Moreover, rates for the short Intrastate movement are on too high a level as compared with intrastate rates on bituminous coal prescribed by the commission in 66 I. C. C. 338 and numerous other cases. Reasonable distance scale of rates prescribed for the future. Slider v. B. & O., 96 I. C. C. 65.

(5v) Rates on wrought-iron or steel pipe from Louisiana and Arkansas points and numerous points in Louisiana, except Shreveport, to and from certain points in Arkansas found unreasonable as compared with intrastate rates in Louisiana and from various points to Arkansas destinations. Rates on like traffic from Shreveport to certain Arkansas points found not unreasonable. Texas Co. v. K. C. S., 96 I. C. C. 81.

(5w) Rate on fuel oil from Kansas City to Kearney, Nebr., found unreasonable as compared with lower rates contemporaneously maintained to Grand Island, Nebr., a farther distant point, and to extent it exceeded a lower rate subsequently established. Reparation awarded. Tyner Construction Co. v. U. P., 96 I. C. C. 91.

(5x) Rates on cabbage from St. Francisville to Monroe, La., via an interstate route through Vicksburg, found unreasonable as compared with rates from and to same points via another route, with distance rates for equal hauls in Arkansas, Texas, and Louisiana, with rate subsequently established via route of movement, and to extent they exceeded rate prescribed for like distances in Natchez Chamber of Commerce, 52 I. C.

C. 105; 58 I. C. C. 610; and 63 I. C. C. 228. Reparation awarded. Sugar Bros. Co. v. Y. & M. V., 96 I. C. C. 97.

(5y) Rate on kerosene from Fort Worth, Tex., to Waterbury, Conn., found unreasonable to extent it exceeded rates contemporaneously applicable from Fort Worth to greater part of New England over route of movement, through Waterbury to more distant points. Due to error on part of tariff compiler the lower rate was not applicable on shipments to any-destinations in Connecticut, and this omission was subsequently corrected. Reparation awarded. Transcontinental Oil Co. v. D., L. & W., 96 I. C. C, 173.

(5z) Rates on lumber from points in Florida and Georgia to Waverley, N. J., found unreasonable to extent they exceeded rates contemporaneously in effect from same points of origin to Newark. Reparation awarded. Stailey Lbr. Co. v. P. R. R., 96 I. C. C. 175.

(6a) Rates on coal from mines in Inner and Outer Crescent districts and Cincinnati, Ohio, to Ben Davis, Ind., found not unreasonable, unjustly discriminatory, or unduly prejudicial as compared with lower rate to Indianapolis, Ind., from the same points and from points in Indiana. Bush & Co. v. B. & O., 96 I. C. C. 178, 183.

(6b) Combination rates on lumber, box shooks, and articles taking lumber rates, from Williams, Flagstaff, and Holbrook, Ariz., to Nogales, Ariz., destined to points in Mexico, found not unreasonable or otherwise unlawful as compared with joint rates from California points to same destinations. The excessive charges complained of accrued solely in the local rate component of the connecting line in Mexico, which is operated as a separate road, is not a party defendant, and not subject to the commission's jurisdiction. Arizona Lumber & Timber Co. v. A. E. R. R. Co., 96 I. C. C. 203.

(6c) Rates on pulp wood, for joint-line hauls, to Covington, Va., from certain points in southern territory, found unreasonable and unduly prejudicial to complainant and preferential of wood pulp and paper manufacturers at Coleman, Big Island, and Hopewell, Va., Canton, N. C., Kingsport, Tenn., and Bristol, Va.,-Tenn. Covington is situated close to the line dividing the two territories and in view of the nature of this traffic and the competitive situation is entitled to rates based as nearly as possible on a joint scale properly aligned with the lower level of rates in southern territory on the one hand, and the higher level in official territory on the other. Reasonable and nonpreferential and nonprejudicial rates prescribed for the future. West Virginia Pulp & Paper Co. v. S. Ry., 96 I. C. C. 244.

(6d) Rate applicable on shipments of wrought-iron pipe from Leeray, Tex., to Bristow, Okla., reconsigned to Okemah, Okla., via M-K-T, found unreasonable and unduly prejudicial to extent it exceeded rate contemporaneously maintained via other lines for comparable distances in same general territory. Reparation awarded. Sinclair Oil & Gas Co. v. C. & N. E. Ry., 96 I. C. C. 286.

(6e) Fourth-class rate assessed on shipments of sisal from New Orleans, La., to Mounds, Ill., during Federal control, found unreasonable as compared with import commodity rate contemporaneously in effect from New Orleans to Indianapolis, Ind., and to extent it exceeded lower import commodity rate subsequently established over route of movement. Reparation awarded. Capital Warehouse Co. v. Director General, 96 I. C. C. 293, 297, 298.

(6f) Rate on shipments of sisal from Indianapolis, Ind., to North Kansas City, Mo., during Federal control, found unreasonable as compared with rate contemporaneously in effect from Indianapolis to St. Paul, Minn., and with import commodity rate in effect from New Orleans, La., to both St. Paul and North Kansas City. Reparation awarded and reasonable rates prescribed for the future. Capital Warehouse Co. v. Director General, 96 I. C. C. 293, 301.

(6g) Rate assessed on shipments of sisal from Mounds, Ill., to Kansas City, Mo., during Federal control, found unreasonable as compared with lower rate contemporaneously in effect from Mounds to Xenia, Ohio, and with rates from Indianapolis, Ind., for substantially greater distances. Reparation awarded. Capital Warehouse Co. v. Director General, 96 I. C. C. 293, 301.

(6h) Rates on cottonseed from certain points on Missouri Pacific in northern Louisiana and southern Arkansas to Jackson, Miss., found unreasonable and unduly prejudicial to manufacturers of cottonseed products at Jackson and un-

duly preferential of their competitors at Vicksburg, Miss. to the extent they exceed rates contemporaneously maintained from same points to Vicksburg by more than 3.5 cents. Reparation awarded and reasonable rates prescribed for future. Southern Cotton Oil Co. v. A. & V. Ry. Co., 96 I. C. C. 333.

(6i) Fifth-class rates assessed on brass and copper ingots from East Liberty, Pa., to Follansbee and Wheeling, W. Va.; Toronto, Youngstown, Canton, Cleveland, Newburg, Harvard Avenue, Lorain, Toledo, Wagon Warks, Maryville, Springfield, and Bellaire, Ohio; Detroit, Mich.; East Chicago and Gary, Ind.; Chicago and South Chicago, Ill.; Louisville and South Louisville, Ky.; and St. Louis, Mo.; found unreasonable to extent they exceeded rates contemporaneously in effect from Williamsport, Pa., to same destinations, and to extent they exceeded rates on brass ingots from Falls Creek and Punxsutawney, Pa., to same destinations. Rate to Buffalo, Lackawanna, and Depew, N. Y., found unreasonable to extent they exceeded rates in effect on brass and copper ingots from 60 per cent group to Rochester, N. Y., and points taking same rate up to and including June 4, 1924, and subsequent thereto, to extent they exceed or may exceed rates in effect from East Liberty to Gasport, Medina, Batavia, and Rochester. Reparation awarded. Duquesne Reduction Co. v. P. R. R. Co., 96 I. C. C. 351.

(6j) Under the circumstances of this case, relative reasonableness, rather than intrinsic reasonableness becomes the important thing to be considered, and other criteria, such as ton-mile earnings, fall into the back ground. Wyoming Coal Co. v. Y. Ry. Co., 96 I. C. C, 359, 367.

(6k) Rates on sulphur from Gulf Hill, Tex., to interstate destinations and on imported fuel oil from Texas City, Tex., to Gulf ports found not unreasonable or unduly prejudicial. Although rates on sulphur to all points in the United States are assailed, no attempt was made to show that any rate in and out of itself was unreasonable or unduly prejudicial, complainant's claim being solely with respect to its failure to receive out of the rates an adequate allowance on all inbound shipments of oil and outbound shipments of sulphur. Complainant found not entitled to allowance granted solely to put it on parity with its competitors. Allowances or Divisions Received by Texas Gulf Sulphur Co., 96 I. C. C. 371.

(6l) Rates on apples in bulk, from the Yakima valley to various interstate destinations found unreasonable and unduly prejudicial to the extent that such rates exceed the contemporaneous rates from and to the same points on apples in boxes. Kloeber v. N. P. Ry. Co., 96 I. C. C. 437.

(6m) Rates on evaporated milk from Lodi and Reedsburg, Wis., to Chicago, and Clearing, Ill., found not unreasonable, unjustly discriminatory, or unduly preferential as compared with contemporaneously applicable rates on like traffic for comparable distances from competitive points in the same general territory to the same destinations. Nestle's Food Co. v. C. & N. W. Ry. Co., 96 I. C. C. 452.

(6n) Rates on prepared roofing and allied articles, in straight or mixed carloads, from Lockland and Carthage, Ohio, to destinations in Kentucky and Tennessee intermediate to Knoxville and Chattanooga, Tenn., found to have been and to be unreasonable to the extent they exceeded or exceed the rates contemporaneously maintained on like traffic from the same points to Knoxville and Chattanooga. Reasonable basis of rates prescribed for the future and reparation awarded. Carey Co. v. C., N. O. & T. P. Ry. Co., 96 I. C. C. 455.

(6o) Rates on cement from Ada, Okla., to destinations on the Texas & Pacific, directly intermediate to New Orleans, La., higher than to New Orleans not shown to be unreasonable as compared with rates from competing mills to destinations in Louisiana, Texas, and Arkansas, and with rates in southeastern territory. Complaint dismissed. Oklahoma Portland Cement Co. v. St. L.-S. F. Ry. Co., 96 I. C. C. 468.

(6p) Rates on coal screenings, shipped from Contrall, Springfield, and Pana, Ill., to Lyons, Iowa, during Federal control found not unreasonable, although lower rates on same commodity were contemporaneously applicable from same points to Clinton, Iowa, within the switching limits of which Lyons is located. Lower rates to Clinton were established through error. Complaint dismissed. Ford Roofing Products Co. v. Director General, 96 I. C. C. 471.

(6q) Rates on hogs, from Atlanta and other points in Georgia, to Ohio and Indiana points, found not unreasonable

or otherwise unlawful, comparing favorably with rates between points in the Southeast and various Ohio and Mississippi River crossings. Complaint dismissed. Patterson Commission Co. v. C. of G. Ry. Co., 96 I. C. C. 473.

(6r) Combination rates on petroleum and its products from points in Oklahoma to destinations in Indiana found unreasonable as compared with rates from same points of origin to other destinations in central territory, particularly in the state of Illinois. Reasonable joint rates prescribed for the future and changes suggested in the rates from other points or groups of origin. Indiana State Chamber of Commerce v. A., T. & S. F. Ry Co., 96 I. C. C. 485.

(6s) Rates on crude, fuel and gas oils from Clay Spur and Osage, Wyo., to points in South Dakota, Iowa, Minnesota, and Wisconsin, found not unreasonable or otherwise unlawful. Although equal to rates contemporaneously maintained on refined oils to and from same points, such rates compare favorably with the rate on crude oil from Lander, Wyo., to Ardmore, S. Dak., found not unreasonable in 91 I. C. C. 563. Complaint dismissed. Barber Co. v. C. & N. W. Ry. Co., 96 I. C. C. 516.

(6t) Carload rates on coal from Wheatcroft, Ky., via Evansville, Ind., to Mount Vernon, Ind., found unreasonable to extent they exceeded rates based on the contemporaneous local to Evansville, plus the intrastate rate beyond. Reparation awarded. Mount Vernon Strawboard Co. v. C. & E. I. Ry. Co., 96 I. C. C. 571.

(6u) Rate on locomotive cranes, with overhanging or detached parts, from Gilmerton, Va., to Greystone, N. C., found not unreasonable as compared with rates from Virginia cities to destinations in North Carolina to which Greystone is intermediate. Raleigh Granite Co. v. S. A. L. Ry. Co., 96 I. C. C. 573.

(6v) Rates on petroleum residuum, in tank-car loads, from Wichita U. S. Yards, Kans., Elbung and Peabody, Kans., during Federal control, found not unreasonable as compared with intrastate rates on like traffic in other neighboring States. Sterling Oil & Refining Co. v. Director General, 96 I. C. C. 586.

(6w) Rates on cement from points in the Kansas Gas belt, including Dewey, Okla., to St. Joseph and intermediate points in Scale II territory in Missouri, found unreasonable and unduly prejudicial to Kansas gas-belt points and Dewey over interstate routes and to shippers therefrom, and unduly preferential of Kansas City and Sugar Creek over intrastate routes to St. Joseph and of shippers therefrom and of intrastate traffic in Missouri between said points, to the extent that the rates from points in Kansas gas belt, including Dewey, exceeded or may exceed rates contemporaneously maintained for the like distances from Kansas City and Sugar Creek and upon intrastate traffic from Kansas City and Sugar Creek to St. Joseph and intermediate points in Missouri. Rates prescribed in Western Cement Rates, 48 I. C. C. 201, and 52 I. C. C. 225, as modified in 69 I. C. C. 644, found to be just and reasonable for application on both interstate and intrastate traffic between said points in the future. Cement from Kansas City to St. Joseph, 96 I. C. C. 718.

(6x) Class rates to Caspar, Wyo., from Omaha, Nebr., Sioux City, Iowa, Kansas City and St. Louis, Mo., St. Paul, Minn., Burlington, Iowa, and Chicago, Ill., and proportional class rates from upper Mississippi River crossings, found unreasonable and unduly prejudicial to Casper and unduly preferential of competing jobbing points, to the extent they exceed the rates specified, which are prescribed as reasonable and nonprejudicial rates for the future. Casper Chamber of Commerce v. C. & N. W. Ry. Co., 96 I. C. C. 736.

(6y) Rate assessed on shipments of uncompressed cotton linters, from Magnolia, Ark., to St. Louis, Mo., found unreasonable as compared with lower rates contemporaneously in effect to St. Louis from points contiguous to Magnolia, and to extent it exceeded rate subsequently established over route of movement. Reparation awarded. O'Donnell Mercantile Co. v. L. & N. W. R. R. Co., 98 I. C. C. 1.

(6z) Present commodity rates on iron and steel articles from St. Louis, Mo., to Mississippi Valley points, adjusted in harmony with commission's decision in 64 I. C. C. 306, found not unreasonable as compared with lower rates from Louisville, Ky. to same destinations. St. Louis Chamber of Commerce v. A. & V. Ry. Co., 98 I. C. C. 29.

(7a) Rates on crude oil from Mexia, Tex., and near-by loading stations, to

Shreveport, La., since November 6, 1921, found not unreasonable or unduly prejudicial as compared with lower rates contemporaneously in effect from Mexia to Beaumont and Port Arthur, Tex. Latter rates are depressed by pipe-line competition and absence of such competition to Shreveport presents a situation which distinguishes the transportation conditions under the rates to Beaumont and Port Arthur from those under rates assailed and removes it from the purview of section 3 of the act. Caddo Central Oil & Refg. Corp. v. K. C. S. Ry. Co., 98 I. C. C. 39.

(7b) Sixth-class rate on bituminous coal from Boston, Mass., to Hills Grove, R. I., found unreasonable as compared with rates from Boston to other points in the same general territory, distance considered, and with rate found reasonable in Arnold, Hoffman & Co., 87 I. C. C. 417. Reparation awarded. Rhode Island Malleable Iron Works v. N. Y., N. H. & H., 98 I. C. C. 43.

(7c) Rates on cottonseed from Oklahoma points to Sherman, Tex., found unreasonable during period up to August 15, 1923, to extent they exceeded rates contemporaneously applied for like distances between Shreveport, La., and points in Texas; and on the subsequent to August 15, 1923, found unreasonable to extent they exceeded or may exceed rates under the distance scale shown in Appendix 7, applied in the manner hereinbefore indicated. Reparation awarded, the similarity of transportation conditions throughout this territory justifying a retroactive rate adjustment to Sherman. Oklahoma Corp. Commission v. A. & S. Ry. Co., 98 I. C. C. 183, 253.

(7d) Rates on newsprint paper from points in New England. New York, and Canada, and from Philadelphia, Pa., to Baltimore, Md., substantially on the sixth-class basis applicable within trunk-line territory, found not unreasonable. While bases of rates in other territories are varying percentages of sixth class, the entire rate structure within and to trunk-line territory is in issue in a pending general investigation and no sufficient reason exists for selecting newsprint for advance consideration. The commission's decision in the Ontario Paper Co. case, 95 I. C. C. 66, upon which complainant relies, was made on consideration of newsprint rates and distances in evidence and not primarily on consideration of the relationship of newsprint rates to sixth class, although the basis found reasonable from Thorold, Ontario, to New York was approximately 80 per cent of sixth class. Washington Publishers' Asso. v. B. &. O. R. R. Co., 98 I. C. C. 339.

(7e) Rates on newsprint paper, from points in New England, New York, and Canada, and from Philadelphia, Pa., to Washington, D. C., found unreasonable and unduly prejudicial to extent they exceeded, exceed, or may exceed, corresponding rates to Baltimore, Md., by more than 3 cents per 100 pounds from Philadelphia, and 2 cents from all the other points of origin. While the entire class-rate structure within and to trunk-line territory is in issue in a pending general investigation, the rates to Washington are clearly indefensible and shippers should not suffer therefrom for the period necessary to complete the general investigation. Washington Publishers' Asso. v. B. & O. R. R. Co., 98 I. C. C. 339.

(7f) Evidence in support of rates to Washington as compared with those to Baltimore, is merely an explanation of how the differences grew up, without going into the merits of such differences, and a contention that Baltimore is at the farthest edge of a group. FOUND, evidence does not show that rate to Baltimore was ever determined on a group basis, on the contrary the only conclusion possible from the record is that rates to New York, Philadelphia, and Baltimore were established upon considerations bearing on those ports alone and not relating to inland points. Washington Publishers' Asso. v. B. & O. R. R. Co., 98 I. C. C. 339, 343.

(7g) Upon attempt to prove that the Buffalo-New York sixth-class rate on newsprint is unreasonable to the extent it exceeds 80 per cent of sixth class and that rates from the other points of origin involved should be derived from the new Buffalo-Baltimore rate by means of present relationships. HELD, no question as to relationships of rates from other points of origin to Buffalo is pressed in this proceeding and commission's decision is without prejudice to any conclusion on that question which may be reached in other proceedings. Washington Publishers' Asso. v. B. & O. R. R. Co., 98 I. C. C. 339,344.

(7h) Rates for interstate transportation of fresh meats and packing-house products from Duluth, Minn., to St. Paul, Minn., found unreasonable to extent they exceed lower contemporaneous rates on like traffic from Mason City, Iowa, to St. Paul, a movement of shorter distance, but having less favorable transportation conditions. Reasonable rates prescribed for future. Duluth Chamber of Commerce v. C. St. P., M. & O. Ry. Co., 98 I. C. C. 352.

(7i) Rates on lump coal from northern Colorado district to Missouri River territory found unreasonable to extent they exceed rates 75 cents less per net ton than the rates herein prescribed to Missouri River points, and to other points taking $5 rates from Walsenburg, Colo., which are prescribed as reasonable rates for future. Colo. & N. Mex. Coal Operators Asso. v. D. & R. G. W. R. R. Co., 98 I. C. C. 377, 390, 391.

(7j) Rates on lump coal from Canon City, Colo, district to various interstate destinations found unreasonable to extent they exceed rates herein prescribed from Walsenburg, Colo., district to same destinations. Colo. & N. Mex. Coal Operators Asso. v. D. & R. G. W. R. R. Co., 98 I. C. C. 377, 396.

(7k) Rates on lump coal from Trinidad, Raton-Dawson, Cameo-Palisade, Bowie-Somerset, Crested Butte, and Routt County (Oak Hills) districts, to various interstate destinations, found unreasonable to extent they exceed rates herein prescribed from Walsenburg, Colo. district by more than present differentials between existing rates, which are prescribed as reasonable rates for the future. Colo. & N. Mex. Coal Operators Asso. v. D. & R. G. W. R. R. Co., 98 I. C. C. 377, 396.

(7l) Rate on zinc concentrates from Minnequa, Colo., to Collinsville, Okla., found unreasonable to extent it exceeded commodity rate contemporaneously in effect from Colorado common points to Collinsville, which lower rate was subsequently made applicable from Minnequa. Reparation awarded. Tulsa Fuel & Mfg. Co. v. Director General, 98 I. C. C. 411.

(7m) Rates on coal from complainants' mines on the Virginia Railway in the New River district of West Virginia to interstate destinations found unreasonable and unduly prejudicial to extent they exceed the district rates on like traffic maintained by defendants to same destinations from mines in the New River districts of the C. & O. and Virginian and the Pocahontas and Tug River districts of the N. &. W., these districts forming part of what is generally referred to as the Outer Crescent. Reasonable and nonprejudicial rates prescribed for future. Wyoming Coal Co. v. V. Ry. Co., 98 I. C. C. 488.

(7n) In finding rates on coal from mines on the Virginian Railway in New River district of West Virginia to interstate destinations unreasonable and unduly prejudicial, the record did not warrant a conclusion that the difference in operating conditions from mines to its western terminus between the haul over the Virginian and that over the branch lines and independent short-line connections of C. & O. is in and of itself sufficient to warrant a higher level of rates from complainants' mines. The difficulty of operation as between the lines serving the west and those serving the east apparently is due in a greater measure to operating practices than to physical obstacles. Wyoming Coal Co. v. V. Ry. Co., 98 I. C. C. 488, 492, 493.

(7o) Rates on coal from mines on the Virginian Railway in the New River district of West Virginia to interstate destinations found unreasonable and unduly prejudicial. Under the circumstances of the case relative reasonableness, rather than intrinsic reasonableness, becomes the important thing to be considered, and other criteria, such as ton-mile earnings, fall into the background. Wyoming Coal Co. v. V. Ry. Co., 98 I. C. C. 488, 497.

(7p) Rates on moss in machine-pressed bales from Plaquemine, La., and from other producing points in Louisiana west of Mississippi River, to certain defined interstate destinations, found not unreasonable, unjustly discriminatory, or unduly prejudicial as compared with lower contemporaneous rates on like traffic from competing points in Louisiana east of the river, such as New Orleans and Baton Rouge. National Asso. of Furniture Mfrs. v. A. A. R. R. Co., 98 I. C. C. 501.

(7q) Rates on cyanamid from Niagara Falls, Ontario, to Alexandria, Vt., found unreasonable to extent they exceeded lower rate based on the commodity rate on like traffic to Baltimore, Md.,

plus the sixth-class differential to Alexandria. Reparation awarded. Bryant v. M. C. R. R. Co., 98 I. C. C. 526.

(7r) Rates on scrap iron from Rensselear, Ind., to St. Joseph, Benton Harbor, and Bridgman, Mich., found unreasonable and unduly prejudicial to extent they exceed the rate applicable from Monticello, Ind., and Chicago, Ill., to Benton Harbor, to which Bridgman and St. Joseph are intermediate. Reparation awarded and reasonable rate prescribed for future. Karnowsky v. C., I. & L. Ry. Co., 98 I. C. C. 533.

(7s) Rate on sugar beets shipped from Talent, Oreg., to Toppenish, Wash., during Federal control, found unreasonable to extent it exceeded lower rate voluntarily established by defendant carrier from Talent to points within a few miles of complainant's factory. Reparation awarded. Utah-Idaho Sugar Co. v. Director General, 98 I. C. C. 541.

(7t) Rate applicable to petroleum products, in tank-car loads, from Greybull, Wyo., to Belgrade, Mont., during Federal control, found unreasonable to extent it exceeded lower rate contemporaneously applicable to contiguous points and which through oversight was not established to Belgrade until subsequent to movements here involved. Reparation awarded. Continental Oil Co., v. Director General, 98 I. C. C. 544.

(7u) Rates on clam and mussel shells, valuable for button manufacture, from points in Illinois to points on Mississippi River in Illinois and Iowa, found not unreasonable or unduly prejudicial. However, the present rate structure on this and similar traffic is in a chaotic condition and prompt revision is suggested. Mississippi Pearl Button Co. v. A., T. & S. F. Ry. Co., 98 I. C. C. 560.

(7v) Interstate rates on iron and steel articles and cast-iron pipe from points in Alabama to Pensacola, Fla., found not unreasonable, and from points of origin other than Birmingham and points grouped therewith taking same rates not otherwise unlawful, as compared with rates on like traffic for similar distances from there as well as other points of origin in same territory. Interstate rates to Mobile, Ala., and Pensacola apparently compare favorably with rates on iron and steel articles from Birmingham to other destinations. Pensacola Chamber of Commerce v. L. & N. R. R. Co., 98 I. C. C. 567.

(7w) Rate charged on shipments of mussel shells from Hobbs Island, Ala., to Oswego, Kans., found not unreasonable or unduly prejudicial. Ton-mile earnings yielded are less than earnings at rates applicable on like traffic from Louisiana points to destinations in Kansas, including Oswego, for comparable distances. Pioneer Pearl Button Co. v. N., C. & St. L. Ry., 98 I. C. C. 578.

(7x) Upon further consideration, commission is of the opinion that finding of unreasonableness of rates on clean rice from points in Arkansas, Louisiana, and Texas to points in Oklahoma, in 95 I. C. C. 645, wherein a reasonable scale of distance rates is prescribed, does not necessitate a general readjustment as that term is used in cases where it has formed the basis for a denial of reparation, and even so, reparation still would be proper under principal announced in 52 I. C. C. 481. Alton Mercantile Co. v. A. & W. Ry Co., 98 I. C. C. 581, 582.

(7y) Rates on scrap steel from Penniman, Va., to Chester, Latrobe, and Vandergrift, Pa., and Massillon, Ohio, found unreasonable to extent they exceeded lower contemporaneous commodity rates on like traffic from Williamsburg, Va., to same destinations. Reparation awarded. Briggs & Turivas v. C. & O. Ry. Co., 98 I. C. C. 584.

(7z) Rates on uncompressed cotton to Galveston, Tex., from Fouke, Womble, Amity, and Gurdon, Ark., following 88 I. C. C. 492, found unreasonable to extent they exceeded lower commodity rate subsequently established in the case of shipments from Fouke and contemporaneous rates from the other points of origin to New Orleans, La. Reparation awarded. Moody Cotton Co. v. Director General, 98 I. C. C. 643.

(8a) Rates on newsprint ink from Bayonne, Hoboken, and Jersey City, N. J., Brooklyn and New York, N. Y., Boston and Morrills, Mass., and Philadelphia, Pa., to Washington, D. C., and Baltimore, Md., found not unreasonable, measured by numerous other fifth-class rates shown as applying for corresponding distances in this territory. This finding is without prejudice to the conclusions that may be reached in the general class-rate investigation now pending. Washington Publishers' Asso. v. B. & O. R. R., 98 I. C. C. 668.

(8b) Class rates from St. Paul, Minneapolis, and Duluth, Minn., and Super-

ior, Wis, and related points taking same rates, to Valley City and Jamestown, N. Dak., found unreasonable and unduly prejudicial as compared with lower contemporaneous rates from same points of origin to Fargo, N. Dak. Fargo Commercial Club v. A. & W. Ry. Co., 98 I. C. C. 691.

(8c) Class rates from Chicago, Ill., to Fargo, N. Dak., found unreasonable as compared with lower contemporaneous rates from Chicago to St. Paul and Minneapolis, Minn. Fargo Commercial Club v. A. & W. Ry. Co., 98 I. C. C. 692, 724.

(8d) Class rates from Fargo, N. Dak. to Montana points found not unreasonable as compared with contemporaneous rates from St. Paul and Minneapolis, Minn., to same destinations and from and to other points for comparable distances. Fargo Commercial Club v. A. & W. Ry. Co., 98 I. C. C. 692, 727.

(8e) Class rates from Omaha, Nebr., and Kansas City, Mo., and points taking same rates to Fargo, N. Dak. found unreasonable as compared with lower contemporaneous rates from same origin points to Duluth, Minn. Reasonable rates prescribed for future. Fargo Commercial Club v. A. & W. Ry. Co., 98 I. C. C. 692, 730.

(8f) Class rates from all points in California, Nevada, and Utah to Fargo, N. Dak., found unreasonable and unduly prejudicial to extent they exceed corresponding contemporaneous rates from same points to Duluth, Minn. Reasonable and nonprejudicial basis of rates prescribed for future. Fargo Commercial Club v. A. & W. Ry. Co., 98 I. C. C. 691, 731.

(8g) In making the readjustment in class rates from and to Fargo, N. Dak., herein required, it is suggested defendants revise the corresponding rates from and to Grand Forks, N. Dak., in harmony with the resulting rates from and to Fargo. Fargo Commercial Club v. A. & W. Ry., Co., 98 I. C. C. 691, 732.

(8h) Where the evidence tends to show relative unreasonableness as distinquished from intrinsic or per se unreasonableness, the findings of the Commission must be based to a great extent upon measuring the rate attacked with other rates; but the Commission must be convinced that the rates submitted by way of comparison are properly comparable. The mere fact that the rate under attack appears to be out of line with a few rates to which it is closely related does not necessarily afford a basis for a finding of unreasonableness. Such a showing may indicate that the comparative rates are too low rather than that the attacked rate is too high, and the correction of such a maladjustment might properly be made under section 3 instead of section 1 of the act. Tolman Dow & Co. v. T. C. R. R. 104 I. C. C. 37, 39.

(8i) Rates on cottonseed oil, cake, meal and hulls from Los Angeles, El Centro, and Calexico, Calif. and from Phoenix, Ariz., to El Paso, found unreasonable. Rates established upon the distance scales of rates on these commodities prescribed in Oklahoma Corporation Commission, 98 I. C. C. 183, plus differentials for hauls in this territory, would be reasonable. The differences between the levels of the rates under the prescribed standard scales for cottonseed oil on the one hand and cottonseed cake, meal, and hulls, on the other indicate that the differentials on cottonseed oil for hauls in this territory should be higher than on the cake, meal, and hulls. Reasonable rates prescribed for the future. Peyton Packing Co. v. A. E. R. R. Co., 100 I. C. C. 4, 23.

(8j) Interstate class rates between Oakland, Calif., and various destinations in California and Nevada found not unreasonable or unduly prejudicial as compared with class rates between San Francisco and said points. The rates applying between the metropolitan district and points here considered, where there is actual water competition, are depressed by such competition, although it is shown that this competition is not so keen as to result in anything in the nature of rate wars between the rail and water lines, and further that the rates between the metropolitan district and points here considered which are not on navigable waters reflect the result of water competition to related points and are likewise lower than normal rates. The water competition from Oakland has been nowhere near as great as that from San Francisco. Oakland Chamber of Commerce v. S. P. Ry. Co., 100 I. C. C. 55, 59, 62.

(8k) Rates on fresh deciduous fruits, other than apples, from California points, to eastern transcontinental

groups, found not unreasonable or unduly prejudicial as compared with rates from points in Washington, Oregon, Idaho, Utah, and Colorado, to same destinations. Rate from Utah and Colorado to destinations east of Chicago is identical with California rate, although distances are less, while rates from Washington, Oregon, and Idaho, or the bases thereof, have previously been found reasonable. See 58 I. C. C. 342 and other cited cases. This finding without prejudice to any conclusions that may be reached upon later or more comprehensive record which is expected to be developed in Docket No. 17000, now pending. Calif. Growers' & Shippers' Protective League v. S. P. Co., 100 I. C. C. 79, 86, 87.

(81) Relationship of rates on certain commodities for export, import, or coastwise movement via Galveston, Tex., from or to points in Texas, Oklahoma, western Louisiana, Arkansas, and Kansas found unduly prejudicial to Galveston and unduly preferential of New Orleans, La. Such undue prejudice should be removed by establishing the same rates to or from New Orleans or Galveston, as the case may be, in instances where the differences in distance from and to the two ports are not greater than 100 miles, and by establishing rates to or from Galveston, as the case may be, certain prescribed differentials under New Orleans in instances where the differences in distance in favor of Galveston are greater than 100 miles. The record is not sufficiently complete to warrant the commission in prescribing relationships between the rates to or from Galveston or New Orleans on other commodities or from or to points other than those embraced in the foregoing findings. Relationships herein prescribed will serve as a guide to defendants in readjusting the rates on other export, import, and coastwise traffic. Galveston Commercial Asso. v. G., H. & S. A. Ry. Co., 100 I. C. C. 110.

(8m) Proposed revision of rates from Atlanta to Buffalo and Pittsburgh proper makes no provision for its application to the Buffalo-Pittsburgh territory, though no reason appears for so restricting the rates. Respondents directed to effect the application of proposed rates to the Buffalo-Pittsburgh territory in season to take effect at same time as the suspended schedules. Furniture from Southern Points, 100 I. C. C. 127, 148.

(8n) Present relationship between the domestic and export rates on cotton from Oklahoma, Arkansas, Texas, and Louisiana to Gulf ports found unduly prejudicial to uptown and interior warehouses and compresses and unduly preferential of water-front warehouses and compresses. The record is not convincing that differences in transportation costs will justify the continuance of the present difference between the export and domestic rates, especially when it is considered that differences in transportation costs have been generally disregarded in keeping the Texas ports and industries at these ports on a rate parity. Application of Rates on Cotton to Gulf Ports, 100 I. C. C. 159, 165.

(8o) Upon further hearing, original report 64 I. C. C. 477, and upon original hearing of consolidated cases, FOUND: Failure of defendants to provide and maintain from Paxton and Spring Garden, Calif., to Wabuska, Nev., on ores and concentrates, rates similar in all respects as to conditions under which such rates are applicable to those contemporaneously maintained on like traffic from Spring Garden to Garfield and International, Utah, but not in excess of 60 per cent thereof will be for the future unduly prejudicial to Wabuska and unduly preferential of Garfield and International. Mason Valley Mines Co. v. W. P. R. R. Co., 100 I. C. C. 180, 204.

(8p) Rates on liquid and solid asphalt from Port Neches, Tex., and points taking same rates, to Tulsa, Okla., found not unreasonable as compared with lower contemporaneous rates on like traffic from points of origin here involved to Memphis, Tenn., Little Rock, and Fort Smith, Ark., following 81 I. C. C. 522. Standard Paving Co. v. A., T. & S. F., 100 I. C. C. 233.

(8q) Class rate on coal from Breed, Colo., to Colorado Springs, Colo., during Federal control, found unreasonable to extent it exceeded the rate contemporaneously in effect from Pikeview, Colo., to Colorado Springs. Reparation awarded. Corley v. Director General, 100 I. C. C. 293.

(8r) Rates assessed on shipments of wheat from St. Joseph, Mo., to Cannon Falls and Lake City, Minn., accorded transit at Leavenworth, Kans., found not to have been unreasonable, unjustly discriminatory, or unduly prejudicial,

as compared with lower contemporaneous rate on like traffic from Kansas City over various lines other than route of movement, with transit at Leavenworth. Moore Lawless Grain Co. v. M. P. R. R. Co., 100 I. C. C. 303.

(8s) Rates on peanuts, shelled or unshelled, from Suffolk, Franklin, Norfolk, and Petersburg, Va., and other points in Group A, to McAlester, Shawnee, and Oklahoma City, Okla., found unreasonable to extent they exceeded lower contemporaneous rates on like traffic from same points of origin to farther distant points in Texas and lower rate on shelled peanuts from the Virginia points to Oklahoma City subsequently established. Maximum reasonable rates prescribed for future and reparation awarded. Oklahoma Traffic Asso. v. C., R. I. & P., 100 I. C. C. 307.

(8t) Rail-and-water and rail-water-and-rail rates on lard, substitutes, green salted hides, and refuse grease from Houston, Tex., to New York, N. Y., and other eastern points, found not unreasonable as compared with contemporaneous rates on like traffic from same origin point to other destinations and from and to other points for comparable distances. Houston Packing Co. v. B. & M. R. R., 100 I. C. C. 345.

(8u) Rates on bituminous coal from mines in Kentucky, Virginia, and West Virginia to Clairton, Pa., found not to have been relatively unreasonable on ground, among other things, that the conditions surrounding the joint line haul from such mines differ from those in respect of the Ohio mines, where only a single-line haul was or is required. Carnegie Steel Co. v. P. R. R. Co., 100 I. C. C. 353.

(8v) Rates on bituminous coal from mines in Kentucky, Virginia and West Virginia to Clairton, Pa. found not unreasonable as compared with contemporaneous rates on like traffic from same origin points to other destinations for comparable distances. Carnegie Steel Co. v. P. R. R. Co., 100 I. C. C. 353.

(8w) Rates on pecans from Texas, Oklahoma and Louisiana points and from Natchez and Vicksburg, Miss., to St. Louis and Chicago, found not unreasonable or otherwise unlawful as compared with rates on like traffic from points in the Southeast to same destinations, distance considered, and from same points of origin to other destinations for comparable distances. Funsten Co. v. A. & V. Ry. Co., 100 I. C. C. 357.

(8x) Contention that carload rates on pecans from southeastern and southwestern sections are not comparable on account of the high grade of the southeastern product, not sustained of record when the farm prices of pecans in the entire southwest over a series of years are considered. Funsten Co. v. A. & V. Ry. Co., 100 I. C. C. 357, 362.

(8y) Rates applicable on shipments of blackstrap molasses from certain points in Louisiana to Fort Calhoun, Nebr., found not unreasonable or unduly prejudicial as compared with rates on like traffic from same points of origin to other destinations for similar distances and with rates between other points for comparable distances. Crown Overall Mfg. Co. v. Director General, 100 I. C. C. 471.

(8z) Applicable rates on wheat bran from points in Western and Southwestern States to points in Louisiana, Texas, and New Mexico, found unreasonable in the past and complainants found not to have been damaged by reason of any undue prejudice which may have existed, but for future such rates found unreasonable and unduly prejudicial to extent they may exceed contemporaneous rates applicable on wheat middlings or shorts, coarse grain and coarse-grain products, from and to same points. Abilene Flour Mills Co. v. A. & S. Ry., 101 I. C. C. 14.

(9a) Commodity rate on pig iron from Toledo, Ohio, to Holland, Mich. found not unreasonable or otherwise unlawful as compared with contemporaneous rates on like traffic from Detroit, Mich., to Holland, from Toledo to other destinations for similar distances and from and to other points for comparable distances. Holland Furnace Co. v. P. M. Ry., 101 I. C. C. 19.

(9b) Rates on doors from Pacific coast points to Memphis, Tenn. found not unreasonable as compared with lower contemporaneous rates on like traffic from same points of origin to other destinations, which lower rates were subsequently established to Memphis, and proof is insufficient upon which to find that complainant was damaged by any unjust discrimination or undue prejudice which may have existed. Memphis

Freight Bureau v. C. & E. I., 101 I. C. C. 26.

(9c) Class rates as applied to plow irons, parts, and castings, from Macon, Ga., to points in Alabama, found not unreasonable but unduly prejudicial and in violation of long-and-short-haul clause of fourth section of act to extent they exceed or may exceed lower contemporaneous rates on plow irons, l. c. l., in effect from Atlanta, Ga., to same destinations. Undue prejudice ordered removed. Massey Gin & Machine Works v. C. of G., 101 I. C. C. 45.

(9d) Class rate on broken soapstone from Marriottsville, Md., to Stockertown Pa., found unreasonable to extent it exceeded or exceeds lower contemporaneous commodity rate on like traffic from Marriottsville to other destinations for comparable distances. Reasonable rate prescribed for future and reparation awarded. Kelly & Co. v. L. V. R. R., 101 I. C. C. 49.

(9e) Rate on cereal beverages from Duluth, Minn, to Greenland, Mich. found unreasonable as compared with lower contemporaneous rates on like traffic from other points of origin to destination here involved for comparable distances. Reparation awarded. Fitger Co. v. Copper Range, 101 I. C. C. 87.

(9f) Rates on interstate shipments of binder twine from complainant's plant on the Owasco River Railway, at Auburn, N. Y. including unabsorbed switching charges of the Owasco, to various destinations, found not unreasonable as compared with rates from North Plymouth, Mass., to same destinations. International Harvester Co. v. N. Y. C. R. R. Co., 101 I. C. C. 89, 91.

(9g) Joint rates on peanuts from points in Alabama, Florida, Georgia, South Carolina, and Tennessee to St. Louis, Mo. found not unjust, unreasonable, or otherwise unlawful, as compared with contemporaneous rates on like traffic from same points of origin to other destinations for comparable distances. United Fig & Date Co. v. A. C. L., 101 I. C. C. 138.

(9h) Rates on phosphate rock from Dunnellon, Prairie, Bartow, and other points in Florida taking same rates, to Knoxville, Tenn., found unreasonable and unduly prejudicial to Knoxville, as compared with rates to the Carolina group, to extent they exceeded and exceed lower contemporaneous rate on like traffic from points of origin involved to Carolina destinations. Reasonable and nonprejudicial rates prescribed for future, and reparation awarded. Knoxville Traffic Bureau v. A. C. L., 101 I. C. C. 165.

(9i) Main-line rates on beef cattle from points on defendants' lines in Arizona to points on their lines in California found not unreasonable or otherwise unlawful as compared with contemporaneous rates on like traffic to same points from producing districts in California and from points of origin in other States for comparable distances. Arizona Cattle Growers Asso. v. A. Ry. Co., 101 I. C. C. 181.

(9j) Rate charged on cement from Leeds, Ala., to Deerland, Ga., found not unreasonable as compared with contemporaneous rates on like traffic from and to other points in same general territory for comparable distances and with distance scales of rates approved in previous cases cited. MacDougald Construction Co. v. C. of G. Ry., 101 I. C. C. 226.

(9k) Rate assessed on slack coal moving from Rock Springs, Wyo., to Cornish, Utah, and diverted in transit to McMillan, Idaho, found unreasonable as compared with lower rates in effect from Wyoming and Utah groups to Idaho points for substantially equal distances, and to extent it exceeded a joint rate contemporaneously in effect from Rock Springs to McMillan, over another route, which lower rate was subsequently made applicable over route of movement. Reparation awarded. Colony Coal Co. v. O. S. L., 101 I. C. C. 330.

(9l) Upon further consideration finding in original report, 96 I. C. C. 81, that rates on wrought-iron or steel pipe from and to numerous points in Louisiana, except Shreveport, to and from certain points in Arkansas were unreasonable as compared with intrastate rates in Louisiana and from various points to Arkansas destinations, and rates on like traffic from Shreveport to certain Arkansas points were not unreasonable, affirmed. As a basis for reparation reasonable rates were those measured by the general level of comparable commodity rates shown of record as having been in effect during period of movement of the shipments, and such were the rates approved in the original report. Texas Co. v. K. C. S., 101 I. C. C. 345.

(9m) Rate on green salted hides from Savanah, Ga., to Manchester, N. H., found unreasonable as compared with lower rates from various other points in the Southeast in the same general territory as Savannah, to same destination, and to extent it exceeded lower rate from Jacksonville, a farther distant point. Subsequent to movement carriers accorded Savannah the same rate as applied from Jacksonville. Reparation awarded. McElwain Co. v. S. & A. Ry., 101 I. C. C. 359.

(9n) Rates on cereal beverages from Milwaukee to Emporia, Kans., found not unreasonable or unduly prejudicial as compared with contemporaneous rates on like traffic from same point of origin to other destinations and from and to other points for comparable distances, or with lower rates established subsequent to movement. Emporia Wholesale Coffee Co. v. A., T. & S. F., 101 I. C. C. 391.

(9o) Class rates from Duluth, and related points taking same rates, to Watertown, S. Dak., found unreasonable to extent they exceed specific rates enumerated herein, and unduly prejudicial to Watertown and unduly preferential of Sioux Falls and Aberdeen, S. Dak., to extent they exceed rates reflecting a certain relationship to the contemporaneous rates from Duluth to Sioux Falls and Aberdeen. Reasonable maximum and nonprejudicial basis of rates from Duluth and related points taking same rates and Sioux Falls and Aberdeen to Watertown prescribed. Watertown Chamber of Commerce v. A. & W., 101 I. C. C. 427, 432.

(9p) Fifth-class rates on condensed milk from Northfield, Minn. to eastern destinations found not unreasonable or unduly prejudicial as compared with lower commodity rates contemporaneously in effect from points in Wisconsin to same destinations. Canned Goods to Eastern Points, 101 I. C. C. 502, 511.

(9q) Rates on crude sulphur from Baltimore, to Detroit, Mich., found not unreasonable or unduly prejudicial as compared with contemporaneous rates on like traffic from same and other points of origin to same and other destinations for comparable distances. Detroit Chemical Works v. C. R. R. Co., 101 I. C. C. 671.

(9r) Commodity rates assessed on shipments of handle material, sawed square, rived, or split from the bolt, not further finished, from Marengo and Corydon, Ind., to Chicago Heights, Ill., found not unreasonable as compared with lower rates on same commodity, contemporaneously in effect from various points in same general territory to Chicago Heights. Chicago Heights Mfrs. Asso. v. B. & O. C. T. R. R., 101 I. C. C. 675, 679, 681.

(9s) Rates on carbon black from Monroe, La., gas district to Chattanooga Tenn., found unreasonable to extent they exceeded lower contemporaneous rates on like traffic from same point of origin to Louisville, Lexington, and Danville, Ky., farther distant points. Reasonable rates prescribed for future and reparation awarded. Lookout Paint Mfg. Co. v. M. P., 101 I. C. C. 691.

(9t) Rate on coal from complainant's mine at Mabie, W. Va., on the Coalton branch of the B. & O., to Port Covington (Baltimore), found unreasonable and unduly prejudicial to extent it exceeded the rate contemporaneously in effect from Mabie mine No. 6, a farther distant competing mine, to which complainant's mine was intermediate. Applicable tariff carried reference to rule 77 of Tariff Circular 18-A that upon reasonable request rates which would not exceed those in effect from or to more distant points would be established from or to intermediate points on one day's notice. Complainant made request for establishment of such rates but was refused. Reparation awarded. Brady v. B. & O., 102 I. C. C. 19, 25, 26.

(9u) Rates on paving and roofing materials from New Orleans to Texas common-point group and all other points in that portion of Texas lying between these points and the port group, and related points, found unduly prejudicial and unreasonable to extent they exceeded lower contemporaneous class E rates applicable on roofing slate, paving slate and hard asbestos shingles from and to same points; and on similar articles from New Orleans to points in Texas differential territory to extent they exceeded abovementioned rates, plus class E differentials. Reasonable rates prescribed for future and reparation awarded. Cameron & Co. v. A. & S., 102 I. C. C. 31.

(9v) Rate on coal from mines in western Kentucky on the L. & N. to Franklin, Tenn., found unreasonable to extent it exceeded lower specific rate under which the yield of ton-mile earn-

ings compare favorably with those yielded under contemporaneous rate on like traffic from same mines to Nashville. Reparation awarded. Lillie Mill Co. v. L. & N., 102 I. C. C. 67.

(9w) Rate on sand from, Roff, Okla., to Fort Smith, Ark., found unreasonable and unduly prejudicial to extent it exceeded and exceeds lower contemporaneous rates on like traffic from and to points in same general territory for comparable distances. Reasonable and nonprejudicial rate prescribed for future and reparation awarded. Harding Glass Co. v. St. L.-S. F., 102 I. C. C. 126.

(9x) Class and commodity rates from Jackson, Miss., to destinations in Louisiana west of Mississippi River and southern Arkansas, found unjust, unreasonable, and unduly prejudicial to Jackson and its shippers and unduly preferential of shippers at New Orleans, Memphis, and Natchez, to extent they exceeded rates for like distances between points west of Mississippi River herein prescribed, plus charges for Mississippi River crossings prescribed in 93 I. C. C. 463. Reasonable and nonprejudicial rates prescribed. Jackson Traffic Bureau v. A. & V., 102 I. C. C. 129.

(9y) Rate on printing paper from Lawrence, Mass., to Long Island City, N. Y., found unreasonable and inapplicable to extent it exceeded sixth-class rate contemporaneously in effect. Printing paper with few exceptions moves at sixth class throughout official classification territory, and that basis of rates was approved in 38 I. C. C. 120. Reparation awarded and maximum reasonable rate prescribed. Merrimac Paper Co. v. B. & M., 102 I. C. C. 133.

(9z) Rates on green coffee from New Orleans, La., and Galveston, Tex., to Oklahoma City and Enid, Okla., found unreasonable as compared with rates from the Gulf ports to other points in the Southwest, and with rates prescribed in 92 I. C. C. 14, for comparable distances. Reparation awarded. Alton Mercantile Co. v. A. G. S., 102 I. C. C. 146.

(10a) Combination rate to and from Perryville Junction, Mo., assessed on gasoline moving from Cushing, Okla., to Perryville, Mo., on the Cape Girardeau Northern Ry., found unreasonable as compared with lower rate contemporaneously in effect to the junction point and numerous other points in southeastern Missouri. Reasonable rates prescribed for the future and reparation awarded. Illinois Oil Co. v. C. G. N., 102 I. C. C. 154.

(10b) Rates on scrap iron or steel and secondhand rails from Colorado points to points in certain other States, found not unreasonable or otherwise unlawful. Taken as a whole, such rates are not out of line with rates on the same or similar commodities moving in same general territory. Denver Metal & Machinery Co. v. A., T. & S. F., 102 I. C. C. 255.

(10c) Rates on slack coal from Bevier, Mo., Pittsburgh, Kans., and Henryetta, Okla., to Superior, Nebr., found unreasonable to extent they exceeded specific rates named herein, which are fixed in their relationship to and in comparison with contemporaneous rates on like traffic from same points of origin to Omaha and Lincoln, Nebr., and from and to other points for comparable distances. Reasonable rates prescribed for future. Nebraska Cement Co. v. A., T. & S. F., 102 I. C. C. 265.

(10d) Rate on coal from certain mines in the Illinois group to Hoopeston, Ill., over an interstate route, found not unreasonable or unduly prejudicial in their relation to the rates from same origin points to Chicago, Ill., and Indianapolis and Vincennes, Ind. While complainants are entitled to reasonable rates, in considering the level, their relationship from other Illinois group points and rates from other groups in the same general territory of which they are a part, can not be ignored. Conditions affecting rates to Chicago are not comparable with those affecting rates to Hoopeston, and the record does not justify condemnation of the rate from the southern Illinois group to Hoopeston or application to that point of lower rates from points of origin named than those from the group. Hoopeston Grain & Coal Co. v. C. & E. I., 102 I. C. C. 269.

(10e) Proposed readjustment of rates on grain and grain products, and seed and seed products, from points in Colorado, Kansas, Nebraska, Missouri, and Oklahoma to the lower Mississippi River crossings, and to points in Mississippi Valley, resulting in both decreases and increases, the latter predominating, found not justified. Present rates compare more favorably than those proposed with rates on like traffic prescribed between points in Oklahoma and Arkansas in 80 I. C. C. 607, and between points in Oklahoma and Texas prescribed in 101

I. C. C. 116. Kansas City Board of Trade v. A. & W. Ry., 102 I. C. C. 285, 304.

(10f) Rate on sulphuric acid from, New Orleans, La., to Houston and Manchester, Tex., found not unreasonable as compared with contemporaneous rates on like traffic from and to other points in same general territory for comparable distances and with rates for corresponding distances from and to a number of points in southwestern territory. Armour Fertilizer Works v. M. L. & T. R. R. & S. S. Co., 102 I. C. C. 350.

(10g) Upon reargument, original report, 95 I. C. C. 66, finding rate on newsprint paper from Thorold, Ontario, Canada, to New York unreasonable, affirmed without modification, relying mainly upon comparison of such rate with contemporaneous rate on like traffic from Niagara Falls to same destination. Ontario Paper Co. v. C. N. Rys., 102 I. C. C. 365.

(10h) Rates on automobiles and automobile parts from eastern defined territories to all points on Northwestern Pacific R. R. north of Willits, Calif., found unjust, unreasonable, and unduly prejudicial to extent they exceed lower contemporaneous rates on like traffic from same territory to California coast-group points. Reasonable and nonprejudicial rates prescribed and reparation awarded. Eriksen v. A. A. R. R., 102 I. C. C. 374.

(10i) Rates on bituminous coal from Pittsburgh-Youghiogheny, West Virginia, Meyersdale, Cumberland-Piedmont, and Clearfield coal regions to, Union Bridge, Md., found not unreasonable as compared with lower contemporaneous rates on like traffic from same points of origin to Security, Md., and rates from same points of origin to other destinations for comparable distances. Tidewater Portland Cement Co. v. C. & P. R. R., 102 I. C. C. 391.

(10j) Rates on crushed gypsum rock found unreasonable and unduly prejudicial as compared with lower contemporaneous rates on crushed stone. Reparation awarded. Nebraska Cement Co. v. M. P. R. R., 102 I. C. C. 411.

(10k) Rates on metal beds from. New Orleans, La., to southern territory found not unduly prejudicial as compared with contemporaneous rates on like traffic from Atlanta, Chicago, and Kenosha, Wis., distance considered. Crescent Bed Co. v. A. & V. Ry., 102 I. C. C. 419.

(10l) Rate assessed on sand from LaFayette, Ind., to Manteno, Ill., found not unreasonable, discriminatory or unduly prejudicial as compared with lower contemporaneous rate on like traffic from LaFayette to Chicago, to which Manteno is intermediate over route of movement, but in violation of long-and-short-haul provision of section 4 of the act. Shanks & Gannon Co. v. C., C., C. & St. L., 102 I. C. C. 462.

(10m) Rates on clean rice from, Memphis, Tenn., to Canadian destinations found not unreasonable as compared with lower rates from New Orleans, and other farther-distant producing points. Such rates, however found to violate long-and-short haul provision of section 4 of the act. Memphis Frt. Bureau v. A. A. R. R., 102 I. C. C. 489.

(10n) Rates on anthracite bird's-eye coal from group mines in Pennsylvania to Ondawa, N. Y., found unreasonable to extent they exceed contemporaneous rates on like traffic from same points of origin to Thomson, N. Y. United Paperboard Co. v. G. & J. Ry., 102 I. C. C. 502.

(10o) Upon further argument finding in original report. 64 I. C. C. 507, that rate on limerock from Flint, Calif., to Tolenas, Calif., during Federal control, was not unreasonable as compared with lower rates between other intrastate points for similar and greater distances as circumstances and conditions attendant upon transportation from Flint to Tolenas is substantially dissimilar from those obtained from and to such other points, affirmed. Pacific Portland Cement Co. v. Director General, 102 I. C. C. 515.

(10p) Rates on gasoline and kerosene from Fort Worth and Hodge, Tex., to Gastonia, N. C., found not unreasonable as compared with contemporaneous rates on like traffic from same points of origin to other destinations in same general territory for comparable distances. While such rates are relatively higher, distance considered, than rates to other territories, it can not be said upon the record here that they are greatly out of line with the rates to Carolina territory as a whole. Piedmont Oil Co. v. A. & V. Ry., 102 I. C. C. 583.

(10q) Rates on lumber from Golden, Miss., group points to St. Louis and Buffalo-Pittsburgh territories found not unreasonable or unduly prejudicial as compared with lower contemporaneous rates

on like traffic from Corinth, Miss., and other points in same general territory to same destination territories and rates from and to a number of other points for comparable distances. Northeast Mississippi Traffic Bureau v. A. & V. Ry., 102 I. C. C. 611.

(10r) Rates on cabbage and strawberries, in straight carloads, and on cabbage and beans, in mixed carloads, from points in Kentucky, Tennessee, and Alabama to Logansport, found not unreasonable but unduly prejudicial to extent they exceeded rates contemporaneously in effect to Fort Wayne or South Bend, Ind. Reparation denied. Caruso & Co. v. C. & E. I., 102 I. C. C. 619.

(10s) Combination rate on crushed slate from Delta, Pa., via Buffalo, to Lockport, N. Y., a Buffalo rate point, found unreasonable to extent it exceeded lower contemporaneous rate from Delta to Buffalo, and reparation awarded. Present lower rate found not unreasonable or otherwise unlawful as compared with rates on like traffic from Delta to other destinations and from and to other points for comparable distances. Lockport Paper Co. v. M. & P. R. R., 102 I. C. C. 624.

(10t) Following 81 I. C. C. 227 and other cases cited, class rates on built-up wood, faced with veneer made from foreign woods, from Louisville, Ky., and New Albany and Evansville, Ind., to, Memphis, Tenn., found not unreasonable as compared with contemporaneous rates on like traffic from and to other points for comparable distances. King-Haase Furniture Co. v. B. & O., 102 I. C. C. 629.

(10u) Rates on lumber from Jonesville, La., to Loudon, Greeneville, and Cleveland, Tenn., and Thomasville and High point, N. C., found not unreasonable as compared with contemporaneous rates on like traffic from Jonesville to other destinations and from and to other points for comparable distances. Southern Lbr. Co. v. L. & A. Ry., 102 I. C. C. 633.

(10v) Rates on apples from Clearbrook, Va., to Jonesboro, Ark., found unreasonable to extent it exceeded lower rate contemporaneously in effect to Jonesboro from other Virginia points for average haul approximately same as from Clearbrook. Reparation awarded. Wimberly Grocer Co. v. P. R. R., 102 I. C. C. 637.

(10w) Class rates applied on potatoes from Naples and Lilly, S. Dak., to points in Iowa found unreasonable to extent they exceeded commodity rates contemporaneously in effect from other points in group in which Naples and Lilly are located and as compared with lower rates in effect from and to other points in same general territory. Reasonable rates prescribed and reparation awarded. Naples Potato Growers Asso. v. C., M. & St. P., 102 I. C. C. 649.

(10x) It can not be fairly assumed that rates on a particular commodity from competing points to a common destination should necessarily bear the same relationship to each other as the class rates from same points. Washington Publishers' Asso. v. B. & O., 102 I. C. C. 662, 663.

(10y) Rates on fiberboard and pulpboard from New Iberia, La., to, Lovefield, Tex., found unreasonable to extent they exceeded lower contemporaneous rate on like traffic from New Iberia to Dallas, of which Lovefield is a suburb, which lower rate was established to Lovefield subsequent to movements here involved. Reparation awarded. Boldt Paper Mills Co. v. N. I. & N. R. R., 102 I. C. C. 682.

(10z) Proposal to readjust rates on petroleum and products from St. Louis and Wood River district points to southern destinations over or in connection with B. & O. or C., C., C. & St. L., comprising some increases but more and greater reductions, found justified. Proposed schedules will result in rates same as those now in effect over routes other than B. & O. and C., C., C. & St. L. Petroleum to Southern Points, 102 I. C. C. 756.

ALL OTHER CITATIONS

Beaumont Chamber of Commerce v. Director General, as Agent, 85 I. C. C. 139; Roquemore Gravel Co. v. A. & W. P. R. R. Co., 85 I. C. C. 184; North Carolina Pine Association v. A. C. L. R. R. Co., 85 I. C. C. 270; Southwest Cotton Co. v. S. P. Co., 85 I. C. C. 420; El Paso Bithulitic Co. v. E. P. & S. W. R. R. Co., 85 I. C. C. 425; Municipal Electric & Water Depts. v. C. I. & W. R. R. Co., 85 I. C. C. 446; Barnsdale Refining Co. v. A. T. & S .F. Ry. Co., 85 I. C. C. 685; Burlington Shippers' Asso. v. A. T. & S. F. Ry. Co., 88 I. C. C. 46; Gulfport Fertilizer Co. v. L. & N. R. R. Co., 88 I. C. C. 129; Cohen v. A. T. & S. F. Ry., 88 I. C. C. 143; Prairie Pipe Line Co. v. Di-

rector General, as Agent, 88 I. C. C. 167; Phoenix Chamber of Commerce v. A. T. & S. F. Ry. Co., 88 I. C. C. 167; Jackson Traffic Bureau v. St. L.-S. F. Ry. Co., 88 I. C. C. 188; Wyoming Sugar Co. v. Director General, 88 I. C. C. 213; Iroquois Pulp & Paper Co. v. G. & J. Ry. Co., 88 I. C. C. 255; Amalgamated Sugar Co. v. Director General, as Agent, 88 I. C. C. 266; Friend & Co. v. C. B. & Q. R. R. Co., 88 I. C. C. 288; Central Pennsylvania Lumber Co. v. T. V. Ry. Co., 88 I. C. C. 303; Doniphan Brick Works v. Director General, as Agent, 88 I. C. C. 436; Barrett Co. v. Director General, as Agent, 88 I. C. C. 459; Lackawanna Steel Co. v. P. R. R. Co., 88 I. C. C. 759; Indiana Public Service Commission v. A. T. & S. F. Ry. Co., 88 I. C. C. 722.

§29. Reproduction Value of Road.

See Evidence §49.

ALL CITATIONS

Utah Gilsonite Co. v. A. T. & S. F. Ry. Co., 85 I. C. C. 557.

§30½. Risk.

See Evidence §52.

(a) In establishing reasonable rates value of commodity to be rated and its liability to damage incident to transportation must be considered. Jackson Traffic Bureau v. B. & O., 93 I. C. C. 342, 343.

(b) Claim hazard is but one of many elements to be considered in determining reasonableness of a rate. See 87 I. C. C. 711. Wortham-Carter Publishing Co. v. Director General, 102 I. C. C. 729, 743.

§32½. Subsequent Reduction.

See Commodity Rates §4; Evidence §64; Reparation §16.

(a) The subsequent publication of a commodity rate is not sufficient ground in the absence of other proof for finding that the rates charged were unreasonable. Garcia Sugar Corporation v. N. Y. C. R. R., 92 I. C. C. 239, 241.

(b) The fact that the rate attacked may have been published in error and the subsequent reduction thereof do not necessarily demonstrate unreasonableness. Denver Alfalfa Products Co. v. Director General, 92 I. C. C. 326, 327.

(c) Complainant attacked commodity rates charged on cars of concrete pipe or drain tile shipped from Knoxville, Tenn., to South Carolina between July 1920 and November 1921 as unreasonable, unjustly discriminatory and unduly preferential of Birmingham, Ala., and Chattanooga, Tenn. Charged at rates ranging from 16 to 31.5c which were the same as those concurrently in effect to the same destinations from Chattanooga and Birmingham, except to Oakley, S. C., to which a rate of 31.5c applied from Knoxville, and 27.5c from Chattanooga and Birmingham. The 27.5c rate was subsequently made applicable from Knoxville. Knoxville, Chattanooga and Birmingham, as well as Rome, Ga., are grouped as to rates on concrete sewer pipe to points in South Carolina on and north of a line drawn from Walhalla in western South Carolina, through Seneca, Anderson, Abbeyville, Columbia, Sumter and Florence, thence to Wilmington, N. C. The points of destination are all on or north of the line except Oakley, to which higher rates applied prior to July 10, 1920 than from Chattanooga, Birmingham and Rome. HELD, rates attacked except to Oakley not unreasonable, unjustly discriminatory or unduly prejudicial; rate attacked to Oakley unreasonable to extent it exceeded rates from Chattanooga, reparation awarded. Shearman Concrete Co. v. Southern Ry., 93 I. C. C. 179.

(defg) Complainant attacked commodity rate charged on one car of peaches shipped May 31, 1922 from Fort Valley Ga., to Watuppa, Mass., as unreasonable, unjustly discriminatory, unduly prejudicial and in violation of fourth section. Shipment moved via C. of Ga., A. C. L., R. F. & P., Pennsylvania, N. Y. N. H. & H., 1,220 miles, charged commodity rate of $1.58. On June 3, 1922 three days after the shipment moved, a rate of $1.355 became effective. A rate of $1.47 was in effect at the time of movement from Eufaula, Ala., a point to which Fort Valley is directly intermediate over the route of movement. The reduction in the rate from Fort Valley to Watuppa on June 3, 1922 was part of a voluntary general reduction in the rates from Georgia to New England points. It can not be regarded as implying any admission on the part of defendants that the prior rate was unreasonable. HELD, rate attacked not unreasonable, unjustly discriminatory or unduly prejudicial, complaint dismissed. Gentile Bros. v. C. of Ga. Ry., 93 I. C. C. 328.

(h) Complainant attacked commodity rates charged on oranges carloads from

Silver Hill, Foley, Loxley, Bay Minette, Irvington and Grand Bay, Ala., to destinations in central and western territories as unreasonable. Bay Minette is north and Irvington and Grand Bay are south of Mobile, Ala., on the L. & N., between New Orleans, La., and Dlomaton, Ala. Loxley, Silver Hill and Foley are on a branch line of that defendant which extends south from Bay Minette. Rates charged from Bay Minette, Irvington and Grand Bay to Lincoln, Omaha, Sioux City and Minneapolis were made by combinations on Mobile, and from Loxely, Silver Hill and Foley combinations on New Orleans. Other rates charged were joint commodity rates. Reduced rates were established Dec. 26, 1923. HELD, rates attacked exceeded those subsequently established, unreasonable, reparation awarded. Gulf Coast Citrus Exchange v. L. & N. R. R., 93 I. C. C. 432.

(i) The voluntary reduction of a rate does not establish the unreasonableness of the former rate. Vossler Company v. E. J. & E. Ry., 96 I. C. C. 75, 76.

(j) The mere reduction of a rate by the carriers voluntarily is insufficient to prove that the former higher rate was unreasonable. Northwest Potato Exchange v. G. N. Ry., 96 I. C. C. 187, 190.

(k) The mere fact of a voluntary reduction is not sufficient evidence to establish that the rate prior to the reduction was unreasonable, but it is evidence to be considered along with other proof. Bryant v. P. R. R., 96 I. C. C. 564, 566.

(l) Complainant attacked commodity rate charged on 18 cars of petroleum products shipped between July 24, 1918 and Sept. 18, 1919 from Greybull, Wyo., to Belgrade, Mont., as unjust, unreasonable and unduly prejudicial to extent it exceeded rates subsequently established. Shipments were routed Burlington, Laurel, Mont., N. P., Lombard, Mont., Milwaukee beyond 323.3 miles, rate applicable 75.5c made up of a commodity rate of 64.5c to Belgrade Junction plus the minimum fifth class distance rate of 11c beyond. At the time these shipments moved, a joint commodity rate of 64.5c was in effect from Greybull to practically every other destination in Montana and northern Idaho, on the Milwaukee, including destinations on the Gallatin Valley branch. The rate of 64.5c was finally published to Belgrade on Oct. 15, 1919 but was made to apply over the short route via Bozeman instead of the Lombard route, over which rates to other destinations on the Gallatin Valley applied. HELD, rate charged unreasonable to extent it exceeded 64.5c reparation awarded. Continental Oil Co. v. Director General, 98 I. C. C. 544.

(m) Combination rate on coke from Everett (East Boston), Mass., to Auburn, R. I., found not unreasonable as compared with lower joint rate subsequently established. Complainant introduced no evidence bearing upon unreasonableness, but relied solely upon subsequent reduction brought about through a readjustment of rates involving both increases and reductions. General Fire Extinguisher Co. v. Director General, 91 I. C. C. 13.

(n) Rate on monochlorobenzol from Kingsport, Tenn., to Carney's Point, N. J., found unreasonable to extent it exceeded rate contemporaneously in effect to New York, N. Y., which lower rate was subsequently established to Carney's Point. For many years Carney's Point has been treated as a New York rate point taking flat New York rate on all traffic moving to and from the South. Reparation awarded. DuPont De Nemours & Co. v. Director General, 91 I. C. C. 15.

(o) Upon further hearing, original report 73 I. C. C. 292, commodity rates on apples from Yakima and Zillah, Wash., and Nampa, Idaho, to Bisbee and Douglas, Ariz., found unreasonable to extent they exceeded rates equivalent to contemporaneous class C rates, to which basis commodity rates were subsequently reduced. Melczer Co., 78 I. C. C. 319 and other cases cited. Reparation awarded. Douglas Chamber of Commerce v. Director General, 91 I. C. C. 354.

(p) Voluntary reduction of a rate by carriers does not, of itself, prove that the rate previously in effect was unreasonable. Macbeth-Evans Glass Co. v. B. & O. R. R. Co., 91 I. C. C. 758, 760.

(q) Rates on manure from Keyton, Ala., to Quincy and Mount Pleasant, Fla., found unreasonable to extent they exceeded lower rates subsequently established. Reparation denied as complainant's right to reparation not shown. Wedeles Tobacco Co. v. Director General, 92 I. C. C. 80.

(r) Reduction of a rate by a carrier to meet lower rate of other lines does not warrant a finding that prior rate was unreasonable. Smythe Co. v. C. S. S. Co., 92 I. C. C. 95, 96.

(s) Rate on cullet (broken glass) from Memphis, Tenn., to Sapulpa, Okla., found not unreasonable as compared with lower rate subsequently established, result of which was to place Memphis on a parity with Fort Smith, Ark., and St. Louis, Mo., with rates on other low-grade commodities between other points in same general territory for similar distances, or with rate approved by commission on junk, including broken glass, in 77 I. C. C. 473, for distances identical with that here involved. Liberty Glass Co. v. St. L.-S. F., 92 I. C. C. 199.

(t) Rates on coal, dead and dead slack found unreasonable to extent they exceeded those contemporaneously in effect on slack coal, which lower rates were subsequently made applicable to dead coal and dead slack. Reparation awarded. Athletic Mining & Smelting Co. v. A. C. R. R., 92 I. C. C. 233.

(u) Rates on liquid asphalt, in tank-car loads, from Port Arthur and Port Neches, Tex., to West Monroe, La., found not unreasonable as compared with lower rate subsequently established for purpose of equalizing those rates with others applicable between points in same general territory. Moreover, rates charged were shown to reflect lower percentage relationships to class D rates than those prescribed by commission on a number of low-grade commodities in Natchez Chamber of Commerce, 58 I. C. C. 610. Deas Co. v. K. C. S., 92 I. C. C. 256.

(v) Subsequent reduction of a rate by carriers does not necessarily demonstrate unreasonableness in the rate formerly in effect. Denver Alfalfa Porducts Co. v. Director General, 92 I. C. C. 326, 327.

(wx) Rates charged on sand and gravel from Winona, Minn., to Viroqua, Wis., found not unreasonable, but applicable rates found unreasonable as compared with rates on same commodities from Winona to various other points for similar distances, and with rates produced by distance scales prescribed by state commissions of Iowa, Minnesota, and Wisconsin for intrastate application. Waiver of undercharges authorized. Campbell Construction Co. v. L. C. & S. E. Ry., 93 I. C. C. 99.

(y) Rate on wrapping paper from International Falls to Chicago, found unreasonable to extent that factor up to Duluth exceeded rate prescribed in Minnesota & Ontario Paper Co., 66 I. C. C. 571, from Fox River group to Chicago. Reparation awarded. Seaman Paper Co. v. Director General, 93 I. C. C. 139.

(z) Subsequent reduction of a rate is insufficient to establish unreasonableness of preexisting rate. General Chemical Co. v. Director General, 93 I. C. C. 193, 194.

(aa) Rate on crude and fuel oils, in tank cars, from Gainesville, Tex., to Miami, Ariz., found not unreasonable as compared with lower rate subsequently established from south Texas points, which rate was later extended to Gainesville, and other north Texas points. Mere fact that a shipper at some other point may have obtained a reduction in his rate prior to date complainant obtained a like reduction does not prove that rate paid by complainant was unreasonable. Miami Copper Co. v. A. E. R. R., 93 I. C. C. 221.

(bb) Mere fact that shipper at some other point may have obtained a reduction in his rate prior to date complainant obtained a like reduction does not prove that rate paid by complainant was unreasonable. Wofford Oil Co. 66 I. C. C. 509. Miami Copper Co. v. A. E. R. R., 93 I. C. C. 221, 222.

(cc) Fact that a rate was subsequently reduced does not of itself support a finding that higher rate formerly in effect was unreasonable. Universal Oil Co. v. Director General, 93 I. C C. 237, 240.

(dd) Rates on cucumbers in brine, in bulk in barrels, and in tank cars, from Blytheville, Ark., to Omaha, found unreasonable to extent they exceeded lower rate subsequently established, which lower rate was the same as that applicable from Colorado common points to Missouri River points. Reasonable rates for the future prescribed and reparation awarded. Haarmann Vinegar & Pickle Co. v. C., B. & Q., 93 I. C. C. 251.

(ee) Rates on rice bran from Wheatley Ark., to Jackson and Meridian found unreasonable to extent they exceeded lower rates contemporaneously in effect to New Orleans and other Louisiana points. Reasonable rates for future prescribed and reparation awarded. Jackson Traffic Bureau v. A. & V., 93 I. C. C. 322.

(ff) Rates on sand from Turner, Kans., to Galloway and Cassidy, Mo. found not unreasonable as compared with lower rates from Kansas City, which lower rates subsequently applied from Turner. The subsequent reduction in rates assailed does not establish their unreasonableness. Kaw River Sand & Material Co. v. Director General, 93 I. C. C. 346.

(gg) Subsequent reduction of a rate does not establish unreasonableness of rate previously in effect. Kaw River Sand & Material Co. v. Director General, 93 I. C. C. 346, 347.

(hh) Rate on wheat from points in Nebraska to Great Falls, Mont., during Federal control, found not unreasonable as compared with lower rate subsequently established by director general to relieve drought conditions. Complainant enjoyed full use of the lower rate until it expired by limitation and record is not convincing that commission would have ordered its establishment, as reasonable, if formal complaint had been filed. Moreover, fact that lower rate was not established until after some of complainant's shipments had moved does not change the situation. Royal Milling Co. v. Director General, 93 I. C. C. 377.

(ii) Fact that rate somewhat lower than rate charged was prescribed by commission for future does not necessarily show that former rate was unreasonable. Especially is this so where the new rate is part of an extensive readjustment. News Corp. v. M. P., 93 I. C. C. 381, 383.

(jj) Rates assessed on oranges from points in California, to Virginia, Minn., found inapplicable and applicable rates, based upon combinations of blanket rate to Duluth and third-class rate beyond found unreasonable to extent they exceeded transcontinental Group F rates contemporaneously in effect to Duluth. Reparation awarded. Hansen-Peterson Co. v. A., T. & S. F., 93 I. C. C. 596.

(kk) Rate applicable on gasoline and kerosene, in tank-car loads, from Tulsa, Okla., to Clayton, N. Mex., via Pueblo, found unreasonable as compared with lower rates from other points to Clayton and Cheyenne, Wyo., for comparable distances, and to extent they exceeded lower rates contemporaneously in effect from Tulsa to Clayton via routes other than route of movement. Reparation awarded. Texas Co. v. A., T. & S. F., 93 I. C. C. 691.

(ll) Rate on strawberries from Castleberry, Ala., to Mansfield, Ohio, found unreasonable to extent it exceeded lower rate contemporaneously in effect to Buffalo, Detroit, Cleveland, and Sandusky, farther distant points to which Mansfield is intermediate, such lower rate having been established to Mansfield subsequent to movement here involved. Reparation awarded. Lee Farms Co. v. L. & N., 93 I. C. C. 699.

(mm) Rate on sporadic shipments of ferromanganese from Seattle, Wash., to Minnequa, Colo., found unreasonable as compared with lower rate established subsequent to movement, request therefor having been made prior thereto. Comparisons were submitted showing rates and earnings on this commodity from Pacific, Atlantic, and Gulf ports to consuming territories, also with rates on other raw materials used in the manufacture of steel. Defendant, however, pointed out that the ferromanganese rate was originally established to enable California producers to compete at the Atlantic seaboard with foreign producers, similar conditions not being shown to exist with respect to rates on the other raw materials. Defendant further referred to rates on various commodities which for similar distances yielded earnings in excess of those under the rate assailed. Bush v. Director General, 95 I. C. C. 661.

(nn) Neither assurance by a carrier that a rate will be reduced nor its actual reduction is proof that applicable unreduced rate is unreasonable. Bush v. Director General, 95 I. C. C. 661, 663.

(oo) Rates on apples from Charles Town, W. Va., to Williamson, W. Va., over an interstate route, on kale, in carloads and less than carloads, from Norfolk, Va., and on potatoes and cabbage from Norfolk and Suffolk, Va., to Williamson found to have been unreasonable to the extent they exceeded rates subsequently established. Reparation awarded. Amicon Fruit Co. v. N. & W. Ry. Co., 96 I. C. C. 477.

(pp) The mere fact of a voluntary reduction in rates is not sufficient evidence to establish that the rate prior to the reduction was unreasonable, but it is evidence to be considered along with other proof. Indiana State Chamber of Commerce v. A. T. & S. F. Ry. Co., 96 I. C. C. 485, 566.

(qq) Rate on gravel from Melvin, Minn., to Grand Forks, N. Dak., found

unreasonable to extent it exceeded the rate subsequently established between the same points. In another formal docket considered herewith the commission prescribed a distance scale and although a request for rates for the future is not made by complainant in this case, defendant should in the future apply the basis of rates found in that scale to be just and reasonable for this distance for application to movement in the territory in which these points are located and avoid the filing of a further formal complaint to obtain the same result. Reparation awarded. Hopeman Material Co. v. N. P. Ry. Co., 98 I. C. C. 361, 373.

(rr) Rate on sand from Portsmouth, Ohio, to Charleston, W. Va, found unreasonable to extent it exceeded lower rate subsequently established on same commodity from and to same points. Reparation awarded. Fuller Co. v. Director General, 98 I. C. C. 468.

(ss) Rates on cement plaster from Plasterco, Plasterco Junction, and Hamlin, Tex., to destinations in Alabama, Florida, Georgia, Kentucky, Mississippi, and Tennessee, from and after July 1, 1922, found unreasonable to extent they exceeded by more than 20 per cent rates in effect August 25, 1920. Reparation awarded. Texas Cement-Plaster Co. v. A. & M. R. R. Co., 98 I. C. C. 519.

(tt) The commission has repeatedly found that the existence of a lower rate over other routes and the subsequent reduction to that basis of the rate over a particular route of movement are not sufficient in themselves to establish the unreasonableness of the previous rate. Mauk Lumber Co. v. Director General, 98 I. C. C. 599, 600.

(uu) The fact that the rate charged was subsequently reduced does not of itself demonstrate unreasonableness. The reductions accompanied a general readjustment of commodity rates in certain portions of the Southwest, involving both increases and reductions. Under similar circumstances the Commission has repeatedly declined to give retroactive effect to such rates as a basis for an award of reparation. Cairo Cotton Oil Mill v. M. & O. R. R. 107 I. C. C. 299, 302.

(vv) An increase of 400% almost immediately followed by a material reduction and latter followed by a further reduction, creates a presumption of unreasonableness which the record fails to rebut. Mitsui & Company v. Director General, 107 I. C. C. 469, 471.

(ww) Rate charged on two carloads of grapefruit from Largo, Fla., to Seattle, Wash., during period of Federal control, found unreasonable to extent it exceeded lower rates previously and subsequently in effect. Reparation awarded. Ryan Fruit Co. v. Director General, 100 I. C. C. 237.

(xx) In numerous cases commission has found that a voluntary reduction of a rate does not of itself establish that the previous higher rate was unreasonable. Moore Lawless Grain Co. v. M. P. R. R. Co., 100 I. C. C. 303, 306.

(yy) The existence of a lower rate to near-by points and subsequent establishment of that rate to Cleveland, do not of themselves establish unreasonableness of rate charged. Rosenblum, 43 I. C. C. 67; Empire Cotton Oil Co., 64 I. C. C. 71. Glidden Co. v. E. R. R. Co., 100 I. C. C. 331, 332.

(zz) Rates on bituminous coal from mines in Kentucky, Virginia, and West Virginia to Clairton, Pa., found not to have been unreasonable as compared with lower rate established subsequent to movement. Carnegie Steel Co. v. P. R. R. Co., 100 I. C. C. 353.

(3a) Rates on bituminous coal from Folks and Narva, Ohio, to Munhall, Pa., found to have been unreasonable to extent they exceeded lower rates subsequently established based on a differential over the rates to Pittsburgh, Pa. Reasonable rates prescribed for future and reparation awarded. Carnegie Steel Co. v. P. R. R. Co., 100 I. C. C. 353.

(3b) Rates on doors from Pacific coast points to Memphis, Tenn., found not unreasonable as compared with lower rate subsequently established. Memphis Freight Bureau v. C. & E. I., 101 I. C. C. 26.

(3c) Subsequent reduction in the rate charged does not necessarily demonstrate unreasonableness. Sheffield Iron Corp. v. Director General, 101 I. C. C. 31, 32.

(3d) Rate on a mixed carload of beets, carrots, turnips, and cabbage from San Fernado, Calif., to St. Paul, Minn., applicable on fresh or green vegetables, found unreasonable to extent it exceeded

lower contemporaneous rate on beets, carrots, and turnips, in mixed carloads, and on cabbage, in straight carloads, which latter rate was subsequently reduced and made applicable on beets, carrots, turnips, in bags, and cabbage, in crates, in mixed carloads. Reparation awarded. August Ammon v. S. P. Co., 101 I. C. C. 37.

(3e) Applicable rate on cereal beverages from Duluth, Minn., to Greenland, Mich., found unreasonable to extent it exceeded lower commodity rate subsequently established. Reparation awarded. Fitger Co. v. Copper Range, 101 I. C. C. 87.

(3f) Rate on scrap iron from Barksdale, Wis., to Duluth, Minn., found unreasonable to extent it exceeded lower rate subsequently established. Reparation awarded. West End Scrap Iron & Metal Co. v. C., St. P., M. & O., 101 I. C. C. 108.

(3g) No evidence was introduced to establish complainant's contention that the rate charged on a carload of sugar from San Francisco, Calif., to Leadville, Colo., was unreasonable or otherwise unlawful, except the mere subsequent establishment of a lower rate over route of movement. Rates can not be condemned upon admissions of unreasonableness of the character made in this case, nor can reparation be authorized unless it is shown that the act has been violated. Western Sugar Refinery v. S. P. Co., 101 I. C. C. 113, 115.

(3h) Subsequent establishment of a lower rate at request of a shipper can not be taken as an admission that the former rate was unreasonable. Consolidated Lbr. Co. v. Director General, 101 I. C. C. 284.

(3i) Combination rates on mine-run coal from Coil and Sunset Mine, Ky., to Boone Terre, Rivermines, and Leadwood, Mo., found unreasonable to extent they exceeded a joint rate subsequently established. Due to a miners' strike, carriers, in order to move traffic and relieve or avoid congestion, assured complainant that they would establish a joint rate if he would allow shipments to go forward. Complainant would not have permitted shipments to move prior to publication of the joint rate but for representations of carriers that it would get the benefit of that rate inasmuch as it could have availed itself of a lower combination rate via another route. Reparation awarded. St. Joseph Lead Co. v. L. & N., 101 I. C. C. 352.

(3j) Class rate on scrap iron moving from Dunbar, W. Va., via an interstate route to Weirton, W. Va., found unreasonable to extent it exceeded a commodity rate subsequently established. As Weirton was not a scrap-iron consuming point until about a year prior to period of movement of shipments, commodity rates generally had not been published to that point, but before making these shipments complainant requested establishment of commodity rate which applied from Dunbar to Wheeling, W. Va., and Steubenville, Ohio. The request was acted upon but due to delay in establishment of rates shipments were made prior thereto in order to supply demands of customers. Reparation awarded. Hilb & Bauer v. N. Y. C., 101 I. C. C. 621.

(3k) Rate on cowpeas from Navojoa, Sonora, Mexico, to San Francisco, found unreasonable to extent it exceeded lower rate on peas, Mexican (garbanzo), which lower rate was established on cowpeas subsequent to movement. Reparation awarded. Lewis-Simas-Jones Co. v. S. P., 102 I. C. C. 245.

(3l) Rates on paper and products from Hamilton, West Carrollton, and Miamisburg, Ohio, and Chicago, Ill., to Dallas, Tex., found unreasonable to extent they exceeded rates subsequently established. Complaint based upon fact that rates charged were out of line with contemporaneous rates from Wisconsin territory, the latter rates having been revised in conformity with decision in Minnesota & Ontario Paper Co., 66 I. C. C. 571, while related rates in issue remained in effect and were not revised until a later date and subsequent to movement. Reparation awarded. Butler Paper Co. v. C., I. & W. R. R., 102 I. C. C. 311.

(3m) Rates on paper and paper articles in mixed carloads from New Orleans to Dallas found unreasonable to extent they exceeded lower rates subsequently established. An analysis of revenues per car-mile under rates assailed shows such rates to be excessive. Reparation awarded. Palmer & Co. v. H. & T. C. R. R., 102 I. C. C. 372.

(3n) The principal that a voluntary reduction in a rate is not proof of unreasonableness of former rate has no application where an analysis of revenues per car-mile shows that such former rate was excessive. Palmer & Co. v. H. & T.

C. R. R., 102 I. C. C. 372, 373.

(3o) Fact that rate assailed was voluntarily reduced does not of itself demonstrate unreasonableness. Armour Fertilizer Works v. M. L. & T. R. R. & S. S. Co., 102 I. C. C. 350.; Eads Bros. Furniture Co. v. B. & O., 102 I. C. C. 381, 383.

(3p) Rates on sulphuric and muriatic acids from Grasseli, Ind., to Sioux City, Iowa, found not unreasonable as compared with lower rates subsequently established. Kennedy & Parsons Co. v. C. & N. W., 102 I. C. C. 591.

(3q) Rate on coke dust or breeze coke from Pittsburgh and points taking same rate to Moundsville, W. Va., found unreasonable to extent it exceeded lower rate contemporaneously applicable on refined zinc and zinc-smelter products between same points, which lower rate was established on coke dust or breeze coke subsequent to movement here involved. Reparation awarded. United Zinc Smelting Corp. v. P. R. R., 102 I. C. C. 601.

(3r) Combination rate on crushed slate from Delta, Pa., via Buffalo, to Lockport, N. Y., a Buffalo rate point, found unreasonable to extent it exceeded lower contemporaneous rate from Delta to Buffalo, and reparation awarded. Present lower rate found not unreasonable or otherwise unlawful as compared with rates on like traffic from Delta to other destinations and from and to other points for comparable distances. Lockport Paper Co. v. M. & P. R. R., 102 I. C. C. 624.

(3s) Fifth-class rate on ground calcined magnesite from Joliet, Ill., to Omaha, Nebr., found unreasonable to extent it exceeded lower class D rate subsequently established, and reparation awarded. Present class D rate found not unreasonable since earnings thereunder compare favorably with those under other class D rates applying on this commodity from Joliet to various Mississippi and Missouri River cities and contiguous points. Mineralite Stucco Corp. v. C., R. I. & P., 102 I. C. C. 654.

(3t) Rates on fiberboard and pulpboard from New Iberia, La., to Lovefield, Tex., found unreasonable to extent they exceeded lower contemporaneous rate on like traffic from New Iberia to Dallas, of which Lovefield is a suburb, which lower rate was established to Lovefield subsequent to movements here involved. Reparation awarded. Boldt Paper Mills Co. v. N. I. & N. R. R., 102 I. C. C. 682.

(3u) Rates assessed on horseshoes, toe calks, and parts, from Duluth to Rochester found unreasonable to extent they exceeded lower contemporaneous rates on like traffic from Steelton, Minn., located within Duluth switching limits, to same destination, which lower rate was subsequently established from Duluth. Reparation awarded. Diamond Calk & Horseshoe Co. v. N. P. Ry., 102 I. C. C. 701.

(3v) Rate on corn-sirup jelly and jelly and preserves in glass containers found unreasonable and unduly prejudicial to extent it exceeded lower contemporaneous rate on various kinds of canned goods in tin cans, including fruits, which lower rate was established on jelly and preserves, in both metal and glass containers, subsequent to movement here involved. Reparation awarded. Zaring & Co. v. C. S. Co., 102 I. C. C. 724.

ALL OTHER CITATIONS

Midland Coal Co. v. F. S. & W. R. R. Co., 85 I. C. C. 146; West End Chemical Co. v. L. A. & S. L. R. R. Co., 85 I. C. C. 339; McFadden v. Director General, as Agent, 85 I. C. C. 365; Imperial Tobacco Co. v. Director General, as Agent, 85 I. C. C. 439; Germain Co. v. L. & N. R. R. Co., 85 I. C. C. 449; General Iron Works v. Director General, as Agent, 85 I. C. C. 452; Sewell & Co. v. Director General, as Agent, 85 I. C. C. 641; Pacific Mills, Ltd. v. Director General, as Agent, 85 I. C. C. 677; Halliday Milling Co. v. Director General, as Agent, 85 I. C. C. 687; Parker Bros. Co., Ltd., v. Director General, as Agent, 85 I. C. C. 721; Wickwire Spencer Steel Corp. v. Director General, as Agent, 88 I. C. C. 54; U. S. Graphite Co. v. Director General as Agent, 88 I. C. C. 157; Wyoming Sugar Co. v. Director General, 88 I. C. C. 213; Seaboard By-Product Coke Co. v. Director General, as Agent, 88 I. C. C. 261; Amalgamated Sugar Co. v. Director General, as Agent, 88 I. C. C. 266; Southern Cotton Oil Co. v. Director General, as Agent 88 I. C. C. 280; Utah-Idaho Co. v. Director General, as Agent, 88 I. C. C. 283; Friend & Co. v. C. B. & Q. R. R. Co., 88 I. C. C. 288; Michigan Tanning & Extract Co. v. Director General, as Agent, 88 I. C. C. 298;Grasselli Chemical Co. v. B. & O. R. R. Co., 88 I. C. C. 337; Sunderland Bros. Co. v. Director General, as Agent, 88 I. C. C. 585;

Republic Iron & Steel Co. v. Director General, as Agent, 88 I. C. C. 691.

§33. Surplus.

See Advanced Rates §6 (4).

(a) Evidence that for a series of years an annual dividend was paid on capital stock of a carrier, and in addition a substantial surplus accumulated, can have no direct bearing upon the reasonableness of rates on a single commodity to a few destinations, even though volume of movement of that commodity is admittedly large. Cincinnati Asso. of Purchasing Agents v. L. & N. R. R. Co., 89 I. C. C. 285, 289, 290.

§36. Ton-mile revenue.

See Supra §11; Evidence §36, §58.

(a) While the commission has condemned application of the same rate on both refined and crude oils, it does not follow that because the same rate is carried on crude oil as on refined oil that the rate on crude oil is thereby unreasonable, for it may be that the rate as applied to refined oil is low. Lubrite Refining Co., 80 I. C. C. 515. Atlantic Refining Co. v. A. B. & A. Ry., 89 I. C. C. 279, 280.

(b) The ton-mile yield returned by rates between points in other territories is not persuasive as to what should be considered reasonable for a haul over a route between two points through an area of low productivity, largely swamp lands, where there are no settlements of any size at which traffic does or could originate. Atlantic Refining Co. v. A. B. & A. Ry. Co., 89 I. C. C. 279, 280.

(c) The ultimate test from the carriers standpoint of the reasonableness of a rate must be the return for the occupation and use of its facilities. Earnings per gross ton mile take into consideration the factor of net to gross weight hauled and the comparative remuneration for the physical haulage involved and to that extent are more comprehensive than the earnings per net ton mile and per car mile. American Strawboard Co. v. I. C. R. R., 96 I. C. C. 289, 290.

(d) Rates on ground limestone from Omaha and Ralston, Nebr., to Chicago, Ill., Minneapolis, Minn., St. Louis, Mo., Toledo, Ohio, and Detroit, Mich., during Federal control, found not unreasonable or otherwise unlawful, based, among other things, upon fact that neither the ton-mile nor the car-mile yields seem unreasonable for these shipments. Barker-Evans Paint Co. v. Director General, 98 I. C. C. 414.

(e) Ton-mile earnings should ordinarily decrease with increasing distance, but it must be borne in mind that the average number of miles hauled in the southern district is approximately one-third greater than in the eastern district. Furniture from Southern Points, 100 I. C. C. 127, 144.

(f) It is a generally recognized principle of rate making that the rate per ton per mile should continually decrease as distance increases, and this theory is herein confirmed. Southern Class Rate Investigation, 100 I. C. C. 513, 642, 644.

§37. Two Line Haul.

(a) Upon further hearing, finding of original report, 83 I. C. C. 712, that rate on anthracite bird's-eye coal from group mines in Pennsylvania to Thomson, N. Y., for joint-line haul, is unreasonable as compared with rate computed on basis of single-line haul, and further prescribing reasonable rate and awarding reparation, affirmed. United Paperboard Co. v. G. & J. Ry., 102 I. C. C. 502.

§38. Value of Commodity.

See Classification §11; Evidence §61.

(a) Rate on solder found not unreasonable, discriminatory, or unduly prejudicial as compared with rates on tin, copper, lead, and spelter, which are all virgin metals. Solder is one step removed by manufacture from tin and lead, and, with exception of tin, is much more valuable than metals compared. Earnings on shipments here involved are not unduly high as compared with earnings on same commodity between other points in same general territory for comparable distances. Union Smelting & Refining Co. v. C. R. R. Co., of N. J. 92 I. C. C. 319.

(b) Generally speaking, rates on raw materials are lower than those on the finished product manufactured therefrom. Oklahoma Traffic Asso. v. A., T. & S. F., 92 I. C. C. 695, 696.

(c) The inferior quality of a commodity can not be made the basis for prescribing rates that are lower than the rates on the same commodity for comparable hauls in the same general

territory. Dixie Portland Cement Co. v. N., C. & St. L. Ry., 88 I. C. C. 147, 149.

ALL OTHER CITATIONS

Arizona Corporation Commission v. A. E. R. R. Co., 85 I. C. C. 76; O-So-Ezy Products Co. v. Director General, as Agent, 85 I. C. C. 187.

§39. Value of service.

See Evidence §62.

(ab) In considering reasonableness of rates economic condition of an industry may be relevant as it bears on value of service to the industry and as it may permanently or for a long period of time affect ability of that industry to pay rates assessed, but taken by itself it can not be accepted as controlling. Rates and Charges on Grain and Products, 91 I. C. C. 105, 143.

(c) Rate level necessary to move a commodity is an element to be considered together with other elements in determining a reasonable rate on the commodity. Chicago Heights Mfrs. Asso. v. P. R. R. 92 I. C. C. 194, 198.

(d) Fact that some movement can be shown under a rate is no proof that it is reasonable. It would be a singular doctrine to hold that no rates are unreasonably high except those which actually stifle the movement of freight. Utah State Automobile Asso. v. A., T. & S. F., 92 I. C. C. 376, 383.

(e) It is not necessary to show that rates are prohibitive in order to prove unreasonableness. Cheese from Wisconsin, 100 I. C. C. 744, 749.

§40. Volume of traffic.

See Evidence §63.

(a) There is no good reason for maintaining commodity rates on articles which move in small volume and in l. c. l. quantities. Burlap Bags and Iron and Steel Articles, 89 I. C. C. 131, 134.

(b) Complainant is entitled to a reasonable rate, and the fact that there have thus far been relatively few shipments of the commodities in question from and to these points is not the sole determinative factor. Parkersburg Rig & Reel Co. v. M. P. R. R., 93 I. C. C. 667, 669.

(c) Regardless of the volume of movement, complainant was entitled to reasonable rates on its shipments. Cleveland Akron Bag Co. v. W. & L. Ry., 93 I. C. C. 694, 696.

(d) Even where the movement is of a temporary character the shipper is entitled to a just and reasonable rate consistent with those charged others under similar conditions and one that will meet the usual tests of reasonableness. Utah Idaho Sugar Co. v. Director General, 98 I. C. C. 541, 543.

(e) While volume of movement is an important element to be considered in arriving at a reasonable rate, an excessive rate can not be justified merely on account of the fact that movements thereunder are infrequent. Hilb & Bauer v. N. Y. C., 101 I. C. C. 621, 622.

(f) Notwithstanding the shipment was sporadic, complainant is entitled to have its traffic move at a rate that is not unreasonable. Lone Star Gas Co. v. C. R. I. & G. Ry., 109 I. C. C. 258, 260.

REBATES

See Allowances VII; Common Carrier; Crimes VI; Evidence §48.

RECEIVERSHIP

(a) The lien created by the provisions of section 2797 of the Civil Code, in favor of certain classes of creditors designated therein, does not unreasonably interfere with interstate commerce, and is not offensive to the commerce clause of the federal Constitution. Nor is that section violative of the due process clause of the Constitution; and it is not void for uncertainty, or because of a failure to provide proceedings by which it may be enforced. Standard Steel Works Co. v. Williams (Ga., 1924) 124 S. E. 21.

(b) In a proceeding to foreclose first mortgage placed on a railroad, intervention petitions were filed seeking to file liens upon the gross income of the receivership. The relief sought by the interveners, who are the plaintiffs in error here, is not of such a character as to have the effect, if granted, of annulling or impairing the order of the Interstate Commerce Commission, under the authority of which the receiver had issued the receiver's certificates in question here. And the court erred in holding that the superior court of Richmond county was without jurisdiction to hear and determine the questions made by the in-

tervention of plaintiffs in error, and to grant the relief sought if the allegations in the intervention were sustained. Standard Steel Works Co. v. Williams, (Ga., 1924) 124 S. E. 21.

(c) In proceedings by receiver of street railway company for permission to increase rates and to enjoin city from enforcing inadequate rates, receiver HELD not permitted to renounce ordinance, which required, as one of the considerations for its passage and acceptance, that the company pay to the city specified sum of money in monthly installments, which had theretofore been mutually performed, and had been construed as binding obligation on the railway to make all installment payments. Westinghouse Electric & Mfg. Co. v. Denver Tramway Co., 3 Fed. (2d) 285. Stenger v. City and County of Denver, 3 Fed. (2d) 285.

(d) Salary allowed receiver or appointment of new receiver are matters properly to be brought before a court having jurisdiction in the premises and have no bearing upon an application for certificate of convenience and necessity for abandonment of line of railroad. Abandonment of M. B. & S. R. R. 90 I. C. C. 31, 34.

RECIPROCAL SWITCHING

See Demurrage §18; Switch Tracks and Switching §6, §7½.

RECONSIGNMENT

I. LEGALITY
- §1. Right to grant privilege.

II. DISCRIMINATION.
- §2. In general.

III. REASONABLENESS OF CHARGES.
- §3. In general.
- §3½. Duty of carrier to afford.

IV. TARIFFS AND PUBLICATION.
- §4. Necessity of publishing.
- §4½. Embargoed destination.
- §5. Construction in general.
- §5½. Notice.
- §6. Retroactive application.
- §6½. Rules and regulations.
- §6½a. Road haul rates applicable.

V. PROCEDURE AND REPARATION.
- §7. In general.
- §8. Parties to complaint.
- §9. Jurisdiction of Commission.
- §10. Damages and reparation.

CROSS REFERENCES

See Canada (e); Demurrage §4¾ (e), §5¾, §7½ (b) (d); Embargoes; Export Rates and Facilities §7 (ca); Express Companies §16¾, §33; Routing and Misrouting §5¾; Through Routes and Joint Rates §19.

I. LEGALITY.

§1. Right to Grant Privilege.

See Demurrage §17 (b).

III. REASONABLENESS OF CHARGES.

See Reasonableness of Rates.

§3. In General.

(a) Shippers are entitled to the benefit of reasonable rules in connection with reconsignment privileges and may recover damages for payment of excessive charges accruing due to default of carriers in providing such reasonable rules. Hull Co. v. Director General, as Agent, 89 I. C. C. 45.

(b) Complainant alleged it was damaged by reason of the sale of a carload of yellow pine lumber shipped Nov. 5, 1921 from Minter, Ala., to North Philadelphia, Pa., the proceeds of such sale being applied by the carriers to the satisfaction of charges which were unjust, unreasonable and in violation of section 1. Shipment tendered to L. & N., at Minter consigned to Ternan & White, North Philadelphia, for which the carrier issued a straight bill of lading. Shipment moved L. & N., Pan Handle and Pennsylvania, arriving Nov. 15, 1921 notice of arrival being sent to consignee on that date. Complainant and the consignee were unable to agree on terms of sale and complainant having ascertained that the Chickasaw Lumber Co. of Demopolis, Ala., desired delivery of a carload of lumber at Moore, Pa., arranged for the sale of the lumber to the latter company if reconsignment could be effected. On Nov. 19, 1921 Chickasaw Lumber Co. wired representative of the carriers to effect reconsignment to Moore. On Nov. 22 defendant replied that the original consignee, who held the original bill of lading, demanded delivery and inquired as to whether an indemnity bond would

be filed if reconsignment were made to Moore. On Nov. 23 Rox requested that the reconsignment be made and stated that an indemnity bond would be executed. In view of consignees attitude nothing was done with reference to an indemnity bond. Nov. 30 defendant notified Rox by letter that it had endeavored to make the reconsignment as requested but that the original consignee held the original bill of lading and refused to waive its claim to the shipment. Defendant notified Rox that when a certified check for transportation charges was forthcoming the car would be reconsigned, but as this was not done contents of car were unloaded. Shipment was sold at public auction and apparently in accordance with the requirements of the law in such cases. There is no claim that the demurrage, storage and freight charges were not assessed in accordance with the applicable tariffs, and there is no evidence of record that the rules or regulations under which they were assessed were unreasonable or otherwise unlawful. The bill of lading was not surrendered until Dec. 9, 1921, and the request for reconsignment was made by some one not a party to the transportation record and not the owner of the lumber. No violation of the act can be predicated upon the facts here shown. HELD, complaint dismissed. Leslie Lumber Co. v. Pennsylvania R. R., 92 I. C. C. 55.

(c) Upon arrival of shipments at originally billed destination they "were placed in public delivery yard ready for delivery." Complainant's customers refused shipments and carrier's agents were notified by telegrams confirmed by letters to "reship" to new destination. HELD: Since definition of reconsignment clearly indicates that shipments must still be in custody of carrier, and shipments here involved never left carrier's custody until they were delivered at ultimate destination, they were reconsignments and not reshipments and penalty charges accruing thereunder were not illegal. Stetson, Cutler & Co. v. N. Y., N. H. & H. R. R. Co., 91 I. C. C. 3.

(d) Definition of reconsignment provides that the term means "Any other instructions * * * necessary to effect delivery which requires a change in billing or an additional movement of the car, or both * * *;" a change in billing and an additional movement also being contemplated by definition of reshipment. However, definition of reconsignment clearly indicates that shipments must still be in custody of carrier, and, if reshipment is to have any meaning differentiating it from reconsignment, line of demarcation must be drawn there. Stetson, Cutler & Co. v. N. Y. N. H. & H. R. R. Co. 91 I. C. C. 3, 5.

(e) Charges of line-haul carrier for placing on its team track and holding for inspection at St. Louis, Mo., and East St. Louis, Ill., carload shipments of hay and straw originating at country stations, and subsequently sold for delivery in other parts of city, found not unreasonable or otherwise unlawful. Rules governing inspection and charges therefor were prescribed by commission in Reconsignment Case No. 3, 53 I. C. C. 455, and are uniformly in effect, and charges assailed were assessed accordingly. Toberman, Mackey & Co. v. C., B. & Q. R. R. Co., 91 I. C. C. 40.

(f) General reconsignment rules provide that, if a car is placed on private tracks or sidings at first-billed destination and subsequently reforwarded, local rates to and from reconsignment point, plus a reconsignment charge, shall be assessed. Such provision applies to all traffic except fruits and vegetables. Upon complaint alleging that application of rule to hay and straw results in unreasonableness and in undue prejudice in favor of fruit and vegetable traffic; FOUND: No competition exists between hay or straw and fresh fruits and vegetables, transportation of latter must be facilitated in every way, and different characteristics of commodities justify different treatment. Undue prejudice not found, but collection of a reconsignment charge in addition to rates to and from point of reconsignment found unreasonable. National Hay Asso. v. A. & R. R. R. Co., 91 I. C. C. 615.

(g) Following Chestnutt Lumber Co., 89 I. C. C. 236, applicable reconsignment charges assessed on cars placed for unloading at original billed destination, and reshipped therefrom without being unloaded to a point outside of switching limits, found unreasonable. Waiver of undercharges authorized. Hollingshead Co. v. N. Y. C. R. R. Co., 91 I. C. C. 657.

(h) Shipment of lumber from Lonoke,

Ark., was originally consigned to Deer Creek, Okla. Diversion requested to Nowata, Okla., could not be effected until after shipment passed point through which the short-line route made. Combination rates based on Winfield, Kans., assessed found not unreasonable as compared with rates contemporaneously in effect via the direct route; nor were individual factors comprising the combination unreasonable as compared with rates between other points instanced by complainant. Shipment here involved was unusual and moved over the circuitous route at instance and for convenience of complainant. While ton-mile earnings thereunder are somewhat higher than those instanced, they can not be said to have been excessive for service performed. Nebraska Bridge Supply Co. v. A., T. & S. F., 93 I. C. C. 301.

(i) Negligence of carrier in failing to transmit promptly to its connection complainant's telephonic request for diversion, resulting in shipment moving through to originally billed destinations and thence back-hauled through point at which diversion could have been effected, found to have resulted in misrouting and collection of overcharges. Under wording of defendant's tariff which provided that diversion requests must be made or confirmed in writing there was a holding out to shippers that such requests in form other than in writing would be accepted, and complainant complied literally therewith by confirming in writing its telephonic request and surrendering bills of lading. The telephonic instructions were accepted by defendant's agent, and record does not show that delay on part of complainant in confirming request in writing in any way contributed to carrier's failure to either divert shipment or transmit request to its connection. Reparation awarded. Humble Oil & Mfg. Co.v. N. Y. C., 93 I. C. C. 331.

(j) There is a clear distinction between the service performed by the carriers in the ordinary diversion or reconsignment and that which is performed in connection with grain and hay held for inspection. Toberman, Mackey & Co. v. C., N. O. & T. P., 96 I. C. C. 237.

(k) Stop-in-transit and reconsignment charges assessed under applicable tariff on hay stopped and held for reconsignment at Cincinnati and Chattanooga, found not unreasonable or otherwise unlawful. Shipper contended that charges were illegal and unlawful to extent they exceeded the stop-in-transit charges applicable on grain and hay "held for inspection and disposition incident thereto." However, there is a clear distinction between ordinary diversion or reconsignment service and that performed in connection with grain and hay held for inspection. Furthermore, in 47 I. C. C. 590, commission approved charges for reconsignment in addition to charges for service of stopping in transit. Toberman, Mackey & Co. v. C., N. O. & T. P., 96 I. C. C. 237.

(l) Shipments of wrought-iron pipe from Leeray, Tex., to Bristow, Okla., reconsigned to Okemah, Okla., with specific instructions that routing beyond Fort Worth be in connection with the M-K-T through Crowder, Okla. Diversion requested could not be effected on one shipment, which had passed point of interception before reconsignment orders, received, and that shipment moved via Frisco through Weleetke, Okla. Applicable rate on shipments routed via M-K-T found unreasonable and unduly prejudicial to extent it exceeded lower rate contemporaneously maintained via other lines for comparable distances in same general territory and rate in effect between origin and destination in opposite direction and subsequently established in both directions. Combination rate assessed on shipment routed via Frisco found unreasonable or unduly prejudicial. Reparation awarded and collection of undercharges ordered waived. Sinclair Oil & Gas Co. v. C. & N. E. Ry., 96 I. C. C. 286.

(m) Reconsignment charges alleged unreasonable, on ground that if car had moved as routed it would have reached reconsignment point before orders of reconsignment were given. Complainant not found entitled to recover anything from reconsignment charges. American Lumber & Export Co. v. A., T. & N. R. R. Corp., 96 I. C. C. 576.

(n) Error on part of complainant in consigning shipment of crushed stone from Port Deposit, Md., to Linden Hall, Pa., necessitated reconsignment to Mendenhall, Pa., is insufficient justification for the assessment of an unreasonable charge. Budding Co. v. P. R. R. Co., 100 I. C. C. 411.

(o) Following 89 I. C. C. 236, and 91 I. C. C. 657, assessment and collection of a reconsignment charge in connection

with combination rates on a tank car of gasoline shipped form Point Breeze, Pa., to New Haven, Conn., where it was placed for unloading, but was reforwarded or reconsigned to Auburn, R. I., under a new billing, found unreasonable. Reparation awarded. Atlantic Refining Co. v. P. R. R., 101 I. C. C. 85, 86.

(oa) Upon reconsideration, finding in original report, 91 I. C. C. 3, that application of penalty charges for detention at originally billed destinations of shipments of lumber which were subsequently reforwarded to new destination were not illegal, affirmed. Cars were placed for delivery on defendants' team tracks, but they had not been unloaded or accepted by consignee or owner, and, under the terms of the governing tariff rule, must be considered reconsignments and not reshipments as contended by complainants. Stetson, Cutler & Co. v. N. Y., N. H. & H., 102 I. C. C. 471.

(p) Complainant attacked reconsignment charge of $6.30 per car at Richmond, Va., on eight cars of leaf tobacco shipped between Nov. 10 and Nov. 15, 1923 from Virginia and North Carolina to Richmond, Va., and thence to Norfolk, Va., for export, as unreasonable. Shipments moved into Richmond over the Southern consigned to complainant for team track delivery. After their arrival at Richmond, and after some, but not all, had been placed for unloading, complainant sold the tobacco. Under the terms of the sale complainant was to deliver it f. o. b. at Norfolk. Complainant and defendant agree that the shipments were delivered to and accepted by complainant at Richmond, and that complainant paid the freight charges to that point. Complainant presented the Southern with switch bills of lading for the movement of the cars which had not been unloaded to the A. C. L., Southern assessed, and complainant paid the reconsignment charges here in issue. Upon delivery of the cars to the A. C. L., complainant presented that carrier with bills of lading covering the movement to Norfolk for export, and prepaid in full at the local rate. The facts of record establish that the movements beyond Richmond were reshipments. Delivery was made to and accepted by complainant who took charge thereof, paid the incoming charges thereon, and arranged, without the carrier or agent of the carrier acting for it, for the further transportation of the tobacco. The inbound movements were wholly unrelated to those outbound. Apparently there was no intention to move the tobacco beyond Richmond until after its arrival at that point. HELD, reconsignment charges unreasonable, reparation awarded. Taylor Co. v. S. Ry., 109 I. C. C. 431.

(q) Wabash and G. T., proposed cancellation of free diversion or reconsignment of anthracite coal at Detroit, Milwaukee Junction, West Detroit and Port Huron, Mich. This will result in application of a charge of $6.30 for reconsignment or diversion to points outside of the switching limits, and of $2.70 for diversion or reconsignment within the switching limits if the orders to divert or reconsign are received in time to permit instructions to be given to yard employees within 24 hours after arrival of the car at destination, or a charge of $6.30 if such orders are received more than 24 hours after arrival of the car at destination. Free diversion or reconsignment of anthracite coal is permitted by different railroads in central territory. Respondents have failed in their proof. HELD proposed schedules not justified. Diversion and reconsignment of anthracite coal, 112 I. C. C. 374.

§3½. Duty of carrier to afford.

(a) Stop-over practice embodies some elements of reconsignment. In both cases aggregate charges from point of origin to destination are computed on basis of c. l. rate from point of origin to final destination plus whatever charge is made for service. Stopping of Cars in Transit to Complete Loading, 36 I. C. C. 130. Wool Rates Investigation, 1923, 91 I. C. C. 235, 281.

(b Negligence of carrier in failing to transmit promptly to its connection complainant's telephonic request for diversion, resulting in shipment moving through to originally billed destination and thence back-hauled through point at which diversion could have been effected, found to have resulted in misrouting and collection of overcharges. Under wording of defendant's tariff which provided that diversion requests must be made or confirmed in writing there was a holding out to shippers that such requests in form other than in writing would be accepted, and complainant complied literally therewith by confirming in writing its telephonic request and surrendering bills of lading. Telephonic

instructions were accepted by defendant's agent, and record does not show that delay on part of complainant in confirming request in writing in any way contributed to carrier's failure to either divert shipment or transmit request to its connection. Reparation awarded. Humble Oil & Refining Co. v. N. Y. C., 93 I. C. C. 331.

(c) Complainant attacked charges assessed on one car of lumber shipped from Jasper, Tex., to St. Louis, Mo., on Dec. 15, 1917 and reconsigned to New York, N. Y., as illegal, and that defendants refusal to reconsign the car from St. Louis when requested to do so, while contemporaneously reconsigning shipments from East St. Louis, Ill., as unduly prejudicial. On Dec. 15, 1917 the car was shipped from Jasper by complainant consigned to itself at St. Louis. It arrived at St. Louis on Dec. 28, and notice of arrival was received by complainant on Dec. 31. On that date it ordered the car reconsigned to Harlem Transfer, N. Y., or if that point was embargoed, to Long Island City, N. Y. Complainant was notified on Dec. 31 that the reconsignment could not be made because of an eastern embargo. For several weeks complainant requested defendants to make the reconsignment and advised them that there was no embargo at Long Island City. The lumber was placed in storage by defendants on March 3, 1918. On April 4, 1918 complainant obtained a permit for the transportation of the car to New York from the freight traffic committee of the car to New York from the freight traffic committee of the north Atlantic ports and on May 14, 1918 the shipment was forwarded to New York. Rate charged was combination on St. Louis made up of factors of 19c south of St. Louis and 28.3c east thereof. The applicable rate east of St. Louis prior to May 18, 1918 was 27.3c. Shipment overcharged to extent rate charged exceeded through rate of 46.3c. Complainant asserted and defendants admitted that the embargo which is said to have prevented reconsignment of the shipment was not an embargo of the eastern lines but was an embargo of the Mo. Pac. That embargo was effective from Dec. 8, 1917 until Mar. 28, 1918, and directed that carload freight, with exceptions not here material, destined to certain territory embracing Long Island City and Harlem Transfer, would not be accepted when routed via certain gateways including St. Louis; that carload freight reconsigned or to be reconsigned would be subject to the same rules as govern direct carload consignments; and that freight would not be accepted when billed to Little Rock, Illmo, Thebes Cairo, Dupo or other intermediate points when intended for reconsignment to embargoed territory, particular reference being made to shipments of lumber and other forest products. HELD, charges collected illegal to extent they exceeded $180.57, reparation awarded. Milne Lumber Co. v. Director General, 102 I. C. C. 520.

(d) The Commission has repeatedly held that reconsignment and diversion on basis of the through rate from point of origin to new destination, with a fair charge for the extra service performed, are reasonable practices. In each instance, however, it has made the nonexistence of an out of line haul and request for reconsignment or diversion within a reasonable time conditions precedent to the right of a shipper to demand such reconsignment. Fess v. C. H. & G. L. Ry. 104 I. C. C. 262, 264.

IV. TARIFFS AND PUBLICATION

See Tariffs.

§4. Necessity of publishing.

(a) Reconsignment charges on grain held in cars for official inspection and disposition orders incident thereto at billed destination found inapplicable. Exceptions to reconsignment tariff provided that rules therein will not apply to "Grain * * * held in cars on track for inspection and disposition orders incident thereto" and words "disposition orders" as used therein clearly contemplated forwarding of cars to points beyond billed destination. Reparation awarded. Flanley Grain Co. v. Director General, as Agent, 89 I. C. C. 33.

(b) Rule in reconsignment tariff of C. & N. W. Ry. Co., to effect that freight which has been handled by the Illinois Central prior to delivery to the North Western would be reconsigned only on basis of combination of locals to and from reconsignment point found unreasonable, and shipper found damaged to extent applicable charges thereunder exceeded charges which would have accrued, based upon joint through rate plus reconsignment charge, which sub-

sequently became applicable when the unreasonable rule was eliminated from the tariff. Reparation awarded. Hull Co. v. Director General, as Agent, 89 I. C. C. 44.

(c) Upon arrival at Nashville, Tenn., cars were placed for unloading. Some were reforwarded with seals unbroken, and others were moved after seals were broken without ladings having been disturbed. Separate bills covering inbound and outbound movements were rendered and paid. HELD: As to such shipments placed for unloading and subsequently reshipped in same cars without change of lading to points beyond switching limits, reconsignment charges were applicable under governing tariffs, but unreasonable. Chestnutt Lumber Co. v. Director General, as Agent, 89 I. C. C. 236.

(d) Complainant attacked charges on carloads of hay and straw placed on track and held for inspection at St. Louis and East St. Louis during 1920, 1921, 1922 and 1923 as unreasonable, unjustly discriminatory, unduly prejudicial and illegal. Hay and straw are shipped to St. Louis and East St. Louis where the cars are placed at a point satisfactory to complainant for inspection before delivery is taken. The cars are switched to another terminal delivery on another railroad, whose switching charges are absorbed, but a reconsignment charge of $2.70 is assessed. Inspection of some commodities is a necessary and valuable commercial incident in the process of marketing them and stoppage and detention of them for this purpose is reasonable and proper, but the carriers can not be required to perform the service without adequate compensation therefor. HELD, charges attacked not unreasonable or otherwise unlawful, complaint dismissed. Toberman Mackey & Company v. C. B. & Q. R. R., 91 I. C. C. 40.

§4½. Embargoed destination.

See Embargoes.

(a) Complainant attacked charges assessed on two cars of yellow pine lumber shipped from Poley and Ruthven, Ala., on Feb. 23 and 25, 1918, to complainant at Evansville, Ind., and reshipped to Zanesville and Dayton, O., as unreasonable and inapplicable. Cars arrived at Evansville on March 9, 1918. On March 12, complainant instructed defendants agent at Evansville to reconsign No. 16626 to Upland and March 13 to reconsign 5849 to Detroit. Both requests to reconsign were refused and complainant was notified that it would be necessary for him to dispose of the lumber at Evansville. This he could not do. The cars were held awaiting disposition orders until March 22. Defendant then ordered them to an independent warehouse for unloading and storage of the lumber. The lumber was placed in storage March 29, and complainant notified. In 1918 complainant requested defendant to reconsign the lumber then in storage to Zanesville and Dayton. This request was refused. Finally, complainant had the lumber reloaded and reshipped to the destinations last named, paying the combination of local rates to and beyond Evansville and a charge of $15 per car for reloading. Joint rates were in effect from points of origin to Upland and Detroit, applicable through Evansville at the time of original shipment and when the cars were first ordered reconsigned. Likewise joint rates were in effect from points of origin to the Ohio river destinations, via Evansville, when the shipments left point of origin and when reconsignment to the latter points was requested. The embargo against reconsignment of shipments stopped at points in official classification territory, which was instituted at the direction of the assistant director general was canceled on March 21, nine days before the lumber was put in storage. The embargo declared by defendant, ostensibly to cover that in official classification territory, was not canceled until March 28, eight days after the embargo in official classification territory had been canceled. At the time reconsignment was requested no embargo existed against either Upland or Detroit, and the only limitations in defendants reconsignment tariff were in regard to points which were embargoed. HELD, charges on car 16626 inapplicable to extent they exceeded those on basis of joint rate of 30.8 c plus demurrage charged of $6 and reconsignment charge of $5; and charges collected on car 5849 inapplicable to extent they exceeded joint rate of 26.2c, plus demurrage charge of $9 and reconsignment charge of $5 reparation awarded. Thomas v. Director General, 92 I. C. C. 469.

(b) Desired route being embargoed, complainant notified consignor to forward shipments via unembargoed route. Subsequently, permit obtained authorizing movement over embargoed route

which complainant forwarded to carrier together with letter setting forth name of consignor and requesting carrier to "be governed accordingly." Complainant, however, failed to change instructions previously given consignor and shipments were billed and moved via higher-rated route. HELD: Applicable tariff provided that "request for diversion or reconsignment must be made or confirmed in writing * * *," but no proper request in conformity therewith was made. Moreover, tender of permit or direction in letter to "be governed accordingly" laid no obligation on carrier to forward shipments via embargoed route in view of specific instructions designated in bills of lading. Weston Dodson & Co. v. N. Y., O. & W. Ry. Co., 91 I. C. C. 659.

(c) Shipments were refused by consignee at originally billed destination, whereupon they were reconsigned without routing instructions. Carrier moved shipments from reconsignment point, retaining to itself entire haul, instead of forwarding via shorter two-line route over which a lower rate applied. HELD: had complainants directed routings over lower-rated route carrier could not lawfully have ignored such instructions, and having failed to indicate any routing it was carrier's duty to forward over the cheaper route. Shipments found misrouted and reparation awarded. Original report, 87 I. C. C. 31, affirmed. Everist v. C., M. & St. P., 90 I. C. C. 473.

(d) Reconsignment was refused at original destination due to embargo and complainant notified. Disposition orders requested but not furnished and shipments were stored. While in storage reconsignment again requested and refused, so complainant subsequently had shipments reloaded and reshipped, paying local rates plus other charges. No embargo existed when reconsignment requested and, while tariffs did not provide for reconsignment on shipments unloaded at first-billed destination, here the unloading was done at defendant's direction, and complainant was not consulted in the matter. HELD: Charges collected found inapplicable to extent they exceeded joint rates from origin to ultimate destination in effect at time of original shipment, plus proper demurrage and reconsignment charges. Reparation awarded. Thames v. Director General, 92 I. C. C. 469.

(e) Due to strike of defendant's employees, certain destinations were embargoed, resulting in complainant being unable to make outbound, or unload inbound shipments. Necessity for embargo was unquestioned and record failed to establish that defendant refused to furnish cars for shipments to unembargoed points. Complainant might have stopped cars from arriving at its plant before storage capacity became exhausted by diverting cars to other points. HELD: Under above circumstances demurrage charges assessed were not unreasonable or otherwise unlawful. Big Diamond Mills Co. v. C. G. W. R. R., 92 I. C. C. 709.

(f) When tariffs contain no restriction against reconsignment to embargoed points, demurrage charges may not be assessed for the car detention resulting therefrom. The right to reconsign depends entirely upon the construction of rules, which are required to be filed in the same manner as rates, and if the carriers do not restrict such rules to the extent of their capacity to perform the service, the shipper can not be held liable for the detention of cars when it is not directly responsible for such detention and can not abate the cause thereof, as in the case of an embargo, which is a disability of the carrier. Milne Lumber Co. v. Director General 102 I. C. C. 520, 522.

(g) The director general is liable for any damage incurred as a proximate result of errors in accepting instructions to reconsign shipments to embargoed points. Empire Lumber Co. v. Director General, 88 I. C. C. 425.

ALL OTHER CITATIONS

Gerhard & Hey (Inc.) v. Director General, as Agent, 88 I. C. C. 293.

§5. Construction in general.

(a) Exceptions to reconsignment tariff provided that rules therein will not apply to "Grain * * * held in cars on track for inspection and disposition orders incident thereto at billed destination or at point intermediate thereto." Contention that term "disposition orders" has a special meaning in traffic parlance and implies delivery only to points within switching limits of billed destination, not sustained. Words of a tariff must be construed in their ordinary sense, and where meaning, so construed, is clear it must govern. In ordinary sense the words "disposition orders" as used in

tariffs clearly contemplated forwarding of cars to points beyond billed destinations. Flanley Grain Co. v. Director General, as Agent, 89 I. C. C. 33, 36.

(b) Rules providing for application of combination rates plus reconsignment charge, on petroleum and products, placed on private siding at original billed destination and reforwarded without being unloaded to points outside switching limits, found unreasonable to extent they provide a higher basis than the through rate plus reconsignment charge. Assailed rules tend to force shippers to inspect shipments on public delivery tracks under conditions and with facilities which fail to measure up to the high degree of safety desirable in the public interest. It is desirable that inspection and sampling of petroleum be performed with all caution and under conditions insuring maximum safety and this can be better accomplished on private sidings than on public delivery tracks. Western Petroleum Refiners Asso. v. C., R. I. & P. Ry. Co., 89 I. C. C. 241, 243.

(c) It would seem that the correct principle has been applied in framing rule 7, uniform reconsignment rules, for a car which has been placed for unloading at its original billed destination has in fact been delivered. A subsequent movement might therefore be properly regarded as a reshipment. Stetson Cutler & Company v. N. Y. N. H. & H. R. R., 91 I. C. C. 3, 5.

(d) The court holds with reference to car of hay and straw held in the yards at Cincinnati in 1922 and 1923 that the carrier can not charge the rate for reconsignment to points beyond the switching limits and also collect a so called inspection charge and that the latter charge allowed is applicable. Where there is no inspection and the shipment is afterwards diverted the reconsignment charge will apply. Where the cars are placed in the Cincinnati yards upon the so called "plug track" and there inspected and unloaded no reconsignment charges can be collected. Baltimore & O. R. Co. v. Cincinnati Grain & Hay Co., 300 Fed. 674, 676.

(e) Under traffic provisions relative to inspection and reconsignment charges, and note making them applicable to particular track, subject to conditions as to switching charge, HELD that, on cars of hay unloaded on such track, no inspection or reconsignment charges could be made, and on reconsigned cars only the charges specified in the note could be collected. Baltimore & O. R. Co. v. Cincinnati Grain & Hay Co., 300 Fed. 674.

(f) Under tariff provision applicable to division and reconsignment of property and to inspection of grain and seed, local charge on hay and straw, which did not require compulsory inspection, HELD a diversion or reconsignment charge so that no further reconsignment charge could be made, and absence of inspection did not prevent such charge. Baltimore & O. R. Co., v. Cincinnati Grain & Hay Co., 300 Fed. 674.

(fa) Shipment of lumber moved from Jasper, Tex., to St. Louis, and was ordered reconsigned to Harlem Transfer, N. Y., or if that point was embargoed, Long Island City, N. Y. Complainant was notified reconsignment could not be made due to an eastern embargo. Shipment was placed in storage and subsequently moved under permit to New York. While applicable tariff prohibited reconsignment to embargoed points, not only was there no embargo on eastern lines against Long Island City but one of such lines reaching St. Louis was willing to accept shipment for transportation. Carriers disability preventing immediate movement was theoretical disability based upon supposed embargo, and it follows that charges assessed as result of refusal to reconsign were illegal. Reparation awarded. Milne Lbr. Co. v. Director General, 102 I. C. C. 520.

(fb) Tariff provided (1) that where one change in destination has already been effected and shipper requests subsequent change necessitating movement of the car shipment will be treated as a reshipment from point of reforwarding and assessed at rates to and from reforwarding point, and (2) if car is stopped short of billed destination after having one reconsignment charges will be made at rates to and from first reconsignment point. Here service of stopping short of billed destination was neither requested nor performed within provision (2) above quoted, which does not contemplate a further movement beyond point of stoppage short of billed destination. Instructions were given and executed involving subsequent changes in destination which necessitated movement of the car. The service performed was clearly governed by provision (1) above quoted and charges based thereon were applicable. Shipments found overcharged and reparation

awarded. Cudahy Packing Co. v. Director General, 102 I. C. C. 598.

(fc) Shipments of anthracite coal moving from Providence, Pa., to Matawan, N. J., thence reconsigned to Asbury Park, N. J., were assessed joint rates and reconsignment charges, plus additional charges because of the movement through Matawan. Contention that additional charges were properly assessed under reconsignment tariffs, which provide for their application where return or additional hauls are involved and where rate from original point of shipment to final destination is not applicable through reconsignment point, it being shown that the customary route between origin and final destination is via South Amboy and Sea Girt, not sustained. Tariff naming through rate having contained no routing restriction, such rate was applicable via route of movement, and charges assessed were illegal to extent of additional charges collected. See 47 I. C. C. 59 and other cases cited. Reparation awarded. Hartwell & Lester v. D. & H. Co., 102 I. C. C. 703.

(g) Complainant attacked interstate rate and reconsignment charge from Tulsa, Okla., to Okmulgee, Okla., during July 1923 on one car of fabricated iron and steel tank material, knocked down, originating at Parkersburg, Va., as inapplicable. On July 6, 1923 complainant shipped a car from Parkersburg to itself at Tulsa, charges prepaid, routed B. & O., to St. Louis, Mo., and Katy beyond. It arrived at Tulsa and notice thereof was given complainant on July 12, but it was not placed for unloading at complainants warehouse, which is served by the Kay. Shipment moved over Frisco from Tulsa on July 13, and arrived at Okmulgee on July 17, 1923 where it was accepted and unloaded and the charges paid. The tariffs in force when the shipment moved authorized reconsignment at St. Louis or Kansas City over the Frisco to Okmulgee at a lower through rate than when reconsigned at Tulsa. When it is considered that on the day the shipment arrived at Tulsa from an interstate point, and before placed for unloading, complainant surrendered the original billing, which was unnecessary except to effect reconsignment, and directed its movement to another point to which reconsignment was authorized, the presumption is strong that defendants properly considered the character of the shipment to be interstate. HELD, charges attacked applicable, complaint dismissed. Parkersburg Rig & Reel Co. v. St. L. S. F. Ry., 109 I. C. C. 235.

ALL OTHER CITATIONS

Litman & Ossep v. Director General, as Agent, 88 I. C. C. 199.

§6. Retroactive Application.

See Facilities and Privileges §19.

(a) Shipment of gasoline moved from point of origin to first billed destination, and after placement on private siding was reforwarded or reconsigned to second billed destination, charges at the applicable combination rates, as well as a reconsignment charge, having been collected. HELD: Since the shipment moved some time prior to the rule prescribed in 89 I. C. C. 241, to effect that the through rate, plus a reconsignment charge, should be applied on shipments of this character, the retroactive application of the rule is not warranted. Atlantic Refining Co. v. P. R. R., 101 I. C. C. 85.

§6½. Rules and regulations.

(a) Complainant attacked rates, rules and regulations applicable to the reconsignment of carload shipments after arrival at the first billed destination and placement on private tracks or sidings, as unjust, unreasonable and unduly prejudicial as applied on hay and straw, and unduly preferential of fresh fruits and vegetables. Throughout the country generally shipments of fresh fruits and vegetables delivered on private tracks have been excepted from the application of that portion of rule 12 which provides for the assessment of local rates to and from the point from which cars are reforwarded. On such shipments the through rates from point of origin to final destination plus the $6.30 charge, are applicable. Although rule 12 does confer a preference on fruit and vegetables such preference is not undue or unlawful. The different characteristics of the commodities justify different treatment. In 89 I. C. C. 236 the Commission found that the assessment, in addition to the rates to and from the point of reshipment, of the reconsignment charge provided by rule 12 was unreasonable, reversing to that extent former decisions in which the provisions of rule 12 have been approved. HELD, present rules not unduly prejudicial or

unreasonable except in providing for the collection of a reconsignment charge in addition to such rates. National Hay Association v. A. & R. Ry. 91 I. C. C. 615.

(b) Complainant alleged defendants negligence in failing to intercept at Norfolk, Va., and to return to Whitehall, Mich., two cars of leather shipped from Whitehall to Haverhill, Mass., resulted in assessment of unreasonable charges. Feb. 12 and 21, 1923 complainant shipped two cars of leather from Whitehall to Haverhill, routed P. M., to Chicago, Ill., C. & O., to Cincinnati, O., N. & W., to Norfolk, M. & M. Transportation Co. to Boston, Mass., and Carter Russell Co. beyond. April 10, complainant instructed the P. M., at Whitehall by telephone, confirmed by letter which reached the agent April 11 to have both cars returned to Whitehall. The cars were not intercepted by defendants, but were shipped to Boston and stored and later reshipped to Whitehall. Both cars reached Norfolk April 3, 1923; they were delivered to the steamship Co. on April 16, 1923 and their contents transferred by that company to its boat on April 17. The instructions were forwarded by the P. M., to the C. & O., but the latter carrier did not comply with the tariff and transmit the instructions to its immediate connections. Had the request for diversion been transmitted to its connection at Cincinnati, it would have reached Boston in time to have prevented the shipments from being placed in storage. HELD, the failure of the C. & O., to comply with its tariff rule resulted in damage to complainant, and this damage is measured by the charges collected for storage at Boston, reparation awarded. Eagle Ottawa Leather Co. v. B. & O. R. R., 98 I. C. C. 400.

(c) Negligence of carrier in failing to transmit promptly to its connection complainant's telephonic request for diversion, resulting in shipment moving through to originally billed destination and thence back-hauled through point at which diversion could have been effected, found to have resulted in misrouting and collection of overcharges. Under wording of defendant's tariff which provided that diversion requests must be made or confirmed in writing there was a holding out to shippers that such requests in form other that in writing would be accepted, and complainant complied literally therewith by confirming in writing its telephonic request and surrendering bills of lading. Telephonic instructions were accepted by defendant's agent, and record does not show that delay on part of complainant in confirming request in writing in any way contributed to carrier's failure to either divert shipment or transmit request to its connection. Reparation awarded. Humble Oil & Rfg. Co. v. N. Y. C., 93 I. C. C. 331.

§6½a. Road Haul Rates Applicable.

See Tariffs §18.

(a) Complainant attacked charges on two cars of steel plates shipped Jan. 29, 1921, from Alliance, O., originally consigned to Ranger, Tex., and reconsigned to Baytown, Tex., as unreasonable as a result of the failure of the M. P., to act promptly upon complainants request to divert the cars while in transit and by reason of the tariff rule of the T. & P., respecting charges to apply on shipments diverted or reconsigned. Shipments consigned on Jan. 29, 1921 to complainant at Ranger over N. Y. C., to Cleveland, Big Four to St. Louis, M. P., to Texarkana and T. & P., beyond. On Feb. 7 complainant telephoned the general agent of M. P., at Houston and requested diversion to Bayton via Shreveport, La., care S. P. Confirmation in writing of complainants request, dated Feb. 6, was received by the general agent at Houston on morning of Feb. 9, together with the bills of lading covering the shipment. Defendant failed to effect the diversion or to transmit the request to its connection, and the cars moved to Ranger as originally routed, charged $1.51 plus a reconsignment charge of $2.50 per car, made up of $1.245 to Ranger, 13c back haul to Fort Worth, and $13.5c from Dayton to Fort Worth. The rate of $1.245 to Ranger was also applicable to Baytown and under the tariff provision charges on the shipments should have been based on the latter rate, plus the back haul charge of 13c, plus the reconsignment charge of $2.50 per car, shipment overcharged. A period of 5 hours and 45 minutes elapsed between the receipt by the general agent at Houston of complainants request for diversior of the cars and their delivery to the T. & P., at Texarkana, and 2 days, 9 hours, 15 minutes between such receipt and the departure of the shipments from Fort Worth. Car should have been diverted at Fort Worth. HELD, shipment overcharged, reparation awarded. Humble

Oil & Refining Co. v. N. Y. C. R. R., 93 I. C. C. 331.

(b) Complainant alleged failure of defendants to follow diversion instructions, caused charges assessed on two shipments of steel rails, with angles, carloads, from Boulder, Colo., to Wilmington, Calif., May 4, 1920 as unreasonable. Shipments routed U. P., to Ogden, O. S. L., to Salt Lake City, and L. A. & S. L., beyond. Shipments consigned to steamer Kaseeka, for export to Phillipine Islands. Export rate applicable over this route was 50c which included transfer of the freight from the car to shipside. No diversion in transit was permitted under this rate. On May 10 because the sailing of the Kaseeka had been canceled, complainant instructed the carrier to divert the six cars to Westwood Junction, Calif., over the S. P., which, under those instructions, would have received the shipments at Ogden or Salt Lake City. Four of the cars have already passed those points, and were permitted to proceed to Wilmington over the Salt Lake. Other two cars were diverted, one at Ogden and other at Salt Lake City, to Westwood Junction, over S. P. On May 13, the complainant learned that the other four cars had passed Ogden and Salt Lake City, and could not be diverted to Westwood Junction, and directed the defendant to cancel the diversion of the two cars to Westwood Junction, and allow them to proceed to destination as originally billed. Before this request could be complied with, the two cars had reached Imlay, Nev., on the S. P., 398 miles west of Ogden. The S. P., on receipt of advice to cancel the diversion of these cars at Westwood Junction, did so, and rediverted the cars to Wilmington. Proper basis $16.30 per ton on the rails and $16.30 per ton on fastenings, from Boulder to Fernley, Neb., 54c to Roseville, and 34.5c beyond. The record can not be accepted as affirmatively establishing the complainants original instructions were to divert all six or none of these cars to Westwood Junction. The record fails to establish any dereliction on the part of defendants prior to the time that the two cars were intercepted at Imlay, on the S. P. It was impracticable to apply the export rate of 50c, in connection with which not even a first diversion was permitted. The tariffs permitted no diversion under export rates, and only one diversion under domestic rates, and imposed the combination of locals to and from the diversion point, plus $5, in case of a second diversion. There is no showing that the diversion rules were unreasonable, or that they were not applied according to their terms. HELD, complaint dismissed. United Commercial Company v. S. P. Co., 93 I. C. C. 417.

(c) Complainant attacked commodity rates charged on two cars of wrought iron pipe, shipped in 1919 from Chester, Pa., and Pittsburgh, Pa., to Tulsa, Okla., diverted to Wynona, Okla., as unreasonable and in applicable. Car from Chester was originally routed Pennsylvania to Philadelphia, Southern Steamship Co. to Houston, Tex., and G. C. & S. F., beyond. On Nov. 7, 1919 after the shipment had arrived at Philadelphia, complainant requested an agent of defendant to divert the car to the all rail route, specifying the Pennsylvania to St. Louis, Mo., but no particular line beyond. On Nov. 13, prior to the departure of the car from St. Louis, complainant requested an agent of defendant at Tulsa to divert the car to Wynona, but due to negligence of defendant this diversion was not accomplished. The car moved from St. Louis over the M. K. & T., to Tulsa, the original destination, and from that point over the same line to Wynona, where it arrived Dec. 11, 1919. The car was not placed for unloading or otherwise delivered to complainant at Tulsa. Charged 6.5c Chester to Philadelphia, 87c beyond, plus $7 for diversion. There were no joint rates from Chester to Tulsa or Wynona. A fifth class rate of 50.5c was applicable to St. Louis, proportional rate of 36.5c East St. Louis to Wynona, or a combination through rate of 87c. The car from Pittsburgh was forwarded to Tulsa Dec. 16, 1919 routed over the Pennsylvania. Prior to arrival at Tulsa complainant requested an agent of defendant to divert it to Wynona. Due to an error the car was diverted to Waynoka, Okla., instead of Wynona. Route of movement was over Pennsylvania to St. Louis, Frisco to Fort Scott, Kas., M. K. & T. to Chanute, Kas., A. T. & S. F., Frisco and M. K. & T., to Wynona. Charged 74c to Waynoka and 17c beyond. The commodity rate of 74c applied to Wynona. All of the lines comprising the route of movement were shown as participating carriers. The tariff contained no limitation or restrictions that would

tend to render the 74c rate inapplicable over the route of movement, although that route included a back haul over a portion of the line from Waynoka to Wynona. HELD, charges Chester to Tulsa, directed to Wynona inapplicable to extent it exceeded 87c plus $4 for diversion; and charges on the car from Pittsburgh diverted to Wynona inapplicable to extent it exceeded 74c plus $3 for diversion, reparation awarded. Tidal Osage Oil Co. v. Director General, 96 I. C. C. 113.

(d) Complainant attacked fifth class rates charged on 12 cars of fruits and vegetables reconsigned from Croxton, N. J., Philadelphia, Pa., and Washington, D. C., originally shipped from California, Oregon, Washington and Colorado to New York, as illegal. The cars were originally billed to New York. Croxton is a hold point on the Erie, where it has been customary to hold shipments consigned to complainant pending notification as to the New York delivery desired. The shipments were reconsigned to Philadelphia and Washington. In addition to the joint commodity rates from the points of origin to New York, fifth class rates of 19.5c and 29c to Philadelphia and Washington, plus a reconsignment charge of $6.30 were collected. At the time the shipments moved the same joint commodity rates applied to Philadelphia and Washington as to New York. HELD, rate attacked illegal to extent it exceeded the joint commodity rate from points of origin to ultimate destinations, reparation awarded. Steinhardt & Kelly v. E. R. R., 96 I. C. C. 229.

(e) Complainant attacked combination commodity rates charged on three cars of wrought iron pipe, carload from Leeray, Tex., to Okemah, Okla., in July and August 1922 as unreasonable unduly prejudicial and in violation of fourth section. Leeray is 100 miles west of Fort Worth, on the C. & N. E. Okemah is local on the F. S. & W. Shipments originally consigned to Bristow, Okla., and reconsigned to Okemah. The reconsignment request specified routing beyond Fort Worth in connection with M. K. & T., through Crowder, Okla., ad F. S. & W., beyond. Two of the shipments were so routed beyond Fort Worth but the third shipment had passed through Fort Worth and had been turned over to the St. L. S. F. & T., and Frisco before reconsignment order was received. It was necessary therefore to route this car in connection with the Frisco through Weleetka, Okla. In connection with M. K. T. applicable rate was 60c reconsignment charge $2.25. Via Frisco combination rate was 70.5c. At the time these shipments moved certain southwestern carriers maintained a rate of 53.5c on wrought iron pipe from Texas to Oklahoma. HELD, rate of 60c applicable via M. K. T. unreasonable to extent it exceeded 53.5c and rate of 70.5c applicable via Frisco not unreasonable or unduly prejudicial, reparation awarded. Sinclair Oil & Gas Co. v. C. & N. E. Ry., 96 I. C. C. 286.

(f) Complainant attacked combination rate charged on one car of rough lumber, shipped Sept. 5, 1923 from Delphi, Ind., to Bay City, Mich., and reconsigned to Corry, Pa., as unreasonable and inapplicable. Shipment moved over C. I. & L., to Michigan City, Ind., M. C., to Bay City and delivered Sept. 20. After the car had been placed for unloading on the private track of the original consignee and had been refused by him complainant notified the M. C., by wire to forward it to Corry for Erie delivery, at joint rate of 26.5c from Delphi, if possible. HELD, combination rate charged applicable and not unreasonable, complaint dismissed. Liberty Cooperage & Lumber Co. v. C. I. & L. Ry., 98 I. C. C. 461.

(g) Complainant attacked charges assessed on one tank car of gasoline Sept. 9, 1922, from Point Breeze, Pa., to New Haven, Conn., and after placement at destination, was reforwarded to Auburn, R. I., as unjust and unreasonable. Rate paid to New Haven 27c and after placement, complainant took out a new bill of lading and reforwarded the car to itself at Auburn. A reconsignment charge of $6.30 and transportation charges at rate of 21.5c were paid. Effective July 24, 1924, defendants established a rule applicable to the transportation of oil in tank cars placed for unloading on private siding at original billed destination, but not unloaded, whereby such cars may be reconsigned to points outside the switching limits on the basis of the thru rate from point of origin to the second billed destination, plus the reconsignment charge. HELD, rates charged unreasonable to extent it exceeded through rate plus reconsignment charge, repara-

tion awarded. Atlantic Refining Co. v. Penn., 101 I. C. C. 85.

(h) Complainant attacked combination rate of 56c charged on a car of cereal beverages shipped March 25, 1922, from Duluth, Minn., to Greenland, Mich., as unreasonable, unjustly discriminatory and unduly prejudicial to extent it exceeded 42.5c. Shipment made March 16, 1922. Moved over D. S. & A. to Houghton, Mich., and Copper Range thence, 308.4 miles, charged fifth class of 37c to Houghton and 19c beyond. Defendants state they would have established that rate had complainant requested a commodity rate prior to making the shipment. HELD: Rate attacked unreasonable to extent it exceeded 42.5c, reparation awarded. Fitger Co. v. C. R. R. R., 101 I. C. C. 87.

(i) Negligence of carrier in failing to transmit promptly to its connection complainant's telephonic request for diversion, resulting in shipment moving through to originally billed destination and thence back-hauled through point at which diversion could have been effected, found to have resulted in misrouting and collection of overcharges. Under wording of defendant's tariff which provided that diversion requests must be made or confirmed in writing there was a holding out to shippers that such requests in form other than in writing would be accepted, and complainant complied literally therewith by confirming in writing its telephonic request and surrendering bills of lading. The telephonic instructions were accepted by defendant's agent, and record does not show that delay on part of complainant in confirming the request in writing in any way contributed to carrier's failure to either divert shipment or transmit the request to its connection. Reparation awarded. Humble Oil & Rfg. Co. v. N. Y. C., 93 I. C. C. 331.

(j) Shipment from Pittsburgh, Duquesne Station, Pa., to Tulsa, Okla., was diverted, through carrier's error to Waynoka, instead of Wynona, Okla., necessitating a back haul to Wynona. Tariffs of participating carrier's named, without applicable restrictions, same rate from origin to both Waynoka and Wynona, and this rate, plus diversion charge, found applicable. Reparation awarded. Tidal Osage Oil Co. v. Director General, 96 I. C. C. 112.

(k) Carload of lumber moved from Delphi, Ind., to Bay City, Mich., where it was placed for unloading but refused by consignee, and upon instructions of shipper was reconsigned to Corry, Pa. The rate applied was the combination rate, and not the joint rate which complainant contends was applicable. HELD, Under the diversion or reconsignment rule governing, the combination rate charged was applicable and not unreasonable. Complaint dismissed. Liberty Cooperage & Lbr. Co. v. C., I. & L. Ry. Co., 98 I. C. C. 461.

(l) Complainant attacked rate charged on one car of apples from Brewster, Wash, to Fort Smith, Ark., as illegal. Shipment was billed from Brewster on Oct. 24, 1922 to Wenatchee, Wash., reconsigned at the latter point on Oct. 25, to Chicago, Ill., for I. C., delivery and on Nov. 4 reconsigned to Fort Smith. The second reconsigning order was given to the I. C., with instructions to route the car over that line to East St. Louis and M. P., beyond. The car was duly delivered to the I. C., at Albert Lea, Minn., on Nov. 6. It moved on to Chicago, but defendants concede that the second reconsigning order was received in time to have permitted the diversion to have been made at Freeport, Ill., by a route 98 miles shorter than through Chicago. Charged $1.50 through rate plus 33c for out of line haul. The applicable rate was $1.50 and there was no provision in the tariff restricting movement through Freeport or Chicago, although a considerably shorter route over the Burlington from Billings, Mont., to Kansas City, Mo., thence M. P., or K. C. S., was available. HELD, rate applicable was $1.50, reparation awarded. Browne Hinton Wholesale Grocery Co., v. G. N. Ry. 102 I. C. C. 237.

(la) Shipments of lumber moved from point of origin to originally billed destinations and subsequently reconsigned to new destination. Charges were collected on basis of combination rates from and to reconsignment points plus reconsignment charge, rate from point of origin to reconsignment points having also been contemporaneously applicable from origin point to ultimate destination over routes of movement. FOUND: Shipments overcharged to extent of rates charged from reconsignment points to ultimate destination. Stetson, Cutler Co. v. N. Y., N. H. & H., 102 I. C. C. 471, 472.

(m) Complainant attacked combination rate charged on a tank car of coconut oil shipped Oct. 28, 1918 from San

Francisco, Calif., to South Omaha, Neb., reconsigned to Calumet station, East Chicago, Ind., and again reconsigned to South Omaha as unreasonable. Shipment moved Santa Fe to Kansas City, Mo., and Burlington beyond. This shipment was part of a total of five cars of coconut oil originally billed to South Omaha which moved from San Francisco in tank cars of the Santa Fe under an arrangement whereby, at the request of the latter, the contents of the cars were to be transferred at Kansas City into tank cars furnished by complainant in order that the Santa Fe cars should not leave the line of that carrier. On Oct. 31, 1918 complaint telegraphed its San Francisco office for the numbers of the cars which were not equipped with steam coils and was advised that three of the cars, including that here considered, were not so equipped. On Nov. 1, 1918 complainants representative at Kansas City instructed the Santa Fe at Topeka, Kas., to telephone to divert this and the other two of these three shipments to complainants at East Chicago, Ind. These instructions were confirmed in writing on the same date. Diversion was affected at Winslow, Ariz., Nov. 5, 1918. Thereafter one of the cars which complainants San Francisco representative had advised was equipped with steam coils was upon arrival at Kansas City found not to be so equipped, and complainant thereupon instructed the Santa Fe to stop for inspection at Kansas City the other four cars, including that here considered. When this car reached that point it was found to be equipped with steam coils, and complainant accordingly instructed that its contents be transferred to another tank car and the latter reconsigned to South Omaha. These instructions were complied with and shipment moved to South Omaha, charged $1.715, made up of $1.125 to Wellington, Kas., and 59c beyond, plus reconsigning charges of $2 at Winslow, $5 at Wellington and $2 at Kansas City. HELD, applicable rate was $1.40 composed of commodity rate of $1.125 to Kansas City and 27.5c beyond, reparation awarded. Cudahy Packing Co. v. Director General, 102 I. C. C. 598.

(n) Complainant attacked combination rate charged on 14 cars of saw logs shipped during April 1923 from Tobins Siding and Ramsay, Mich., to Sheboygan, Wis., and reconsigned to Wausau, Wis., as unreasonable and inapplicable. Points of origin are on the Northwestern, 43 and 49 miles west of Watersmeet, Mich., and distance to Sheboygan are 270.8 and 276.8 miles, respectively. Distance from Sheboygan to Wausau is 154.7 miles. Charged 9c and 5c to and from Sheboygan. A rate of 7c was applicable to Sheboygan for these distances on saw logs and bolts for manufacture—products to be reshipped. These logs were manufactured at Wausau and the products reshipped. By virtue of the reconsigning tariff the haul from Sheboygan to Wausau became part of a through movement, and it follows logically that all of the conditions attaching to the factor from Sheboygan to Wausau attached likewise to the rate for the through movement. HELD, rate attacked to Sheboygan unreasonable to extent it exceeded 7c, reparation awarded. Oelhafen Mondeau Co. v. C. & N. W. Ry., 104 I. C. C. 295.

(o) Complainant attacked charges collected on seven cars of bituminous coal shipped March 12, 1923 from Clinton, Ind., to South Bend, Ind., and reconsigned to Chicago, Ill., as excessive and otherwise unlawful. Shipments were consigned from Clinton to South Bend over C. & E. I., to Momence and N. Y. C. C. & E. I., delivered them to the N. Y. C., at Momence at 2:30 p. m. March 14, 1923. On March 15, 1923 complainant telephoned the C. & E. I., at Momence for information relative to the whereabouts of the shipments with a view to diverting them to Chicago if they had not gone forward to South Bend. On the same date the latter was informed by an agent of the N. Y. C., at Momence that the cars had been hauled the previous evening to Kankakee, Ill., a point 11.3 miles west of Momence, where they would be made up in a train for South Bend, and transmitted this information to complainant by telephone. Upon being advised by the C. & I., that the charges for back hauling from Kankakee to Momence would be the only transportation charges in addition to those based on the through rate from point of origin to final destination which would be incurred in effecting diversion from Kankakee to Chicago, complainant instructs the former to have the shipments so diverted. In transmitting these instructions to the N. Y. C., the C. & E. I., stated specifically that complainant did not desire the shipments diverted if additional transportation

charges other than those applicable for the out of line haul from Momence to Kankakee and return would be incurred. The advice given the C. & E. I., by the N. Y. C., agent at Momence on March 15 1923, that the shipments had been hauled to Kankakee the previous evening and would be placed in a train for movement to South Bend was in error. The cars had left Momence at 7:15 a. m. on the date named before the inquiry as to their whereabouts had been made and moved directly east to South Bend, arriving at 7:50 a. m. The latter point is 90 miles east of Momence. On March 17, 1923 the N. Y. C., returned the shipments to the C. &. E. I., at Momence and they moved thence to Chicago over the last named line and the I. H. B. The rate of $1.70 maintained from Clinton to South Bend is not applicable over the route the shipments moved. On bituminous coal, carloads, moving from and to these points over the C. & E. I., to Momence and N. Y. S., beyond a combination of $3.24 applies, based on a commodity rates of $1.60 to the interchange point and $1.64 beyond. The applicable charges were less than those which would have accrued had the diversion not been effected. HELD, charges applicable not unreasonable or otherwise unlawful, complaint dismissed. Eagle Coal & Mining Co. v. C. &. E. I. Ry., 107 I. C. C. 607.

(p) Rate assessed on shipment of crushed stone from Port Deposit, Md., consigned through error to Linden Hall, Pa., and reconsigned at Marysville, Pa., to Mendenhall, Pa., found unreasonable. Error on part of complainants in consigning the shipment originally to Linden Hall, instead of Mendenhall, requiring reconsignment to latter point, stressed by defendant, is insufficient justification for the assessment of an unreasonable charge. Budding Co. v. P. R. R. Co., 100 I. C. C. 411.

(q) Shipment of gasoline moved from point of origin to first-billed destination; and after placement on private siding was reforwarded or reconsigned to second billed destination, charges at the applicable combination rates, as well as to reconsignment charge, having been collected. HELD, Since the shipment moved some time prior to the rule prescribed in 89 I. C. C. 241, to effect that the through rate, plus a reconsignment charge, should be applied on shipments of this character, the retroactive application of the rule is not warranted. Atlantic Refining Co. v. P. R. R., 101 I. C. C. 85.

(r) Inbound and outbound rates charged on sand moving from Montezuma, Ind., to Illiopolis, Ill., there placed for unloading and subsequently reconsigned to Buffalo, Ill., found legally assessed, notwithstanding fact that shipments could have moved via a less circuitous route taking a lower rate. Applicable reconsignment tariff provided that if shipment has been placed for unloading at original billed destination and reforwarded therefrom without being unloaded, to a point outside the switching limits, it will be subject to published rates to and from reconsignment point. Here the cars were so placed and reforwarded, and combination assessed was therefore applicable. Reconsignment charges, however, assessed in addition to rates to and from reforwarding point found unreasonable, following 89 I. C. C. 236, 91 I. C. C. 615, and reparation awarded. Meneely Co. v. C., I. & W., 101 I. C. C. 389.

(s) Shipments of chestnut lumber moved from Camden-on-Gauley, W. Va., to Montreal, Canada, and at latter point reconsigned to Ste. Therese, Canada, on which charges were collected based on a joint commodity rate to point of reconsignment and a local rate of Canadian carrier beyond: FOUND: Rate from point of origin to reconsignment point not unreasonable or in violation of long-and-short-haul clause of fourth section of the act, and question whether action taken by Canadian carrier upon and in connection with reconsignment of the shipments from Montreal to Ste. Therese resulted in overcharges which entitle complainant to an award of reparation, does not come within the jurisdiction of the commission. Natl. Amer. Wholesale Lbr. Asso. v. B. & O., 101 I. C. C. 741.

ALL OTHER CITATIONS

Municipal Electric & Water Dept. v. C. I. & W. R. R. Co., 85 I. C. C. 446; Simms Oil Co. v. H. & T. C. R. R. Co., 85 I. C. C. 537; Dells Paper & Pulp Co. v. Director General, as Agent, 85 I. C. C. 609; Gadsden Lumber Co. v. A. N. R. R. Co., 85 I. C. C. 626.

V. PROCEDURE AND REPARATION

See Procedure Before Commission; Reparation.

§7. In General.

(a) Prayer for rates from nonproducing points in Maryland and Pennsylvania to points on lines of Pennsylvania R. R. Co., applicable on shipments of crushed stone reconsigned out of route or return hauled, denied, in view of fact that the record is inadequate to afford a basis for the prescription of such rates. Budding Co. v. P. R. R. Co., 100 I. C. C. 411, 413, 414.

§10. Damages and reparation.

See Loss and Damage; Reparation.

(a) Shippers are entitled to benefit of reasonable rules in connection with reconsignment privileges, and may recover damages for payment of excessive charges accruing due to default of carriers in providing such reasonable rules. Hull Co. v. Director General, as Agent, 89 I. C. C. 44, 45.

(b) Failure of carrier to transmit diversion orders in connection with two carload shipments of leather moving from Whitehall, Mich., via Norfolk, Va., to Haverhill, Mass., in accordance with tariff rule governing, found to have resulted in damage to complainant to extent of charges collected for storage at Boston, Mass. Reparation awarded. Eagle-Ottawa Leather Co. v. B. & O., 98 I. C. C. 400.

(c) Complainant attacked failure of defendant Norfolk & Western to exercise reasonable diligence toward its diversion instructions subjected it to the payment of unreasonable charges on a carload of ground peanut hulls shipped August 31, 1923 from Suffolk, Va., to Granite City, Ill., and reconsigned to Steubenville, O. Shipment moved N. & W., to Ivorydale, Cincinnati O. Big Four to Granite City, Big Four to Wellington, O., and W. & L. E., beyond. That portion of the haul from Granite City to Indianapolis, Ind., constituted a back haul. Charged 35 and 23.5c to and from Granite City, $8 demurrage at Granite City, $6.30 switching at Granite City and $6.30 reconsigning charge. Applicable rate from Granite City to Steubenville was 30.5c and shipment was undercharged. Car left Suffolk Aug. 31, arrived at Roanoke Sat. Sept. 1. At about 1.45; complainant directed defendants agent at Suffolk to divert the car to Steubenville. The telegram from the agent at Suffolk to defendants general offices in Roanoke was not filed at the telegraph office in Suffolk until 7 p. m. on Saturday, Sept. 1. Apparently the agent was remiss in permitting this delay, Sunday and Monday were holidays. At 9:30 a.m. Tuesday, Sept. 4, defendant requested its transportation department to effect the diversion at Circleville, O, for movement over Pennsylvania beyond. Circleville is about 69 miles north of Portsmouth, O. Routing via Circleville was not directed by complainant but constituted the Suffolk's agent understanding of the proper route to Steubenville. Defendant did not transmit the diversion request to the Big Four. The record is persuasive that if defendant had fulfilled its obligation to accord the diversion request attention the car could have been intercepted in ample time to protest the joint rate. HELD, reparation awarded to rate of 22.5c plus $2.70 diversion charge. Newsome Grain & Feed Co. v. C. C. C. & St. L. Ry. 104 I. C. C. 269.

REDUCED RATES

I. CONTROL AND REGULATION.
- §1. Jurisdiction of Commission.
- §2. Power to suspend.

II. LEGALITY OF REDUCED RATES.
- §2½. In general.
- §3. Charitable institutions, fairs or emergency.
- §4. Government or municipal shipments.
- §4½. Reasonableness and discrimination.
- §5. Returned or old shipments.
- §6. Company material.
- §6½. To encourage markets or meet competition.

III. TARIFFS AND PUBLICATION.
- §7. In general.
- §8. Reparation.

IV. PROCEDURE.
- §9. In general.
- §10. Evidence and burden of proof.

CROSS REFERENCES

See Classification §12⅞ (a); Discrimination §2, §3½a, §12; Divisions §5; Evidence §64; Loss and Damage §9; Passenger Fares and Facilities §5, §7¼;

Released Rates; Reparation; Through Routes and Joint Rates.

I CONTROL AND REGULATION.

See Control and Regulation.

§1. Jurisdiction of Commission.

See Interstate Commerce Commission I; Jurisdiction of Commission.

(a) Commission does not consider that when rates assailed are shown to be unreasonable its hands are bound so tightly by provisions of section 15a of the Act that it can not grant a general reduction unless and until interested carriers as a whole in their respective groups make a fair return. Rates and Charges on Grain and Products, 91 I. C. C. 105, 164.

ALL OTHER CITATIONS

North Carolina Pine Asso v. A. C. L. R. R. Co., 85 I. C. C. 270.

II. LEGALITY OF REDUCED RATES.

See Legality of Rates.

§2½. In general.

(a) C. G. W., C. M. & St. P., Rock Island, M. & St. L., and Northwestern, respondents, proposed to reduce rates on brick and related articles taking same rates, carloads, from Mason City, Sheffield and other adjacent points in Iowa to the Twin Cities and Duluth, Minn., Omaha, Neb., and certain nearby destinations. In view of the withdrawal of all protests against the proposed rates to Minnesota and Wisconsin points, the Commission sees no reason for not permitting them to become effective. HELD, proposed rates not unlawful. Brick and clay products between western points, 93 I. C. C. 81.

(b) Shippers safeguard against exaction of exorbitant charges is found in §1 of the Act, and if persons advocating reductions on certain commodities meet usual tests of reasonableness approved by experience and valid in law, and rates on such commodities are unreasonable, it is Commission's duty to prescribe just and reasonable rates thereon for future. Rates and Charges on Grain and Products, 91 I. C. C. 153, 154.

(c) Commission instituted an investigation as to reasonableness of all of the rates on anthracite coal, and certain questions in respect of shortage of household fuel in the New England states and the Middle Atlantic states are before it. Can the high retail selling prices of anthracite coal, used as fuel for heating of dwellings and buildings and in kitchen ranges, be reduced through reduction of freight rates thereon which may be unreasonable or otherwise unlawful? Should new rates be established for the purpose of facilitating the shipping and distribution of fuels to be used as substitutes for or to supplement domestic sizes of anthracite? The domestic sizes of anthracite include lump, grate, egg, stove and chestnut sizes, called prepared sizes, and pea size. Although $16 per ton, a standard retail selling price, was the price of domestic sizes of anthracite obtained by several dealers in Boston in Nov. 1923, such sizes were sold at retail for $18 per ton in New Britain, Conn., in Jan., 1924, and higher prices were exacted from consumers at various points by speculators during several periods of acute shortage of those sizes. It is apparent that the rates applicable for transportation of domestic sizes of anthracite, the household fuel, over the shorter routes to numerous points of consumption are more renumerative than the rates on many other commodities transported similar distances by the respondent carriers. That present condition, which is of long standing, does not differ materially from a similar condition disclosed in the former investigation, 35 I. C. C. 220, 282. The transportation of anthracite coal produces the principal revenue of several respondent carriers. HELD: The Commission is unable to find that all of the rates on anthracite coal now in force are excessive, unreasonable or otherwise unlawful, and a horizontal reduction of all those rates, to an extent which could be reflected in an appreciable reduction of the retail selling price, would reduce the income of several of the carriers to an extent which would impair their credit, and consequently, their ability to perform sufficient and satisfactory transportation service to the public. The rates on anthracite transported over the shortest route to each of points in New England are lower than the rates on anthracite transported over one or more of the longer routes to each of those points. It is within the power of the respondent carriers to reduce materially the difference in mileage between the short routes on the one hand and several of the longer routes on the other by the formation of new through routes. The present structure of rates on anthra-

cite reflect grouping of mines and grouping of numerous points of destination. This grouping principal is inconsistent with the differences in rates which are now maintained between the shorter and the longer routes.. And it may be noted that if equalization of rates over all these routes should be brought about the carriers would suffer deductions on the longer routes are all carriers that have the advantage of numerous relatively high rates for the shorter hauls. The Clearfield, Pa., district schedule of rates is one of the higher schedules of rates on bituminous coal, considering length of haul, to points in New England states. Nevertheless, the rate to Boston under that schedule is only 6c per ton higher than rates in prepared sizes of anthracite to Boston and the haul of such bituminous averages 138 to 191 miles longer than the haul of prepared sizes of anthracite under the rates as stated. Commission shall not authorize any increases in the rates on anthracite, and it expects the carriers to reduce the higher rates on domestic sizes and pea size of anthracite applicable over the longer routes to the level of the rates applicable over the shorter routes between the same points. The joint rate on prepared sizes of anthracite from mines on D. L. & W. to Watertown, N. Y., a point in the N. Y. C., and not on the lines of any other respondent carrier is $3.91. A joint rate of $3.28 is applicable from those mines via carriers named to Buffalo and the haul to that point via Syracuse is 75 miles longer than the haul to Watertown. HELD: Rate to Watertown should be reduced to that in effect to Buffalo. Rates on anthracite coal of the Reading from mines in Pennsylvania to Philadelphia are under attack, and the rates to Port Richmond to be transhipped therefrom beyond the capes are also under attack. HELD: The rates to Port Richmond are applicable to the rail portion of the transportation of coal partly by railroad and partly by water to Boston and other ports. The rates in question are excessive in that they yield an excessive measure of revenue from the transportation of a low grade, long haul traffic of large volume. Rates attacked unreasonable to extent they exceeded on prepared sizes $1.90 and on pea size and smaller sizes $1.76. Rates on anthracite from mines on the Pennsylvania and Reading to Wilmington, Del., are attacked, prepared sizes $3.02, pea size $2.52, smaller sizes $2.39. Claimed average haul of 170 miles. HELD: Rates attacked unreasonable to extent they exceed on prepared sizes $2.59, pea size and smaller sizes $2.34. Present rates on anthracite coal to North Carolina are combination rates to and beyond Virginia cities. HELD: Rates attacked unreasonable to extent they exceeded $5.75 per ton on prepared sizes. Is the distribution of supplementary fuels restrained or restricted by excessive or unreasonable freight rates? There is an abundant supply of low volatile bituminous coal in certain coal bearing lands of Pennsylvania, Maryland and West Virginia. The rates have not been challenged in this case. Freight rates affect total restraint of the shipping of coal produced from mines in West Virginia to points in the 11 Northeastern states north of Hagerstown, Md., and Washington, D C. That is the only restraint of distribution of household fuel, effected through freight rates which has come to the attention of the Commission in this investigation. Joint rates on low volatile bituminous coal from mines in West Virginia to points in the Middle Atlantic states and the New England states have not been established and there has been no transportation of that coal to those points over all rail routes. The mines are in the New River district on the C. & O. and Virginian and in the Pocahontas district and Tug River district on the N. & W. The applicable rates are the local rates or mileage rates of each carrier forming the through routes, and the aggregate, or combination, of those several local rates produces the rates applicable for the through transportation. The combination rates were intended to have application to exceptional transportation of coal and not to a stable coal traffic. HELD: Reasonable joint rates to points in New England except B. & M., shall be rates that will not exceed by more than $1.10 per gross ton the rates on bituminous coal from the Clearfield to those points and to points on the B. & M., $1.35 more than rates from Cumberland-Piedmont district. If any of the respondent carriers prefer to establish proportional rates to and beyond Hagerstown and Potomac Yard, respectively, instead of establishing the joint rates as prescribed, they may apply to the Commission for modification of the order. And if any of the respondent carriers prefer to make the prescribed joint rates applicable via all rail routes other than the routes prescribed and not over the routes prescribed, they may apply to the Commission for modification of the order. Anthracite Coal Investigation, 101 I. C. C. 363.

ALL OTHER CITATIONS

Ratings on Army Tractor Tanks, 85 I. C. C. 383.

§4. Government or Municipal Shipments.

(a) United States was not liable for additional charges for transportation of coal over land-aided railroads, under tariff providing for such charges where road haul revenue was less than $1 per ton, though after land grant deduction the balance to be paid in money was less than $1 per ton, since the land received from the government was a part of the compensation for the transportation. Louisville & N. R. Co. v. United States, 45 Sup. Ct. 233.

(b) Obligation of land-aided railroads to haul property of the United States at reduced rates was a part of the consideration for which land grant was made, under Land Grant Acts of May 17, 1856, June 3, 1856, March 3, 1857, April 10, 1869, March 3, 1871, and March 3, 1875. Louisville & N. R. Co. v. United States, 45 Sup. Ct. 233.

(c) Under Land Grant Acts of May 17, 1856, June 3, 1856, March 3, 1857, April 10, 1869, March 3, 1871, and March 3, 1875, the United States was entitled to transportation of its property over land-aided railroads at reduced rates. Louisville & N. R. Co. v. United States, 45 Sup. Ct. 233.

(d) Mere use of government forms of bills of lading on transportation of goods over land-aided railroads is not conclusive that government owned goods at time of transportation requiring railroads to transport goods at land grant rates. Louisville & N. R. Co. v. United States, 45 Sup. Ct. 233.

(e) Where contract by which the United States purchased coal, and specifications made part thereof, gave the United States the right to select between delivery at mine and delivery at Gulf ports, provided that, if mine delivery should be selected, the coal should be ordered in carload lots and shipped on government bills of lading, to be furnished by government and that government, in such event should pay freight, and that contractor should provide transportation from cars to government barges, tow barges and furnish and deliver water for steam and drinking purposes at various places, and gave government right to inspect coal after transportation, and to reject it if not in accordance with specifications, and where the United States furnished the government bills of lading under which the coal was transported over land-aided railroads, the title, at time of transportation, was in the United States, entitling government to transportation at reduced rates, under Land Grant Acts of May 17, 1856, June 3, 1856, March 3, 1857, April 10, 1869, March 3, 1871, and March 3, 1875. Louisville & N. R. Co. v. United States, 45 Sup. Ct. 233.

(f) Land-aided railroads, having accepted freight at reduced rates for transportation of goods under government bills of lading, with full knowledge of all the facts, without protest against land grant deductions, could not subsequently recover from government the amounts deducted, on theory that ownership of goods at time of transportation was not in the United States. Louisville & N. R. Co. v. United States, 45 Sup. Ct. 233.

(g) The use of government bills of lading and the payment of reduced charges by the United States are not sufficient to sustain finding that coal, at time of transportation over land-aided railroads, was the property of the United States entitled to transportation at reduced rates. Louisville & N. R. Co. v. United States, 45 Sup. Ct. 233.

(h) The city of Grafton, N. Dak., desiring to take advantage of the reduction in freight rates on sand, gravel, and crushed rock when used for public purposes, persuaded John O'Connor Co., to permit the shipments to be billed to the city and to pay the city the full tariff rates, thus giving the city the benefit of the 10-cent per net ton reduction which was in accord with the intention of carriers in providing for such reductions. FOUND, that the arrangement was not entered into with any intent to defraud the railroad company nor to take undue advantage of the provisions for this reduction provided in the tariff circulars, and the company did not benefit by the reduction but permitted the city to obtain such lawful benefit. Reparation awarded. Hopeman Material Co. v. N. P. Ry. Co., 98 I. C. C. 361, 369, 370.

§4½. Reasonableness and discrimination.

See Blanket Rates §10½ (h), §13 (k); Branch Lines §1 (bb); Commodity Rates §2½ (a), §5

(g); Discrimination; Evidence §12 (1) (3v); Long and Short Hauls §12 (2) (a); Rail and Water Rates (c); Reasonableness of Rates; State Rates and Regulations (vv).

(a) The commission is impressed with the view that a carrier should not so publish its rates that further reductions might take place automatically; but they should be so published that any contemplated reductions would be made only after they had received the carrier's careful consideration with a view to determining whether or not they would have the effect of so reducing the revenue as unduly to burden other traffic. Reduced Commodity Rates to Pacific Coast, 89 I. C. C. 530, 531.

(b) The commission is impressed with the view that a carrier should not so publish its rates that further reductions might take place automatically; but they should be so published that any contemplated reductions would be made only after they had received the carrier's careful consideration with a view to determining whether or not they would have the effect of so reducing the revenue as unduly to burden other traffic. Reduced Commodity Rates to Pacific Coast, 89 I. C. C. 530, 531.

(c) Proposed to reduce rates on crushed stone from Gladhill, Advance, and Maria Furnace, Pa., and Flint, Deerfield, and Baltimore, Md., to Niagara frontier points, but to restrict such rates to movements in open-top cars, found justified. Crushed Stone from Maryland and Pennsylvania, 89 I. C. C. 681.

(d) Western Maryland Ry. proposed changes in rates and commodity descriptions in its tariff naming rates on stone from stations on its line and the Hagerstown & Frederick to trunk line, New England and Niagara frontier points. Reduced rates proposed were on crushed stone from Gladhill, Advance and Maria Furnace, Pa., and Flint, Deerfield and Baltimore, Md., to Buffalo, N. Y., Lockport, N. Y., and other Niagara frontier points from $3.28 to $3.05 but to restrict these rates to movement in open top cars. They further proposed to add a new commodity description namely, stone chips or granules, and to apply a rate of $3.40 on that commodity from and to the points named. In addition, they proposed to make no change in the figures of the rates but to change the description from crushed stone to stone chips or granules, in certain items naming rates from Gladhill, Advance, Maria Furnace, Flint and Deerfield to Jersey City, N. J., and other trunk line and New England points. Gladhill and Advance are on the W. M., 19 miles west of Gettysburg Pa., Baltimore rate territory. Lockport is northeast of Buffalo in the Buffalo rate group and Niagara frontier point, served by the N. Y. C., and Erie. The general basis of rates, both class and commodity, from the Baltimore group to the Buffalo group is the same as the basis of rates from the Philadelphia rate group to 60% points in central territory, of which Erie is representative. The rates on stone chips or granules to central territory are substantially less than the rates on crushed stone and are about 48% of the sixth class rates, while the rate to Erie and the proposed rate to Lockport on stone chips or granules are higher than the rates on crushed stone and are more than 60% of the sixth class rates. The restriction of crushed stone to open top cars would appear to impose no handicap on shippers of greenstone or ordinary crushed stone as the requirement is but the observance of the present general practice. To points in trunk line and New England the change of description from crushed stone to stone chips or granules would appear to impose class rates on ordinary crushed stone to these points in the event that any should move, although the record is silent on that point. No explanation is offered why rates on crushed stone in open top cars were not published to these points as well as to Buffalo rate territory. HELD, respondents have justified the inclusion of the description "stone chips or granules (roofing granules)" in addition to the modified description of crushed stone in open top cars and reduced rates proposed for the latter justified. Respondents have not justified proposed increase in the rates on the commodity which it is proposed to designate as stone ships or granules. Crushed stone from Maryland and Pennsylvania, 89 I. C. C. 681.

(e) Respondents proposed reductions in class and commodity rates from points on the Central Vermont Ry., New London, Conn. to Fonda Junction, Vt., to points generally in central and western trunk line territories. The proposed rates were published to comply with fourth section order 8833. By that order the Commission denied application to con-

tinue rates from New York to Chicago, Ill., Milwaukee, Wis., lower than from intermediate points in New England. The fourth section applications are based upon applicants desire to compete with routes which are shorter and which afford more expeditious and efficient service, namely, standard all rail, differential all rail, standard rail and lake, differential rail and lake, ocean and rail canal and lake. Rates from New York not lower than the sixth class rates are reasonably compensatory. HELD proposed rates not justified, applicants authorized to maintain not less than the present sixth class rates but not lower than present rates from New York. Rail and lake rates from New England, 92 I. C. C. 106.

(f) Respondents proposed to establish reduced rates on cement, carloads, from Dixon, Ill., La Salle, Ill., and Hannibal, Mo., to points in Kentucky, served by the L. H. & St. L. Maine line of the L. H. & St. L. extends along the south bank of the Ohio river from Henderson, Ky., its western terminus to Strawberry, Ky., 6 miles south of Louisville, Ky., and, through trackage arrangements with the L. & N., it serves Evansville, Ind., and Louisville, Ky. on through business. The only river crossings touched by it are Evansville and Henderson on the west and Louisville and New Albany, Ind., on the east. It is to points served by this main line that the proposed rates apply. Buffington and Hannibal now have reduced rate on cement to the destinations on this line, whereas the other points of production named have had the proposed reduced rates deferred. HELD, suspended schedules justified. Cement from Illinois and Missouri, 92 I. C. C. 133.

(g) Respondents proposed to reduce the rates on spelter, carload from Fort Smith, South Fort Smith and Van Buren, Ark., to Chicago, and East St. Louis, Ill., St. Louis, Mo., and Milwaukee, Wis. Spelter is zinc. Rates to Chicago and Milwaukee are based differently over rates to St. Louis. As smelters came to be established in southeastern Kansas they were accorded the Joplin rates, now known as group 1 rates. Later Bartlesville prevailed in getting the Joplin rates extended to it. Rates from the Fort Smith territory were established in 1916 on a basis higher than group 1 rates, and by August 5, 1916, these same rates applied generally from points beyond group 1, including Quinton and Henryetta. Fourth sections violations would exist under the rates as proposed on shipments moving to Chicago and Milwaukee over the Ft. S. & W. No violations would occur on shipments moving to or through St. Louis. It would be possible to move shipments from South Fort Smith or Van Buren by way of Kansas City to Chicago at the rate of 24c, such shipments moving through Quinton from which the rate is 25.5c. The proposed schedules would destroy a rate parity of long standing as between the points here considered and certain competing points on a commodity which is highly competitive and would injuriously affect smelters at such competing points. HELD, proposed schedules would unduly prefer South Fort Smith and Van Buren to the undue prejudice of Quinton and they have not been justified. It is unreasonable to apply group 1 rates from Quinton and when this is done the group 1 rates may be published from South Fort Smith and Van Buren. Spelter from Arkansas, 92 I. C. C. 136.

(h) Respondents proposed to reduce the rates on tin, terne, and black plate, carloads, from defined territories as provided in Lelands I. C. C. 1641 to Houston, Tex., and Texas gulf ports taking the same rates. They are carload rates from Pittsburgh. Present rates are 88c on tin plate and 90c on the others. The 90c rate represents the New Orleans combination. Proposed rates are on tin and terne plate 76c and on black plate 74.5c. Present rates to Texas common points except black plate, represents the Deming, N. M. maximum of 90c. Present rate on black plate to Texas common points is 102 c. In July 1924 respondents published other schedules which were not protested, naming the same rates to Louisiana and Arkansas destinations as those proposed to the Houston group. Houston interests at hearing stated they desired the all rail rates be maintained on a normal all rail basis. HELD, proposed schedules not justified. Tin, terne and black plate, 92 I. C. C. 356.

(i) Complainant attacked commodity rates on common stoneware, carloads, from Monmouth, Macomb and Whitehall, Ill., to N. Dakota and eastern Montana as unreasonable, unjustly discriminatory and unduly prejudicial as compared with rates from Red Wing, Minn. Routes from points of origin are via St. Paul, Minn. Distances to St. Paul over Burlington are 394 miles from

Monmouth, 425 from Macomb and 501 from Whitehall, distance from Monmouth via M. & St. L., 392 miles. Red Wing is 40 miles southeast of St. Paul on the C. G. W., and C. M. & St. P. In 81 I. C. C. 64, the Commission prescribed a reduction on earthenware and stoneware from Red Wing to north Pacific coast and intermediate transcontinental territory from the Group E to the Group F basis or from $1.35 to $1.28. Red Wing, Monmouth and Whitehall are in Group E and there had been a substantial parity between them since 1987 to the north Pacific coast territory and since 1906 to points in intermediate territory affected by the reduction. From Red Wing to the west the general basis of rates is class B joint or combination, with the coast rate as a maximum. Defendants express a willingness to remove the hump in the difference between Red Wing and the Illinois points by reductions from the latter which will result in maximum difference in eastern Montana of 9c. The proposed maximum difference in eastern Montana of 9c would remove the irregularities in the relationship and would give complainants all the relief to which they are entitled. HELD, reductions proposed by defendants would result in fair, nondiscriminatory and nonprejudicial rates, complaint dismissed. Western Stoneware Co. v. C. B, & Q. Ry., 93 I. C. C. 143.

(ia) Fact that saving per individual farmer in event of a rate reduction is small, presents no reason why his freight rates should not be reduced if unreasonable. Rates and Charges on Grain and Products, 91 I. C. C. 105.

(j) Proposed changes in rates on petroleum and products from points in Missouri, Kansas, and Oklahoma to stations on M. & O. R. R. between East St. Louis and Cairo, Ill., for purpose of placing all destinations on Chicago, Ill., basis, but which would represent increases at East Carondelet and Cairo and reductions at intermediate points, found not justified as to increases, but justified as to reductions. Under respondent's revised proposal fourth-section departures at Murphysboro, and other intermediate points while lessened in degree, would be continued. Petroleum from Southwestern States, 91 I. C. C. 464.

(k) Reduction of a rate by a carrier to meet lower rates of other lines does not warrant a finding that prior rate was unreasonable. Smythe Co. v. C. S. S. Co., 92 I. C. C. 95, 96.

(l) Proposal to comply with commission's order denying fourth-section relief with respect to rates from New York City, by reducing class and commodity rates from points on Central Vermont Ry. in New England, to points in c. f. a. and western trunk-line territories applying via differential rail-and-lake route through Depot Harbor, Ontario, and boat line of Canada Atlantic Transit Co., found not justified. Present rates from New York are reasonably compensatory and to permit removal of fourth-section departures by reducing the intermediate rates would necessitate reductions over other routes at competitive points, result in a chaotic condition of rates throughout New England, and further aggravate financial difficulties of New England lines. Rail-and-lake Rates from New England, 92 I. C. C. 106.

(m) Proposed reductions in rates on cement from Dixon and La Salle, Ill., and Hannibal, Mo., to points in Kentucky served by L. H. & St. L. Ry., established in compliance with findings in Atlas Portland Cement Co., 81 I. C. C. 1, and for purpose of meeting reduced rates from Buffington to Kentucky destinations established in connection with construction of certain large dams and engineering works by United States Government along Ohio River, found justified. Rates on cement to Kentucky stations from Buffington, Dixon, La Salle, Oglesby, Hannibal, and St. Louis have heretofore borne some relationship which carriers desire to maintain. Cement from Illinois and Missouri, 92 I. C. C. 133.

(n) Proposed reduced rates on spelter from Fort Smith, South Fort Smith, and Van Buren, Ark., to Chicago, East St. Louis, St. Louis, and Milwaukee found not justified. Fourth-section violations would result; rate parity of long standing as between points here considered and certain competing points would be destroyed; and Quinton, Okla., would be subjected to undue prejudice in favor of South Fort Smith and Van Buren. While level of proposed rates has been justified, a proper rate relationship as between competing points is in many respects of greater importance to shipping public than measure of rates themselves. Spelter from Arkansas, 92 I. C. C. 136.

(o) Proposed reduced all-rail rates on tin, terne, and black plate from certain defined territories to Houston, Tex., and points taking same rates, designed for

purpose of meeting lower rail-water-and-rail rates from and to the same points, found not justified. Proposed schedules would result in new and unauthorized fourth-section departures and increase those already existing. Tin, Terne and Black Plate, 92 I. C. C. 356.

(p) Proposed reduced all-rail rates on tin, terne, and black plate from certain defined territories to Houston, Tex., and points taking same rates, designed for purpose of meeting lower rail-water-and-rail rates from and to same points, found not justified. Proposed schedules are to alternate with those now published, thereby adding to tariff complexity already existing; they would result in new and unauthorized fourth-section departures and increase those already existing; and would subject Dallas and Fort Worth, competing points, to undue prejudice and disadvantage. Tin, Terne, and Black Plate, 92 I. C. C. 356.

(q) Proposed reduced rates on brick and related articles taking same rates from Mason City, Sheffield, and other adjacent points in Iowa to Twin Cities and Duluth, Omaha, and certain near-by destinations, found not unlawful. Brick and Clay products between Western Points, 93 I. C. C. 81.

(r) Proposed establishment of commodity rate lower than prevailing class basis on insulators from Emeryville, Calif., and other western points to transcontinental Groups F to J, inclusive, found justified. Considering extensive areas of the respective groups, proposed rate is not materially out of line with rates from Macomb, Ill., and other eastern producing points. Eastbound Transcontinental Rates on Insulators, 93 I. C. C. 282.

(s) Proposed reduced charges for handling fertilizer, fertilizer materials, cement, and salt at south Atlantic and certain Gulf ports, found justified. Present charges are so high that they have resulted in practices by shippers which obviate the necessity for railroad handling of these commodities and a consequent heavy loss of revenue. Proposed charge is not unreasonably high nor is there warrant for holding that it is unduly prejudicial. Moreover, cost figures submitted by carriers while tending to show that reduced charges will probably not cover all costs if cost is to be ascertained by distributing all burdens over all traffic, indicate that they will produce considerable return in excess of direct out-of-pocket costs of the services. Handling Charges on Cement, Fertilizer, and Salt, 93 I. C. C. 640.

(t) In Reduced rates, 1922, 68 I. C. C. 676, the commission found rates on coal unreasonable and ordered a 10-per cent reduction. Carrier requested that it be excluded from findings in that case, which request was denied upon supplemental report in 73 I. C. C. 189. Rate charged on shipment moving just prior to date when carrier published the reduced rates in compliance with commission's order in the supplemental proceeding found unreasonable and reparation awarded. St. Anthony & Dakota Elevator Co. v. D. & S. L. R. R., 96 I. C. C. 49.

(u) Schedules proposing reduced rates on seed potatoes from Minnesota to Washington were suspended upon a prima facie showing that they would result in undue prejudice to Montana shippers unless latter were accorded contemporaneous reduction in their rates and protestant so advised. Both voluntary reductions were subsequently authorized by commission, and prior order of suspension vacated. Relying on these facts, complainant, brought by former protestant, sought reparation on shipments moving prior to date reductions became effective. HELD: Question of reasonableness was not before commission and no final finding was made with respect to undue prejudice. Complaint dismissed. Northwest Potato Exchange v. G. N., 96 I. C. C. 187.

(v) Commission's approval of suspended schedules, provided reductions were made on seed potatoes from Montana points to Yakima district sufficient to put them on a nonprejudicial basis with respect to proposed temporary reductions from Minnesota origins to same district, "the commission to be final judge of measures of rates to Montana," was transmitted to complainant by telegram on March 31, 1923. Construing this as a finding of previous unreasonableness, complainant contends that, transportation conditions being identical, rates on shipments made in April, May, and June, 1922, were unreasonable to extent they exceeded temporary rates. HELD: Schedules were suspended upon a prima facie showing that undue prejudice would result unless Montana shippers received contemporaneous reductions and question of reasonableness was not before commission, nor was a final finding made with respect to undue prejudice. Moreover, mere reduction of rate by carrier voluntarily is insufficient to prove former

rate unreasonable. Northwest Potato Exchange v. G. N., 96 I. C. C. 187.

(w) Further contention that undue prejudice is shown because complainant was not appraised of contemplated reduction in rates from Minnesota origins to Yakima district, made subsequent to expiration of temporary-reduction period, until too late to file a protest, not sustained. Undue prejudice is not alleged in complaint nor are rates established subsequent to temporary reduction period attacked as unreasonable. North west Potato Exchange v. G. N., 96 I. C. C. 187, 190.

(x) Proposed reduction in rates on cement from Kansas City and Sugar Creek, Mo., and Bonner Springs, Kans., to St. Joseph, Mo., and related points in Kansas and Missouri found unduly prejudicial to the Kansas gas-belt mills, including Dewey, Okla., and unduly preferential of Sugar Creek, Kansas City, and Bonner Springs, and not justified, in that it would tend to destroy the existing cement-rate structure prescribed in Western Cement Rates, 48 I. C. C. 201, 52 I. C. C. 225, and 69 I. C. C. 644. Cement from Kansas City to St. Joseph, 96 I. C. C. 718, 725.

(y) Rates assessed on l. c. l. shipments of returned empty steel drums from Sartell, Minn., and Groos and Menominee, Mich., to North Milwaukee, Wis., found applicable but found to have been unreasonable to extent they exceeded l. c. l. rates, based on a rating of one-half of fourth class, contemporaneously in effect on returned empty iron drums in same general territory, which rates and rating were subsequently made applicable on steel drums, returned empty. Reparation awarded. Vera Chemical Co. v. C., M. & St. P., 98 I. C. C. 3.

(z) Upon contention that rates, during the period defendants were not permitted to establish reduced rates, were unreasonable to the extent they exceeded the subsequently established reduced rates, HELD, Reversal in 69 I. C. C. 345 of finding in 63 I. C. C. 74 as to propriety of proposed reduction was not tantamount to a finding that previous rate was unreasonable. What the commission may permit carriers to do and what it may require them to do are entirely different matters. Union Sulphur Co. v. T. & N. O. R. R. Co., 98 I. C. C. 76, 81.

(aa) Respondents proposed reduced rates on iron and steel articles, carloads, from the Birmingham district to the Houston group. Respondents proposed like rates to intermediate points in Louisiana to which the present rates are higher than those proposed to the Houston group in order to avoid violations of the fourth section. Included in the suspended schedules is a proposed reduction from 48c to 33c in the rate on cotton ties and bucklers. None of the protestants is interested in this rate. The proposed reduced rates apply only on district on the L. & N., Southern, I. C., or Frisco, when routed via Baton Rouge or New Orleans and S. P., or G. C. L., beyond. The reductions are 3c and 3.5c except on plate the reduction is 16c. By the suspended schedules, published upon the specific instructions of the south western respondents to the tariff publishing agent given after the other southwestern lines had voted against such action, it is proposed to restore the rates from the Birmingham district maintained prior to Sept. 1, 1924 thus disrupting the long existing parity of rates with St. Louis and the relationships with iron and steel producing points in defined territories. The distance between Birmingham and Houston proper is 708 miles and from St. Louis to Houston 823 miles. Fourth section departures would be created under the proposed revision. There is no evidence of unlawfulness in the proposed rate on cotton ties and buckles. HELD, suspended schedules not justified, except on cotton ties and buckles. Iron and steel from Birmingham, 102 I. C. C. 7.

(aab) Proposed reduced rates on iron and steel articles from Birmingham, Ala., district to Houston, Tex., group, and to Louisiana points intermediate to Houston group, designed, among other things, to assist the industries served in meeting the competition from iron and steel mills in seaboard territory, which have lower rail-and-water rates via Atlantic ports, found not justified, except on cotton ties and buckles, the rate on which was not protested and no evidence of unlawfulness was offered. Iron and Steel from Birmingham, 102 I. C. C. 7.

(aac) Proposed reduced rates on iron and steel articles from Birmingham, Ala., district to Houston Tex., group and to Louisiana points intermediate to Houston group, designed to restore the rates previously maintained, thus disrupting the long-existing parity of rates with

St. Louis and the relationships with iron and steel producing points in defined territories, found not justified, except on cotton ties and buckles. Iron and Steel from Birmingham, 102 I. C. C. 7.

(aad) Proposed reduced rates on iron and steel articles from Birmingham, Ala., district to Houston, Tex., group, and to Louisiana points intermediate to Houston group, designed to meet competition of the water route and to assist industries served in meeting competition from iron and steel mills in seaboard territory having lower rail-and-water rates, found not justified except on cotton ties and buckles, the rate on which was not protested and no evidence of unlawfulness was offered. Proposed schedules would disrupt the long-existing parity of rates with St. Louis and the relationships with iron and steel producing points in defined territories, and create departures from long-and-short-haul clause of section 4 of the act. Iron and Steel from Birmingham, 102 I. C. C. 7.

(aae) Proposed reduced rates on iron and steel articles from Birmingham, Ala., district, to Houston, Tex., group and to Louisiana points intermediate to Houston group, designed, among other things, to meet the competition of the water route, found not justified, except on cotton ties and buckles, the rate on which was not protested and no evidence of unlawfulness was offered. It may fairly be assumed that rates resulting from findings in 98 I. C. C. 567 will enable respondents to meet the water route competition from Birmingham under a more favorable rate adjustment than that which would have resulted under rate they proposed with a continuance of the present total rate over that route. Iron and Steel from Birmingham, 102 I. C. C. 7.

(aaf) Rate on common brick from Blue Island, Ill., in Chicago switching district, to Illinois and Indiana points within that district, during Federal control, to which a flat increase of 2 cents per 100 pounds was added under General Order No. 28 of director general, found not unreasonable as compared with rate subsequently established when the rate basis was changed by addition of 25 per cent in lieu of the flat increase. In 64 I. C. C. 273 a rate similar to that here charged was found not unreasonable, and if that decision is correct the rate in effect within the switching district prior to the increase must have been less than a reasonable maximum rate. Moreover, in a similar case, 73 I. C. C. 215, it was found that considering the congested conditions in and around Chicago a rate equal to that charged can scarcely be denominated high even on a low grade commodity and for comparatively short distances. Illinois Brick Co. v. Director General, 102 I. C. C. 64.

(aag) Rate on wet brewers' grain from Philadelphia to Newark found unreasonable to extent it exceeded lower rate subsequently established, which lower rate was contemporaneously in effect over another route and in the reverse direction over defendants' own route. Reparation awarded. Penn. Grains & Feed Co. v. R. Co., 102 I. C. C. 100.

(aah) Applicable rate on dried beans from Mills, N. Mex., to Rockdale, Tex., found unreasonable to extent it exceeded lower contemporaneous rate on like traffic from and to same points over other available routes and to contiguous points, which lower rate was not made applicable to Rockdale over route of movement until subsequent to movement here involved through error on part of carriers. Reparation awarded. Waco Chamber of Commerce v. E. P. & S. W., 102 I. C. C. 105.

(aai) Proposed reduced rates on iron and steel articles from Birmingham and other southern producing points to Memphis and intermediate points found not unreasonable but unduly prejudicial. Respondent's position is that while present rate is not unreasonable high, if Birmingham is to continue to sell its products in Memphis it must meet the barge competition which exists by way of the Ohio and Mississippi Rivers. However, establishment of the proposed rates while maintaining a higher rate from St. Louis and Louisville to Memphis would be unduly prejudicial to the latter points and unduly preferential of the points from which the proposed rates are published. Iron and Steel Articles from Southern Points, 102 I. C. C. 175.

(bb) Respondents proposed to reduce the rates on certain manufactured iron and steel articles, carloads, from Birmingham, Ala., and other southern producing points to Memphis, Tenn., and intermediate points. The proposed reductions to points intermediate to Memphis are only such as would be necessary to avoid violations of the fourth section. Principal respondents are the Frisco and Southern. The short line distance from Birmingham to Memphis, 252 miles, is over the former. Over the lat-

ter the distance is 284 miles. HELD, proposed rates not unreasonable but the establishment of such rates, while maintaining a rate in excess of 31.5c from St. Louis, Mo., and Louisville, Ky., to Memphis would be unduly prejudicial to the latter points and unduly preferential of the points from which the proposed rates were published. Iron and steel articles from southern points, 102 I. C. C. 175.

(cc) Respondents proposed certain increases and reductions in rates on petroleum and its products, carloads, from Ohio and Mississippi river crossings to southern destinations. The adjustment of rates as proposed became effective June 10, 1925 from all points named in in the Wood river district, except from St. Louis and Wood River points, over or in connection with the B. & O., or Big Four. On traffic from these points of origin moving over the B. & O., or Big Four to Ohio river crossings Lawrenceville is an intermediate point; and respondents at that time had failed to readjust the rates from Lawrenceville to correspond with the changes in rates from St. Louis. No rates from Lawrenceville were suspended and, effective August 1, 1925 the B. & O., and Big Four established proportional rates of 7c from that point to Cairo, Ill., and Evansville, Ind., thereby complying with the requirements of the fourth section and readjusting rate relationships as between St. Louis and Lawrenceville, so that the latter, to the destinations here considered, now has an advantage in rates generally of 2c. From all these points the rates in issue are in practically every instance 9c higher than from Cairo and Evansville and are the same as have been in effect over other routes on and since June 10, 1925. The rates in issue in connection with the B. & O., and Big Four are joint rates and are the result of a general adjustment. HELD, proposed schedules justified. FOURTH SECTION APPLICATIONS. Authority is sought to continue rates on petroleum and its products, carloads, from Ohio and Mississippi river crossings to destinations in North Carolina, South Carolina, and Virginia without observing the long and short haul provision of section four. There are now no departures from the fourth section at points of origin when traffic from St. Louis over or in connection with the B. & O., or Big Four. Practically no evidence was introduced by applicants in support of their request in connection with the maintenance of the present differential adjustment of rates to Carolina territory and relief will be denied. HELD, applicants may maintain lower rates from Ohio and Mississippi river crossings to competitive points in North Carolina, South Carolina, Virginia than maintained to intermediate points in which their lines are 15% or more longer, but not more than 70% longer, than the short line routes between the same points, provided the present rates to said intermediate points shall not be increased except as authorized, and that they shall not exceed the lowest combination, and that relief granted herein shall not extend to intermediate points as to which the haul of the petitioning line is not longer than that of the direct line or route to the competitive points, and that the relief granted shall not extend to routes that are less than 15% or more than 70% longer than the direct line or route to the said competitive points. Petroleum to southern points, 102 I. C. C. 756.

(cca) Proposal to readjust rates on petroleum and products from St. Louis and Wood River district points to southern destinations over or in connection with B. & O. or C., C., C. & St. L., comprising some increased but more and greater reductions, found justified. Proposed schedules will result in rates same as those now in effect over routes other than B. & O. and C., C., C. & St. L. Petroleum to Southern Points, 102 I. C. C. 756.

(dd) Respondents proposed reductions in the rates on pig iron, carloads from producing points in Alabama, Tennessee, Kentucky and Virginia to Kansas City and St. Louis, Mo., Ohio river crossings and related and intermediate points. The proposed rates are not constructed with a view to maintaining any specific rate relationship nor is it contended that they are reasonable maximum rates. They are merely the result of an arbitrary reduction which, according to the shippers, is the least that will do them any good and, according to the Frisco, is the greatest that it can afford to make. The Frisco which does not reach Ohio river crossings, only proposed to establish these rates to Kansas City and St. Louis. Other southern lines such as the Southern, L. &. N., I. C., agreed that the rates proposed to St. Louis and Kansas City were justi-

fied and met them via their lines. There is nothing upon this record to indicate that any of the proposed rates are less than reasonable maxima, and the Commission does not regard them as much. Not one of the carriers serving the Birmingham district and having a controlling voice in the rates from that district serves or has a controlling voice in the rates from the Southern Ohio district, Cleveland or Chicago. Some of them may have in the rates from Granite City, but the movement of pig iron from that point to Louisville to Cincinnati is not material, and the Commission does not believe that under this adjustment the difference in its favor of $3.412 would hurt that protestants opportunities in competing with Birmingham in the St. Louis market. HELD, suspended schedules justified. Pig iron from southern points, 104 I. C. C. 27.

(ee) Respondents proposed generally to reduce their carload rates on grain and grain products, and upon seed and seed products from Colorado, Wyoming, Nebraska, Kansas, Arkansas, Oklahoma and Missouri to points in Louisiana west of the Mississippi river, except to New Orleans and certain contiguous points in the southern portion of the state. Also to restrict the routing in connection with the proposed reduced rates from points on the Rock Island, MKT, K. C. C. & S. Ry., Frisco or when in connection with the S. P., so that they will not apply over routes through Texas. Neither the present nor proposed rates from points on the M. P., apply through Texas. From points on the other lines, the present rates apply over routes through Texas as well as over routes through Arkansas. Transit is permitted in connection with these rates, so that wheat may be shipped to milling points in Arkansas, Kansas, Missouri, Oklahoma and Texas and there may be milled into flour and the flour forwarded to destinations in Louisiana at rates protecting the through rates from point of origin of the wheat. This permits free competition among the millers in buying wheat in the affected origin territory. The suspended schedules propose to reduce the rates over the routes generally through Arkansas only, and thereby will disrupt the present parity in rates to the disadvantage of Texas millers, who claim that this will shut them completely out of the Louisiana markets. The proposed rates will restore the general basis of rates in effect from the origin territory prior to April 1, 1922, will remove many fourth section departures in Louisiana, and harmonize a maladjustment of rates to the destination territory. The proposed reductions in the local rates from Kansas City, and in the rates from the country points beyond, will remove many violations of the fourth section. Except from points in Colorado and southern and southwestern Oklahoma the routes through Texas are generally longer than those through Arkansas that carry the traffic. The M. P., Burlington, U. P., and lines similarly situated do not operate routes through Texas. The record does not warrant the Commission in condemning the proposed rates from points on those lines, particularly since such rates will remove numerous fourth section departures in the present rate structure and in addition will effect a more consistent adjustment than that now in force in the destination territory. This record does not show that the suspended rates are unreasonably low. HELD, proposed schedules, except those publishing rates from points on the MKT Rock Island Frisco justified, rates from points on those lines not justified. Grain and grain products from western points 104 I. C. C. 272.

(ff) Respondents proposed both increased and reduced rates on clean rice and rice products, carloads, from Arkansas, Louisiana and Texas and from Memphis, Tenn., to points in central and western trunk line territories. The origin territory is divided into several groups, namely, the Arkansas group, of which Stuttgart, Ark., may be taken as representative; the Lake Charles, or interior Louisiana-Texas group, of which Lake Charles, La., is representative; and the Memphis and New Orleans, La., groups. The readjustment proposed is in purported compliance with the direct result of 93 I. C. C. 517. The rates proposed to points in central territory are those prescribed therein or are made with close relation to such rates; they represent largely, if not almost entirely, reductions, and no reason appears why they should not be approved. The case may, therefore, be confined to a consideration of the proposed rates to western trunk line points, including Chicago and points on the Mississippi river. The rates proposed by the socalled east side lines and the K. C. S., and connections to the Missouri river cities

and related points are in some instances lower than those proposed by the other lines. This is particularly true of the rates from New Orleans. With respect to the rates to Omaha and Sioux City, it may be said that the I. C., with its own line from New Orleans, apparently controls the situation and the K. C. S., desires to meet the rates of that line. The I. C., and other east side lines maintain lower rates on traffic in general to the territory they directly serve than do the west side lines for similar distances, except that between Mississippi river points, St. Louis and south, the west side lines are permitted to meet the rates of the east side lines and charge higher rates at intermediate points. The adjustment proposed by the K. C. S., to the Missouri river cities is in part violative of the order in 93 I. C. C. 517. If rates are not promptly published in conformity with the order in the case mentioned, proceedings under the penal provisions of the act will be considered. HELD, the rates proposed by the lines east of the Mississippi river and by the K. C. S., and connections, which are lower than the rates proposed from and to the same points by the west side lines other than the K. C. S., and connections, have not been justified. The rates proposed to points in central territory, and by the west side lines other than the K. C. S., and connections to points west thereof, have in general been justified, subject to correction of admitted errors, in the proposed rates to Thebes, Ill., and Grand Island, Neb., and except that the rates to the Missouri river groups should not exceed, from Arkansas and Memphis to Omaha 59c; from Lake Charles to Ommaha, 69c; from New Orleans to Omaha, 72c; from New Orleans to Kansas City 66.5c. Rice from Arkansas, Louisiana and Texas, 104 I. C. C. 681.

(gg) Respondents proposed to reduce their rates on coal, in carloads, from southern Illinois, Murphysboro, Centralia and DuQuoin districts to St. Louis, Mo., and a few nearby points in Missouri. The present rates over all routes from the southern Illinois group to St. Louis is $1.385 and the proposed rate, limited to certain routes is $1.35 representing a reduction of 3.5c. The reductions to St. Louis proposed from the DuQuoin, Centralia, the Murphysboro groups, which are intermediate to the southern Illinois group, are 0.5, 1 and 3c, respectively. The rates proposed from all of the points of origin to the destinations near St. Louis are in harmony with those proposed to St. Louis. The present rate over all routes from the southern Illinois group to St. Louis is the outgrowth of 62 I. C. C. 741, 64 I. C. C. 751. On traffic to St. Louis the differential prescribed in the cases mentioned as between the southern Illinois and Belleville groups was 22.5c or the same as had applied prior to May 1, 1925. The present rate of $1.385 from the southern Illinois group to St. Louis which became effective as a part of the general revision of July 19, 1925, and which represents an increase of 3.5c over the rate previously in effect, reflects this differential, the rate from the Belleville group being $1.16. The reduced rates are for application only from mines on the M. P., Burlington, I. C. C. & E. I., M. & O. and certain short lines, and if permitted to have become effective as published would have left the rates to St. Louis established as a part of the general revision of July 19, 1925, in effect only one month. The proposal is made under the leadership of the M. P., with the support of the Burlington. To approve the $1.35 rate to St. Louis merely because it would bear a proper relationship to the intrastate rate to East St. Louis would be to hold that intrastate rates may control interstate rates HELD, reduced rates not justified. Coal from Southern Illinois, 107 I. C. C. 415.

(hh) Complainant attacked rate charged on one car of empty beverage packages returned from Little Rock, Ark., to St. Paul, Minn., on Feb. 4, 1919, as unreasonable to extent it exceeded aggregate of intermediates. Shipment moved over M. P., to East St. Louis, Burlington beyond, charged 43c which was one-half of joint fourth class rate. Intermediates were 14.5c from Little Rock to East St. Louis and 16.5c beyond, total 31c. There was also in effect via Kansas City, Mo., a combination rate of 29.5c made up of 14.5c to Kansas City and 15c beyond. Subsequent to movement joint commodity rates of 31c and 29.5c were established over both routes. The shipment was tendered to the carriers without routing instructions but inasmuch as the joint rate on the basis of one-half fourth class, 43c, was also applicable via Kansas City, the shipment was not misrouted. HELD,

rate attacked not unreasonable, complaint dismissed. Hamm Brewing Co. v. Director General, 107 I. C. C. 600.

(ii) This is an application under the fourth section of the act, filed by western transcontinental carriers for authority to establish reduced rates on certain commodities, from points in eastern defined territories, Groups D to G inclusive to Pacific coast terminals lower than are observed at intermediate destinations. The origin territory extends from Chicago, Ill., on the east, to Denver, Colo., on the west. The destinations are ports served by steamship lines operating between the Atlantic and Pacific coasts through the Panama canal. It is proposed to reduce the rates to the Pacific coast ports in order to place the manufacturers of the Middle West more nearly upon a rate equality with their eastern competitors who by reason of their location on or near the Atlantic seaboard enjoy the advantage of cheaper water transportation. The applicants hope that by stimulating traffic through the proposed reductions they may be able to increase their net revenues, but they do not propose to apply the reduced rates to intermediate destinations, since to do so would more than offset the gain from increased traffic to the ports. It is claimed that the reductions proposed are necessary if the western rail carriers are to transport to the Pacific coast in any volume articles produced or manufactured in the Middle West which are also produced on or near the Atlantic seaboard and more therefrom through the Panama canal at rates substantially lower than the present all rail rates from the origin territory covered by this application. Previous cases 74 I. C. C. 48, 40 I. C. C. 35 and 46 I. C. C. 236. At the time of the hearing in the present case the intercoastal movement was greater than at any previous time in the history of the canal. That many of the commodities embraced in the application move in considerable volume through the canal is evident from the record. This is particularly true of iron and steel. The incidental charges for the transportation by water consists in the main of wharfage, handling and marine insurance. Considered as a whole, it can not be said that the proposed terminal rates, with the exception of the rate on ammunition, are lower than would be necessary to permit the Middle West manufacturers to compete on relatively equal terms with manufacturers located at same distance from the seaboard who ship their products through the Atlantic ports. But before the relief from the operation of the fourth section which is here sought may be granted the Commission must be satisfied that there would not thereby be created infractions of other provisions of the act, particularly those of section 3 prohibiting undue or unreasonable preference or advantage to persons or localities. It should likewise be convinced that the adjustment proposed will result in the substantial benefits which its proponents anticipate. The relief sought is based primarily on market competition. The natural advantage of location near the Atlantic seaboard which Pittsburgh enjoys is to be neutralized by extending it to points from 500 to 1,500 miles farther away. Manufacturers of other commodities in the Middle West would also be accorded a basis of rates to which they are not legitimately entitled by any natural advantage which they possess, whereas the manufacturers of the same commodities on the seaboard would have their advantage taken from them or diminished. While the manufacturers in the Middle West in effect would thus have accorded to them the advantage of proximity to water transportation and would be placed more nearly on an equality with the eastern manufacturers with respect to shipments of the latter moving to the Pacific coast ports through the canal, they would not only continue to enjoy the advantage of their more westerly location on traffic moving all rail from the east, but this advantage would be increased. It is important to note also the effect the proposed reductions would have on the dealers and consumers on the Pacific coast and in the intermountain states. At the present time they are on an equality in purchasing in the central west. If the reductions sought in the terminal rates are granted, this equality will no longer obtain. The Pacific coast dealers will retain their present ability to purchase more cheaply in the eastern markets and in addition will have the advantage of being able to purchase in the markets of the middle west upon more favorable terms. Dealers in the intermountain territory and on the Pacific coast purchase in the same markets and compete for sales in the same territory. With the eastern markets now closed to the intermountain dealers except on payment of higher freight rates, and the Middle

West available on equal terms with the Pacific coast dealers, to accord to the latter the markets of the Middle West also on more favorable terms than can be obtained by the intermountain country, must necessarily be prejudicial in effect. The record is far from convincing that the establishment of the proposed rates will result in the benefits which the applicants anticipate. The proposed rates on iron and steel articles, from which the applicants hope to obtain their greatest increase in net revenue, might be expected to divert some of the traffic which now originates in the Pittsburgh district if the rail and water rates from Pittsburgh remain the same. There is no assurance, however, that the eastern rail carriers and particularly the water lines would permit any substantial diversion of their traffic without making an effort to retain it. They would be urged to take this action by eastern manufacturers whose business would suffer through loss of their Pacific coast trade. A slight reduction in the water rate would suffice to retain the advantage to the rail and water route, and this would call for further reductions in the rates of the western carriers to bring about the near equalization of the Middle West and eastern markets. On the other hand, if the western carriers were not inclined to meet reductions in the water or rail and water rates the competitive situation would remain as it is at present, the revenues of the applicants and the water lines would be unnecessarily reduced, the Pacific coast shippers would receive the only advantage. The opportunity for shrinkage in the rail and water rates from interior eastern points will be clear when it is borne in mind that the eastern carriers now charge full local rates to the seaboard, and that it is more profitable for the water lines to accept westbound traffic at very low rates rather than that their ships shall sail under ballast. If the hopes of the applicants should be realized the benefits which they as a whole might obtain from the granting of the application would be greatly disproportionate to the loss which the water lines would suffer. The record shows that the total tonnage, both eastbound and westbound, of all the water lines is but a very small fraction of that of the transcontinental carriers operating west of Chicago. It is evident, therefore, that the diversion of any substantial tonnage from the water lines would have but an unappreciable effect on the net revenues of the rail carriers. On the other hand, it might very seriously impair the ability of the water lines to maintain their present standard of service. HELD, application for authority to depart from the long and short haul provision of the act should be denied. Commodity rates to Pacific coast terminals, 107 I. C. C. 421.

(jj) Proposed readjustments, involving increases and reductions, in rates on livestock in single-deck and double-deck cars between points in Arizona and New Mexico on the one hand and Deming, N. Mex., and El Paso, Tex., on the other, to conform with the scale of rates prescribed in American National Livestock Asso., 26 I. C. C. 37, found not justified as to the increases, the proposed reductions not being protested. Suspended schedules ordered cancelled without prejudice to the filing of new schedules publishing the proposed reduced rates. Peyton Packing Co. v. A. E. R. R. Co., 100 I. C. C. 4, 8, 15.

(kk) Proposed reduced rates on potatoes and onions from certain points in Colorado, Utah, and Wyoming to destinations in California found justified. Proposed rates are in conformity with respondent's practice of grouping main and branch-line points in western Colorado in making rates on agricultural products, will remove alleged undue prejudice suffered by producers in western Colorado, and are compensatory. Present rates are admitted to be prohibitive, although not unreasonably high. Potatoes and Onions from Colorado, Utah, and Wyoming to California, 100 I. C. C. 49, 51.

(ll) Application for authority to further reduce rate on sulphur from points in Texas and Louisiana to California terminals without observing the long-and-short-haul provision of fourth section of the act, denied, on ground that proposed rate has not been shown to be reasonably compensatory as required by the act. Sulphur to California Terminals, 100 I. C. C. 369.

(mm) Proposed readjustment of rates on live and dressed poultry, butter and eggs from points in Kentucky, Tennessee, Alabama, and Mississippi to eastern cities and Buffalo-Pittsburgh zone, resulting, among other things, in reduction in rates generally, found justified. Dairy Products from Southern Points, 100 I. C. C. 756.

(nn) Correspondence leading up to the reduction of a rate can not be taken as an admission that the previous rate was unlawful. Memphis Freight Bureau v. S. & E. I., 101 I. C. C. 26, 27.

(oo) Proposed waiver of out-of-line charges at Kansas City on grain and products from points in Kansas and Colorado through Kansas City for reshipment under domestic and export rates to interior destinations in Texas and Louisiana and to Texas Gulf ports for export, designed to meet carrier competition, and which will result in an excessive amount of extra transportation without additional charge, found not justified, even temporarily. Transit at Kansas City, 101 I. C. C. 696.

(pp) Wabash R. R., proposed to reduce rates on bituminous coal, carloads, from mines on the Wabash at Springfield and Riverton, Ill., to Keokuk and other destinations in Iowa. A similar proposal to reduce the intrastate rates from Springfield and Riverton to Quincy and other destinations in Illinois was filed with the Illinois Commission, and became effective. C. & A., tariff contains reductions similar to those proposed by the Wabash to Keokuk and to Hannibal and Oakwood, Mo. Big Four published reduced rates on bituminous coal from southern Illinois district to destinations in Iowa including Keokuk, to meet rates which had been published by the Burlington from southern Illinois to Iowa, including Keokuk. No objection to reduced rates published by the Big Four from southern Illinois, suspension as to them being vacated. The proposed reductions would have the effect of destroying the differential relationship prescribed in 62 I. C. C. 741. No attempt was made by respondents to justify the proposed rates to Hannibal and Quincy except on the basis of the competitive relationship and the long existing grouping of the three cities in the publication of coal rates from the Illinois mines. The failure to make the reductions apply uniformly from all mines in the Springfield district would result in a splitting of that district into two groups for which there has been no justification. HELD, rates proposed by Wabash and Alton not justified. Bituminous coal from Illinois 112 I. C. C. 369.

ALL OTHER CITATIONS

Tripoli from Kansas and Missouri, 85 I. C. C. 35; Gila Water Co. v. A. E. R. R. Co., 85 I. C. C. 408; Parkersburg Rig & Reel Co. v. T. & P. Ry. Co., 88 I. C. C. 463.

§5. **Returned or old shipments.**

See Advanced Rates §17 (kk); Classification §5 (i) (bb), §7 (j), §12⅞, §15 (h), §16 (e) (f), §17 (yy), §22 (i); Demurrage §5 (a); Overcharges (t); Reasonableness of Rates §28 (j); Routing and Misrouting §5½ (e); State Rates and Regulations (yy).

(a) Rates on secondhand steel rails and angle bars, in mixed carloads, from Sault Ste. Marie, Mich., to Duluth, Minn., found unreasonable to extent they exceeded lower rates from Sault Ste. Marie, Ontario, a farther distant point, which lower rates were published in accordance with Rule 77 of Tariff Circular 18-A and were subsequently established from Sault Ste. Marie, Mich. Reparation awarded. Duluth Iron & Metal Co. v. Director General, as Agent 89 I. C. C. 343.

(b) The Commission has repeatedly declined to sanction the principle that old and secondhand articles are necessarily entitled to lower ratings than the same articles when new. Levenes Sons v. D. L. & W. Ry., 93 I. C. C. 103.

(c) Complainant attacked ratings on files in the three classification territories as unreasonable, unjustly discriminatory and unduly prejudicial as applied to socalled worn out files from various points to Anderson, Ind. Under the general heading of "tools", files or rasps, iron or steel, are rated third class in official and second class in southern and western classifications, as are mechanics tools and an iron or steel hardware. Used files are subject to the ratings on "files" without distinction in the classification of tariffs between the new and used articles. Complainant does not generally buy scrap iron as such, the old files being purchased for the purpose of reworking them and with the expectation that they will be found in fit condition to be reworked. The second class of shipments, which comprises the larger part of the traffic, consists of used files which are returned for reconditioning, under contract, by concerns to which new files are sold by complainant. The classification, as well

as practically all tariffs naming rates on scrap iron, provides that such rates will apply on scraps or pieces of iron or steel having value for remelting purposes only. HELD, ratings not unreasonable or unlawful, complaint dismissed. Continental File Co. v. P. C. C. & St. L. Ry., 93 I. C. C. 373.

(d) The Commission is not prepared to lay down the principle that old or second hand articles must be treated differently from new or that value is the controlling element in making rates. Such of these articles or parts as are in fact scrap are entitled to the scrap rate, but if they have any value as the articles which they originally purported to be, the Commission does not feel that it can require the carriers to transport them at other than the regular tariff rates applicable to the new or originally transported article. Continental File Co. v. P. C. C. & St. L. Ry., 93 I. C. C. 373, 376.

(e) Complainant attacked class rates charged on empty returned beverage bottles carloads from Atlanta, Ga., to Evansville, Ind., and Milwaukee, Wis., since August 26, 1920, as unreasonable and unduly prejudicial. Shipments to Evansville moved over N. C. & St. L. to Nashville, Tenn., and L. & N., beyond. To Milwaukee 12 moved through Cairo, Ill., and two through Evansville. For many years bottles returned in carloads were rated in southern classification on basis of one half of the inbound carloads rate on the beer or beverage. On Oct. 10, 1921 by exception to the classification, the rating was reduced to 66 2-3% of inbound beverage rate. In official classification rating was and is fifth class, but effective Jan. 1, 1922 the lines north of the Ohio river reduced the rating to 80% of the sixth class. With respect to the cereal beverage trade it is self evident that the return of the empty bottles is contemplated by both consignor and consignee. For that reason and on account of the nonadaptability of these containers to other uses the practice of according rates lower than those on new containers should not be discouraged. The measure of such lower rates can not be made the subject of any hard and first rules, but must depend, as do all rates, upon the facts and circumstances of record, taking into consideration the low value of the commodity, the volume of the movement, and other material elements. HELD, between August 26, 1920 and Oct. 6, 1921 rates attacked unreasonable to extent they exceeded 66 2-3% of sixth class to Cairo and Evansville and sixth class beyond, reparation awarded. Bradley & Woertz v. N. C. & St. L. Ry., 93 I. C. C. 512.

(f) Rates on returned shipments should not, on principle, be made lower than the rates on the original movement, and that the return element should be disregarded. Bradley & Woertz v. N. C. & St. L. Ry., 93 I. C. C. 512, 515.

(g) Complainant attacked class rates charged on empty returned cement bags from Texas points to Ada, Okla., as unjust and unreasonable in that it exceeds rates applicable locally in Texas. Western classification provides a fourth class rating, and by exceptions to classification defendants accord a rating of one half of fourth class on same articles moving wholly in Texas. Bags or sacks in which cement is shipped are seldom lost or damaged in transit and the insurance risk is low. They require little care in transportation. No reason has been suggested for rating them higher for interstate than for intrastate transportation in the same general territory. HELD, rates charged unreasonable and unduly prejudicial to extent they exceed one half of fourth class. Oklahoma Portland Cement Co. v. A. & S. Ry., 93 I. C. C. 605.

(h) Complainant attacked class rates charged on 23 cars of paper winding cores from Kansas City, Mo., to Wisconsin Rapids, Wis., between April 27, 1921 and Feb. 1, 1922 as unreasonable, unjustly discriminatory and unduly prejudicial. Paper winding cores are metal centers on which newsprint paper is wound. Shipments moved via the C. M. & St. P., 624 miles charged fifth class rate of 46c. The rate on newsprint paper between Kansas City and Wisconsin Rapids was 34c. Effective Feb. 1, defendant provided in its tariff that the rate on cores returned to the mill point from which originally shipped wound with paper would not exceed the rate on newsprint paper in the reverse direction. Defendant admits rate charged unreasonable to extent it exceeded 34c. HELD, rate attacked unreasonable to extent it exceeded 34c, reparation awarded. Nelson Estate v. C. M. & St. P. Ry., 93 I. C. C. 607.

(i) Complainant attacked class and commodity rates charged on 28 cars of old steel rails from Nitro, W. Va., to Detroit, Mich., Akron, O., and McKees Rocks, Pa., as unreasonable, unjustly discriminatory and unduly prejudicial in relation to rates on like shipments from West Virginia, Pennsylvania, Ohio, Illinois and Maryland to same destinations. Rated sixth class, charged sixth class to Akron 24.5c, Detroit 27c, and to McKees Rocks 25.5c. The contract of sale described the rails as unused steel rails, in good condition except for surface rust caused by exposure to weather during storage. The rails did not come within the varying commodity descriptions covering old rails or rails for scrap or relaying. There are no rate comparisons and there is no other evidence to indicate that the rates charged were unreasonable or otherwise unlawful as applied to rails of that description. Nor is there anything in the record to suggest that there will be shipments from Nitro of rails different in character from those covered by this complaint. HELD, rates attacked not unreasonable, unjustly discriminatory or unduly prejudicial, complaint dismissed. Hyman Michaels Co. v. K. & M. Ry., 95 I. C. C 623.

(j) Complainant attacked class rates charged on carloads of carbon black buildings and parts, knocked down, from Wilsonburg, W. Va., to Guthrie and Swartz, La., as unreasonable. They moved as routed over B. & O., to St. Louis, Mo., beyond M. P., to Swartz 1,106 miles, and M. P., and connections to Guthrie 1,111 miles, charged class A rates of $1.31 to Guthrie and $1.28 to Swartz. The rates on iron and steel articles and machinery from Wilsonburg to the destinations here considered are the same as those from Pittsburgh. Generally speaking, it is not the policy of the carriers to maintain lower rates on secondhand iron, steel or machinery than on new articles of like character. The record does not show that there has been or is likely to be a substantial movement of any of the articles included in those shipments from Wilsonburg to Guthrie or Swartz. HELD, rates attacked not unreasonable, complaint dismissed. Peerless Carbon Black Co. v. A. & L. M. Ry., 95 I. C. C. 696.

(k) Complainant attacked class rates charged on steel drums or barrels returned empty from Sartell, Minn., and Groos and Menominee, Mich., to North Milwaukee, Wis., between August 2 and Sept. 20, 1922 as unreasonable, unjustly discriminatory, unduly prejudicial and unlawful to the extent they exceeded the rates on returned empty iron drums. The western classification provided a rating of fourth class on iron and steel drums, old, in less carloads, and class C carloads, which ratings would apply on returned shipments in the absence of other provisions. Paid fourth class, less carloads. Under exceptions to western classification then in effect a rating of one half fourth class for less carloads was applicable upon iron drums or barrels, and iron and steel cylinders, second hand, returned empty. Effective Dec. 15, 1922 after these shipments moved, this item of the classification was amended to read drums or barrels, iron or steel, and iron or steel cylinders, secondhand, returned empty, less carloads. An article, when made of iron, may take a different rate from the same article made of steel. HELD, rating charged applicable, but unreasonable to extent they exceeded one half fourth class, reparation awarded. Vera Chemical Co. v. C. M. & St. P. Ry., 98 I. C. C. 3.

(l) Return of empty milk cans by consignee of full cans and carrier after contents have been used is proper subject for custom. American Ry. Express Co. v. Mohawk Dairy Co. (Mass., 1924) 144 N. E. 721.

(m) Charges assessed for return movement of privately owned tank cars after Federal control, which moved loaded during Federal control, found inapplicable. Equalization rule governing mileage on tank cars was suspended during Federal control and at termination thereof was restored. Applicable tariffs, however, continuously carried a rule under which private tank cars would "be moved empty, without charge, at time movement is made," and transition from Federal to corporate control did not annul their effect. Moreover, applicable tariff applied to complete transaction and it could not be nullified by restoration of equalization rule. It follows, therefore, that such equalization rule was applicable only on shipment initiated on and after its effective date. General Petroleum Corp. v. C. B. & Q. R. R. Co., 91 I. C. C. 388.

(n) Tariff in effect when shipments were made carried a provision for return

of empty cars without additional charge. Subsequently such provision was nullified by restoration of so-called equalization rule governing mileage on tank cars. HELD: Since tariff in effect when shipments were made applied to the complete transaction, provision for return of empty cars without additional charge could not be nullified by restoring rule. Conf. Rulings 172 and 471. General Petroleum Corp. v. C. B. & Q. R. R. Co., 91 I. C. C. 388, 393.

(o) Shipments of used army knapsacks, in cases, were billed as old rags, in cases, and charges were collected at rate applicable on old rags. When shipments moved knapsacks or haversacks, in boxes, any quantity, were rated first class. FOUND: Commission having repeatedly declined to sanction principle that old and secondhand articles are necessarily entitled to lower ratings than same articles when new, first-class rates were legally applicable and shipments were undercharged. Levene's Sons v. D., L. & W., 93 I. C. C. 103.

(p) Application of existing classification ratings on steel files, l. c. l. to shipments of used or worn files, returned for reconditioning, found not unreasonable or otherwise unlawful. Practice of applying same rating on used as on new files extends to all other kinds of tools and machinery, such as agricultural implements, etc., and many of such articles are shipped secondhand or are returned to manufacturers for repairs or reconstruction. Moreover, in Minneapolis Traffic Asso., 23 I. C. C. 432, 437, the commission pointed out the difficulties which would be encountered in practicable application of different rates on old and on new articles of same kind. Continental File Co. v. P., C., C. & St. L., 93 I. C. C. 373.

(q) Rates on empty returned beverage containers from Atlanta to Evansville and Milwaukee, found unreasonable to extent they exceeded rates based upon 66⅔ per cent of sixth class to Cairo and Evansville and sixth class beyond, minimum 20,000 pounds. Reparation awarded. Bradley & Woertz v. N., C. & St. L., 93 I. C. C. 512.

(r) Measure of rates on returned empty cereal-beverage containers lower than on new containers cannot be made the subject of any hard and fast rule, but must depend, as do all rates, upon facts and circumstances of record, taking into consideration low value of the commodity, volume of movement, and other material elements. Bradley & Woertz v. N., C. & St. L., 93 I. C. C. 512, 515.

(s) With respect to cereal-beverage trade it is self-evident that return of empty bottles is contemplated by both consignor and consignee, and for that reason and on account of nonadaptability of these containers to other uses practice of according rates lower than those on new containers should not be discouraged. Bradley & Woertz v. N., C. & St. L., 93 I. C. C. 512, 515.

(t) The return of empty beverage containers to manufacturer for refilling benefits carrier because it encourages use of substantial containers and furnishes additional revenue for empty-return movement, benefits manufacturer because it permits repeated use of same container, and benefits public because it makes for a lower cost of the product. Bradley & Woertz v. N. C. & St. L., 93 I. C. C. 512, 515.

(u) Rates on empty returned beer packages, c. l. and l. c. l, from eastern points to La Crosse, Wis., found unreasonable to extent they exceeded the aggregate of intermediates to and from Chicago. Joint rates which exceeded the aggregate of intermediates are prima facie unreasonable and evidence in instant case affords an unsatisfactory rebuttal of that presumption. Reparation awarded. La Crosse Chamber of Commerce v. Director General, 93 I. C. C. 602.

(v) Fourth-class rates on empty returned cement bags and sacks from Texas points to Ada, Okla., found unreasonable and unduly prejudicial as compared with rates of one-half of fourth class contemporaneously in effect on same commodities wholly within Texas and other states; also with similar lower rates on both state and interstate movements of various other empty returned containers in same genera' territory. Measure of reasonable rates prescribed. Oklahoma Portland Cement Co. v. A. & S., 93 I. C. C. 605.

(w) Rates on empty returned bags and sacks, found unreasonable and unduly prejudicial as compared with lower rates on various other empty returned containers. Oklahoma Portland Cement Co. v. A. & S. Ry., 93 I. C. C. 605.

(x) Acid carboys are not desirable freight and can not be handled as expedi-

tiously or cheaply as other empty returned containers which can be tiered. There is considerable danger involved in their handling, and many restrictions not operative with respect to other empty returned containers increase cost of their transportation. Carboys, Returned Empty, in Western Territory, 93 I. C. C. 672, 673.

(y) Fourth-class rates assessed on l. c. l. shipments of cases and casks, containing empty bottles, returned from Saxon, Wis., and Herman and Hancock, Mich., to Duluth, Minn., found unreasonable to extent they exceeded one-half of the fourth-class rates, subject to the fourth-class minimum charge. Prior to movement applicable tariffs authorized use of the lower rates between these points, and after movement such basis was restored. Moreover, one-half of fourth-class has been applicable in western trunk-line territory for many years, and competitors of complainant at St. Paul and Minneapolis, Chicago, and Milwaukee, enjoyed that basis at time of movement of shipments here under consideration. Reparation awarded. Fitger Brewing Co. v. D., S., S. & A., 95 I. C. C. 3.

(z) Rates on old unused steel rails found not unreasonable or otherwise unlawful as compared with rates on scrap rails and old rails for re-laying. Rails shipped were new in sense that they had never been used, but they did not come within varying commodity descriptions covering old rails or rails for scrap or re-laying. No comparisons or other evidence were submitted to indicate that rates applied were unreasonable or otherwise unlawful as applied to rails of the kind shipped; nor is there anything in the record to suggest that there will be shipments from origin point here under consideration of rails different in character from those involved. Hyman-Michaels Co. v. K. & M., 95 I. C. C. 623.

(aa) Charges on secondhand carbon-black houses, iron or steel, k. d., secondhand iron and steel articles and secondhand machinery in mixed carloads, from Wilsonburg, W. Va., to Guthrie and Swartz, La., based upon the highest c. l. class rate applicable on the various articles, found not unreasonable as compared with rates on iron and steel articles from and to same points. Ton-mile earnings under rates assailed yield less than those under rates found reasonable on similar shipments in 73 I. C. C. 123; moreover, record does not show that there has been or will be a substantial movement of any articles included in shipment between points here involved. Peerless Carbon Black Co. v. A. & L. M. Ry., 95 I. C. C. 696.

(bb) Generally speaking, it is not the policy of carriers to maintain lower rates on secondhand iron, steel or machinery than on new articles of like character. Peerless Carbon Black Co. v. A. & L. M. Ry., 95 I. C. C. 696, 698.

(cc) Where through error or oversight on the part of some agent or employee, a shipment is billed to an erroneous destination carriers may return such astray shipments to their proper destinations without assessment of additional charges. Conference ruling 217. Tidal Osage Oil Co. v. Director General. 96 I. C. C. 112, 114.

(dd) Rates assessed on l. c. l. shipments of returned empty steel drums from Sartell, Minn., and Groos and Menominee, Mich., to North Milwaukee, Wis., found applicable but found to have been unreasonable to extent they exceeded l. c. l. rates, based on a rating of one-half of fourth class, contemporaneously in effect on returned empty iron drums in same general territory, which rates and rating were subsequently made applicable on steel drums, returned empty. Reparation awarded. Vera Chemical Co. v. C., M. & St. P., 98 I. C. C. 3.

(ee) Shipments of returned empty fruit boxes, in carloads, from Los Angeles, Calif., to various intrastate destinations, during Federal control, found overcharged to extent that charges assessed exceeded the lowest charges under tariff rules providing that the charge for a car fully loaded must not exceed the charge for same lot of freight if taken as a l. c. l. shipment, subject to a minimum charge on each car. Reparation awarded. Klein-Simpson Fruit Co. v. Director General, 98 I. C. C. 547.

(ff) Complainant attacked commodity rates charged on worn out and discarded locomotive boiler flues or tubes from Harvey, Chicago and East St. Louis, Ill., St. Paul, Minn. and Omaha, Neb., to Cedar Falls, Ia., as unreasonable to extent they exceeded rates on scrap iron. The gate manufactured by complainant consists of a wire fabric held in place by a frame made of iron and steel pipe. Most of the shipments on

which reparation is asked were purchased of scrap iron dealers, though it was testified that the flues used by complainant are generally shipped direct from the carriers yards; that when removed from the boilers they are piled separately from other scrap; and that complainant takes them as they come from the pile. Rates on scrap iron are generally restricted to apply on scraps or pieces of iron or steel, having value for remelting purposes only, the tariffs as a police measure also often imposing the requirement that the iron be broken in pieces at point of origin so that it can not be put to any other use. But locomotive boiler tubes shipped by complainant do not meet any of these requirements. They are not only broken into scraps before shipment but would be of no value to complainant in the manufacturing of gates if broken into pieces at that time or during the reconditioning process. In fact from 5 to 10 per cent of the flues shipped by complainant are unfit for its use and including that material and the ends cut from others it appears that complainant throws out "as scrap" from 20 to 25 per cent, which unserviceable material is subsequently cut into small pieces and sold to local foundries for remelting. HELD, rates attacked not unreasonable or unlawful, complaint dismissed. Iowa Gate Company v. B. & O. R. R., 104 I. C. C. 169.

(gg) A shipment having been accepted by the consignee at destination and removed to his place of business was subsequently returned to the delivering carrier, the outbound charges were refunded and included in the return way bill as advanced charges. Upon delivery of the returned shipment to the original consignor the return charges, as well as such advance charges, were demanded and collected: HELD, that the published rate for the return movement was the only charge that carrier could lawfully exact from the original consignor. Heimeman Lumber Co. v. C. St. P. M. & O. Ry., 107 I. C. C. 62, 63.

(hh) Complainant attacked charges collected on five cars of obsolete lathe parts shipped during April, 1924 from Providence R. I., to Jersey City, N. J., as in violation of sections 1 and 6 of the act. Two of the shipments were billed as machine parts, one as machinery and one as castings, and one as a mixed shipment of steel rolls, machine bases and steel bars. Charged at rates applicable to articles of the character of the billing, but complainant contended that the articles shipped fall within the description "scraps and pieces of iron or steel having value for remelting purposes only." The articles shipped were originally manufactured as parts of a type of lathe, but the use of that type had been discontinued about a year prior to the movement of the shipments. They had been stored in the open prior to movement, were similarly stored at destination, and are being used for remelting purposes only. The lathe parts were in no case broken up, and did not therefore, come within the term "scraps or pieces" as those words are used in the tariff description. From a transportation standpoint they were not different from new articles of the same description. They were loaded by shippers in cars of the type ordinarily used for new articles of the same class, and some of the larger pieces were cleated or braced on the cars. HELD, rates sought not applicable, not unreasonable, complaint dismissed. McCabe Lathe & Machinery Co. v. N. Y. N. H. & H. R. R., 107 I. C. C. 311.

(ii) Complainant attacked commodity rates charged on 18 cars of returned empty beverage packages shipped from Little Rock and Fort Smith, Ark., to St. Paul, Minn., between March 6, 1918 and Nov. 6 1918 as unjust, unreasonable, unduly prejudicial and in violation of the fourth section. Charged 34.5c from Little Rock prior to June 25, 1918 and 43c thereafter, from Fort Smith 39.5c prior to June 25, 1918 and 49.5c thereafter. On April 24, 1919 the 31c combination rate on St. Louis was made applicable and on July 1, 1919 the rates were further reduced to the Kansas City combination of 29.5c. The evidence submitted by the director general is sufficient to rebut the presumption of unreasonableness which attaches to a through rate which exceeds the aggregate of intermediates. HELD, rates attacked not unreasonable or otherwise unlawful, complaint dismissed. Hamm Brewing Co. v. Director General, 109 I. C. C. 444.

(jj) Complainant attacked ratings and rates on new and on junked old worn out automobile armatures, less carloads, between Oklahoma and Indianapolis, Ind., as unjust and unreasonable. Armatures, electric, loose or on skids, or in boxes or crates, are rated less carloads,

first class in official and western classifications and second class in southern, and, in carloads, in packages, loose or on skids, minimum 30,000 pounds, fifth class in official, sixth class in southern and class A in western. Electric armatures are not rated as automobile parts. The record before the Commission is indefinite in that it refers almost entirely to one type of automobile electric armature and contains little or no information as to automobile electric armatures generally and how such armatures compared with other small armatures in value, loading weight per cubic foot, volume of movement, etc. Complainant asks that automobile electric armatures be segregated from other kinds, although there is no basis in the record for assuming that they are entitled to more favorable ratings. Complainants prayer for a lower rating on worn out or burned out electric automobile armature than on new ones is in practical effect a request for the junk rating on the former. The general rule in classifying is that used or second hand articles will be given lower ratings than new articles of the same kind only when the old articles have no value except as junk. The most frequent departures from this rule are in cases of return shipments of various articles, such as bags, or other containers, used in connection with shipments. Old automobile electric armatures clearly are more than junk and there appears to be no justification for giving them the junk rating. HELD, rates and ratings attacked not unreasonable, complaint dismissed. Oklahoma Traffic Asso. v. A. R. R. R., 109 I. C. C. 457.

ALL OTHER CITATIONS

General Iron Works v. Director General, as Agent, 85 I. C. C. 452; Automatic Train-Control Devices, 85 I. C. C. 403; Southern Carbon Co. v. A. & L. M. Ry. Co., 85 I. C. C. 542; Mathieson Alkali Works v. B. & O. R. R. Co., 85 I. C. C. 728; Jackson Traffic Bureau v. C. R. I. & P. Ry. Co., 88 I. C. C. 373; State of Arizona, ex rel, v. A. E. R. R. Co., 88 I. C. C. 679.

§6. Company Material.

See Advanced Rates §9½; Discrimination §6.

ALL CITATIONS

Arizona Corporation Commission v. A. E. R. R. Co., 85 I. C. C. 76.

§6½. To encourage markets or meet Competition.

See Market Competition.

(a) A reduction in the rates on cotton would have a very serious effect on the ability of many short lines serving Mississippi to earn sufficient revenue to serve the public efficiently as many of the short roads serving that State are unable to stand any appreciable losses in revenue. The traffic density of these short roads is low and while they are seeking to stimulate greater production of farm produce the tonnage has not yet reached a heavy state. Some short lines are unable to pay operating costs; the rates from many points on such roads are held down by the force of cross-country competition with points situated on stronger trunk lines; and to compel them to bear any greater strain would undoubtedly cause an impairment of service inimical to the general welfare of Mississippi. Mississippi R. R. Commission v. A. & V. Ry. Co., 89 I. C. C. 47, 69.

(b) Proposed reduced rates on numerous commodities from New York, N. Y., piers of Southern Pacific Co.-Atlantic S. S. Lines (Morgan Lines), applying by water to Galveston, Tex., and New Orleans, La. thence by rail to points on lines of Southern Pacific system in New Mexico, Arizona and California, designed for purposes of meeting rates of competing water carriers operating through the Panama Canal, found justified. Reduced Commodity Rates to Pacific Coast, 89 I. C. C. 512.

(c) There is ordinarily no point in voluntarily reducing a freight rate except for purpose of attracting traffic. Utah State Automobile Asso. v. A., T. & S. F., 92 I. C. C. 376, 385.

(d) Proposed reduced rates on iron and steel articles from Birmingham, Ala., district to Houston, Tex., group and to Louisiana Points intermediate to Houston group, designed to meet the competition of the water route and to assist the industries served in meeting the competition from iron and steel mills in seaboard territory having lower rail-and-water rates, found not justified, except on cotton ties and buckles, the rate on which was not protested, and no evidence of unlawfulness was offered. Proposed schedules would, among other things, create departures from long-and-short-haul clause of fourth section of the act. Iron and Steel from Birmingham, 102 I. C. C. 7.

III. TARIFFS AND PUBLICATION.

See Tariffs.

§8. Reparation.

See Reparation.

(a) Findings in 64 I. C. C. 85 that the present rates on coarse grains will be for the future unjust and unreasonable" did not become binding until finally ordered into effect on January 7, 1922, although November 20 was originally suggested to carriers as date when reductions should be made effective. Reparation on shipments moving between those dates denied. Northern Grain & Warehouse Co. v. O. S. L. R. R. Co., 100 I. C. C. 319, 321.

IV. PROCEDURE.

See Procedure Before Commission.

§10. Evidence and burden of proof.

See Evidence I.

(a) Carriers proposing reduced rates are subject to the limitation that they may not establish rates which will produce less than out-of-pocket cost of rendering the transportation and thus unduly burden other traffic. Reduced Commodity Rates to Pacific Coast, 89 I. C. C. 521, 530.

REFRIGERATION

I. CONTROL AND REGULATION.
§1. Jurisdiction of Commission.
§1½. Private refrigerator lines.
II. DUTY TO FURNISH.
§2. In general.
§3. Incidental services and charges.
§3½. Icing and re-icing.
§3½a. Top icing.
III. REASONABLENESS OF CHARGES.
§4. In general.
§4½. Facilities used.
§4½a. Private refrigerator cars.
IV. TARIFFS AND PUBLICATION.
§4¾. In general.
§5. Obligation to file.
§6. Construction in general.
§6½. Rules.
V. WEIGHTS.
§7. Minimums.
VI. REPARATION.
§8. In general.
§9. Liability for damage.

CROSS REFERENCES

See Allowances §8 (3⅛); Cars and Car Supply §9⅝, §9⅞ (3); Pre-Cooling; Perishable Freight; Protective Service.

II. DUTY TO FURNISH.

§2. In General.

(a) Deciduous fruits usually move under refrigeration, in refrigerator cars which are considerably heavier in proportion to their loading capacity than box cars. The shipments must be stopped at various points en route for reicing and expedited schedules are maintained which are faster than those for citrus fruits and other freight, except fresh vegetables and cantaloupes, and necessitate a reduction in the tonnage of 20 to 50 per cent below that of "drag trains." Calif. Growers' & Shippers' Protective League v. S. P. Co., 100 I. C. C. 79, 96, 98.

(b) Pork-hide trimmings are always shipped in iced refrigerator cars and receive expedited service, whereas calfskin trimmings, sinews, and horn piths move in ordinary box cars without protective service, are not accorded expedited movement, load more heavily, and are of much less value. Glue Stock in Official Classification Territory, 101 I. C. C. 601, 603.

§3. Incidental Services and Charges.

See Additional Charges and Services; Special Rates and Services; Switch Tracks and Switching §5; Transportation.

(a) Instead of contributing in proportion pro rata to total cost of transportation, ice transportation service perhaps should contribute on basis of out-of-pocket costs incident to additional gross car weight due to ice. Out-of-pocket costs possibly do not exceed 50 per cent of total costs. Refrigeration Charges from Florida, 85 I. C. C. 247, 252.

§3½. Icing and Re-icing.

See Infra §3½a; Top Icing.

(a) Complainant attacked rates charged on dressed poultry, butter eggs and other dairy products, in straight and mixed carloads, from certain points in United States and Canada between August 1919 and December 1919, as illegal and in excess of the published tariff rates in that defendant refused to pay com-

plainant the published allowance for the cost of initial icing of the shipments, which icing was performed by complainant at its cost. In 77 I. C. C. 678, the Commission found that charges for ice and salt furnished by the carrier were illegal. Between August and December 1919 defendant published rules providing compensation for ice or for ice and salt used in the initial icing in central territory of shipments of butter, cheese, eggs, dressed poultry, fish, game, and other perishable freight rated third class or higher, carload minimum 15 000 pounds. During the period covered by these complaints the tariffs carried provision for an allowance to shippers for ice furnished by the shipper for initial icing and after Sept. 5, 1919 for an allowance for ice and salt. HELD, failure of defendants to pay complainant for ice and salt furnished in accordance with tariff illegal, reparation awarded. Swift & Company v. Director General, 92 I. C. C. 263.

(b) Complainant alleged that by reason of the failure and refusal of defendants to perform the service of icing interstate less carload shipments of milk, skim milk, cream plain condensed milk, butter-milk, and pot cheese from New York and Connecticut to destinations in those states, it was charged rates that were unreasonable unjustly discriminatory and unduly prejudicial. Defendants are New Haven and Central New England Ry. Shipments are made in less carloads. In 45 I. C. C. 412, the Commission prescribed a scale of rates on milk and other dairy products from territory of origin, including icing when necessary. Defendants have never performed the initial icing service required by the rule. Beginning Nov. 1, 1922, defendants agreed to the payment not exceeding $3 per ton, pending final determination as to whether defendant should perform the service or reimburse complainant for doing it. After that date defendants, upon advice of counsel, declined to carry out the agreement and discontinued allowances to other milk shippers in March 1922. HELD, defendants failure to ice when necessary less carloads of milk unreasonable, reparation denied, as the record fails to establish the reasonable cost of icing such shipments. Bordens Farm Products Co. v. N. Y. N. H. & H. R. R., 92 I. C. C. 270.

(ba) Upon further argument, former report, 92 I. C. C. 270, affirmed and failure or refusal of defendants to perform service of icing interstate l. c. l. shipments of milk and other dairy products, as provided by tariff, from points in New York and Connecticut to destinations in those States, while exacting rates including such service, found to constitute an unreasonable and unlawful practice. Reparation denied for lack of proof of amount of damages sustained. Borden's Farm Products Co. v. N. Y., N. H. & H., 102 I. C. C. 497.

(bb) Reicing charge named in tariff as applying at Evansville, Ind., found applicable to shipments reiced at Howell. Howell was not indexed in tariff as a station; it is a corporate part of the city of Evansville, and the icing plant was and is located within the municipal as well as the switching limits of that city. Under these circumstances a lower reicing charge named in tariff as applying at "all other points" was not applicable at Howell. Swift & Co. v. A. & R. R. R., 102 I. C. C. 499.

(c) Complainant attacked charges paid for icing and reicing in transit of dressed poultry, and butter and eggs, carloads, shipped between August 1, 1919 and Jan. 23, 1920 from Chicago, Ill., Moulton, Ia., Quincy, Ill., to New York and from Oklahoma City, Okla., Keokuk, Ia., and Fort Wayne, Ind., to destinations in official territory as unreasonable and in violation of section 6. The individual tariffs of the carriers which performed the icing service in question provided for separate charges for icing in transit and there is a general provision in the exception to the official classification for the application of the tariffs of the individual carriers in respect to miscellaneous charges, including icing charges. HELD, icing charges applicable except via the Wabash, reparation awarded. Schweitzer Co. v. Director General, 109 I. C. C. 663.

(d) Proposed change in perishable protective tariff rule to effect that ice and salt will be supplied by carrier in body refrigerator cars equipped with ice bunkers or tanks only when cars are moving under full standard refrigeration, found not justified. Such rule with the proposed change would necessitate the payment of full stated refrigeration charges as a condition precedent to performance of this service and result in increased charges which respondents made no attempt to justify. Furnishing Ice and Salt, 88 I. C. C. 361.

(e) Imposition of charges provided in rule 240 (A) of perishable protective

tariff No. 1, in addition to applicable freight rates, on fresh meats and packing-house products initially iced by consignor and delivered to carrier with instructions not to re-ice in transit, from points in Washington, Oregon, California, and Nevada to interstate destinations, found to result in unreasonable total charges. Reparation awarded and revision of tariffs required. Frye & Co. v. G. N. Ry. Co., 88 I. C. C. 477.

§3½a. Top Icing.

See Supra §3½; Top Icing.

(a) Respondents proposed certain changes in the rules, regulations and practices affecting the charges for refrigeration and handling of perishable freight at points in the United States. In the past few years there has grown up a practice of loading ice on the top of perishable freight in the body of the refrigerator cars. This practice, at first confined to a comparatively small originating territory and to certain vegetables, particularly the socalled iceburg lettuce, is growing rapidly, not only as to the originating territory but also as to the number and variety of vegetables. Respondents do not receive any additional compensation for the haulage of ice placed upon top of the load which weighs from 1,500 to 12,000 pounds. It is with a view to securing compensatory charges for the transportation of this ice and the alleged resultant damage to the car that the proposed changes in refrigeration rules are designed. The only method provided by the carriers for preserving perishable vegetables and fruits while in transit is by ice placed in bunkers located at each end of the standard refrigerator car. This is accomplished usually under standard refrigeration, which consists of filling the bunkers with about 9,000 pounds of ice at point of origin and reicing the car at regular icing stations enroute to destination. For this service a stated refrigerator charge is made. If the shipper does not desire standard refrigeration he fills the bunkers with ice or requests the carrier to perform this service, noting on the bill of lading "do not reice". In that event a charge to cover the damage to the bunkers and for transporting the ice is made, which is provided for under current tariffs. In shipments of lettuce, especially from California and other western states, the shippers have for many years placed about 25 pounds of crushed ice in each crate of lettuce shipped. Under the system of averaging the weight of the crates provided in the tariffs, a shipper pays on 15 pounds of ice per crate the freight rates applicable to the commodity shipped, upon the theory that 10 pounds of ice placed in each crate melts before the car moves. None of the latter charges are here involved. Paragraph G of rule 2001, here under suspension, provides that carriers will not place ice or salt in packages with freight or in the body of refrigerator cars equipped with ice bunkers or tanks when such cars are loaded with perishable freight. The object of this amendment was to provide definitely that carriers would not place ice or salt in packages with the freight, and would perform no body icing either at origin or in transit providing the shipments moved in refrigerator cars equipped with ice bunkers or tanks. Rule 241 provides that shippers will be permitted to place ice in the body of the car at point of origin when loaded with fruit, vegetables, berries or other perishable freight, as covered by section 2 of the tariff; that not to exceed 5,000 pounds of ice (not including ice in the packages with the freight) will be transported under provisions of the rule, any amount in excess of 5,000 pounds to be charged for on the basis of the freight rate applicable to the lowest rated commodity contained in the car; and that when carload shipments of perishable freight, to which the rule is applicable, are tendered for transportation with ice in the body of the car (not including ice in packages with the freight) an additional charge will be made, viz $5 per car, if the journey from point of origin is confined within the limits of a single origin group, $7.50 if it is confined within the limits of two contiguous origin groups, and in all other cases 20 per cent of the stated refrigeration charge would otherwise be applicable. During the six months period from October to March, no ice need ordinarily be placed in the bunkers of cars containing lettuce, as crate icing and top icing will usually afford ample refrigeration. Respondents insist they are entitled to additional compensation to cover the cost of hauling ice placed on top of the load and the damage to the floors and walls of the car caused by the water. In this proceeding it seems clear that the freight rates generally throughout the country on green vegetables when established did not take into consideration the damage to the cars from top icing or the

additional expense to which the respondents were placed in transporting the top ice. It may be that some change in the construction of refrigerator cars will be necessary to meet present day requirements for shipments of such commodities as lettuce which, in addition to refrigeration, require moisture while in transit. When ice is placed on the load for the carriers to transport, they are performing a service for which they receive no compensation and which is not covered by tariff. However, if a shipper is given an additional service which is peculiarly necessary for his particular shipments it would seem that he should pay a reasonable charge for that service. Aside from the admission of counsel for the western carriers in argument that "top icing has come to stay" the evidence seems to warrant a finding that ice on top of the lading or some other equally efficient method must be adopted to safely transport and preserve lettuce, cauliflower, and certain other vegetables over great distances during the warm season of the year. Water dripping on the floors of refrigerator cars as at present constructed will dampen the felt and other substances now used in insulating the car and render it less effective to service the purposes of refrigeration. This damage can not be altogether attributed to the water from the ice on top of the ladings. The meltage from the ice in the crate must necessarily pass to the floor of the car, with the resultant damage to the car. If top icing should be entirely eliminated there would still remain the damage from the ice in the crates. The damage to the equipment is incapable of measurement. It does not follow that the carrier should not be compensated in some way for which ever damage may be attributable to the top icing and for the cost of transporting the ice. The evidence seems to warrant the finding that the limit of 5,000 pounds proposed is too low and that 7,500 pounds would be a reasonable maximum. Protective service rules on perishable freight, 104 I. C. C. 79.

III. REASONABLENESS OF CHARGES.

See Class Rates §2 (3q); Classification §5 (z); Express Companies §10 (d); Reasonableness of Rates.

§4. In general.

(a) Western Maryland respondent, proposed to increase the so-called refrigeration charges on fruits and vegetables from points on its line in Maryland, Pennsylvania and West Virginia to destinations in other states throughout the country, and in Canada. In 1922 respondent contracted with the Fruit Growers Express Company to furnish refrigerator cars upon payment of the entire revenue derived from refrigeration; guaranteeing an amount equal to the total expense of furnishing the service on all cars handled, plus $20 per car per trip for each loaded cars shipped under refrigeration, and 2c per car mile, empty and loaded. Respondent states that in 1923 the F. G. E. Co. would not make a contract without a guaranty similar to that embodied in the 1922 contract unless the stated refrigeration charges were increased to cover the actual cost of the service. The increases were therefore proposed. The charges now in effect were first established on Feb. 28, 1920, in perishable protective tariff No. 1 pursuant to 56 I. C. C. 449. The charges proposed represent increases ranging from 27 to 70%. No changes are proposed by other lines serving the same general territory. The factors considered as properly chargeable to refrigeration in establishing the present charges were cost of ice in bunkers of cars, cost of haulage of ice in car bunkers, cost of switching to and from icing stations, cost of wear and tear on refrigerating devices and cost of supervision. While the costs shown no doubt represent costs to respondent, it is by no means certain that they represent costs properly chargeable to the service rendered by the F. G. E. Co. If may be that the amounts which the respondent is called upon to pay for the use of equipment under its contract are excessive. In fact respondent refers to its inability to arrange a suitable contract and states that other car companies were approached with a view to obtaining a more favorable contract. Certainly shippers should not be called upon to pay unreasonable charges because of that situation. HELD, proposed schedules not justified. Refrigeration charges to interstate destinations, 91 I. C. C. 707.

(b) Complainant attacked defendants rates and refrigeration charges on melons and cantaloupes in straight and mixed carloads and on melons cantaloupes and vegetables, in mixed carloads, from several points in the Imperial Valley of California to Douglas, Ariz., as

unjust and unreasonable. Points of origin are served by the S. P., Indio, Brawley, Imperial, El Centro and Calexico, and Westmorland the movement beyond Tuscon is over the E. P. & S. W. Apparently there is no definitely established relationship between the class C rates and the rates on fresh fruit and vegetables in straight or mixed carloads, but rates on such traffic in mixed carloads, the equivalent of class C rates were prescribed in 59 I. C. C. 552 and other cases. The record establishes that a reasonable refrigeration charge on melons from these Imperial Valley points to Douglas would not exceed $85 per car. Possibly it should be lower, although complainants showing does not support a reduction to a lower basis. HELD, rates attacked not unreasonable but refrigeration charges unreasonable to extent they exceeded $85 per car, reparation awarded. Buxton Smith Company v. E. P. & S. W. Ry., 92 I. C. C. 227.

(c) Complainant attacked rates and refrigeration charges on fresh and green vegetables other than potatoes, carloads, from Charleston, S. C., and on asparagus from Ridge Spring, Trenton and Williston, S. C., to New England, trunk line and central territories. Carriers serving the territory of origin are the A. C. L., C. & W. C., S. A. L., and Southern. From South Carolina producing sections and from Florida and other southeastern cities served by these originating lines tariffs provide rates, stated in amounts per 100 pounds, on potatoes and cabbage, in packages named therein or in bulk, and on turnips, in sacks, but on asparagus and vegetables not otherwise specified, rates are stated in amounts per package according to specified standard containers. These commodities may be shipped in standard packages of 1, 1.5 or 3 bushel capacity. The rates from a large part of the Charleston district to New York are 92c per 3 bushel package, 63c per 1.5 bushel package, and 51c per 1 bushel package. A large volume of the present movement is in the 3 bushel package although there is a substantial movement of certain of the vegetables in the smaller packages. If the rates on the 1 and 1.5 bushel packages were made one third and one half, respectively, of the present rates on the 3 bushel package, with a carload minimum of 600 bushels, the revenue could be the same on a minimum carload regardless of the size of the package used, or $184 per car. HELD, rates attacked unreasonable to extent they exceed one third and one half, respectively, of the present rates on similar traffic in 3 bushel packages, in connection with a minimum of 600 bushels in each case. In the absence of evidence of record which would enable the Commission properly to determine what would be reasonable refrigeration charges from South Carolina by considering all the elements which go to make up the refrigeration charges, and faced with a situation which obviously is in need of correction, the only solution seems to be to prescribe charges from South Carolina with relation to the rates from Florida, HELD, refrigeration charges attacked unreasonable to extent they exceed 85% of the charges from Florida. South Carolina Produce Assn. v. A. & R. R. R., 96 I. C. C. 107.

(d) Complainant attacked transportation and refrigeration charges on fruit and vegetables, carloads, and rules governing the mixture of these commodities in carloads from producing points in Mississippi to interstate destinations as unreasonable. They also allege that defendants failed to maintain point rates on this traffic from Mississippi producing points to many interstate destinations. Principal vegetables shipped are, in order of volume of movement in straight carloads, tomatoes, cabbages, carrots, string beans, and white and sweet potatoes. **Transportation Rates.** The rates on vegetables from Mississippi to the principal markets are made on a group basis. The rates from each of the groups are with some exceptions also adjusted with a view to reflecting to a certain extent dissimilarities in the transportation characteristics of the different varieties of vegetables. Tomatoes are shipped in refrigerator cars but not always under refrigeration. All the other vegetables move under refrigeration. Crystal Springs, a local station on the I. C., about 24 miles south of Jackson, is used as a representative shipping point. Generally speaking, the rates attacked to the principal markets are either lower than or not in excess of the rates on the same commodities for similar distances from Texas and Louisiana, and southern states such as Alabama and Florida. With the possible exception of livestock traffic, and of such commodities as move in refrigerator cars, the record indicates that the vegetable

traffic requires special services, equipment, and facilities that are not required by the other commodities referred to, thereby increasing the difficulties and costs of transportation. HELD, while the record is not sufficiently developed to enable the Commission to prescribe commodity rates to points to which complainants seek such rates, the carriers will be expected to provide commodity rates from Mississippi points to Little Rock and other important consuming points in Arkansas, Richmond, Va., Atlanta, Ga., New Orleans, La., and Springfield, Joplin and Carthage, Mo., which will be properly aligned with commodity rates now maintained on some or all of the vegetables here considered from the points of origin and contiguous producing territories in Alabama and Louisiana to the same destinations, and in line with the rates from these producing points to other destinations in the same general territories. On the record made no opinion can be expressed respecting the establishment of commodity rates to other destinations. **Mixed Carload Rule.** The rule in effect is essentially that prescribed in 19 I. C. C. 513. HELD, rule not condemned. **Refrigeration Charges.** The present charges for the refrigeration of vegetables from Mississippi to interstate destinations are those established Feb. 28, 1920, on which date the former charges were increased following 56 I. C. C. 449.. The charges attacked are uniformly $10 per car higher on tomatoes and cabbage, the two vegetables shipped in greatest volume from Mississippi, than on other vegetables, in straight carloads. The higher charges also apply on mixed carloads of vegetables containing tomatoes and cabbage when the actual weight of either is in excess of 25% of the other vegetables in the mixture. HELD, considering their relative level and other facts of record, it can not be said that the line haul rates include compensation for any of the expense attached to refrigeration. HELD, refrigeration charges on tomatoes and cabbages are unreasonable to extent they exceed present refrigeration charges on other vegetables from and to the same points, and that the refrigeration charges on other vegetables and the transportation rates from Mississippi not unreasonable. Mississippi Railroad Commission v. A. & R. Ry., 98 I. C. C. 55.

(e) Proposed increased refrigeration charges on fruits and vegetables from points on Western Maryland Ry. in Maryland, Pennsylvania and West Virginia to destinations in other states and in Canada found not justified. In justification of proposed advances respondent submitted studies of cost of ice in bunkers, cost of hauling ice in bunkers, cost of switching to and from icing stations, and wear and tear on refrigerating devices and cost of supervision. However, character of evidence and methods of ascertaining such costs were decidedly unsatisfactory and were previously followed by carriers and disapproved by commission in 56 I. C. C. 449, and 85 I. C. C. 247. Refrigeration Charges to Interstate Destinations, 91 I. C. C. 707.

(f) Complainant attacked refrigeration charges on vegetable and citrus fruits from Imperial Valley of California to Fort Worth, Tex., as unreasonable and in violation of section four. Shipments moved between March 11, 1920, and April 17, 1922, from Imperial, Heber, Brawley, Westmoreland, El Centro, and Calexio, Calif., points named are on the branch line of the S. P. between Niland, Calif., and Yuma, Ariz., and are from 62 to 93 miles from Yuma. Points named are in group B. Reparation is asked to basis of rates from group A. Complainant made no reference in its memorandum to the fourth section departure alleged in its complaint. Neither did it make comparison of the charges and distances from Group B. as compared with Group A. HELD: Complaint dismissed. Home Star Produce Co. v. S. P. Co., 101 I. C. C. 69.

(g) Rate on ice, in refrigerator cars owned and furnished by complainant, from Tobyhanna, Pa., to Trenton, N. J., found not unreasonable. No evidence of the usual character was offered to show that rate charged was unreasonable; compensation paid for use of complainant's cars by defendants in the usual mileage rate paid under tariffs to all private owners of similar equipment, and it appears that carriers' gross earnings were lower than on ice shipped to complainant in either carrier-owned box or refrigerator cars. Holcombe & Sons v. C. R. R. Co. of N. J., 92 I. C. C. 27.

(h) Refrigeration charges on melons and cantaloupes, in straight and mixed carloads, and on melons, cantaloupes, and vegetables, in mixed carloads, from Imperial Valley points in California to

Douglas, Ariz., found unreasonable as compared with refrigeration charges between points in same general territory for similar distances, and to extent they exceeded charges herein prescribed for future. Reparation awarded. Buxton-Smith Co. v. E. P. & S. W. R. R., 92 I. C. C. 227.

(i) Protective-tariff rule governing l. c. l. shipments provided that carriers would furnish, or allow use of, refrigerator cars when aggregate weight of shipments was not less than 15,000 pounds, with no charge for refrigeration service unless specifically provided for in separate tariffs. Upon contention that shipments of lettuce were l. c. l. shipments entitled to benefits of the rule, FOUND. As each box was not marked as required by the classification to obtain benefit of the l. c. l. rate, and as cars used were ordered for c. l. shipments and bills of lading and shipping orders signed by or for shippers showed minimum weights applicable to c. l. shipments and bore notations and instructions having application only to c. l. traffic under the protective tariff, the c. l. rates, minimum, and stated refrigeration charges applicable thereto were legally assessed. Martin v. P. R. R., 92 I. C. C. 639.

(j) Refrigeration charges on fresh vegetables, including asparagus, from Charleston and other South Carolina points to New England, eastern trunkline and central territories, found unreasonable to extent they exceeded 85 per cent of the same present charges on like traffic from Florida producing points to same destinations. In view of the shorter distance to the northern markets the amount of refrigeration service which the South Carolina shippers receive is in all elements materially less than that from Florida and therefore the charges should be less. Nothwithstanding findings of the commission in 61 I. C. C. 438; 74 I. C. C. 157; 85 I. C. C. 247, defendants undertook to show the present charges not to be unreasonable by resort to substantially the same methods as were used in the cited cases and which were found to be unacceptable. Reasonable charges prescribed for the future. South Carolina Produce Asso. v. A. & R. R. R., 96 I. C. C. 107.

(k) Refrigeration charges on vegetables, except tomatoes and cabbages, from producing points in Mississippi to interstate destinations found not unreasonable as compared with rates on vegetables from other producing points in the Southern States. Mississippi R. R. Commission v. A. & R. R. R. Co., 98 I. C. C. 55.

(l) Rates and refrigeration charges on vegetables from producing points in Mississippi to interstate destinations, with certain exceptions, found not unreasonable as compared with rates for similar distances from other producing points in the Southern States. Rates assailed are, in the main those approved by commission in Fruits and Vegetables, 43 I. C. C. 291, as modified by subsequent general percentage changes, and grouping of Mississippi producing points was a part of the general grouping of production points found justified therein. Mississippi R. R. Commission v. A. & R. R. R. Co., 98 I. C. C. 55.

(m) Rates and refrigeration charges on vegetables from producing points in Mississippi to interstate destinations found not unreasonable as compared with rates for similar distances from other producing points in the Southern States, except that rates to Little Rock and other Arkansas consuming points, Richmond, Va., Atlanta, Ga., New Orleans, La., and Springfield, Joplin, and Carthage, Mo., need alignment. Mississippi R. R. Commission v. A. & R. R. R. Co., 98 I. C. C. 55.

(n) Considering their relative level and other facts of record it can not be said that line-haul rates include compensation for the following items of refrigeration expense: (1) Hauling of ice placed in bunkers of refrigerator cars, (2) switching cars to and from stations for the purpose of placing ice in the bunkers, (3) repairs to refrigerating devices of refrigerator cars, and (4) supervision. These items and also cost of ice furnished are either in whole or in part necessarily incident to the transportation of the traffic under refrigeration. They have received recognition by commission in previous cases dealing with refrigeration charges and, unless included in the line-haul rates, are items of expense that properly may be considered in determining the reasonableness of refrigeration charges. Mississippi R. R. Commission v. A. & R. R. R. Co., 98 I. C. C. 55, 69, 70.

(o) Refrigeration charges on tomatoes and cabbages from Mississippi producing points to interstate destinations found unreasonable to extent they ex-

ceed or may exceed present refrigeration rates on other vegetables to and from same points. Exhibit of cost data does not show that the amount of ice required for refrigeration of commodities in issue is greater than that required for other vegetables. Mississippi R. R. Commission v. A. & R. R. R. Co., 98 I. C. C. 55, 73, 74.

(p) Complainant attacked charge of $50 per car exacted for the icing at White River Jct., Vt., of 14 cars of grapes from St. Catherines, Beemsville, Winona and Jordan, Ont., Can., to Boston in Sept. and Oct. 1922 as unreasonable. No evidence was introduced which in any way tended to show that the charge was unreasonable for icing from and to stations in New Hampshire and Vermont or that the charge was unreasonable as a proportional charge on shipments from Canada. HELD, refrigeration charge attacked not unreasonable, complaint dismissed. Kingman Co. v. O. V. Ry., 104 I. C. C. 445.

(q) Complainant attacked rates and refrigeration charges assessed on strawberries, shipped during May and June 1921 from Virginia, Maryland and Delaware, to various interstate destinations as unreasonable and unduly prejudicial. Reparation claimed is in each instance the amount of the refrigeration charge assessed. The freight rates as such are not in issue. The strawberries were packed in standard crates, each containing 32 one quart baskets, and were handled by defendants as carload shipments, charged at rates applicable on carload shipments based on a minimum of 15,000 pounds. State refrigeration charges were also collected. The record does not show that complainant in any way indicated to defendants that less carload shipments were desired. In fact the evidence shows that separate cars were ordered for each shipment and there appears to have been no protest at the time the shipments were made concerning the assessment of refrigeration charges. Photostatic copies of shipping orders typical of the orders given by complainants were submitted in evidence. They show that the shipper received the exclusive use of the car and each order bears such significant notations as "loaded by shipper," "under refrigeration," "standard refrigeration," etc., all of which indicate that the cars were intended to move carload quantities. The weight in several instances is shown as 15,000 pounds. HELD, refrigeration charges applicable, complaint dismissed. Allen & Company v. Pennsylvania R. R. Co., 107 I. C. C. 18.

(r) Complainant attacked rates, rules, regulations and charges on fresh fruits, melons, and vegetables, carloads, from Maricopa County, Ariz., to interstate destinations as unjust, unreasonable, unjustly discriminatory and unduly prejudicial. The evidence relates principally to the refrigeration of cantaloupes from Salt River Valley, in which Phoenix is located. Chicago, Ill., is taken as typical of eastern markets. Distances to Chicago are 1,898 miles from Phoenix, 1,842 miles from Casa Grande, 2,029 miles from Yuma, 2,099 miles from El Centro, Calif., in the Imperial Valley, and 2,261 miles from Los Angeles, Calif. The stated refrigeration charge on melons from Maricopa County and the Imperial Valley is $125 per car, as compared with $95 from the other points referred. The same difference of $30 per car is maintained to Denver, Colo., Texas common points and all points east thereof. On fresh fruits and vegetables this difference is $5. The cars are iced before loading and again as soon as practicable after loading, usually before starting on their eastbound journey. They are inspected en route and reiced at regular and sometimes emergency stations. The Commission has no reason to believe that the charges attacked are excessive for the service performed. HELD, stated refrigeration charges on melons, carloads, from Maricopa County to Texas common points, Denver and all points east thereof not unreasonable but unduly prejudicial to extent they exceed the charges from Bakersfield district in California by more than $10 per car. Maricopa County Farm Bureau v. A. & S. Ry., 109 I. C. C. 472..

(s) Complainant attacked refrigeration charges on a car of plums from Sanborn, N. Y., to Lockport, N. Y., Sept. 19, 1923 thence reconsigned to Philadelphia, Pa., as unreasonable. Shipment moved to Lockport via N. Y. C., 10.7 miles. Instructions were given defendant at Sanborn to initially ice the car and a notation was placed on the bill of lading reading "do not reice". The car was iced at Sanborn by defendant at charge of $22.80. An additional charge of $9 was also made. The movement from Sanborn to Lockport was

within the limits of a single origin group and the charge of $5 in addition to the cost of ice was applicable. On arrival of car at original destination the car was reconsigned to Philadelphia with instructions to defendant to furnish full standard refrigeration. The charge of $55 per car for full standard refrigeration applicable from either Sanborn or Lockport to Philadelphia was paid by complainant in addition to the charges applicable from Sanborn to Lockport. The tariff rules did not provide for a cancellation of the refrigeration charges that accrued under rule 240 (a) from Sanborn to Lockport and the application of charges for standard refrigeration from the point of origin to ultimate destination. HELD, refrigeration charges not unreasonable or otherwise unlawful, complaint dismissed. Rinelle v. N. Y. C. R. R., 112 I. C. C. 111.

ALL OTHER CITATIONS

Refrigeration Charges from Florida, 85 I. C. C. 247; St. Louis Fruit & Vegetable Dealers v. W. Ry. Co., 85 I. C. C. 496.

IV. TARIFFS AND PUBLICATION.

See Tariffs.

§4¾. In general.

(a) Proposed rule in perishable protective tariff providing that fruits and vegetables in refrigerator cars with ice on top of load will be considered as moving under refrigeration, and charges assessed accordingly, found not justified. Practice of moving shipments under standard refrigeration with top icing, and with ice in bunkers negatives theory that proposed rule would result in discontinuance of top icing. The burden of hauling such ice without compensation therefor in refrigeration charges would still be upon carriers, and shippers would be compelled to pay for a service not ordered and regarded as unnecessary in many cases. Moreover, damage to cars is not so serious as to require a prohibition of the top-icing practice. Carriers however, are entitled to compensation for haulage of top ice and for damage caused thereby to equipment, and reasonable rule and charges therefor suggested. Rules for Protective Service on Perishable Freight, 89 I. C. C. 87.

§6½. Rules.

(a) Complainant attacked charges on lettuce, in refrigerator cars, shipped from points in New York to New York, N. Y., over interstate routes, and to Philadelphia, Pa., during June, July and August, 1921 as illegal, in violation of section 6. Charged fourth class rates, stated refrigeration charges were also collected. Perishable Freight Tariff 1 provided that upon reasonable notice carriers would furnish, or allow the use of, refrigerator cars to be loaded by shippers at their own expense, with freight, including lettuce, from one consignor at one point of origin to one consignee at one destination, when the aggregate weight was not less than 15,000 pounds per car or when charges were assessed on the basis of 15,000 pounds per car, and that no charge would be made for refrigerator service unless specifically provided in separate tariffs of the carriers. Defendants published a charge for refrigeration service on shipments subject to the rule. Defendants show that each box was not marked as required by the classification in order to obtain the benefit of the less carload rate and that the cars used were in each instance ordered for carload shipments. HELD charges attacked were applicable, complaint dismissed. Martin v. Pennsylvania R. R., 92 I. C. C. 639.

V. WEIGHTS.

See Weights and Weighing.

§7. Minimums.

See Minimums.

(a) Complainant attacked refrigeration rates on preserved fruits and berries, carloads, during the period May 15, 1917 to February 27, 1920 from Oregon and California to destinations in central and eastern states as unreasonable. In 74 I. C. C. 179 the Commission found charges attacked unreasonable to extent they exceeded the basic deciduous fruit refrigeration rates between the same points, except that the minimum car loading should be 50,000 pounds, excess in proportion. HELD, reparation awarded. National Preservers & Fruit Products Asso. v. Director General, 91 I. C. C. 221.

(b) Carload minimum of 350 crates on celery under refrigeration from Florida to interstate and foreign destinations found unreasonable to extent it exceeded 315 crates for refrigerator cars ranging in length from 28 feet 9 inches to 31 feet 6 inches, inside measurement, when furnished for carrier's convenience. Reasonable minimum for such cars prescribed

and reparation awarded. Florida R. R. Commrs. v. A. & R., 102 I. C. C. 677.

RELATIVE RATES

See Advanced Rates §5 (1) (2) (3), §11½, §15; Blanket Rates §8, §12½; Classification §20; Commodity Rates §2; Differentials §2, §6; Discrimination §3½, §7, §13; Distance Rates; Equalization of Rates III, §8; Export Rates and Facilities §6 (jj); Evidence §13, §28, §31, §65, §66; Proportional Rates II (ll); Reasonableness of Rates §28; Reparation §12; Through Routes and Joint Rates §8, §13½.

RELEASED RATES

I. CONTROL AND REGULATION.
§½ In general.
§1. Jurisdiction of Commission.

II. CONSTRUCTION AND APPLICATION.
§1½. In general.
§2. Duty to inform shipper.
§3. Intention to use.
§3½. Knowledge of shipper.

III. LEGALITY AND CREATION.
§4. In general.

IV. REASONABLENESS.
§5. In general.
§5a. Reparation.

V. LIMITATION OF LIABILITY.
§6. Effect in general.

VI. REPARATION.
§7. In general.

CROSS REFERENCES

See Bills of Lading IV; Export Rates and Facilities §2 (b); Express Companies §16½; Loss and Damage §2, §2½, §9, §11.

I. CONTROL AND REGULATION.

See Control and Regulation.

§½. In general.

(a) Since the enactment of second Cummins amendment, forming part of paragraph 11 of section 20 of the act, no carrier may lawfully publish rates based on the declared or agreed value of the commodity shipped, or limit the amount of its liability to the value so declared or agreed upon, without specific authority from the Commission. Released rates on stone in the southeast, 93 I. C. C. 90, 91.

§1. Jurisdiction of Commission.

See Interstate Commission I; Jurisdiction of Commission .

(a) The Director General, as agent of the President, contended that he was authorized by the Federal Control Act to initiate rates by filing them with the Commission, and no prior authorization by the Commission was necessary in order for him to make effective released or declared value rates. But the Cummins Amendment provides that all attempted limitations of liability shall be void unless approved by the Commission, and the Federal Control Act conferred no authority upon the Director General to establish limitations of liability without approval of the Commission. Crown Overall Mfg. Co. v. Director General, 100 I. C. C. 471, 481.

(b) Under section 20 of interstate commerce act, as amended, any attempted limitation of the shipper's right of recovery for full actual loss, damage, or injury to property received for transportation is "declared to be unlawful and void" except when the limitation is published under an order from the commission; and it follows that any attempt on part of a carrier to set up a defense of limited liability as to goods shipped under actual value rates not published under such an order would fall. Crown Overall Mfg. Co. v. Director General, 100 I. C. C. 471, 477.

(c) The Federal control act conferred no authority upon the director general to establish limitations of liability without commission's approval. Crown Overall Mfg. Co. v. Director General, 100 I. C. C. 471, 482.

II. CONSTRUCTION AND APPLICATION.

§1½. In General.

(a) If a commodity is fairly uniform in value, so that carrier knows with reasonable degree of certainty the liability it assumes when it accepts a shipment for transportation, it should establish packing and loading, with a view to minimizing loss and damage claims; and, having done so, should then publish a single rate based on known transportation characteristics of the commodity. Released Rates on Stone in Southeast, 93 I. C. C. 90, 93.

(b) Rates graded according to actual

value do not operate as a limitation upon the shippers right to recover for actual loss, damage or injury to the property transported, and actual value rates may be fairly distinguished from released rates. San Antonio Paper Co. v. Director General, 102 I. C. C. 243, 244.

(c) Actual value rates and released rates may be fairly and effectively differentiated, and valuation restrictions in connection with actual value rates are to be given effect in applying the rates. Heller Bros. v. Director General, 102 I. C. C. 749, 751.

(d) Upon consideration of the matter of rates graded according to actual value of commodities shipped, which do not operate as a limitation upon the shipper's right to recover for the full actual loss, damage, or injury to the property transported, HELD: That actual value rates and released rates may be fairly and effectively differentiated. Crown Overall Mfg. Co. v. Director General, 100 I. C. C. 471.

(e) It is not all rates in connection with which a declaration of value in writing by the shipper may be required that are within the purview of the second Cummins amendment, but only those where the valuation is thus declared or agreed upon as the released value of the property. 63 I. C. C. 234. Crown Overall Mfg. Co. v. Director General, 100 I. C. C. 471, 474.

(f) Actual-value rates are rates the application of which is dependent upon the actual value of the commodity not exceeding a specified amount, and the principle underlying these rates is that the articles covered by the different groups of valuations are in fact so different as to constitute in effect different commodities. There is no holding forth by carrier of an offer to transport goods of the higher values at lower rates in consideration of release by shipper of carrier's liability. Crown Overall Mfg. Co. v. Director General, 100 I. C. C. 471, 475.

(g) Upon consideration of the matter of rates graded according to actual value of commodities shipped, which do not operate as a limitation upon the shipper's right to recover for the full actual loss, damage, or inquiry to the property transported, HELD: That actual value rates and released rates may be fairly and effectively differentiated. Crown Overall Mfg. Co. v. Director General, 100 I. C. C. 471, 477.

(h) It is the commission's view, first expressed in The Cummins amendment, 33 I. C. C. 682, and since quite consistently followed, that the rate and its qualifying limitation are severable, and that the limitation should be ignored or regarded as not present in the tariff, but the rate should be applied. Crown Overall Mfg. Co. v. Director General, 100 I. C. C. 471, 482.

(i) Shipments of blackstrap molasses from Mobile, Ala., to Fort Calhoun, Nebr., found overcharged to extent that charges collected exceeded those which would have accrued at lower declared value rate. Reparation awarded. Crown Overall Mfg. Co. v. Director General, 100 I. C. C. 471, 482.

(ia) Tariff carried rates on newsprint and wrapping paper based on value, together with higher rates on same commodities without reference to value. Shipper made no reference to value in billing. FOUND: Higher rates charged found legally assessed, and, following 100 I. C. C. 471, the rates graded according to value were not released rates but actual-value rates, and the restrictions in connection therewith were not void. San Antonio Paper Co. v. Director General, 102 I. C. C. 243.

(ib) Tariff carried rates on household goods based on declared value, but shipper was misled through misinformation furnished by carrier's agent into declaring a valuation higher than that at which he actually valued the goods, resulting in the application of a rate higher than that which would otherwise have applied. FOUND: Misquotation of a rate by carrier's agent affords no ground for an award of reparation, and applicable rate, herein determined, was not unreasonable or otherwise unlawful. Arizona Corp. Comm. v. A. E. R. R., 102 I. C. C. 578.

(ic) Following 100 I. C. C. 471, wherein it was found that actual-value rates and released rates may be fairly and effectively differentiated and that actual-value rates should be applied as published, shipments of newsprint, printing, and wrapping paper moving under actual-value rates found not to have been overcharged. Texas Farm & Ranch Publishing Co. v. Director General, 102 I. C. C. 581.

(id) Shipments of whiskey, alcohol, brandy, and gin, moving under actual-

value rates, found not to have been overcharged. While carrier published lower declared-value rates, tariff in which they were carried contained no specific requirement that shipper declare value in writing, and here no value was declared nor is the true value disclosed. Moreover, in 100 I. C. C. 471, commission found that rates graded according to actual value do not operate as a limitation upon shipper's right to recover for full actual loss, damage, or injury to property transported, and that actual-value rates and released rates may be fairly and effectively differentiated. Woolner Distilling Co. v. Director General, 102 I. C. C. 605.

(ie) Tariff carried released rates on dressed granite and granite monuments based on value certified to by shipper, together with higher actual-value rates where value is not so certified. Shipments here involved were of a value in excess of released rates and were properly assessed rates based on actual value, commission having held in 100 I. C. C. 471 that actual-value rates and released rates may be fairly and effectively differentiated, and that valuation restrictions in connection with actual-value rates are to be given effect in applying the rates. FOUND: Shipments not overcharged. Heller Bros. v. Director General, 102 I. C. C. 749.

(j) Complainant attacked rates charged, class, on four cars of granite from New Hampshire and Vermont to Delphos, O., Macomb, Ill., Wauseon, O., and Ligonier, Ind. There was no restriction as to the value of the commodity attached to any of the rates charged. The rates which complainants claim should have been applied are commodity rates, subject to the condition that the value of the commodity shall not exceed $2.25 per 100 pounds, to be so certified by the consignor in the bill of lading.. Complainants not having shown that the value of these shipments was less than $2.25, it follows that the complaints should be dismissed. HELD, complaint dismissed. Sherger & Sons v. B. & M. R. R., 109 I. C. C. 555.

III. LEGALITY AND CREATION.

§4. In General.

See Legality of Rates.

(a) L. & N., and other rail carriers in the southeast sought authority under paragraph 11 section 20 of the act on behalf of themselves and certain of their northern and western connections to established released rates for the transportation of marble, granite, and other kinds of stone, in different stages of manufacture and finish from, to, and within the southeastern portion of the United States. Generally speaking the relief sought by these carriers is authority to incorporate in their tariffs in connection with their published rates a limitation of liability, in case of loss or damage to 20c on rough stone and 40c on finished stone. The range of value of rough quarried sawed, sand rubbed, and polished granite or marble is not so great that the carriers can not estimate with a reasonable degree of accuracy what their liability will be in the event of loss or damage in transit. HELD schedules not justified. Released rates on stone in the southeast, 93 I. C. C. 90.

(b) The fact that claims for loss and damage are frequent in the transportation of a given commodity is not in itself a valid reason for the establishment of released rates. If the commodity is fairly uniform in value, so that the carrier knows with a reasonable degree of certainty the liability it assumes when it accepts a shipment for transportation, it may and should establish reasonable tariff regulations relative to packing and loading, with a view to minimizing such claims, and, having done so should then publish a single rate based on the known transportation characteristics of the commodity. Nor is the fact that an article has a wide range of value alone sufficient to warrant the establishment of released rates, because claims for loss and damage on that article may be negligible in any event. But where those conditions occur, where the susceptibility to loss or damage is comparatively high and the wide range in the value of the commodity makes the amount of any claim that may arise difficult to estimate, the carrier is at a disadvantage unless it is permitted to base its liability and its charges on a declaration of value obtained in advance from the shipper. In such a case a basic rate should be established conditioned upon the declaration by the shipper of a fair average value of the commoner forms of the commodity, together with one or more higher rates to apply when a greater value is declared, such higher rates to be no more than reasonably commensurate with the additional risk assumed by the carrier. Released rates on stone in the southeast, 93 I. C. C. 90, 93.

(c) Application for authority under section 20 (11) of the act to establish released rates on marble, granite, and other stone from, to, and within the Southeast, denied. Range of value of rough-quarried sawed, sand-rubbed, and polished granite or marble is not so great that carriers can not estimate with reasonable degree of accuracy what their liability will be in event of loss or damage in transit. It is only where marble or granite has been carved that variation in value becomes extreme, and it is only then that claims for loss or damages are at all substantial, in proportion to freight charges collected. Released rates on carved variety may be proper or even desirable, but record is not sufficient to enable commission to prescribe reasonable basic value, nor relationship which should exist between released and unreleased rates. Released Rates on Stone in Southeast, 93 I. C. C. 90.

(d) Fact that an article has a wide range of value, in and of itself, is insufficient to warrant establishment of released rates, because loss and damage claims on that article may be negligible in any event. Released Rates on Stone in Southeast, 93 I. C. C. 90, 93.

(e) Fact that claims for loss and damage are frequent in the transportation of a given commodity is not in itself a valid reason for establishment of released rates. Released Rates on Stone in Southeast, 93 I. C. C. 90, 93.

(f) Where rates based on declared or agreed value have been authorized by commission, the statute accords shippers the right to understate value for purpose of securing the lower rate, and if excess of unreleased over released rates is more than cost of insurance, shippers will ordinarily release carrier and obtain transit insurance elsewhere. But frequently transit insurance can not be obtained, in which event, those shippers who are financially able to do so will assume risk of loss themselves. On other hand, small shippers are less apt to be able to risk loss of their less frequent shipments, and will thus in greater measure feel compelled to resort to higher unreleased rates for adequate protection. Released Rates on Stone in Southeast, 93 I. C. C. 90, 94.

(g) Where rates dependent upon value are published without the commission's authority the limitations attached thereto are void but the rates remain applicable. Waco Chamber of Commerce, 73 I. C. C. 708. Victory Bag & Paper Co. v. A., T. & S. F., 95 I. C. C. 677, 678.

(h) It is not all rates in connection with which a declaration of value in writing by the shipper may be required that are within the purview of the second Cummins amendment, but only those where the valuation is thus declared or agreed upon as the released value of the property. 63 I. C. C. 234. Crown Overall Mfg. Co. v. Director General, 100 I. C. C. 471, 476.

(i) Rates based on actual value are not prohibited by the Cummins amendment, neither such rates nor their qualifying conditions as to actual value are unlawful. Rates may be differentiated based on actual value and rates dependent upon the value declared in writing by the shipper or agreed upon in writing as the released value of the property. Sherger & Sons v. B. & M. R. R., 109 I. C. C. 555, 556.

ALL OTHER CITATIONS

Wasmuth-Endicott Co. v. W. Ry. Co., 85 I. C. C. 370.

IV. REASONABLENESS.

See Reasonableness of Rates.

§5. In General.

(a) Complainant attacked commodity rate charged on zinc ore, carloads, between Nov. 1, 1918, and March 1, 1920, from Murray, Utah to Canon City, Colo., as unjust and unreasonable. Murray is 578 miles from Canon City, on the D. & R. G. Charged 34.5c applicable on ore of a value not exceeding $60 per ton. There was contemporaneously in effect a commodity rate of 30c on zinc ore with no limitation as to value from Murray and Midvale to Denver and Pueblo, Colo., more distant points on that line, this rate subsequently being established to Canon City. HELD: Rate attacked unreasonable to extent it exceeded 30c, reparation awarded. Western Metals Co. v. Director General, 100 I. C. C. 314.

(b) Where susceptibility of a commodity to loss or damage is comparatively high and wide range in value makes amount of any claim that may arise difficult to estimate, carriers are at a disadvantage unless permitted to base liability and charges on a declaration of value obtained in advance from shipper. In such cases a basic rate should be established conditioned upon declaration by shipper of fair average value of commoner forms of commodity,

together with one or more higher rates to apply when, greater value is declared such higher rates to be no more than reasonably commensurate with additional risk assumed. Released Rates on Stone in Southeast, 93 I. C. C. 90, 93.

(c) Complainant attacked class rates charged on household goods, less carload, from Mississippi to Phoenix, Ariz., as unreasonable, unjustly discriminatory and unduly prejudicial. There was no commodity rate and the joint class rate was governed by the western classification. In that classification household goods less carloads, were and are rated first class when valued at not over 10c per pound and one and one quarter times first class when valued at more than 10c but not more than 20c per pound. The rates were made dependent upon the value declared in writing by the shipper, or agreed upon in writing as the released value of the property and had been authorized by the Commission under Cummins amendment. When the shipment was made by complainant Perkins he first told the agent of the initial carrier to value it at $10 per 100 pounds. But the agent informed him that the rate would be the same whether the value were placed at $10 or $20 per 100 pounds, and he therefore allowed the agent to insert a value of $20 per 100 pounds. Complainant Perkins was misled into declaring a valuation of $20 per 100 pounds through misinformation given him by the agent regarding the application of the rate. HELD, rate charged not unreasonable or otherwise unlawful, complaint dismissed. Arizona Corporation Commission v. A. E. R. R., 102 I. C. C. 578.

(d) Complainant attacked as illegal rates on newsprint, printing and wrapping paper during federal control from Michigan, Mississippi, New York, Ohio, Pennsylvania and Wisconsin to Dallas, Tex. Two rates were provided, the higher applicable on paper without reference to value, or in some cases, of a value exceeding a stated amount per pound or of a value not declared, and the lower applicable only upon paper having an invoice or actual value not exceeding a specified amount per pound. Complainants concede that all of their shipments were of values exceeding the amounts specified in connection with the lower rates, but their contention is that under former findings by the Commission the tariff provisions with reference to value were null and void and should be treated as not present in the tariffs, in which case the lower rates were applicable upon their shipments. In 100 I. C. C. 471 the Commission found that actual value rates and released rates may be fairly and effectively differentiated and that actual value rates should be applied as published. HELD, complainants shipments were not of a value entitling them to the application of the lower rates sought, complaint dismissed. Texas Farm & Ranch Publishing Co. v. Director General 102 I. C. C. 581.

(e) Complainant attacked class rates charged on whiskey, alcohol, brandy, gin shipped between March 8, 1918 and June 12, 1919 from Peoria, Ill., to Minneapolis and St. Paul, Minn., as unjust and unreasonable, unjustly and unduly discriminatory and inapplicable. Western classification provided second class rating on these liquors and effective second class any quantity rates of 50c to June 24, 1918 and 62.5c thereafter were charged. Contemporaneously, defendants published specific commodity rates between these points of 30c to June 24, 1918 and 37.5c thereafter on these liquors when in carloads, minimum 24,000 pounds, actual value not exceeding $2.50 per gallon. There was no specific requirement that the shipper declare the value in writing. The shipper declared no value on these shipments and the record does not disclose the true value thereof. In 100 I. C. C. 471 the Commission held that actual value rates and released rates may be fairly and effectively differentiated, and it applied the actual value rates as published. HELD, shipments not overcharged, complaint dismissed. Woolner Distilling Co. v. Director General, 102 I. C. C. 605.

(f) Complainant attacked commodity rates charged on cars of monumental granite during 1918 and 1919 from Barre, Montpelier, Northfield and Waterbury, Vt., to Chicago, Champaign, and Joliet, Ill., and Indianapolis, Frankfort, Shelbyville, Lafayette, and Kokomo, Ind., as unreasonable and inapplicable. No one testified who had any knowledge as to the actual shipments. There is no evidence of record bearing upon the allegations of unreasonableness, and the sole issue is as to what rates were applicable. Apparently the actual value of the granite comprising the shipments exceeded the restricted value of $2.25 per 100 pounds, and some of the bills of lading bear certificates to that effect. None

of the shipments here considered was shown to be of a value entitling it to the commodity rates provided by item 230. HELD, no overcharge, complaint dismissed. Heller Bros. v. Director General, 102 I. C. C. 749.

(g) Rate on zinc ore, limited as to value, from Murray and Midvale, Utah, to Canon City, Colo., during Federal control, found unreasonable to extent it exceeded a rate contemporaneously in effect from these points to Denver and Pueblo, Colo., more distant points. The tariffs publishing the lower rate, which was not limited as to value, contained a notation that in accordance with rule 77 of Tariff Circular 18—A, rates to intermediate points not in excess of those to the more distant points would be established on one day's notice, upon reasonable request, but, because of the specific rate in effect at Canon City, rule 77 was not applicable, Standard Asphalt & Refining Co., 66 I. C. C. 611. Reparation awarded. Western Metals Co. v. Director General, 100 I. C. C. 314.

(h) Rates on clothing, n. o. s., applied on l. c. l. shipments of overalls from Cincinnati, Ohio, to Pacific coast terminals and certain other western territory, found applicable on ground that overalls were not of a value entitling them to the application of the commodity rates on overalls. Applicable rates found unreasonable to extent they exceed lower contemporaneous rates on clothing restricted as to value. Reparation awarded. Crown Overall Mfg. Co. v. Director General, 100 I. C. C. 471.

(i) Complainant made shipments Sept. 27 and 28, 1922 and Jan. 20, 1923 of crated dining room furniture from Allegan, Mich., to Los Angeles, Calif., that it instructed the agent of the P. M., the originating carrier, to enter on the bill of lading a released value of not to exceed $18 for each article, so as to make applicable a rate of $2.63; that agent failed to make said entry; that defendants collected a rate of $3.58, applicable on shipments not made with a declared or released value of not to exceed $18 each; that rate collected was in violation of the act. The local agent of the P. M., admitted in writing that the shipper instructed him to bill the shipments so that the released rate would apply, but that he did not then know that it was necessary to enter a released value of not to exceed $18 each for the articles on the bill of lading. Defendants do not deny that such instructions were given, and expressed willingness to refund as an overcharge the amount of reparation claimed. HELD, rate attacked unreasonable to extent it exceeded $2.63, reparation awarded. Baker & Company v. C. M. & St. P. Ry., 109 I. C. C. 399.

(j) When the carrier knows that the shipper wishes to ship at the released rate it is its duty to make necessary entry in the bill of lading, and if it does not do so any higher rate collected on the shipment is unreasonable. Baker & Company v. C. M. & St. P. Ry., 109 I. C. C. 339, 400.

§5a. Reparation.

See Reparation.

ALL CITATIONS

Wasmuth-Endicott Co. v. W. Ry. Co., 85 I. C. C. 370.

V. LIMITATION OF LIABILITY.

See Loss and Damage §9.

§6. Effect in general.

(a) Basing of rates by common carriers and similar public service corporations in part on liability involved in a given service is determination in advance of the maximum amount thereof, a liquidation of the damages contingent upon nonperformance of the service and is not a limitation of liability for negligence. State v. Public Service Commission (Mo. 1924) 264 S. W. 669.

(b) The value of the commodity transported is an element in rate making aside from the risk of loss or damage, because it serves to measure the value of the service rendered the shipper. But where rates based on declared or agreed value have been authorized by the Commission, the statute accords shippers the right to understate the value for the purpose of securing the lower rate, and it is clear that if the excess of the unreleased over the released rates is more than the cost of insurance, shippers will ordinarily release the carrier and obtain transit insurance elsewhere. But frequently transit insurance can not be obtained. When it is not available, those shippers who are financially able to do so will assume the risk of loss themselves. The small shipper is less apt to be able to risk the loss of his less frequent shipments, and will thus in greater measure feel compelled to resort to the higher unreleased rates for adequate protection. Released rates on stone in southwest, 93 I. C. C. 90, 94.

(c) Rates on articles of stated value, which were not authorized by the Commission, were legal, but that the declarations of value, which indirectly limited the carriers liability, were unlawful and void under the second Cummins amendment. Carpenter v. C. V. Ry., 93 I. C. C. 309, 310.

(de) Complainant attacked less carload rates on overalls from Cincinnati, O., to Arizona, California, Idaho, Montana, Nevada, Oregon and Washington, between Jan. 1, 1918, and Dec. 29, 1920, as illegal in violation of sections 6 and 20 of the Act; and that thereafter to May 1, 1922, from the same point of origin to points in the aforementioned states and points in Colorado, Kansas, Nebraska, New Mexico, North Dakota, South Dakota, Utah and Wyoming as unreasonable, unduly prejudicial and illegal. Complainant in 14444 attacked commodity rate of 39c charged on 13 tank cars of blackstrap molasses from Mobile, Ala., and Abbieville and other points in Louisiana to Fort Calhoun, Nebr., 16 north of Omaha, between August 28, 1918, and Feb. 18, 1919, as unreasonable to extent it exceeded 36.5c. No. 14102 and sub. 1. To Montana destinations the rate originally established was $2.30 on Jan. 1, 1916. On Feb. 24, 1917, this rate was restricted to garments of an actual value not exceeding $12 per dozen. On March 15, 1918, the terminal rate was made the same as the Montana rate, and both were increased to $2.875 effective June 25, 1918, and to $3.835 on August 26, 1920. These rates were canceled effective March 15, 1921, to California terminals and effective April 13, 1921, to north Pacific coast line terminals and Montana destinations. Thereafter no specific rates were in effect until April 15, 1922, when the rates of $3.835 were reestablished without restriction as to value. On overalls of a value greater than $12 per dozen during the period when a restriction as to value was in effect, and on overalls unrestricted as to value during the period when no specific rates were in force, defendants applied the commodity rate on clothing, n. o. s. The clothing rate to the Pacific coast was $3 prior to March 15, 1918, when it became $3.45. On June 25, 1918, it was increased to $4.315 and on August 26, 1920, to $5.755. To Montana destinations the clothing rate was $3.45 prior to June 25, 1918, and since that date it has been the same as the rate to the Pacific coast. The intermediate territory was charged at combination of locals with the Pacific coast terminal rates as maxima. On and after Dec. 30, 1919, neither the rate tariffs nor the classification required a declaration of value by the shipper. The Supreme Court sustained the validity of released rates holding that in view of his representations to the carrier at the time of shipment the shipper is bound by his declaration or agreement and estopped from claiming or recovering more than that value in case of loss or damage to the property. Actual value rates are rates the application of which is dependant upon the actual value of the commodity not exceeding a specified amount; and as a rule the tariffs publishing such rates require a declaration in writing by the shipper that the actual value of the commodity shipped does not exceed the amount specified by the tariff. The principle underlying these rates is entirely different from that underlying released rates, in that the articles covered by the different groups of valuations are in fact so different as to constitute in effect different commodities. There is no holding forth by the carrier of an offer to transport goods of the higher values at the lower rates in consideration of release by the shipper of the carriers liability, and any wilful misstatement by the shipper of the value of his goods forwarded under such rates is a misbilling which may subject the shipper to prosecution under the criminal provisions of the statutes. These rates were made to cover commodities of wide range in values, such as furniture, alcoholic liquors, and ores; and they operate to the ultimate advantage of shippers in affording rates made with more particular reference to the actual value of the articles shipped. Actual value rates were permitted, under the law, before the enactment of the second Cummins amendment, and it follows that they are still permitted unless the amendment clearly discloses a contrary intention on the part of Congress. But there is no disclosure of any intention to prohibit, or in any way to deal with, rates the object or effect of which is not to limit the shippers right of recovery. Actual value rates have no such object. There are numerous statements to be found in the digests and reports to the same general effect as that in 10 R. C. L. 774, that "acceptance of a lower rate based on an agreed valua-

tion raises an estoppel to assert a greater value after loss or damage." But the cases relied upon, so far as examined, are all cases involving released rates. The distinction should be clear between an "agreed valuation" which is the one on which the minds of the parties met, however it came to be fixed, and the rate of freight was based on that valuation, and was fixed on condition that such was the valuation, and that the liability should go to that extent and no further; and a value given not as a measure of the extent to which the liability of the carrier shall go, but as a description for determination of what the particular commodity is that is being shipped. The estoppel in the former case is based upon the fact that the shipment was received for transportation with the understanding that the carriers liability should extend only to the amount indicated. In the latter there is no such understanding or representation, but the representation as to value is made solely as establishing the identity of the commodity. Furthermore, under section 20 as amended any attempted limitation of the shippers right of recovery for the full actual loss, damage or injury to property received for transportation is declared to be unlawful and void except when the limitation is published under an order from the Commission; and it follows that any attempt on the part of a carrier to set up a defense of limited liability as to goods shipped under actual value rates not published under order from the Commission would fail. And there can no longer be any doubt that shipment under actual value rates, even upon a declaration of value which is less than the actual value and at the reduced rate, does not operate as a limitation upon the shippers right to recover for the full actual loss, damage or injury. Released rates and actual value rates may be fairly and effectively differentiated. HELD, Complainants shipments were not of a value entitling them to the application of the commodity rates on overalls, and that the applicable rates were those applying on clothing n. o. s. For many years prior to the publication of the actual value rates on overalls that commodity was covered by a general clothing rate which also included gingham and denim blouses, lined duck clothing, jean and drill drawers, cardigan jackets, check, calico, and hickory jumpers and Canton flannel, merino, and cotton knit underwear. HELD: Rates of $4.315 prior to August 26, 1920, and $5.755 thereafter, unreasonable to extent they exceeded $2.875 and $3.835, reparation awarded. No. 14444. The Louisiana points of origin in 14444 are Abbieville, Erath, Knapp, Maringouin, Raceland and Rosedale. During the period here considered two rates, viz., 36.5 and 39c were provided on blackstrap molasses, in tank cars, from all points of origin to Fort Calhoun. From Abbieville, Erath and Raceland the 36.5c rate was subject to the description "declared value 8c or less per gallon," the 39c rate was subject to the description "declared in excess of 8c per gallon." From Mobile the respective rates were subject to the following descriptions: "When declared value (as stated in the shipping order) is 8c less per gallon" and "when declared value (as stated in the shipping order) is in excess of 8c per gallon, or when value is not declared in shipping order". From Knapp, Maringouin and Rosedale the respective descriptions were "When actual value of each gallon does not exceed 8c, actual value to be stated by shipper in writing in shipping order," and "When actual value of each gallon exceeds 8c, and is so stated by shipper in writing in shipping order; or when the value is not stated by shipper in writing in shipping order." Released rates order No. 23 authorized the maintenance of released rates, otherwise denominated as declared value rates, from the Louisiana origins here considered. Such rates having been specifically approved by the Commission, failure of the tariff to make reference to such authorization was not vital, and as to shipments from Abbieville, Erath, and Raceland, the shipper might lawfully have declared less than the actual value, thus limiting the carriers liability and entitling the shipments to the benefit of the lower rate. There was a holding out to transport at a reduced rate in consideration of a contract of limited liability which defendant was bound to protect. But there is no evidence that a value not exceeding 8c per gallon was declared on shipments from these points, and the record therefore will not sustain a finding that these shipments were overcharged. The rates as published from Knapp, Maringouin and Rosedale required a declaration of the actual value. The distinction between actual value rates and released or declared value rates has already been discussed. There is no

evidence that the shipments from these points were of a value entitling them to the lower rate, and the Commission can not find that they were overcharged. The rate from Mobile presents a different question. This in form was a declared value rate, the intended effect of which was to limit the carriers liability to the value declared by the shipper. This record does not establish that its maintenance has been authorized by the Commission. The rate and its qualifying limitation is severable, and the limitation should be ignored or regarded as not present in the tariff, but the rate should be applied. HELD: Void limitation should be treated as not present in the tariff; lower rate applicable from Mobile, shipments overcharged. HELD: Rates attacked not unreasonable or unduly prejudicial. Crown Overall Mfg. Co. v. Director General, 100 I. C. C. 471.

(f) Where susceptibility of a commodity to loss or damage is comparatively high and wide range in value makes amount of any claim that may arise difficult to estimate, carriers are at a disadvantage unless permitted to base liability and charges on a declaration of value obtained in advance from shipper. In such cases a basic rate should be established conditioned upon declaration by shipper of fair average value of commoner forms of the commodity, together with one or more higher rates to apply when greater value is declared, such higher rates to be no more than reasonably commensurate with additional risk assumed. Released Rates On Stone In Southeast, 93 I. C. C. 90, 93.

(g) Where rates based on declared or agreed value have been authorized by commission, the statute accords shippers the right to understate value for purpose of securing the lower rate, and if excess of unreleased over released rates is more than cost of insurance, shippers will ordinarily release carrier and obtain transit insurance elsewhere. But frequently transit insurance can not be obtained, in which event, those shippers who are financially able to do so will assume risk of loss themselves. On the other hand, small shippers are less apt to be able to risk loss of their less frequent shipments, and will thus in greater measure feel compelled to resort to higher unreleased rates for adequate protection. Released Rates On Stone In Southeast, 93 I. C. C. 90, 94.

(h) Tariff provided commodity rate on granite blocks, slabs, or pieces, when "rough quarried, * * *" subject to declaration by shipper that actual value was not in excees of a certain amount, and for application of class rate when of greater value. Actual value exceeded limited value specified under commodity rate and class rate was assessed. Limitations as to value in connection with the commodity rate were unlawful and void since they were published without commission's authorization as provided in section 20 (11) of the act. Shipment here involved consisted of rough granite and fell within description of material on which commodity rate applied. Reparation awarded. Carpenter v. C. V. Ry., 93 I. C. C. 309.

(i) Where rates dependent upon value are published without the commission's authority, limitations attached thereto are void but rates remain applicable. Waco Chamber of Commerce, 73 I. C. C. 708. Victory Bag & Paper Co. v. A., T. & S. F., 95 I. C. C. 677, 678.

(j) Shipments of blackstrap molasses from certain points in Louisiana to Fort Calhoun, Nebr., found not to have been overcharged. On some of the shipments involved no value was declared, as required, while on those on which this requirement was met they were not of a value entitling them to a lower rate. Failure of the tariff to make reference to fact that the released rates applicable were approved by the commission, as required by law, was not vital. Crown Overall Mfg. Co. v. Director General, 100 I. C. C. 471, 481.

(k) It is the commission's view, first expressed in The Cummins Amendment, 33 I. C. C. 682, and since quite consistently followed, that the rate and its qualifying limitation are severable, and that the limitation should be ignored or regarded as not present in the tariff, but the rate should be applied. Crown Overall Mfg. Co. v. Director General, 100 I. C. C. 471, 482.

(l) Following 100 I. C. C. 471, wherein it was found that actual-value rates and released rates may be fairly and effiectively differentiated and that actual-value rates should be applied as published, shipments of newsprint, printing, and wrapping paper moving under actual-value rates found not to have been overcharged. Texas Farm & Ranch Publishing Co. v. Director General, 102 I. C. C. 581.

(m) Shipments of whiskey, alcohol, brandy, and gin, moving under actual-value rates, found not to have been overcharged. While carrier published lower-declared-value rates, tariff in which they were carried contained no specific requirement that shipper declare value in writing, and here no value was declared nor is the true value disclosed. Moreover, in 100 I. C. C. 471, commission found that rates graded according to actual value do not operate as a limitation upon shipper's right to recover for full actual loss, damage, or injury to property transported, and that actual-value rates and released rates may be fairly and effectively differentiated. Woolner Distilling Co. v. Director General, 102 I. C. C. 605.

(n) Tariff carried released rates on dressed granite and granite monuments based on value certified to by shipper, together with higher actual-value rates where value is not so certified. Shipments here involved were of a value in excess of released rates and were properly assessed rates based on actual value, commission having held in 100 I. C. C. 471 that actual-value rates and released rates may be fairly and effectively differentiated, and that valuation restrictions in connection with actual-value rates are to be given effect in applying the rates. FOUND: Shipments not overcharged. Heller Bros. v. Director General, 102 I. C. C. 749.

VI. REPARATION.

See Reparation.

§7. In General.

(a) Tariff carried rates on household goods based on declared value, but shipper was misled through misinformation furnished by carrier's agent into declaring a valuation higher than that at which he actually valued the goods, resulting in the application of a rate higher than that which would otherwise have applied. FOUND: Misquotation of a rate by carrier's agent affords no ground for an award of reparation, and applicable rates, herein determined, were not unreasonable or otherwise unlawful. Arizona Corp. Comm. v. A. E. R. R., 102 I. C. C. 578.

REPARATION

I. JURISDICTION OF COMMISSION
- §½. In general.
- §1. Necessity of and primary action by Commission.
- §2. Necessity of and effect of finding of unreasonableness.
- §3. Power to award tort damages.

II. RIGHT TO RECOVER.
- §3½. Extent of recovery.
- §4. Necessity of protest.
- §5. Necessity of first paying tariff rate.
- §6. Parties entitled to recover.
- §7. Statute of limitations.

III. CIRCUMSTANCES DETERMINING RIGHT.
- §7½. In general.
- §8. Erroneous publication or quotation.
- §8½. Previous action of Commission.
- §9. Failure to post tariff.
- §10. Laches.
- §10½. Showing of damage.
- §11. Rate via competing route.
- §12. Readjustment of rates.
- §13. Res adjudicata.
- §13a. State shipments.
- §14. Special rate.
- §15. Unpublished charges.
- §16. Voluntary or subsequent reduction.
- §17. Willingness of carrier to pay.

IV. LIABILITY FOR REPARATION.
- §17½. Interest or court costs.
- §18. Measure of reparation.
- §19. Parties to make refund.
- §20. Release of liability.
- §20½. Undercharges or overcharges.

V. PROCEDURE.
- §20¾. In general.
- §21. Formal proceedings.
- §22. Informal proceedings.
- §23. Court pleadings and procedure.
- §24. Intervening petitions.
- §25. Statements for reparation.

CROSS REFERENCES

See Absorption of Charges V, VII; Actions at Law; Advanced Rates VII; Allowances VI; Attorneys Fees; Bills of Lading VI; Blanket Rates §19½; Canada (h) (i) (o) (p); Cars and Car Supply §6, VI, §33; Claims; Commodity Rates §6; Demurrage V; Differentials V; Discrimination §15, §17; Facilities

and Privileges V; Interstate Commerce Commission VI; Long and Short Hauls §13; Minimums §11; Overcharges; Passenger Fares and Facilities IV; Precooling; Reconsignment §10, V; Refrigeration VI; Routing and Misrouting §7¾, §9, §11; Special Contracts §4; State Rates and Regulations (5f); Switch Tracks and Switching §9; Tap Lines §12; Telephone and Telegraph Companies IV, §4; Through Routes and Joint Rates §16; Water Carriers §5; Weights and Weighing V.

I. JURISDICTION OF COMMISSION.

See Interstate Commerce Commission I; Jurisdiction of Commission.

§½. In General.

(a) Under section 9 of the act the commission is empowered to award reparation for damages sustained as a direct consequence of a violation of any of its provisions. Miles Lumber Co. v. C., B. & Q. R. R. Co., 89 I. C. C. 761, 764.

(bcd) The Commission is without authority to award reparation on unfulfilled promises alleged to have been made by representatives of carriers that the reduced rates would be made effective in accordance with the order. The powers of the Commission are not those of a court of equity. Northern Grain & Warehouse Co. v. O. S. L. R. R., 100 I. C. 319, 322.

(e) The commission is empowered to award reparation only for violations of the act. Leslie Bros. Lbr. Co. v. P. R. R., 92 I. C. C. 55, 58.

(f) Complainant formerly shipped intrastate shipments via joint-line interstate routes to obtain benefit of rates lower than those applying intrastate. Carriers subsequently limited application of the interstate tariff to interstate traffic. Upon complaint assailing rates charged on shipments moving intrastate via intrastate routes, HELD: Limitation in interstate tariff precluded its application to complainant's shipments. Moreover, the commission's jurisdiction over intrastate rates is prescribed by sections 3 and 13 of the act, and it has no authority under the law to pass upon the measure of such rates except as provided in those sections. Nebraska Cement Co. v. C. & N. W., 92 I. C. C. 457.

(g) A common carrier, prior to an award of reparation by the commission, can not make refund to a shipper of charges collected for transportation in interstate or foreign commerce over and above what that carrier might concede to be a reasonable rate. Shreveport Creosoting Co. v. L. & P. Ry., 92 I. C. C. 519, 523.

(h) Collection of an unreasonable rate is a tort arising from unlawful exaction of money belonging to shipper or consignee in violation of carrier's obligation to transport for a reasonable price and should be distinguished from personal injury torts. Shipper or consignee has suffered damage when he pays the unreasonable rate and his claim accrues at once in theory of law. Darnell-Taenzer case, 245 U. S. 531. In reimbursing shipper for loss thus suffered interest is awarded as an element of compensatory damages due him, and not for any default or delay in payment of damages. "Such damages may reasonably include interest and costs." Ault case 256 U. S. 554. Shreveport Creosoting Co. v. L. & P. Ry., 92 I. C. C. 519, 526.

(i) It is not within commission's province to pass upon question of whether a court erred in its determination. American Hominy Co. v. Director General, 93 I. C. C. 256, 259.

(j) Upon contention that with respect to both reparation on past shipments and the prescribing of a rate for the future on, shipments moving from points in Canada to points in United States the commission's jurisdiction is limited to the determination of the lawfulness of the amount received or to be received for the transportation from the Canadian border to the United States points, HELD: As to reparation, decisions in International Nickel Co., 66 I. C. C. 627, and a number of later cases, adverse to this contention, are controlling. Ontario Paper Co. v. C. N. Rys., 95 I. C. C. 66, 72.

(k) The commission is without jurisdiction to award reparation on intrastate shipments made during the guaranty period. Pittsburgh Steel Co. v. Director General, 95 I. C. C. 637.

(ka) Contention that because complainant did not allege a violation of section 6 but only violations of sections 1, 2, and 3 of the act, the commission is without jurisdiction to find that the rate collected was inapplicable and to award reparation, not sustained in view of fact that the record shows a thorough effort by each side to prove facts which determine the rate applicable. See 88 I. C. C.

407, 408. Clark Bros. Bolt Co. v. N. Y. C., 102 I. C. C. 355, 357.

(kb) In view of frequent recurrence of the question of commission's jurisdiction to award reparation on shipments from a foreign country to United States, it seems advisable to repeat commission's observation in International Nickel Co., 66 I. C. C. 627, that a review of its ruling in the courts would be desirable for future guidance. Ontario Paper Co. v. C. N. Rys., 102 I. C. C. 365, 367.

(l) The jurisdiction of the Commission to entertain complaints for reparation on account of the exaction of unreasonable rates on shipments which moved during the period of federal control is derived solely from section 206c of the transportation act, 1920 under which such complaints must be filed within one year after federal control terminated on Feb. 29, 1920. Cudahy Packing Co. v. Director General, 102 I. C. C. 598, 600.

(m) The Commission is without authority to award reparation, or to consent to an award of reparation by a state commission, on intrastate shipments which moved during the guaranty period. Armour & Co. v. G. N. Ry., 104 I. C. C. 34, 36.

(n) Upon contention of complainant that no reversal of opinion by the commission or modification of a former opinion could wipe out or extinguish the vested rights of a complainant secured by contracts made in reliance upon the former opinion, FOUND: That the commission is without authority to make an award of reparation based upon such a contention, and this applies with equal force to unfulfilled promises alleged to have been made by representatives of carriers that the reduced rates would be made effective in accordance with the exception expressed in the report. The powers of the commission are not those of a court of equity. Northern Grain & Warehouse Co. v. O. S. L. R. R. Co., 100 I. C. C. 319, 322.

ALL OTHER CITATIONS

Cotton Mfgrs. Asso. of S. C. v. C. C. & O. S. L. R. R. Co., 85 I. C. C. 131; Lilly Co. v. O. S. L. R. R. Co., 85 I. C. C. 644; Japan Cotton Trading Co. v. Director General, as Agent, 88 I. C. C. 407.

§1. Necessity of and primary action by Commission.

(a) Under section 9 of the act the Commission is empowered to award reparation for damages sustained as a direct consequence of a violation of any of its provisions. Miles Lumber Co. v. C. B. & Q. R. R., 89 I. C. C. 761, 764.

(b) Until the Interstate Commerce Commission has, as an official body of technical experts, declared the existence of a right to reparation because of shipments of grain made after its finding that the existing rate was excessive and before the effective date of a subsequent order establishing a lower rate, by some order fixing a right to such reparation, an action to recover the difference between the published tariff rate and the reasonable rate may not be maintained in view of Interstate Commerce Act, §§ 9, 15 (Comp. St. §§ 8573, 8583). Chicago, B. & O. R. Co. v. Merriman & Millard Co., 297 Fed. 1.

(c) No action for reparation for exaction of unreasonable or discriminatory demurrage charges can be maintained in any court in the absence of an appropriate finding by the Interstate Commerce Commission. Turner, Dennis & Lowry Lumber Co. v. Chicago, M. & St. P. Ry. Co., 2 Fed. (2d) 291.

§3. Power to Award Tort Damages.

(a) Loss sustained by complainant in connection with a shipment of lumber sold by carriers and proceeds applied in satisfaction of accrued demurrage, storage, and freight charges after such shipment had been refused by consignee at billed destination, found not to have resulted from any violation of the act. Such charges were assessed in accordance with applicable tariffs, and no evidence was adduced to show that rules or regulations under which they were assessed were unreasonable or otherwise unlawful. The commission is empowered to award reparation only for violations of the act, and complainant's remedy, if any, lies in the courts. Leslie Bros. Lbr. Co. v. P. R. R., 92 I. C. C. 55.

(b) Complainant did not operate its plant during a specified period and claimed "general damages" based upon loss on shipments they claim would have been made if their mill had been in operation, and included depreciation of mill, plant, and equipment, and overhead expenses. Evidence shows that other mills also were shut down at the time because of the then existing economic situation. FOUND: That even if freight rates were the controlling reason for closing complainants' mill, "general damages" claim-

ed are speculative and can not be allowed. Fleming Bros. v. G. N. R. R., 92 I. C. C. 582, 585.

(c) Upon complaint that attempt of N. Y., N. H. & H. R. R. Co. to eject complainant from its produce house at Harlem River Station, New York, N. Y., previously leased to him, and threat to refuse to place cars consigned to him, subjected complainant to unjust discrimination and undue prejudice; HELD, That complainant's evidence is insufficient to warrant a finding that consignees receiving shipments on team tracks are unduly prejudiced or lessees of the produce house unduly preferred, and that he has not proven damage by reason of any undue prejudice which may have existed during the time when the question of the lease was in process of litigation in the courts. Complaint dismissed. Gallup v. N. Y., N. H. & H. R. R. Co. 98 I. C. C. 453.

II. RIGHT TO RECOVER.

§3½. Extent of Recovery.

(a) Complaint alleged unreasonableness, discrimination, and preference and prejudice and sought reparation due to increased rates which resulted in a widening of a spread of rates in favor of competing points. Upon contention of defendant that this raised an issue of prejudice only; HELD: Prayer is for such sums as Commission may determine complainants entitled to and allegations are sufficient. Whitaker-Glessner Co. v. C. & O. Ry. Co., 91 I. C. C. 339, 340.

(b) At common law, shipper had right to recover difference between reasonable charge and exorbitant charges coercively exacted by carrier. Cocke v. Morgan's Louisiana & Tex., R. & S. S. Co. 4 Fed. (2d) 961.

(c) Complainant, in its informal and formal complaints, sought reparation down to a certain basis, but in the presentation of the case it asks that damages be awarded to a still lower basis. Defendants argue that the only issue which may properly be presented to the commission under section 206 (c) of the transportation act, 1920, is a claim for reparation on the basis of the rate sought in the informal and formal complaints. In Shreveport Creosoting Co., 92 I. C. C. 519, and Omaha Steel Works, 87 I. C. C. 403, similar contentions were rejected. Los Angeles Pressed Brick Co. v. Director General, 98 I. C. C. 45, 46.

(d) The measure of damages is the difference between the charges paid and those which would have accrued at certain rates in issue; and a finding of damage in a specific amount measured in this manner must rest upon evidence which shows with certainty and definiteness that this amount does not exceed, at least, the difference between such charges. The finding can not be based upon conjecture. Southern Veneer Asso. v. A. C. L. R. R. Co., 98 I. C. C. 112, 117.

§6. Parties entitled to recover.

See Infra §19; Association; Claims §1 (n); Parties; Procedure Before Commission V.

(a) Evidence of a contract between complainant and its vendors as to freight allowances to be made in case of increases or reductions in freight rates is immaterial where complainant, as owner of shipments, paid freight charges, was party directly damaged by collection of unreasonable rates, and is entitled to recover the unreasonable charges. Missouri Portland Cement Co., 88 I. C. C. 492. As stated in Sanford-Day Iron Works, 41 I. C. C. 10 12, "To go into matter of allowances between parties would lead the commission away from the direct results of act of carrier in exaction of an unreasonable rate into domain of indirect and remote consequences and perhaps into questions of equity between vendor and vendee." Standard Oil Co. v. Director General, 89 I. C. C. 7, 9, 10.

(b) Director general denies right of complainant to award of reparation on ground that predecessor company, which made the shipment, was not a party to informal proceedings, and was not joined as a complainant until formal complaint was filed and after statute of limitations as to that company had run. It was shown, however, that complainant assumed all assets and liabilities and handles all affairs of its predecessors, and that informal complaint filed by complainant stated that shipment was made by its predecessor company. HELD: Predecessor company found to have been party damaged, but reparation awarded successor in interest. Midland Coal Co. v. M. P. R. R. Co. 89 I. C. C. 101, 102.

(c) Shipments were sold at delivered price and settlement made by buyer paying freight charges and remitting to seller difference between delivered price of the commodity and freight charges. Contract of sale provided that if freight

charges were less than a certain amount, buyer would receive benefit of such reduction. If freight charges were higher than figure named, seller agreed to allow buyer the difference between higher rate and rate named in contract. Under terms of the contract any reduction in freight rates belonged to seller. Upon separate complaints filed by both buyer and seller seeking reparation on certain shipments purchased at a delivered price under contract above set forth, HELD: Reparation awarded to seller and not buyer. Dolese Bros. Co. v. A., T. & S. F. Ry. Co., 89 I. C. C. 110, 122.

(d) In view of possession by complainant of paid freight bills showing it consignee of shipments, coupled with fact that defendant had previously investigated the charges on shipments here involved, and had satisfied itself that complainant was entitled to overcharges thereon, and further fact that defendant offered no evidence casting doubt upon complainant's right to any reparation found to be due for unreasonable charges collected HELD: Preponderance of evidence supports view that complainant paid freight charges and was damaged thereby, and is entitled to recover unreasonable charges collected. Southern Cotton Oil Co. v. Director General 89 I. C. C. 154, 155, 156.

(e) Complainant purchased the capital stock and acquired by general assignment "all accounts and bills receivable, debts, demands, actions, causes of action, and claims of whatsoever nature" of party who made shipments and paid freight charges thereon, the latter continuing its existence only as a manufacturing branch of complainant who furnished funds for its continued operation. Contention by director general that complainant is barred from making claim for reparation with respect to such shipments by virtue of section 3477 of Revised Statutes, which forbids assignments of unliquidated claims against United States, not sustained since that statute has no application when the assignment is incidental to corporate succession. Nestles Food Co. v. Director General, as Agent, 89 I. C. C. 340, 341. 342.

(f) Contention that assignment of a claim for overcharges being of unliquidated claims against the United States is void under section 3477 of Revised Statutes of United States, not sustained. Statute relied upon does not apply to claims against director general for overcharges under provisions of the Federal control act authorizing suits to be brought against carriers, which latter act also provides that no defense shall be made thereto upon ground that carrier is an instrumentality of the Federal Government. Parrington v. Davis, 285 Fed. 741, citing Missouri Pacific R. R. Co. v. Ault, 256 U. S., 554, 559. McCloud River Lumber Co. v. Director General, 89 I. C. C. 645, 649, 650.

(g) Complainant has borne freight charges, and he is the only person to whom reparation could legally be awarded. Givens v. Director General, 92 I. C. C. 63, 66.

(h) Complainants paid the freight charges and were not reimbursed for those charges as such. They were entitled to award of reparation under a finding of unreasonableness. Wadhams Oil Co. v. C. & N. W. Ry., 92 I. C. C. 361, 362.

(ij) The Commission has consistently found that the fact that a complainant included the freight charges in arriving at the selling price of its product does not preclude it from recovering from the carrier the damages it sustained in consequence of the exaction from it of an unreasonable freight rate. Shreveport Creosoting Company v. L. & P. Ry., 92 I. C. C. 519, 522.

(k) The only one who can recover is the one that alone was in relation with the carrier and from whom the carrier took the sum. California Cotton & Factorage Co. v. Director General, 93 I. C. C. 260, 262.

(l) If the Commission finds that complainant has been the party injured by a violation of the act it is to complainant that the award of reparation should be made under that act, and the Commission may not deny it reparation because of an assignment pendent lite under which no adverse rights are asserted, even if it has jurisdiction under that act to pass upon such conflicts. Delta Beet Sugar Corp. v. Director General, 93 I. C. C. 547, 550.

(m) If the Commission finds that complainant has been the party injured by a violation of the act it is to complainant that the award of reparation should be made under that act, and the Commission may not deny it reparation because of an assignment pendente lite under which no adverse rights are as-

serted, even if it had jurisdiction under that act to pass upon such conflicts. Delta Beet Sugar Corp. v. Director General, 93 I. C. C. 551, 554.

(n) The Commission has found that where one filed informal complaint in season and another filed formal complaint after the statute had run the claim of the latter was barred. It is also true that the bureau failed to comply with Rule 111 of the Rules of Practice which provides that the informal complaint should contain—if any recovery is sought on behalf of others than complainant, a statement of the capacity and authority in or by which complaint is made in their behalf. But that failure is not fatal to complainants claim if it appears that the filing by the bureau was, in fact, on complainants behalf. Thaxter & Co. v. Director General, 95 I. C. C. 693, 695.

(op) Complainant attacked commodity rates charged on rags, waste paper, cottonseed hull shavings, and cotton linters from Latrobe, Pa., to interstate destinations, as unreasonable. In 88 I. C. C. 535, the Commission found the rates from Latrobe to Kingston, Pa., as components of through rates between Kingston and interstate points as unreasonable, reparation awarded. HELD, that on all inbound shipments on which complainant paid the freight charges to the carrier complainant was damaged in the amount of the difference between the charges paid and those which would have accrued at the rates found reasonable, reparation awarded. On the remaining class of shipments the consignor prepaid the freight charges and included them in the invoice price, not as freight charges, but as a part of the price of the goods. The record contains no copy of the contract of sale but the testimony of complainant is that these shipments were purchased f. o. b. point of destination and that the contract price of the goods plus the freight charges. In the cases of the class of complainants shipments now being considered the contract of sale called for a delivered price, which was arrived at by adding the freight charges to the market price f. o. b. destination the consignor was obliged to pay the freight charges, not for the consignee but for himself. HELD, reparation denied. Barrett Co. v. Director General, 96 I. C. C. 226.

(q) Complainants claim fails to meet any one of the principles of law under which a claim for damages may be maintained against a carrier: 1, that of privity of contract, the consignor having entered into the contract of shipment with the carrier as principal and not as agent for the consignee complainant; 2, that of principal and agent, because, the contract calling for a price f. o. b. destination, the consignee was not obliged to pay the freight charges and the consignor paid them not as agent but as principal; and that the tendency of the law with regard to damage does not go beyond the first step, the first step here having been taken by the consignor, reparation denied. Barrett Company v. Director General, 96 I. C. C. 226, 227.

(r) It is a well established rule of law that where the consignor contracts with the railroad for the movement of goods, but sells the goods f. o. b. point of origin and collects the freight charges from the consignee, the consignor is acting as agent, and the consignee is the undisclosed principal in the transaction. In such a case either the principal or his agent may sue in his own name. Barrett Co. v. Director General, 96 I. C. C. 226, 227.

(s) The Commission has in numerous cases awarded reparation where the complainant paid and bore all or part of the difference between the rates charged and the rates found reasonable. Kanawha Black Band Coal Co. v. K. C. Ry., 98 I. C. C. 431, 433.

(t) A consignor is entitled to reparation on account of unreasonable switching charges paid by it, although admittedly it subsequently collected from the consignees the amounts so paid. Fuller Co. v. Director General, 98 I. C. C. 468, 470.

(u) Complainant was the consignor of the shipments and paid the freight charges in the first instance and subsequently collected them from the consignees. In awarding reparation to complainant the Commission found that it had a right to bring the action. Barse Livestock Commission Co. v. Director General, 98 I. C. C. 539, 540.

(v) Complainant which, as consignor, had prepaid charge on certain shipments of cement on the basis of unreasonable rates, has been damaged thereby and is entitled to reparation notwithstanding the fact that it had subsequently collected from the consignees the freight charges which it paid. Moody Cotton Co. v.

Director General, 98 I. C. C. 643, 645.

(w) Freight charges were paid and borne by consignee, T. H. Collier Estate. Attached to informal complaint filed by consignor were expense bills covering shipments and a letter inquiring as to whether consignor thought they could secure a refund for estate. Request was also made that expense bills be returned if such refund could not be secured. Defendants declined to submit claim on special docket and formal complaint was then filed by consignor in his own name. HELD: Inference to be drawn from letter and other papers of informal complaint is that complainants were seeking reparation on behalf of Collier Estate but, since formal complaint made no reference to estate and does not allege that complainants are acting as its agents, no reparation can be awarded complainant. Russell-Heckle Seed Co. v. Director General, 91 I. C. C. 63, 64.

(x) Pending a decision on merits of case, members of complainant association did not offer detailed evidence as to particular shipments and payment and bearing of freight charges thereon. Upon further hearing, such details and proof having been submitted by claimant members of association on whose behalf complaint was filed, reparation awarded to basis found reasonable in original report. National Preservers & Fruit Products Asso. v. Director General, 91 I. C. C. 221.

(y) Reparation awarded to successors in interest on shipments made by predecessor companies. Jones & Laughlin Steel Co. v. P. & L. E. R. R. Co., 91 I. C. C. 300, 307.

(z) Where complainant, who is neither consignor nor consignee but merely acted as selling agent for consignor and did not pay or bear freight charges, seeks reparation for its own account and not as agent for consignor, who is not a party to proceeding reparation will be denied. Ozark Cooperage & Lumber Co. v. A. & R. R. R. Co., 91 I. C. C. 329, 333.

(aa) Where both consignor and consignee are named as parties complainant, and freight charges are paid by consignee and charged back to consignor, reparation will be awarded to consignor. Gust Johnson Lumber Co. v. C., M. & St. P. Ry. Co., 91 I. C. C. 561, 562.

(bb) Complaint was filed by a corporation which assumed all assets and liabilities of party who paid and bore inapplicable charges HELD: Predecessor company found party damaged but reparation awarded successor in interest. Sloan & Zook Co. v. M. V. R. R., 91 I. C. C. 693, 694.

(cc) 1. Consignor prepaid the freight charges and invoiced the consignee for the Pittsburgh plus price, but not for the freight charges so prepaid. 2. The consignor prepaid the freight charges and invoiced the consignee for the freight charges so prepaid and for the Pittsburgh plus price less the amount so prepaid, both stated separately in the invoice. 3. The consignor did not prepay the freight charges but invoiced the consignee for the Pittsburgh plus price less the amount of the freight charges payable, and the consignee paid those freight charges to the carrier. 4. The consignor did not prepay the freight charges but invoiced the consignee for the Pittsburgh plus price and the consignee paid to the carrier the freight charges and deducted them from the invoiced price in remitting to the consignor. Reparation denied under first class, reparation awarded under second, third and fourth classes. Atlas Metal Works v. A. C. & Y. Ry., 100 I. C. C. 173, 178.

(dd) In 58 I. C. C. 164 the Commission found that shippers who bore the charges and who are parties of record herein are entitled to reparation, following a finding that the collection, between May 21, 1917, and April 1, 1920, of separate charges from shippers for loading and unloading ordinary livestock at, in addition to the rates to and from, Chicago stockyards was an unlawful and unreasonable practice. As the record then before the Commission did not indicate the amount of reparation due each shipper, the parties were requested to comply with Rule V of the Rules of Practice. HELD: Reparation awarded. Chicago Livestock Exchange v. A. T. & S. F. Ry., 100 I. C. C. 266.

(ee) The right of factors in their representative capacity to recover reparation in their own names for unlawful and unreasonable charges is settled. Chicago Livestock Exchage v. A. T. & S. F. Ry., 100 I. C. C. 266, 270.

(ff) Following Missouri Portland Cement Co., 88 I. C. C. 492, wherein it was held that a shipper is damaged when he pays unreasonable transportation charges, and that it is not necessary for commission to go beyond the first step re-

paration awarded to complainant who paid, but who failed to prove that it bore, the unreasonable transportation charges. Cutler-Hammer Mfg. Co. v. Director General, 92 I. C. C. 9.

(gg) Informal complaint was filed by Southern Traffic & Accounting Bureau on behalf of "consignees." Shipments here involved were consigned to subsidiary companies which complainant owns and operates. Complainant's evidence merely reiterated that it "in the final stood and bore the freight charges" and is the party entitled to reparation but left it to be assumed that the subsidiary companies are corporations and not merely trade names under which it conducts portions of its business. Contentions by defendant that claim is barred since informal complaint was not on behalf of complainant itself, and that the fact that complainant finally bore charges paid by its subsidiaries does not entitle it to reparation, sustained. See Gillican-Chipley Co., 85 I. C. C. 702, and cases there cited. Wedeles Tobacco Co. v. Director General, 92 I. C. C. 80, 81, 82.

(hh) Complaint was filed by associations on behalf of their members, but no evidence was introduced with respect to any shipments made for or in their behalf. Such members, in event shipments were made by them, authorized to file reparation statements under Rule V of Rules of Practice, accompanied by proof in form of affidavits that shipments were made and unreasonable charges were paid and borne by them, with understanding that if defendants object to proof in affidavit form such shippers must request further hearing with respect to subject of reparation. Houston Cotton Exchange v. A. & R. R. R., 92 I. C. C. 220, 222, 223.

(ii) Shipments were made by a corporation, such corporation subsequently becoming a partnership. Complaint filed by successor in interest, involving shipments made by its predecessor, found proper and reparation awarded accordingly. See Midland Coal Co., 89 I. C. C. 101. Midland Coal Co. v. St. L.-S. F., 92 I. C. C. 283.

(jj) Informal complaint filed by employee acting in behalf of, and as agent for, and undisclosed principal. Formal complaint filed by latter. Reparation awarded to undisclosed principal, the real party in interest who in fact paid the unreasonable freight charges. Warren Construction Co. v. G. N. P. S. S. Co., 92 I. C. C. 302, 303.

(kk) In original report, 78 I. C. C. 387, reparation was denied complainant because record did "not disclose who paid and bore freight charges." Only witness testifying on the point admitted that all he knew of his own personal knowledge was that invoice showed that charges were prepaid, and while not showing who paid them, he presumed that they were paid by a party other than complainant. No additional evidence was offered by complainant at the hearing. HELD: This evidence is inadequate to sustain a finding that complainant paid and bore freight charges and original finding is affirmed. American Trading Co. v. Director General, 92 I. C. C. 461.

(ll) Following Missouri Portland Cement Co., 88 I. C. C. 492, the party who pays the freight charges is the party directly damaged by the collection of unreasonable rates, and is entitled to recover the unreasonable charges. Southern Wire & Iron Co. v. A., C. & Y. Ry., 92 I. C. C. 463.

(mm) Complainant named in informal proceeding, which failed of adjustment, differed from that set forth in subsequently filed formal complaint. The former owns all capital stock and controls and operates plants, facilities, and business of the latter. HELD: Following Gillican-Chipley Co., 85 I. C. C. 702, the two complainants being in law separate entities, the formal complaint can not be considered a continuation of the informal proceeding. Moreover, party named in formal proceeding not having brought its complaint in its own name within statutory period, is barred. Badger Bag & Paper Co. v. M. D. & W. Ry., 92 I. C. C. 485.

(nn) Complainant succeeded to all obligations, liabilities, assets, and claims of its predecessor who paid and bore unreasonableness charges. FOUND:Predecessor company found party damaged, but reparation awarded successor in interest. California Sales Co. v. Director General, 92 I. C. C. 619, 620.

(oo) Complainant was both consignor and consignee. Shipment was sold f. o. b. destination, purchaser paying freight at destination, as agent for complainant, and deducting it from the latter's invoice. HELD: Complainant is party entitled to recover unreasonable freight charges since he contracted with defendants for carriage and was only party that had privity with them. The only one who

can recover is the one that alone was in relation with carrier and from whom carrier took the sum. Darnell-Taenzer case, 245 U. S. 531; Missouri Portland Cement Co., 88 I. C. C. 492. California Cotton & Factorage Co. v. Director General, 93 I. C. C. 260.

(pp) Shipments were billed in name of consignor who was selling agent of complainant. Complainant's name did not appear on any of the transportation papers, but shipments were made for and on its behalf and freight charges were borne by it. Complainant found party entitled to reparation. Kaw River Sand & Material Co. v. Director General, 93 I. C. C. 346, 347, 349.

(qq) Home Accident & Insurance Co. assumed direction of complainant's business and selected a general manager who paid freight charges in complainants' name on shipments consigned to him individually and to a road commissioner from funds advanced by the insurance company. Identity of complainant's company was maintained and all items of expense and merchandise charged to it. Defendants contended that complainants were not real parties in interest, so complainants' counsel moved to amend complaint by making insurance company a party complainant. This was permitted subject to defendants' objections. HELD: Under facts stated complainant is entitled to reparation and since insurance company presented no adverse claim, it is unnecessary to pass upon motion to amend. Edwards Construction Co. v. J., L. C. & E., 93 I. C. C. 370, 371, 372.

(rr) Contract between consignor and consignee provided that consignee should have benefit of any decrease in freight rates. Consignor, who is not party to the proceedings, paid all freight charges, no part thereof being paid by consignee, the complainant herein. FOUND: Complainant (consignee) is not entitled to reparation. Whatever may be rights or equities of parties arising out of their contract as to variations in their agreed price for the commodity, dependent upon changes in the transportation rates, they present no question cognizable by this commission, dealing, as it does, with the legal public obligations of the carrier, which is a stranger to the private contract. See also 40 I. C. C. 738, 741, and 81 I. C. C. 435, 439. Crawford County Commrs. v. St. L. S. F., 93 I. C. C. 502, 595.

(ss) Prior to filing of complaint, assets and liabilities of complainant were assumed by a successor company whose interest was not disclosed until after statute of limitations had run. Upon contention that motion to join successor in interest as co-complainant comes too late, and that lack of interest precludes a recovery of reparation by complainant, HELD: Following Plymouth Coal Co., 56 I. C. C. 699, if complainant is party injured by a violation of the act the award of reparation should be made in its favor, and it may not be denied reparation because of an assignment pendente lite under which no adverse rights are asserted. Fact that assignment took place prior to filing of complaint warrants no different conclusion. See 68 I. C. C. 138; 83 I. C. C. 557. Delta Beet Sugar Corp. v. Director General, 93 I. C. C. 547, 549, 550. Same v. Same, 93 I. C. C. 551, 553, 554.

(tt) Following Jones & Laughlin Steel Co., 91 I. C. C. 300, reparation awarded complainants and interveners in respect of interstate shipments on which they paid charges of the Monongahela connecting, South Buffalo, and Union railroads, in addition to district rates of trunk-line connections, defendants having failed to justify increased rates during nonabsorption period in so far as they resulted in transportation charges exceeding those contemporaneously in effect to and from trunk-line points in same rate districts, aggregate charges applicable during period of nonabsorption having been found unreasonable to that extent in the cited case. Jones & Laughlin Steel Co. v. P. & L. E., 93 I. C. C. 637.

(uu) Complainant did not present proof of payment and bearing of freight charges due to its witness not being available. FOUND: That unless further hearing is requested within 10 days after service of report its complaint will be dismissed for want of prosecution. Jones & Laughlin Steel Co. v. P. &. L. E., 93 I. C. C. 637, 639.

(vv) Formal complaint filed by same company filing informal proceeding bore signatures of complainant's attorney and of the general traffic manager of another company which bought complainants entire stock. Upon contention that formal complaint is barred because filed by successor company, and does not represent a formal complaint filed by same company named in the informal proceeding, HELD: While formal complaint carries signature of general traffic manager of the successor company without show-

ing agency, it is also signed by complainant's attorney, and as presented is properly signed and not barred. Forrester-Nace Box Co. v. Director General, 93 I. C. C. 665.

(ww) Upon further hearing, complainant having submitted satisfactory proof of having borne unreasonable freight charges on shipments of box shooks from Raymond, Wash., to San Francisco and other California points, reparation awarded. Original report, 77 I. C. C. 669. West Coast Lumberman's Asso. v. Director General, 95 I. C. C. 287.

(xx) Upon further hearing, complainant members of association filing the complaint, having submitted satisfactory proof of having paid and borne unreasonable freight charges at rates found unreasonable in original report, 88 I. C. C. 178, reparation awarded. Phoenix Chamber of Commerce v. A., T. & S. F., 95 I. C. C. 665 .

(yy) Where freight charges are paid by consignee but are charged back to consignor, the consignor, if he makes the claim, is entitled to reparation found to be due. Sloss-Sheffield Steel & Iron Co., 40 I. C. C. 738; Missouri Portland Cement Co., 88 I. C. C. 492. M'Fadden & Bros. Agency v. Director General, 95 I. C. C. 734, 737.

(zz) Shipments were purchased f. o. b. destination. Consignor prepaid freight charges and included them in invoice price. FOUND: Where consignor contracts with railroad for movement of goods, but sells the goods f. o. b. point of origin and collects freight charges from consignee, the consignor is agent and consignee is undisclosed principal in the transaction; either may sue in own name in such case. However, where contract of sale calls for a delivered price, arrived at by adding freight charges to market price f. o. b. shipping point and consignor is obligated to pay freight charges, not for consignee, but for himself, question of principal and agent is not involved, as no privity of contract exists between consignee and carrier. Moreover, general tendency of the law with regard to damages is not to go beyond the first step. Barrett Co. v. Director General, 96 I. C. C. 226.

(3a) Shipments were purchased f. o. b. point of origin at a price which included an amount sufficient to cover freight charges, which were paid direct to carrier by consignee and deducted from invoice price. FOUND: Following Missouri Portland Cement Co., 88 I. C. C. 492, the law does not require the commission to go beyond first step in the payment of freight charges and since they were paid by consignee he is the party entitled to reparation. Barrett Co. v. Director General, 96 I. C. C. 226.

(3b) Shipments were purchased f. o. b. destination. Consignor prepaid freight charges and included them in invoice price. FOUND: Where consignor contracts with railroad for movement of goods, but sells the goods f. o. b. point of origin and collects freight charges from consignee, the consignor is agent and consignee is undisclosed principal in the transaction; either may sue in own name in such case. However, where contract of sale calls for a delivered price, arrived at by adding freight charges to market price f. o. b. shipping point and consignor is obligated to pay freight charges, not for consignee, but for himself, question of principal and agent is not involved, as no privity of contract exists between consignee and carrier. Moreover, general tendency of the law with regard to damages is not to go beyond the first step. Barrett Co. v. Director General, 96 I. C. C. 226, 227.

(3c) Shipments were purchased f. o. b. points of origin and sold f. o. b. destination, complainant being consignee, or both, on majority of shipments. Where a consignee other than complainant paid freight charges, such charges were deducted from invoice price and where complainant appeared neither as consignee nor consignor, shipments were made by a nominal consignor under the direction and for benefit of complainant. HELD: Complainant paid and bore freight charges on shipments under consideration and is entitled to reparation thereon. Cohn v. C., M. & St. P. Ry. Co., 96 I. C. C. 257, 258, 259.

(3d) Reparation awarded successor in interest on shipments made by predecessor company. Mistletoe Creameries v. A., T. & S. F., 96 I. C. C. 303, 310.

(3e) Upon further consideration statement in original report, 92 I. C. C. 32, that defendants not made parties to the complaint within the statutory period may join in payment of reparation, eliminated. In Phillips v. Grand Trunk Ry., 236 U. S. 662, it was held that with respect to claims not filed within the statutory period the remedy is barred

and liability destroyed. Larrowe Milling Co. v. A. A. R. R., 96 I. C. C. 329.

(3f) Upon contention that where the identity of business houses, in whose behalf claims for reparation are presented on further hearing, has changed since shipments in issue moved, all claims on which interest accrued subsequently to such change are barred under section 3477 of Revised Statutes of the United States. HELD: Commission has uniformly overruled such contention. See Fairmont Creamery Co. v. Director General, 68 I. C. C. 507; McCloud River Lumber Co. v. Director General, 89 I. C. C. 645. Boston Wool Trade Asso. v. Director General, 98 I. C. C. 48, 51.

(3g) Upon contention of defendant that complainants failed to prove that they paid and bore the charges in connection with the shipments made by them for contracts executed on a cost-plus basis and therefore were not damaged and are not entitled to reparation. FOUND: Complaints clearly showed that they paid the freight charges and the commission held in Missouri Portland Cement Co., 88 I. C. C. 492, that proof of payment of freight charges found unreasonable is sufficient to warrant an award of reparation. Reparation awarded. Hopeman Material Co. v. N. P. Ry. Co., 98 I. C. C. 361, 370.

(3h) Contention that as paragraph 3 of Rules of Practice requires that where recovery is sought on behalf of other than complainant a statement of the capacity or authority in and by which complaint is made must be set forth, the complaint in invalidated so far as it concerns the rightful claimants, namely, the consignors, who actually bore freight charges, not sustained, following 88 I. C. C. 492. Barse Live Stock Commission Co. v. Director General, 98 I. C. C. 539.

(3i) Following 88 I. C. C. 492, a cotton factor, filing complaint in its own name, found entitled to damages on shipments on which it paid charges. Moody Cotton Co. v. Director General, 98 I. C. C. 643.

(3j) So-called assignments did not purport to transfer title to the claims. The words used fairly indicated an intention to retain the ownership, did not constitute an assignment, and were nothing more than an authorization to complainant to receive payment. Under the findings of the commission herein, their legal effect is not controlling. Moody Cotton Co. v. Director General, 98 I. C. C. 643, 645.

(3k) While it is true that the minimum here involved appears to be excessive, it must not be overlooked that it is a part of the rate, and in order to entitle complainants to an award of reparation it must be found that they paid unreasonable charges on their shipments. Swift & Co. v. G. T. Ry. Co. of Canada, 98 I. C. C. 649, 652.

(3ka) Freight charges were paid by consignee, who had no connection with party filing complaint, except as a customer. Complainant was an utter stranger to the transportation, shipment having been made merely in its behalf. Letter of consignee filed with complaint and addressed to consignor not as a representative of complainant, and which only acquiesced in an anticipated effort to procure a "refund on the freight charges" found not to be an assignment. Even under the commission's liberal rules of practice such letter can not be construed as an appointment of complainant as agent for consignee, who paid the charges. Butler Paper Co. v. C., I. & W. R. R., 102 I. C. C. 311, 313.

(3kb) Freight charges were paid by consignee, a branch firm of party filing complaint. Consignee filed a letter informing the commission that complainant had been given permission and instructed to file claim in its behalf, that it is a subsidiary of complainant, and that any settlement made with complainant would be satisfactory to it, FOUND: Letter can not be considered an assignment, but is a sufficient appointment of complainant as agent for consignee for purpose of prosecuting the claim. Butler Paper Co. v. C., I. & W. R. R., 102 I. C. C. 311, 313.

(3kc) Reparation denied where complainant was not present at the hearing and his witnesses had no knowledge as to who paid and bore charges aside from allegation in the complaint. Kaseman v. A., T. & S. F., 102 I. C. C. 315, 316.

(3kd) One of the complainants herein, the consignor, sold shipments to consignees f. o. b. destination, all sales orders, invoices, and other documents relating to the sales being made in its own name. Consignees actually paid freight charges at destination, but deducted them from purchase price in making settle-

ment with consignor. In the final accounting between themselves the freight charges were borne in equal proportion by joint complainants. Contention that reparation may only be awarded to consignees by reason of their having paid freight charges, not sustained, and reparation awarded in equal proportion to joint complainants. Tidal-Western Oil Corp. v. M., K. & T., 102 I. C. C. 322, 323, 324.

(3ke) Complainant purchased shipments under a contract providing for delivery f. o. b. seller's works at point of origin, selling price including a freight allowance to be deducted by complainant from face of invoice before payment. FOUND: Seller has no right to reparation because it merely deducted exact amount set forth in contract as allowance. Complainant who paid charges to carrier is party entitled to reparation, and whatever may have been purpose of circumlocution in contract does not affect its rights thereto. Clark Bros. Bolt Co. v. N. Y. C., 102 I. C. C. 355, 357.

(3kf) Where consignees, commission firms, pay freight charges to carriers and deduct amounts thereof from their remittances to shippers, the commission firms are thus acting as agents for shippers in payment of charges and are entitled, as such, to awards of reparation for exaction of illegal rates. Chicago Live Stock Exchange v. Director General, 102 I. C. C. 452, 454.

(3kg) Purported assignments and letters of authorization to complainant from consignors of all rights to reparation respecting shipments on which consignors bore charges, bearing dates after that on which the statutory period within which complaints for the recovery of damages could have been filed, found to come too late to accomplish the purpose intended. See 80 I. C. C. 55. Farrel v. C., M. & St. P., 102 I. C. C. 455, 457.

(3kh) Following Missouri Portland Cement Co., 88 I. C. C. 492, wherein commission interpreted the law as not requiring it to go beyond the first step in payment of freight charges, reparation awarded to complainant on shipments on which it paid, or paid and bore, freight charges, but denied as to shipments on which part of charges were paid by complainant, part by consignor, and all finally borne by consignor. Farrel v. C., M. & St. P., 102 I. C. C. 455, 458.

(3ki) Claimant organization made no shipments in its own name, failed to name as cocomplainants any of its members, and complaint filed by it does not state definitely on whose behalf reparation is sought. None of its members intervened at the hearing, although several manufacturers and dealers offered testimony, general in character, with respect to sources of their competition and their business methods in payment of freight charges. Their evidence, however, in view of defects in pleadings, can not be regarded as constituting valid claims for damages or reparation. Northeast Mississippi Traffic Bureau v. A. & V., 102 I. C. C. 611, 616.

(3kj) Freight allowance was received by complainant from consignor on certain shipments in order to equalize freight rate from some other point of production. Upon contention of carriers that if reparation is awarded on these shipments there should be deducted from amount thereof this allowance, HELD: Complainant paid to carriers full amount of freight charges and is entitled to full amount of reparation. To go into matter of allowances between parties would lead away from direct results of act of carriers in exaction of unreasonable rates, into domain of indirect or remote consequences, and perhaps into questions of equity as between vendor and vendee. See also 40 I. C. C. 747. Wortham-Carter Publishing Co. v. Director General, 102 I. C. C. 729, 744.

(3l) The record is clear that these complainants paid to defendants the entire amount of the freight charges. To go into the matter of allowances between the parties would lead away from the direct results of the act of the carriers in the exaction of unreasonable rates, into the domain of indirect or remote consequences and perhaps into questions of equity as between vendor and vendee. Wortham Carter Publishing Co. v. Director General, 102 I. C. C. 729, 744.

(3la) By agreements, consignors obtained from consignees assignments purporting to transfer to assignees (the consignors) "all rights to * * * any refund of freight charges" on specified shipments, with understanding that any reparation obtained would be refunded to respective assignors (the consignees who paid and bore the freight charges), less proper allowances for expenses. Upon contention that instruments were in effect powers of attorney and not assignments, and that since informal complaints were filed in name of consignors

and not of real parties in interest, no recovery can be made because barred by the statute of limitation, HELD: Documents are not powers of attorney. They transferred to consignors legal title to claims, and fact that beneficial interest may have been in assignors is immaterial. Consignors received assignments prior to filing of informal complaints and therefore had right to file complaints in their own behalf. Wichita Chamber of Commerce v. Director General, 102 I. C. C. 745, 746.

(3lb) Informal complaint showed "The Team Company" a copartnership composed of three partners as claimant. Formal complaint brought in the Wichita Company as additional complainant. Upon contention that the Wichita Company is a department of the copartnership; that informal complaint tolled the statute with respect to all shipments on its behalf; that partners were operating under two names; and that trade names, as such, have no standing under the law, copartners being real parties in interest, HELD: Failure to name the Wichita Company in informal complaints is not fatal. The parties in interest are named and the statute tolled in respect of the shipments here involved. Wichita Chamber of Commerce v. Director General, 102 I. C. C. 745, 746.

(3lc) Assignments were made under seal and purported to transfer to assignees "all rights to * * * any refund of freight charges" on specified shipments. Upon contention that since no consideration is expressed in the documents they are invalid, FOUND: Such assignments are valid since made under seal. Wichita Chamber of Commerce v. Director General, 102 I. C. C. 745, 746.

(3ld) Upon contention that under section 3477 of the Revised Statutes of the United States assignments were void because they transfer unliquidated claims against the Government, HELD: Section 3477 does not apply to claims brought under the transportation act against the Director General. See 89 I. C. C. 645, 649. Wichita Chamber of Commerce v. Director General, 102 I. C. C. 745, 746, 747.

(3le) The Team Company, a copartnership of three partners, entered into contract with a private individual, the individual to receive in consideration of his services a specified percentage of net profits, without participating in losses. HELD: Such contract did not create a new copartnership but continued the old copartnership in effect. See 116 U. S. 461, 472. To have created a new copartnership composed of the four men, a joint agreement would have been necessary to the effect that each copartner was to participate in both profits and losses. See 132 U. S. 539; 20 R. C. L. 825. Wichita Chamber of Commerce v. Director General, 102 I. C. C. 745, 747.

(3lf) Reparation will not ordinarily be awarded to basis of finding made in a general investigation resulting in a widespread readjustment of rates on shipments which moved prior to effective date of commission's order. See 69 I. C. C. 11 and other cases cited. Western Pine Mfrs. Asso. v. Director General, 102 I. C. C. 753, 755.

(3m) In 81 I. C. C. 169 the Commission found that reparation on certain shipments of imported tin from San Francisco, Calif., to Chicago, Ill., Newark, N. J., and New York, N. Y., could not be awarded because consignee was not a party complainant. HELD, upon reconsideration, complainant awarded reparation, based upon rate found unreasonable of $1.25. Mitsui & Company v. Director General, 107 I. C. C. 469.

(3n) Complainant's affidavit avers that the fuel oil "was purchased on basis of f. o. b. refinery with freight and tax allowed to Newport News," FOUND: That this statement is ambiguous and no conclusion can be drawn from it on the bearing of charges. Complainant paid the charges. Missouri Portland Cement Co., 88 I. C. C. 492. Reparation awarded. Newport News Shipbuilding & Dry Dock Co. v. L. & N. R. R. Co., 100 I. C. C. 1, 3.

(3o) Joint rates on tin plate from McKeesport, Pa., Yorkville, Ohio, and Cumberland, Md., to New London, Wis., found not unduly prejudicial but found unreasonable. Complainant did not pay or bear freight charges based on the rates herein found unreasonable on shipments from Cumberland and is not entitled to reparation, but on the shipments from McKeesport and Yorkville, while it might be said that the consignee paid an invoice price which reflected freight charges based on the Pittsburgh rate, the fact that these points took the same rate as Pittsburgh is but a coincidence, and the evidence falls short of proving that complainant under these contracts paid or bore as such the

freight charges assessed under the particular rates herein found unreasonable. It is clear upon this record that if the joint rates herein found unreasonable had not been in effect, complainant's invoices would still have reflected the rate from Pittsburgh, as was actually the case, and not the rates from these points of origin. Reparation denied. Borden Co. v. A. A. R. R. Co., 100 I. C. C. 153, 156, 157.

(3p) Shipments of iron and steel articles from various points in Ohio, Kentucky, Indiana, Alabama, Illinois, Pennsylvania, New York, and Missouri to Dallas, Fort Worth, and Harrys, Tex., were purchased by complainants on the so-called Pittsburgh-plus basis. It appears that on some of the shipments the freight charges were prepaid by the shipper and on others they were paid by these complainants, the consignees, but before the commission can award reparation to any of these complainants it must have sufficient proof with respect to their shipments that they are entitled to it. Atlas Metal Works v. A., C. & Y. Ry. Co., 100 I. C. C., 173, 177, 178.

(3q) Complainants and their shipments were identified by reason of the fact that none but members of the Chicago Live Stock Exchange were permitted to do business through the stockyards, participant in the transportatoin where all such members were known and where their shipments were matters of record. Chicago Live Stock Exchange v. A. T. & S. F., 100 I. C. C. 266, 267.

(3r) The right of factors in their representative capacity to recover reparation in their own names for unlawful and unreasonable charges is settled. Memphis Freight Bureau v. St. L. & S. F. R. R. Co., 57 I. C. C. 212. Chicago Live Stock Exchange v. A. T. & S. F., 100 I. C. C. 266, 270.

(3s) The reasonableness of the freight rate paid by the shipper is not controlled by the agreement the shipper may have with another. The Commission is only concerned with who paid and/or bore the freight charges as such. Columbia Steel Co. v. B. & O. R. R., 109 I. C. C. 46, 49.

(3t) Where one corporation takes over the assets of another by merger, the absorbing corporation may enforce the claims of the merged corporation against the United States. Schweitzer Co. v. Director General, 109 I. C. C. 663, 664.

ALL OTHER CITATIONS

Cities of Marshall and Jefferson v. T. & P. Ry. Co., 85 I. C. C. 115; Beaumont Chamber of Commerce v. Director General, as Agent, 85 I. C. C. 139; Midland Coal Co. v. F. S. & W. R. R. Co., 85 I. C. C. 146; Nebraska Bridge Supply & Lumber Co. v. Director General, as Agent, 85 I. C. C. 327; Sewell & Co. v. Director General, as Agent, 85 I. C. C. 641; Lafayette Lumber Co. v. Director General, as Agent, 85 I. C. C. 647; Pacific Mills, Ltd., v. Director General, as Agent, 85 I. C. C. 677; Gillican-Chipley Co. v. Director General, as Agent, 85 I. C. C. 702; Hoskins Lumber Co. v. Director General, as Agent, 85 I. C. C. 740; Wyoming Sugar Co. v. Director General, as Agent, 88 I. C. C. 213; Texas Farm & Ranch Publishing Co. v. A. & W. Ry. Co., 88 I. C. C. 417; Doniphan Brick Works v. Director General, as Agent, 88 I. C. C. 438; Gillican-Chipley Co. v. Director General, as Agent, 88 I. C. C. 441; Trojan Powder Co. v. Director General, as Agent, 88 I. C. C. 447; Missouri Portland Cement Co. v. Director General, as Agent, 88 I. C. C. 492; Cutler-Hammer Mfg. Co. v. Director General, as Agent, 88 I. C. C. 600.

§7. Statute of limitations.

See Claims I.

(a) Shipments moving prior to Federal control, freight charges on which were paid during that period found barred by the statute of limitations, the period on such shipments being computed from date of delivery or tender of delivery. Du Pont de Nemours & Co., 87 I. C. C. 189. Lindeteves-Stokis v. Director General, as Agent, 89 I. C. C. 3.

(b) Director general denies right of complainant to award of reparation on ground that predecessor company, which made the shipment, was not a party to the informal proceedings, and was not joined as a complainant until formal complaint was filed and after the statute of limitations as to that company had run. It was shown, however, that complainant assumed all assets and liabilities and handles all affairs of its predecessor, and that informal complaint filed by complainant stated that shipment was made by its predecessor company. HELD: Predecessor company found to have been party damaged but

reparation awarded successor in interest. Midland Coal Co. v. M. P. R. R. Co. 89 I. C. C. 101, 102.

(c) Complainant attacked commodity rates charged on nine cars of wrapping paper in November 1918, from International Falls, Minn., to Wausau, Wis., as unreasonable and unduly prejudicial. The Union Paper & Bag Corporation owns all the capital stock of the Badge Bag & Paper Company and controls and operates all the plants, facilities, and business of the latter, but the two companies are in law separate entities. The complaint was filed Oct. 18, 1922, within the six months period; but since the complainants are not the same the formal complaint can not be considered as a continuation of the informal proceeding. The true complainant was not disclosed until the date last mentioned and its complaint was not filed within the statutory period after the termination of federal control. HELD complaint dismissed. Badger Bag & Paper Co. v. M. D. & W. Ry. 92 I. C. C. 465.

(d) Section 16 of the act provides that, except under circumstances not here present, all complaints for the recovery of damages shall be filed with the commission within two years from the time the cause of action accrues and not after, and for the purposes of this section the cause of action shall be deemed to accrue upon delivery or tender of delivery of shipments. With respect to claims not filed within the statutory period the remedy is barred and liability destroyed. Larrowe Milling Co. v. A. A. Ry., 96 I. C. C. 329.

(e) Complainant attacked charges on grain between March 1, 1920 and April 1, 1922, as unreasonable, original report 92 I. C. C. 32. On shipments delivered or tendered for delivery prior to May 17, 1920, no reparation against the carriers not made parties to the complaint until May 16, 1922 could be awarded. HELD, reparation denied. Larrowe Milling Co. v. A. A. R. R., 96 I. C. C. 329.

(f) Petition in intervention seeking reparation on shipments moving during Federal control period found barred by Statute of limitations because not filed within one year after termination of Federal control. Hudson Mule Co. v. Director General, 91 I. C. C. 459.

(g) Excluding period of Federal control as provided in section 206 (f) of Transportation Act, 1920, claims for reparation based on causes of action arising prior to Federal control found to have been filed within two years and not barred. Macbeth-Evans Glass Co. v. B. & O. R. R. Co., 91 I. C. C. 758.

(h) Claims for reparation based upon causes for action which arose during period of Federal control, filed with Commission within one year after termination thereof, as provided in section 206 (c) of Transportation Act, 1920, found not barred. Macbeth-Evans Glass Co. v. B. & O. R. R. Co., 91 I. C. C. 758.

(i) Original formal complaint attacking one factor of a combination rate was filed against originating carrier within statutory period. By amended complaint filed more than six months after notice that claim could not be disposed of informally and more than two years after cause of action accrued, carrier publishing other factor was brought in as an additional party defendant. HELD: Claim against originating line, whose factor only is assailed, found not barred but claim against carrier named in amended complaint found abandoned under Rule III (g) of Rules of Practice. Inland Empire Paper Co. v. C., M. & St. P., 92 I. C. C. 29, 30.

(j) Contention that filing of an informal complaint did not stop running of the statute in favor of complainant named in formal proceeding because it did not specifically state that it was filed in his behalf, not sustained. Party filing informal complaint made no claim in its own behalf or in behalf of complainant but bills of lading and paid expense and demurrage bills accompanying the claim clearly indicated that complainant named in formal proceedings was the real party in interest. Givens v. Director General, 92 I. C. C. 63, 66.

(k) Informal complaint against director general, as agent, involving shipments moving during Federal control, in so far as question of reasonableness is concerned, found barred by the statute of limitations because filed more than one year after Federal control terminated. Chevrolet Motor Co. of Calif. v. Director General, 92 I. C. C. 73.

(l) Informal complaint named Buffalo, Black Rock, and Niagara Falls, N. Y., as destination points. Formal complaint, specifically intended to cover same shipments, named Harriet, N. Y., as point of destination. Upon contention of director

general that claims covered by formal complaint are barred because Harriet was not named as destination point therein until subsequent to time allowed by law for filing complaints for damages against him. FOUND Freight bills on some shipments show Harriet as destination, and correspondence and final letter of rejection of informal claim from director general refer to that claim as covering shipments from that point. There is, therefore, no room for reasonable doubt that he was put on notice by the informal complaint as to subject matter of the formal proceeding. Acheson Graphite Co. v. Director General, 92 I. C. C. 215, 216, 217.

(m) Formal complaint filed with commission within 90-day period after institution of suit by carriers in the courts for undercharges. Carrier, not named as a party to such suit or as a defendant in formal proceeding before the commission, requested that it be made a party defendant in latter proceeding. HELD: Since such request was filed more than 90 days after institution of the court proceeding, and more than two years from date of delivery of shipments, the statute has barred the claim against such carrier. Randolphs Furniture Works v. E. R. R. 92 I. C. C. 245, 246.

(n) Formal complaint filed with commission within 90-day period after institution of suit by carriers in the courts for undercharges. Complainant was amended by bringing in an additional party defendant after expiration of such 90-day period. Such additional defendant was not a party to, nor did it bring an action for recovery of, undercharges within three-year period prescribed by the statute. FOUND: Such additional defendant is protected by the statute of limitations, complainant having failed to bring an action against it before the commission within two years from date of delivery of shipments. Randolph Furniture Works v. E. R. R., 92 I. C. C. 245.

(o) Where an informal complaint filed within statutory period specifies certain shipments, and formal complaint based upon informal proceedings brings in additional shipments, such additional shipments are barred unless brought in issue within the statutory period. Whiting Plover Paper Co. v. S. Ry. Co., 92 I. C. 292.

(p) Complaint as originally filed alleged unreasonableness in rates on shipments moving between specified dates. At the hearing complainants filed motion to amend to include additional shipments moving subsequent to date specified, defendants objecting thereto on ground that such amendment would broaden the issues. HELD: Amendment allowed since it only puts in issue the reasonableness of rates subsequent to date named in complaint as originally filed. Houston Cotton Exchange v. A. & S. Ry., 92 I. C. C. 363.

(q) Complainant only sought reparation on past shipments therein specified, but at original hearing complainants filed an amendment to cover all shipments moving since filing of the complaint to which defendants interposed no objection. Subsequently a further hearing was held and defendants there contended that shipments delivered more than two years prior thereto are barred by the statute. HELD: Complainants clearly seek reparation on shipments made during pendency of the proceeding. Wichita Board of Commerce v. Director General, 92 I. C. C. 370, 371.

(r) Carriers question complainants' right to reparation on shipments which moved subsequent to filing of complaint, on ground that said complaint only sought reparation on past shipments therein specified. HELD: While prayer of complaint was so restricted, at original hearing complainants asked to have shipments moving subsequent to filing of complaint included and no objection thereto was interposed by carriers. This was tantamount to an amendment of the complaint and the commission so considers it. Wichita Board of Commerce v. Director General, 92 I. C. C. 370, 371.

(s) Complainant in its petition sought reparation down to a certain basis but at hearing asked that damages be awarded to still lower basis. Objection by defendant that reparation can not be awarded to lower basis sought because request therefor was made after expiration of limitation period prescribed in the act, found not well taken. Request for increased damages is found upon facts stated in original complaint, does not constitute a new cause of action, and therefore relates back to time of filing of the complaint. Shreveport Creosoting Co. v. L. & P. Ry., 92 I. C. C. 519, 520.

(t) Where shipper's claim for damages for misrouting of shipment was barred by two-year limitation prescribed by Interstate Commerce Act, §16 (2), being Comp. St. §8584, before passage of

Transportation Act 1920, §206 (f), being (Comp. St. Ann Supp. 1923, §10071¼ cc.) declaring that period of federal control should not be computed as part of period of limitation, in actions against carriers or in claims for reparation, HELD, lapse of period of limitation prescribed not only barred shipper's remedy, but destroyed liability of carrier, which was not revived by subsequent enactment of Transportation Act, nor would such act be construed as retroactive to create liability, since to do so would render it violative of Const. U. S. Amend. 5, as denial of due process. William Danzer and Co. Inc., v. Gulf & S. I. R. Co., 45 Sup. Ct. 612.

(u) Cause of action did not arise before period of federal control within Transportation Act Feb. 28, 1920, §206f (Comp. St. Ann. Supp. 1923, §10071¼cc), excluding such period in computing limitations, if it did not accrue so as to be enforceable until after federal control began. Cocke v. Morgan's Louisiana & Tex. R. & S. S. Co., 4 Fed. (2d) 961.

(v) Counsel for defendants question right of opposing counsel to represent many shippers named as complainants, and also contended that many claims presented are barred by the statute of limitations. But as they admit that some shippers named are bona fide complainants and that some claims are not barred by the statute the commission may proceed to consider the issues without passing upon jurisdictional question as to individual complainants and claims. Dickerson v. Director General, 93 I. C. C. 304, 305.

(w) Complaint, filed with commission within 90 days after institution of suit by carrier in the courts for undercharges, found not barred by the statute of limitations. See Section 16 (3) of the act. Texas Co. v. A., T. & S. F., 93 I. C. C. 691.

(x) Complainants seek reparation on shipments that moved during two year period prior to filing of amended complaint and thereafter during the pendency of the proceeding and defendant resists such an award referring to provisions of Rule 3 (s) of Rules of Practice. FOUND: This rule has no application where prayer for reparation is not a new complaint, but an amendment of one already filed. Nelson Fuel Co. v Director General, 96 I. C. C. 124, 130.

(y) Upon further consideration statement in original report, 92 I. C. C. 32, that defendants not made parties to the complaint within the statutory period may join in payment of reparation, eliminated. In Phillips v. Grand Trunk Ry., 236 U. S. 662, it was held that with respect to claims not filed within the statutory period the remedy is barred and liability destroyed. Larrow Milling Co. v. A. A. R. R., 96 I. C. C. 329.

(z) Upon contention of defendant that complainants failed to prove that they paid and bore the charges in connection with the shipments made by them for contracts executed on a cost-plus basis and therefore were not damaged and are not entitled to reparation. FOUND: Complainants clearly showed that they paid the freight charges, and the commission held in Missouri Portland Cement Co., 88 I. C. C. 492, that proof of payment of freight charges found unreasonable is sufficient to warrant an award of reparation. Reparation awarded. Hopeman Material Co. v. N. P. Ry. Co., 98 I. C. C. 361, 370.

(aa) Upon contention that formal complaint was barred by statute because informal complaint on which it rested was filed by New Jersey Zinc Co., as principal and not as agent for complainant, FOUND: Informal filing was, in fact, on complainant's behalf and formal complaint not barred. Tulsa Fuel & Mfg. Co. v. Director General, 98 I. C. C. 411.

(bb) Contention that informal filing of complaint by Fuller Co. was not sufficient to stop running of the statute as to the Libbey-Owens Co., which in formal complaint is alleged to have suffered damage, found immaterial following 88 I. C. C. 492. Under the contract between the two parties, Libbey-Owens Co. was not a party to the transportation record and no order could be entered in respect of it. Fuller Co. v. Director General, 98 I. C. C. 468, 469.

(cc) Contention that as paragraph 3 of Rules of Practice requires that where recovery is sought on behalf of other than complainant a statement of the capacity or authority in and by which complaint is made must be set forth, the complaint is invalidated so far as it concerns the rightful claimants, namely, the consignors, who actually bore freight charges, not sustained, following 88 I. C. C. 492. Barse Live Stock Commission Co. v. Director General, 98 I. C. C. 539.

(dd) Following 88 I. C. C. 492, a cot-

ton factor, filing complaint in its own name, found entitled to damages on shipments on which it paid charges. Moody Cotton Co. v. Director General, 98 I. C. C. 643.

(ee) Claims on all shipments prior to Jan. 1, 1918 the beginning of federal control, are barred by the statute of limitations, unless charges in respect of such shipments were collected at such times as to save complainants rights under the statute of limitations in effect prior to the passage of the amendment of March 1, 1920. Wortham Carter Publishing Co. v. Director General, 102 I. C. C. 729, 730.

(ff) Reparation statement indicates that two shipments were delivered subsequent to the period of Federal Control and the right of recovery upon these shipments lay against the Denver & Rio Grande Western, successor to the Denver & Rio Grande, and not against the director general, who was made the sole defendant herein, these shipments, therefore, are barred. Western Metals Co. v. Director General, 100 I. C. C. 314, 315.

(gg) Contention by carriers that no reparation may be awarded covering a period of more than two years prior to filing of a sub-complaint; that original complaint did not put in issue the through rates; that a finding of unreasonableness and award of reparation can not be made because carrier participating in one factor is not a party defendant; and that as to the other factor, reparation to full amount can not be made against delivering carrier named in original complaint because other participating carrier is not a party, not sustained. Allegations in original complaint specify through rate and are in substantially same form as in previous cases where commission found rate charged unreasonable to extent a specified factor exceeded a certain amount. See 92 I. C. C. 29; 88 I. C. C. 535; and 87 I. C. C. 668, 672. Delivering carrier named in original complaint participated in joint rate factor and is jointly and severally liable irrespective of whether other participant in that joint rate is a party to the proceeding. Barrett Co. v. N., C. & St. L., 101 I. C. C. 279, 280, 281.

(gga) Fact that all of carriers over whose rails shipments moved were not named in formal complaint can not act as a bar to running of statute of limitations where shipments moved during Federal control wholly over federally-controlled lines and only reparation is sought. See 80 I. C. C. 485. Farrell v. C., M. & St. P., 102 I. C. C. 455, 456.

(ggb) Formal complaint alleging unreasonableness on shipments moving during Federal control, filed with commission within 90 days after institution of suit by carrier in the courts for collection of undercharges, but more than one year after termination of Federal control, found barred. The right of action under allegation of unreasonableness was not revived by court proceeding and is not properly before the commission under section 16 (3) of the interstate commerce act. The commission's jurisdiction to entertain complaints for reparation on account of the exaction of unreasonable rates on shipments moving during Federal control is derived solely from section 206 (c) of the transportation act, 1920, under which such complaints must be filed within one year after termination of Federal control. See 264 U. S. 456. Cudahy Packing Co. v. Director General, 102 I. C. C. 598, 599, 600.

(ggc) Claims for reparation on shipments moving prior to Federal control are barred by the statute of limitations, unless charges in respect of shipments are collected at such times as to save a shipper's rights under the statute of limitations in effect prior to the transportation act, 1920, such statute having been construed by the Supreme Court in 246 U. S. 638 as accruing and beginning to run from date of payment of freight charges. See Danzer & Co. 268 U. S. 633; 87 I. C. C. 189. Wortham-Carter Publishing Co. v. Director General, 102 I. C. C. 729, 731.

(hh) Section 16 of the act provides that substantially all complaints for the recovery of damages not based on overcharges shall be filed with the commission within two years from the time the cause of action accrued and not after; also that the cause of action accrues upon delivery or tender of delivery of the property by the carrier. Gentile Co. v. Amer. Ry. Exp. Co., 109 I. C. C. 171.

(ii) Complainant attacked class rate charged on three cars of less carload shipments from Chicago on August 25, 1920 to Kansas, Louisiana, Missouri, New Mexico, Oklahoma and Texas, as unreasonable, unjustly discriminatory, unduly prejudicial and preferential and in violation of section 6 in that the rates charged were those in effect August 26, 1920 instead of Aug. 25, 1920. Ship-

ments were all delivered on or before Dec. 9, 1920, informal complaint received on Dec. 11, 1922 or more than two years after delivery of shipments. HELD, shipments barred by the statute prior to the enactment of the amendment of June 7, 1924, complaint dismissed. Calumet Baking Powder Co. v. A. & N. R. R. R. Co., 109 I. C. C. 249.

(jj) On Oct. 8, 1924 the Commission served a report in which it found the claim for reparation barred by the statute of limitations and dismissed the complaint. Case was reopened. HELD, claim barred by the statute of limitations, complaint dismissed. Moore Lawless Grain Co. v. M. P. R. R., 109 I. C. C. 588.

ALL OTHER CITATIONS

Greater Des Moines Committee v. Director General, as Agent, 85 I. C. C. 478; Eishelman & Sons v. Director General, as Agent, 85 I. C. C. 578; Lilly Co. v. O. S. L. R. R. Co., 85 I. C. C. 644; Gillican-Chipley Co. v. Director General, as Agent, 85 I. C. C. 702; Gerhard & Hey (Inc.) v. Director General, as Agent, 88 I. C. C. 293.

III. CIRCUMSTANCES DETERMINING RIGHT.

§7½. In General.

(a) Before complainant is entitled to reparation the Commission must find that the rate is unreasonable, and the fact that no evidence was offered on behalf of defendants does not preclude the Commission from determining whether or not the rate was in fact unreasonable. Nebraska Bridge Supply & Lumber Co. v. A. T. & S. F. Ry., 93 I. C. C. 301, 303.

(b) If complainants paid unreasonable rates it follows that they are entitled to reparation. Gulf Coast Citrus Exchange v. L. & N. R. R., 93 I. C. C. 432, 434.

(c) Complainant attacked commodity rate charged on pig iron carloads, in 1922 and 1923 from Youngstown, Leetonia and Warren, O., to Huff, Pa., as unreasonable. Defendants agree to publish the rate sought so reparation is all that is to be considered. Huff is on the Pennsylvania, 2 miles south of Greensburg which is 32 miles east of Pittsburg. Youngstown is 66 miles northwest of Pittsburgh, movement to Huff being through Pittsburgh. The average distance from the Youngstown group points to Pittsburgh is 63.5 miles, and to Huff 97.5 miles. Pig iron and steel are rated sixth class in official classification. No reason is disclosed to justify higher rates to Huff than from Youngstown group to points about the same distance in the immediate vicinity thereof. HELD, rates attacked unreasonable to extent they exceeded $1.96 prior to July 1, 1922 and $1.76 thereafter, reparation awarded. Kelly & Jones Co. v. Pennsylvania, 95 I. C. C. 640.

(d) The fact that shipments were isolated or sporadic is a circumstance to be given weight in determining whether lower rates should be established for the future or reparation awarded but it is not the sole determinative factor. Carter Oil Co. v. C. B. & Q. R. R., 96 I. C. C. 215, 216.

(e) Proof of payment of freight charges found unreasonable is sufficient to warrant an award of reparation. Hopeman Material Co. v. N. P. Ry., 98 I. C. C. 361, 370.

(f) Where only witness appearing on behalf of a complainant had no personal knowledge as to paying and bearing of freight charges on shipment upon which reparation is claimed no award can be made to such complainant. National Preservers & Fruit Products Asso. v. Director General, 91 I. C. C. 221, 222.

(g) In order to do substantial justice under the special circumstances of instant case under which combination rates were found unreasonable, Commission determined reasonableness of each factor composing combination and awarded reparation upon a mileage-prorate basis. Midland Coal Co. v. M. V. R. R. Co., 91 I. C. C. 571.

(h) A finding of unreasonableness for the future does not necessarily constitute a basis for an award of reparation. Northern Grain & Warehouse Co. v. O. S. L. R. R., 100 I. C. C. 319, 321.

(i) Reparation was not considered and could not have been awarded in a case of investigation of rates instituted by the Commission and not one upon complaint. Northern Grain & Warehouse Co. v. O. S. L. R. R., 100 I. C. C. 319, 322.

(j) An isolated movement during a comparatively short period is not a proper basis for requiring the establishment of rates for the future or for an award of reparation, but have nevertheless found that inasmuch as complainants are en-

titled to reasonable rates, the fact of the shipments having been isolated is not the sole determinative factor. Municipal Elec. & Water Depts. v. C. C. C. & St. L. Ry., 101 I. C. C. 618, 619.

(k) In determining whether or not a complainant has been damaged by the exaction of unreasonable or unduly preferential reshipping rates the total thru charges paid from points of origin must be considered. Municipal Elec. Water Depts. v. C. C. C. & St. L. Ry., 101 I. C. C. 618, 620.

(l) Rates which might properly have been made under an adjustment in compliance with a decision of the commission can not be used as a basis for awarding reparation under section 1. National Coffee Co. v. G., C. & S. F. Ry., 92 I. C. C. 14, 16.

(m) Carriers in complying with an alternative order of the commission advanced lower instead of reducing higher rates. Such advances were suspended and subsequently found not justified. HELD: Fact that order was in the alternative did not relieve carriers from responsibility of publishing rates which would not contravene the act; and whether carriers' literal compliance with such order by proposing increases, or the commission's action in suspending them, led to exaction of unreasonable rates during suspension period is immaterial and not controlling in so far as an award of reparation is concerned. If rates in effect during suspension period were unreasonable, carriers are not entitled to retain excessive portion even though it be said that rates were in effect despite their efforts. Wadhams Oil Co. v. C. & N. W., 92 I. C. C. 361.

(n) Fact that a complainant included freight charges in arriving at selling price of its product does not preclude it from recovering from carriers damages sustained in consequence of exaction of an unreasonable freight rate. Shreveport Creosoting Co. v. L. & P. Ry., 92 I. C. C. 519, 520, 522.

(o) Collection of an unreasonable rate constitutes a tort giving rise to a claim for damages whether that rate be collected by common carriers or by an agent of director general. Shreveport Creosoting Co. v. L. & P. Ry., 92 I. C. C. 519, 520, 523.

(p) The Ault case, 256 U. S. 554, establishes the principle that the director general is liable for compensatory damages, as distinguished from punitive damages or penalties, in same manner and to same extent as if he were a corporate common carrier, and that such damages may reasonably include interest. Shreveport Creosoting Co. v. L. & P. Ry. 92 I. C. C. 519, 520, 524, 525.

(q) Complainant alleged that rates charged were unjust and unreasonable, and also stated that a double increase was applied to each combination of separately established rates and that in each case the tariff naming one of the factors contained a so-called combination rule providing for application of a single increase to combination rates so constructed. HELD: Complaint contains sufficient matter to constitute an allegation that overcharges have been collected. National Supply Co. v. Director General, 92 I. C. C. 610.

(r) Rates on canned vegetables and condensed milk from Wisconsin points to Cincinnati, found not unreasonable as compared with rates to Ashland, Ky., and Huntington and Kenova, W. Va., to which Cincinnati is intermediate. Cincinnati formerly took rates lower than to the more distant points but increases authorized in the Fifteen Per Cent Case, 45 I. C. C. 303, disrupted this adjustment and created the fourth section violation which carriers subsequently removed by reducing rates at the intermediate point. Fact that rates to intermediate point were in excess of those to more distant points does not prove unreasonableness, nor, in absence of evidence of specific damages to shipper, afford a sufficient basis for an award of reparation. Vessler Co. v. E. J. & E. Ry., 96 I. C. C. 75.

(s) Fact that carriers have charged or received rates which violate the long-and-short-haul rule of section 4 of the act is not of itself sufficient basis for an award of reparation in absence of proof of damage to shipper. See also 88 I. C. C. 619. Lissberger & Co. v. N. Y., N. H. & H., 96 I. C. C. 231, 233.

(t) Except under unusual conditions, the commission has uniformly awarded reparation on shipments moving to intermediate points under rates which are higher than to more distant points where the rates to the latter points were established subject to rule 77 of Tariff Circular 18-A. Carey Co. v. C., N. O. & T. P. Ry. Co., 96 I. C. C. 455, 457.

(u) Proof consisting only of affidavits was objected to by defendants and not received in evidence. Upon repre-

sentation of complainants that defendant, since the hearing, has undertaken to handle similar claims on special docket, and accepted affidavit proof, complainant authorized to file Rule V statements, accompanied by affidavits, further hearing to be sought if defendant still objects to form of proof. Jockusch v. G., C. & S. F. Ry., 96 I. C. C. 500.

(v) In numerous instances where class rates were charged on unusual movements the commission has declined to award reparation in absence of proof that the commodity was improperly classified or that the class rates as such were unreasonable. The special facts of particular cases have, however, warranted some departures from this principle. Omaha Cold Storage Co. v. C. & N. W. Ry. Co., 98 I. C. C. 437, 440.

(w) Position taken by defendant carriers that because complainant knew the rate he is not entitled to reparation would mean that in no case could a shipper be entitled to reparation, inasmuch as under the law he is presumed to know the applicable rate. Karnowsky v. C., I. & L. Ry. Co., 98 I. C. C. 533, 534.

(x) There was no evidence of any change in conditions during the period covered by the complaint which would justify a conclusion that the rates which were found unreasonable for the future were not also unreasonable in the past. Denial of reparation in former report reversed. Alton Mercantile Co. v. A. & W. Ry. Co., 98 I. C. C. 581.

(y) The law does not require the Commission to go beyond the first step in the payment of freight charges. Farrell v. C. M. & St. P. Ry., 102 I. C. C. 454, 457.

(z) Complainant's affidavit avers that the fuel oil "was purchased on basis of f. o. b. refinery with freight and tax allowed to Newport News," FOUND: That this statement is ambiguous and no conclusion can be drawn from it on the bearing of charges. Complainant paid the charges. Missouri Portland Cement Co., 88 I. C. C. 492. Reparation awarded. Newport News Shipbuilding & Dry Dock Co. v. L. & N. R. R. Co., 100 I. C. C. 1, 3.

(aa) Upon contention of defendants that as Midvale, Utah, was not specifically mentioned as a point of origin in either the informal or formal complaints, no consideration should be given to the shipments from that point FOUND: That Midvale takes the same rate as Murray, Utah, the other point of origin considered herein, and evidently no defense could be made of the rate from Midvale that is not now made respecting the rate to Murray. Defendant was the first to call attention to the Midvale shipments at the hearing and apparently prior thereto had known of their inclusion in the reparation statements. Upon the circumstances disclosed the defendant was "fairly informed" as to these shipments and they will be considered herein. Western Metals Co. v. Director General, 100 I. C. C. 314.

(bb) Upon contention of complainant that no reversal of opinion by the commission or modification of a former opinion could wipe out or extinguish the vested rights of a complainant secured by contracts made in reliance upon the former opinion, FOUND: That the commission is without authority to make an award of reparation based upon such a contention, and this applies with equal force to unfulfilled promises alleged to have been made by representatives of carriers that the reduced rates would be made effective in accordance with the exception expressed in the report. The powers of the commission are not those of a court of equity. Northern Grain & Warehouse Co. v. O. S. L. R. R. Co., 100 I. C. C. 319, 322

(cc) First-class rating on barrack bags in official classification found unreasonable to extent it exceeded or exceeds second-class, any quantity, which is prescribed as a reasonable rating for future. Charges collected on such shipments from Jeffersonville, Ind., to New York, N. Y., at first class rate found unreasonable to extent they exceeded those which would have accrued at second-class rate. Opportunity afforded complainant to prove its right to reparation. Triad Corp. v. E. R. R. Co., 100 I. C. C. 402.

(dd) Reparation awarded on shipments of lard substitutes from Houston to destinations in Louisiana, Arkansas, and Oklahoma, which will merely be in the nature of a retroactive extension to the Houston and Sherman complainants of a rate basis which as a result of commission's decisions has long been enjoyed by their competitors in same territory. Proctor & Gamble Distributing Co. v. St. L. S. F., 101 I. C. C. 563, 590.

(ee) An isolated movement during a comparatively short period is not a prop-

er basis for requiring the establishment of rates for the future or for an award of reparation, and inasmuch as shippers are entitled to reasonable rates, the fact of shipments having been isolated is not the sole determinative factor. See 78 I. C. C. 473; 92 I. C. C. 453. Municipal Elec. & Water Depts. v. C., C., C. & St. L., 101 I. C. C. 618, 619.

(eea) Contention that because complainant did not allege a violation of section 6 but only violations of sections 1, 2, and 3 of the act, the commission is without jurisdiction to find that the rate collected was inapplicable and to award reparation, not sustained in view of fact that the record shows a thorough effort by each side to prove facts which determine the rate applicable. See 88 I. C. C. 407, 408. Clark Bros. Bolt Co. v. N. Y. C., 102 I. C. C. 355, 357.

(ff) A carriers failure to comply with certain tariff rules may make it liable to the penalty provisions of the act, but such failure is not a sufficient basis for an award of reparation where the evidence does not show that the shipper was damaged thereby. Curtis v. Director General, 109 I. C. C. 378, 379.

(gg) In 81 I. C. C. 200, the Commission found that the carload rates on packing house products from Ottumwa, Iowa, to Memphis, Tenn., unreasonable to extent they exceeded contemporaneous fifth class rates between the same points and awarded reparation. HELD, reparation awarded on reconsideration. Morrell & Co. v. C. B. & Q. R. R., 109 I. C. C. 613.

(hh) It seems clear that the jurisdiction of the Commission is limited to an award of damages capable of definite ascertainment, and not to punitive damages. Crosby v. St. L. S. F. Ry. 112 I. C. C. 239, 243.

ALL OTHER CITATIONS

Midland Linseed Products Co. v. Director General, as Agent, 88 I. C. C. 247.

§8. Erroneous Publication or Quotation.

See Erroneous Rates.

(a) A misquotation of rate by the carriers agent is insufficient as a basis upon which to award reparation. Philadelphia Quartz Co. v. Director General, 95 I. C. C. 593, 594.

(bc) The erroneous information alleged to have been given by the carriers agent upon which complainant relied in support of its claim against that carrier affords no basis for relief from the Commission. Krauss Bros. Lumber Co. v. I. C. R. R., 96 I. C. C. 760, 761.

(de) Relying on joint rate and route quoted by originating carrier's agent. complainant specified such rate and route in bill of lading, and prepaid charges However, there was no joint rate in connection with originating line, and higher combination was applicable. Undercharges collected at destination. Route of movement was shortest route in connection with originating line, and applicable rate was lowest available rate via any route over which originating line could have received a haul. Notwithstanding fact that originating carrier misquoted rate to complainant, it was not obligated to turn shipment over to competing carriers at point of origin and forego a haul thereon. Newsom v. M. & O. R. R. Co., 91 I. C. C. 68.

(f) Notwithstanding fact that an originating carrier misquoted a rate to a shipper, it is not obliged to turn shipment over to competing carriers at point of origin and forego a haul thereon. McLean Lumber Co., 22 I. C. C. 349. Newsom v. M. & O. R. R. Co., 91 I. C. C. 68, 70.

(g) Shippers and carriers alike are charged with knowledge of lawfully published rates and tariff provisions, and the misquotation thereof by an agent of the carrier, except in cases within the purview of section 6 (11) of the interstate commerce act, affords no basis for an award of reparation. Chapin-Sacks Corp. v. P. R. R. Co., 96 I. C. C. 706, 708.

(h) Misquotation of rates by carrier's agent does not afford, in itself, a basis for an award of reparation. Conejos Cooperative Mills & Mfg. Co. v. Director General, 98 I. C. C. 515, 516.

(ha) Tariff carried rates on household goods based on declared value, but shipper was misled through misinformation furnished by carrier's agent into declaring a valuation higher than that at which he actually valued the goods, resulting in the application of a rate higher than that which would otherwise have applied. FOUND: Misquotation of a rate by carrier's agent affords no ground for an award of reparation, and applicable rate, herein determined, was not unreasonable or otherwise unlawful. Arizona Corp.

Comm. v. A. E. R. R., 102 I. C. C. 578.

(i) Misquotation of a rate by carrier's agent affords no ground for an award of reparation. See 12 I. C. C. 469. Arizona Corporation Commission v. A. E. Ry., 102 I. C. C. 578, 579, 580.

(j) A misquotation of a rate affords no basis for an award of reparation. Fess v. C. H. & G. L. Ry., 104 I. C. C. 262, 264.

ALL OTHER CITATIONS

Armacost Co. v. M. & M. T. Co., 88 I. C. C. 185.

§8½. Previous action of commission.

See Previous Decisions of Commission; Reasonableness of Rates §26½.

(a) Complainant attacked commodity rates charged on apples, carloads, from Yakima, Wash., and Hood River, Oreg., to Mesa, Ariz., as unreasonable. In 88 I. C. C. 385, the Commission found rates attacked as unreasonable to extent they exceeded $1.405. In 78 I. C. C. 319 the Commission found the rate attacked unreasonable to extent it exceeded $1.41. HELD, upon further consideration rates attacked unreasonable to extent they exceeded $1.41, reparation awarded. Johnson Pearce Produce Co. v. O. W. R. & N. Co. 89 I. C. C. 361.

(b) Complainant attacked commodity rates charged on canned tomatoes from Livermore, Ky., to Evansville, Ind., as unreasonable. In 88 I. C. C. 405, the Commission found rates attacked unreasonable to extent they exceeded 20c, and for future to extent they exceeded 18c, reparation awarded. HELD, reparation awarded. Gilbert Company v. L. & N. R. R., 91 I. C. C. 377.

(c) Complainant attacked commodity rates charged on newsprint paper from Wisconsin to Wichita, Kas., Oklahoma City and Okmulgee Okla., as unreasonable and in 66 I. C. C. 571, the Commission prescribed reasonable maximum rates, using rates from the Fox River group in Wisconsin as the basis of the structure, and awarded reparation. Upon rehearing, reparation awarded. Wichita Board of Commerce v. Director General, 92 I. C. C. 370.

(d) Complainant attacked commodity rate of $1 charged on muriate of potash, carloads, shipped during federal control from Wilmington, Calif., to Bay City, Mich., and Niagara Falls N. Y., as unreasonable to extent it exceeded 75c. In 78 I. C. C. 413, the Commission found the rates unreasonable and awarded reparation. HELD, findings in original report affirmed. Diamond Match Company v. Director General, 92 I. C. C. 373.

(e) Complainant attacked commodity rates on box board chip board, wood pulp board, and newsboard, carloads, from Thomson, N. Y., to points on the B. & M., and New Haven as unreasonable to extent they exceed by more than 6c the rate from Johnsonville N. Y. Original report found in 81 I. C. C. 591. HELD, reparation awarded. United Paperboard Company v. G. & J. Ry., 92 I. C. C. 651.

(f) In 63 I. C. C. 6, the Commission found rates attacked on horses and mules, carloads, from numerous points various states to Atlanta, Ga., as unreasonable to extent they exceeded the aggregate of intermediate rates subject to the act. HELD, reparation awarded. Hudson Mule Co. v. L. & N. R. R., 93 I. C. C. 325.

(g) Complainant attacked commodity rates charged on crude petroleum from Cement, Okla., to North Fort Worth, Tex., as unreasonable. Original report found in 78 I. C. C. 572. The question at issue is whether the Commission was justified in awarding reparation upon the basis of relatively higher rates than was found reasonable for the future. The rates upon which its award was based are the rates which were specifically named in complainants prayer, but the complaint sought such other and further relief as it might find due. In the opinion of the Commission, the actual damage sustained is a matter for determination by the Commission upon the facts before it, and such determination is not limited by the sum specifically named in the complaint. HELD, rate attacked unreasonable to extent it exceeded 15.5c prior to August 26, 1920, and 21c thereafter, reparation awarded. Montrose Oil Refining Co. v. St. L. S. F. Ry., 95 I. C. C. 96.

(h) Complainant attacked commodity rates charged on box shooks, crate material and shingles, carloads, from Portland, Ore., and Washington to San Francisco as unreasonable. Original report found in 77 I. C. C. 669. HELD, reparation awarded on basis of rates found reasonable in original report. West Coast Lumbermens Asso. v. Director General, 95 I. C. C. 287.

(i) Complainant attacked commodity rates charged on canned salmon, carloads, from Seattle, Wash., Portland, Ore., and Los Angeles, Calif., to Phoenix, Ariz., as unreasonable. In 88 I. C. C. 178 the Commission found rates unreasonable to extent they exceeded rates to Tuscon, reparation held open. HELD, reparation awarded. Phoenix Chamber of Commerce v. A. T. & S. F. Ry., 95 I. C. C. 665.

(j) Complainant attacked commodity rate charged on one car of nut coal Sept. 14, 1922 from Mount Harris, Colo., to Dixon, Neb., as unreasonable. Mount Harris is in the Oak Hills district in Colorado on the D. & S. L. Shipment moved via that line and Burlington 876 miles, charged $6.36. On Sept. 17, 1922 rate was reduced to $6.36 following 73 I. C. C. 189 and 68 I. C. C. 676. HELD, rate attacked unreasonable to extent they exceeded $6.36, reparation awarded. St. Anthony & Dakota Elevator Co. v. D. & S. L. Ry., 96 I. C. C. 49.

(k) In 81 I. C. C. 131 the Commission made findings with respect to shipments of wool and mohair, in the grease, in sacks and bales, from points west of the Missouri river to Boston, Mass., during federal control, and determined the basis for an award of reparation. Case was reopened for further hearing to determine the amount of reparation due to individual shippers. HELD, reparation awarded. Boston Wool Trade Asso. v. Director General, 98 I. C. C. 48.

(ka) Complainant attacked commodity rates charged on grain and grain products, carloads, from Idaho, Montana, Oregon and Washington to California, Ore., Washington, Utah, Minn. Mo. and Tennessee between Nov. 20, 1921, and Jan. 6, 1922, as unreasonable. The order in 64 I. C. C. 85 was originally effective Nov. 20, 1921, subsequently postponed by the Commission until Jan. 6, 1922, and reparation is sought during this period. Complainants offer no evidence bearing upon the reasonableness of the rates in effect when these shipments moved. HELD rates attacked not unreasonable, complaints dismissed. Northern Grain & Warehouse Co. v. O. S. L. R. R., 100 I. C. C. 319.

(kb) Upon further hearing, rates on crude petroleum, in tank-car loads, from Irvine and Beattyville, Ky., to Blue Island, Ill., found unreasonable to extent they exceeded rates from mid-continent field. Taking into consideration the greater distance from mid-continent than from eastern Kentucky field, a parity of rates as between the two fields would sufficiently allow for mountainous character of originating territory in eastern Kentucky, for lesser volume of movement, and for lighter weight of the oil. Reasonable rates prescribed and reparation awarded. Original report, 59 I. C. C. 689, reversed. Barnett Oil & Gas Co. v. Director General, 93 I. C. C. 85.

(kc) Following Jones & Laughlin Steel Co., 91 I. C. C. 300, reparation awarded complainants and interveners in respect of interstate shipments on which they paid charges of the Monongahela Connecting, South Buffalo, and Union railroads, in addition to district rates of trunk-line connections, defendants having failed to justify increased rates during nonabsorption period in so far as they resulted in transportation charges exceeding those contemporaneously in effect to and from trunk-line points in the same rate districts, aggregate charges applicable during the period of nonabsorption having been found unreasonable to that extent in the cited cases. Jones & Laughlin Steel Co. v. P. & L. E., 93 I. C. C. 637.

(kd) In original report 78 I. C. C. 572, the commission awarded reparation for unreasonableness down to the basis specifically named in complainant's prayer for damages. Complaint, however, sought such other and further relief as the commission might find due. Upon further consideration, rate prescribed for future in such former report, taking into account the general reductions and advances, found reasonable for application on past shipments and reparation awarded accordingly. Montrose Oil Rfg. Co. v. St. L.-S. F., 95 I. C. C. 96.

(ke) Rates on news-print paper and certain paper articles from points in Wisconsin, Michigan, Minnesota, and Missouri to Oklahoma City and Guthrie found unreasonable to extent they exceeded rates found reasonable in Minnesota & Ontario Paper case, 66 I. C. C. 571. Reparation awarded. Oklahoma Publishing Co. v. A., T. & S. F., 95 I. C. C. 448.

(kf) Upon contention by carriers that commission's findings in Minnesota & Ontario Paper case, 66 I. C. C. 571, required a widespread and comprehensive readjustment in rates and that it would be

inequitable to require them to pay reparation; furthermore, that shippers can better afford to bear higher rates charged than carriers can afford further reductions in their earnings, FOUND: Latter contention is obviously untenable, and as to former, the circumstances here are substantially the same as in a number of cases where reparation has been awarded to basis found reasonable in the cited case. Oklahoma Publishing Co. v. A. T. & S. F., 95 I. C. C. 448, 449.

(kg) Rates on paper bags and wrapping paper from Marinette, Wis., to Ft. Worth, Dallas and San Antonio, Tex., found unreasonable to extent they exceed rate prescribed in Minnesota & Ontario Paper Co., 66 I. C. C. 571. Reparation awarded. Victory Bag & Paper Co. v. A., T. & S. F., 95 I. C. C. 677.

(l) Contention that no reparation should be awarded to basis of rates prescribed in Minnesota & Ontario Paper Co., 66 I. C. C. 571, because such rates were in the nature of a general readjustment, not sustained. Similar contention was raised in 87 I. C. C. 539, in which reparation was awarded. Victory Bag & Paper Co. v. A. T. & S. F., 95 I. C. C. 677, 678.

(m) Rate on newsprint from Alexandria, Ind., to Omaha, Nebr., and Kansas City, Mo., found unreasonable for the future. Rates on newsprint, printing paper, and certain other kinds of paper from manufacturing points in Minnesota, Wisconsin, upper Michigan, and in c. f. a. and eastern territories to Omaha and Kansas City found not unreasonable. Reparation based upon rates prescribed in Minnesota & Ontario Paper Co., 66 I. C. C. 571, denied as to certain points and allowed as to others. Western Newspaper Union v. A., T. & S. F., 96 I. C. C. 5.

(n) Upon further consideration, statement in original report, 92 I. C. C. 32, that defendants not made parties to the complaint within the statutory period may join in payment of reparation, eliminated. In Phillips v. Grand Trunk Ry., 236 U. S. 662, it was held that with respect to claims not filed within the statutory period the remedy is barred and liability destroyed. Larrowe Milling Co. v. A. A. R. R., 96 I. C. C. 329.

(o) Reparation awarded on shipments of cereal beverages, in carloads, from St. Louis, Mo., to Dallas and Fort Worth, Tex., made subsequent to the hearing under rates found unreasonable in the original report, 88 I. C. C. 143. Cohen v. A., T. & S. F., 96 I. C. C. 459.

(p) Upon further hearing, FOUND: That, except in certain instances, evidence of record does not afford a reliable basis for determining the amount of reparation to which complainants may be entitled on shipments of poplar and gum logs covered by findings in original report, 62 I. C. C. 669, and unless further hearing is requested within 60 days after service of report to supplement present record, complaint will stand subject to dismissal for failure of proof. Southern Veneer Asso. v. A. C. L. R. R. Co., 98 I. C. C. 112, 118.

(q) Rates on cottonseed from Oklahoma points to Sherman, Tex., found unreasonable during period up to August 15, 1923, to extent they exceeded rates contemporaneously applied for like distances between Shreveport, La., and points in Texas; and on and subsequent to August 15, 1923, found unreasonable to extent they exceeded or may exceed rates under the distance scale shown in Appendix 7, applied in the manner hereinbefore indicated. Reparation awarded, the similarity of transportation conditions throughout this territory justifying a retroactive rate adjustment to Sherman. Oklahoma Corp. Commission v. A. & S. Ry. Co., 98 I. C. C. 183, 253.

(r) Upon further consideration commission is of the opinion that finding of unreasonableness of rates on clean rice from points in Arkansas, Louisiana, and Texas to points in Oklahoma, in 95 I. C. C. 645, wherein a reasonable scale of distance rates is prescribed, does not necessitate a general readjustment as that term is used in cases where it has formed the basis for a denial of reparation, and, even so, reparation still would be proper under principle announced in 52 I. C. C. 481. Alton Mercantile Co. v. A. & W. Ry. Co., 98 I. C. C. 581, 582.

(ra) Cases cited in which reparation has been awarded down to basis of rates subsequently established in conformity with general readjustment of rates on paper and paper articles made effective following decision in Minnesota & Ontario Paper Co., 66 I. C. C. 571. Butler Paper Co. v. C., I. & W. R. R., 102 I. C. C. 311, 312.

(s) In 89 I. C. C. 437 the Commission found that the rates on cabbage, carloads, from Washington to St. Louis,

Mo., were unreasonable to the extent they exceeded 94c, reparation awarded. Upon petition of defendant rehearing was had as to the payment and bearing of freight charges. HELD, reparation awarded. Meyer Vasquez Produce Co. v. Director General, 102 I. C. C. 491.

(t) In 83 I. C. C. 712 the Commission found that the rates of $2.60 prior to August 26, 1920, $3.64 between that date and June 30, 1922, and $3.28 thereafter on anthracite birdseye coal from Groups A B and C on the D. & H., in Pennsylvania to Thomson, N. Y., as unreasonable to extent they exceeded $2.30 prior to August 26, 1920 $3.22 from August 26, 1920 to June 30, 1922 and $2.90 thereafter. Reparation awarded, and rate prescribed was made effective Feb. 14, 1924. A petition of intervention was filed alleging that the rates to Ondawa were and are unreasonable. When the original report was issued Ondawa took the same rates as Thomson. Ondawa is located between Thomson and Greenwich, N. Y., 4.06 miles from the former and 2.42 miles from the latter. All traffic over the G. & J., to Thomson must pass through Ondawa and it is therefore apparent that with respect to traffic to Ondawa the same transportation conditions prevails as with respect to traffic to Thomson. The intervening petition does not unduly broaden the issues. The traffic here considered moves over the D. & H., to Mechanicville, N. Y., thence D. & H., over tracks of the B. & M., to Johnsonville, N. Y., where it is delivered to the G. & J., for hauling to destination. HELD, reparation awarded based on rates found reasonable in the original case. United Paperboard Company v. G. & J. Ry., 102 I. C. C. 502.

(ta) Upon contention that reparation should not be awarded to basis of rates established pursuant to decision in Minnesota & Ontario Paper Case, 66 I. C. C. 571, because that case involved a general readjustment of such nature as to come within category of cases where reparation is usually denied, FOUND: Since decision in the Paper case reparation has been awarded in a number of proceedings to bases established pursuant to that decision. Reparation awarded here. Wortham-Carter Publishing Co. v. Director General, 102 I. C. C. 729, 737, 743, 744.

(u) Complainant attacked commodity rate charged on 527 cars of iron ore shipped from Ironwood, Mich., and Baraboo, Wis., to Carondelet, Mo., between August 26, 1920 and July 6, 1921 as unreasonable and unjustly discriminatory and reparation is sought on basis of rate prescribed in 62 I. C. C. 194, original report in 74 I. C. C. 369, complaint dismissed. The shipments moved from East St. Louis over the Terminal, either via the Merchants Bridge to Lesperance St., St. Louis, a distance of about 12 miles, or to Dupo, Ill., 7 miles, and from those points over the M. P., to complainants plant, distances of 4.5 and 6.5 miles, respectively. Of the total of 527 shipments 198 moved over the former route and the remainder over the latter. The joint rates were the same over both routes. In 62 I. C. C. 194 the Commission had before it a terminal situation which involved delivery in the northern East St. Louis switching district, whereas in the instant proceeding there is involved a somewhat greater haul, the crossing of the Mississippi river, and transportation through the congested St. Louis district. HELD, rates attacked not unreasonable or otherwise unlawful, complaints dismissed. Mississippi Valley Iron Company v. C. & N. W. Ry., 104 I. C. C. 243.

(v) Complainant attacked commodity rate charged on two cars of paper boxes, knocked down flat, from Chicago, Ill., to Dallas, Tex., on April 22 and May 24, 1922 as unreasonable, unjustly discriminatory and unduly prejudicial. Charged $1.135, rate of 86.5c desired. In 66 I. C. C. 571 the Commission prescribed rates from and to the points involved, and effective Dec. 15, 1922 the carriers published a rate of 78c, which would have been 86.5c prior to the 10 per cent reduction. HELD, rate attacked unreasonable to extent it exceeded 86.5c, reparation awarded. Chicago Carton Co. v. C. B. & Q. R. R., 107 I. C. C. 586.

(w) Findings in 64 I. C. C. 85, that the "present rates on coarse grain will be for the future unjust and unreasonable" did not become binding until finally ordered into effect on January 7, 1922, although November 20, 1921, was originally suggested to carriers as date when reductions should be made effective. Reparation on shipments moving between those dates denied. Northern Grain & Warehouse Co. v. O. S. L. R. R. Co., 100 I. C. C. 319, 321.

(x) Shipments of hay from points in northeastern Oklahoma to points in northern Texas, which moved during the

period covered by the complaint here involved, appear to have been assessed charges at group rates substantially in accord with prior decision in 69 I. C. C. 207, and the further changes that are now being made are part of a general readjustment of rates in this territory. Reparation denied. Oklahoma Corp. Comm. v. A. & S. Ry., 101 I. C. C. 116, 132.

(y) Following Waco Chamber of Commerce, 73 I. C. C. 708, and other cited cases, reparation awarded on shipments of newsprint paper moving from International Falls, Minn., to Arkansas City, Kans., to basis of rates subsequently established by carriers in compliance with decision in Minnesota & Ontario Paper Case, 66 I. C. C. 571. News Publishing Co. v. A., T. & S. F., 101 I. C. C. 419.

(z) In 92 I. C. C. 675 the Commission found rates charged since July 17, 1922 on crude feldspar, carloads, from Maine, New Hampshire and Connecticut to Trenton, N. J., as unreasonable and unduly prejudicial. HELD, reparation awarded. Ceramic Traffic Asso. v. Me. Central R. R. 109 I. C. C. 51.

(aa) Complainant attacked commodity rates charged on lumber carloads from Whiteville, Lake Waccamaw and Boardman, N. C., to Norfolk and Pinners Point, Va., and points north thereof prior to May 15, 1915 as unreasonable. HELD, in 48 I. C. C. 475, reparation awarded. Complainant attacked rates charged on lumber, carloads, from Bolton, N. C., to Norfolk, and Pinners Point as unreasonable prior to May 22, 1915, HELD, in 55 I. C. C. 595, rates found unreasonable to extent they exceeded aggregate of intermediates, reparation awarded. HELD, complainants entitled to reparation based on previous orders, and so found. Butter Lumber Co. v. A. C. L. R. R. 109 I. C. C. 224.

ALL OTHER CITATIONS

Midland Linseed Products Co. v. N. Y. S. & W. R. R. Co., 88 I. C. C. 329.

§10½. Showing of Damage.

See Act to Regulate Commerce §2 (c); Allowances VI; Discrimination §15, §17; Interstate Commerce Commission VI; Long and Short Hauls §13.

(a) A shipper is damaged when he pays the unreasonable transportation charges, and it is not necessary to go beyond the first step. Cutler Hammer Mfg. Co. v. Director General, 92 I. C. C. 9, 10.

(b) It is equally true that the collection of an unreasonable rate constitutes a tort giving rise to a claim for damages whether that rate be collected by a common carrier or by an agent of the Director General. Shreveport Creosoting Co. v. L. & P. Ry., 92 I. C. C. 519, 523.

(c) The shipper or consignee has suffered damage when he pays the unreasonable rate and his claim accrues at once in theory of law. Shreveport Creosoting Co. v. L. & P. Ry., 92 I. C. C. 519, 526.

(d) Even if it were found that the freight rates were the controlling reason for the closing of complainants mill, the "general damages" claimed are speculative. Fleming Bros. v. G. N. Ry., 92 I. C. C. 582, 585.

(e) The measure of damages recoverable upon a finding of unjust discrimination or of undue prejudice is the pecuniary loss inflicted upon complainant as the result of the unjust discrimination or of the undue prejudice alleged. Donner Steel Co. v. D. L. & W. Ry., 92 I. C. C. 595, 598.

(f) Proof of specific damage is required before the Commission may award reparation under the sections of the act alleged to have been violated. Fowler Commission Co. v. St. L. S. F. Ry., 92 I. C. C. 641, 642.

(g) Complainant attacked as overcharges made during federal control filed August 29, 1922. They are based upon the theory that any departure from the requirements of the fourth section of the act is unlawful, that the published tariff charge reflecting such a departure does not show the legal tariff charge, that the latter is to be found in the lower rate to a more distant point or in the lower aggregate of intermediate rates, and that the collection of the published tariff charge which exceeds lower rates so found is a straight overcharge. No. 14285 relates to charges collected on vegetables and melons from California to Tacoma and Seattle; Wash., rates collected in excess of the combination of locals. No. 14286 has reference to diferent commodities from California to Oregon higher than from points beyond. No. 14287 relates to vegetables and melons from California to Oregon in violation of the long and short haul clause. HELD, no proof of damages was shown,

complaints dismissed. Pacific Adjustment Co. v. Director General, 93 I. C. C. 50.

(h) In the absence of proof of damage to the shipper, the fact that the carriers have charged or received rates which violate the long and short haul rule of the fourth section is not of itself sufficient basis for an award of reparation. Lissberger & Co. v. N. Y. N. H. & H. R. R., 96 I. C. C. 231, 233.

(i) Claims for damage under undue prejudice must be established by evidence and proof of such evidentiary value as would warrant a judgment in a court of law. In such cases the claimant must not only show that the discrimination alleged or found to exist has operated to his injury but must also show that he has been damaged and the amount thereof. Carnegie Steel Co. v. Director General, 96 I. C. C. 527, 536.

(jk) Following Missouri Portland Cement Co., 88 I. C. C. 492, wherein it was held that a shipper is damaged when he pays unreasonable transportation charges, and that it is not necessary for the commission to go beyond the first step, reparation awarded to complainant who paid, but who failed to prove that it bore, the unreasonable transportation charges. Cutler-Hammer Mfg. Co. v. Director General, 92 I. C. C. 9.

(l) Fact that word "damage" appears in section 206 (c) of the transportation act, in contradistinction to words "full amount of damages" appearing in section 8 of interstate commerce act, has no special significance. The commission concludes and finds that the director general is liable for "the full amount of damages" suffered by a shipper through the collection of an unreasonable rate by the Director General of Railroads, or his agents, during Federal control; and that the measure of that liability is the same as that of a common carrier subject to the interstate commerce act, the sovereign right of the Government having been waived to this extent by act of Congress. Shreveport Creosoting Co. v. L. & P. Ry., 92 I. C. C. 519, 526.

(m) Collection of an unreasonable rate is a tort arising from the unlawful exaction of money belonging to shipper or consignee in violation of the carrier's obligation to transport for a reasonable price and should be distinguished from personal-injury torts. The shipper or consignee has suffered damage when he pays the unreasonable rate and his claim accrues at once in theory of law. Darnell-Taenzer case, 245 U. S. 531. In reimbursing shipper for loss thus suffered interest is awarded as an element of compensatory damages due him, and not for any default or delay in payment of the damages. "Such damages may reasonably include interest and costs." Ault case, 256 U. S. 554. Shreveport Creosoting Co. v. L. & P. Ry., 92 I. C. C. 519, 520, 526.

(n) The interstate commerce act directs that "full amount of damages" suffered by a shipper shall be paid to him. In the commission's opinion, as an element of compensatory damages, interest runs from time the unreasonable charge is collected; otherwise shipper would not be reimbursed for "full amount of damages" suffered through detention by carrier of money belonging to him, and of the use of which he has been unlawfully deprived. Shreveport Creosoting Co. v. L. & P. Ry., 92 I. C. C. 519, 527.

(o) Complainant sought reparation under sections 2 and 3 and long-and-short-haul clause of section 4 of the act, due to application of charges on grain and products switched between its elevator and connections of defendant in Kansas City, Mo.-Kans., switching district, which were higher than those to and from a competing elevator to which complainant's plant is intermediate. Cause of complaint was subsequently removed by reducing complainant's charges to basis of those from the competitor. HELD: Since proof of specific damage is required before reparation may be awarded under sections of the act alleged to have been violated, and no such evidence was introduced by complainant, reparation denied and petition dismissed. Fowler Commission Co. v. St. L.-S. F., 92 I. C. C. 641.

(p) Proof of specific damage is required before reparation may be awarded under section 3 of the act. International Coal Co. case, 230 U. S. 184; Fowler Commission Co. v. St. L.-S. F., 92 I. C. C. 641, 642.

(q) Proof of specific damage is required before reparation may be awarded under sections 2 and 3 and the long-and-short-haul clause of section 4 of the act. International Coal Co. case, 230 U. S. 184; Iten Biscuit Co., 50 I. C. C. 724; 53 I. C. C. 729; Portland Seed Co. case, 265 U. S. 403. Fowler Commission Co. v. St. L.-S. F., 92 I. C. C. 641, 642.

(r) Complaint seeking reparation, as overcharges, based upon violations of long-and-short-haul provision of section 4 of the act, dismissed following Portland Seed Co. case, 264 U. S. 403. Pacific Adjustment Co. v. Director General, 93 I. C. C. 50.

(s) Following Nollenberger case, 15 I. C. C. 595, 598, the actual damage sustained in any case is a matter for determination by the commission upon facts before it and such determination is not limited by the sum specifically named in the complaint. Montrose Oil Rfg. Co. v. St. L.-S. F., 95 I. C. C. 96, 97.

(t) Fact that rates to an intermediate point were in excess of those to more distant points is not proof of unreasonableness, nor, in absence of evidence of specific damages to shipper, is it a sufficient basis for an award of reparation. Vessler Co. v. E. J. & E. Ry., 96 I. C. C. 75, 76.

(u) Possible shrinkage of profits, as result of prejudice, being only basis laid for an award of reparation held not sufficient to warrant an award. Carnegie Steel Co. v. Director General, 96 I. C. C. 527, 536.

(v) The measure of damages is the difference between the charges paid and those which would have accrued at certain rates in issue; and a finding of damage in a specific amount measured in this manner must rest upon evidence which shows with certainty and definiteness that this amount does not exceed, at least, the difference between such charges. The finding can not be based upon conjecture. Southern Veneer Asso. v. A. C. L. R. R. Co., 98 I. C. C. 112, 117.

(w) The only question before the Commission is that at which it has hinted; whether the fact that the plaintiffs were able to pass on the damage that they sustained in the first instance by paying the unreasonable charge, and to collect that amount from the purchasers, prevents their recovering the overpayment from the carriers The answer is not difficult. The general tendency of the law, in regard to damages at least, is not to go beyond the first step. As it does not attribute remote consequences to a defendant so it holds him liable if proximately the plaintiff has suffered a loss. The plaintiffs suffered losses to the amount of the verdict when they paid. Their claim accrued at once in the theory of the law and it does not inquire into later events. Eriksen v. A. R. R., 102 I. C. C. 374, 380.

(wa) Contention that complainants are not damaged where they reimburse to themselves freight paid by making the selling price of their goods sufficiently high to cover freight paid and a profit in addition, not sustained. Complainants paid charges assessed and took chances on making advantageous sales and neither courts nor commission have departed from principle announced in the Darnell-Taenzer case, 245 U. S. 533, wherein it was held that general tendency of the law, in regard to damages at least, is not to go beyond the first step, i.e., damage is suffered in the payment of an unreasonable charge at time such charge is paid, and it is not necessary to inquire into later events. Eriksen v. A. A. R. R., 102 I. C. C. 374, 379, 380.

(wb) Objection to evidence as to paying and bearing of freight charges on ground that there is no allegation of damage in the complaint, not sustained. Formal complaint specifically alleges complainant has been subjected to payment of rates which were unreasonable and violative of certain other provisions of law specifically named, and prays for reparation in a specific sum or in such other sum as may be found due. Meyer-Vasquez Produce Co. v. Director General, 102 I. C. C. 491.

(wc) Upon further hearing, complainant submitting satisfactory proof of paying and bearing of freight charges, reparation awarded on shipments of cabbage from certain points in State of Washington to St. Louis in amount of difference between charges paid and those which would have accrued at rates found reasonable in original report, 89 I. C. C. 437. Meyer-Vasquez Produce Co. v. Director General, 102 I. C. C. 491.

(wd) Freight allowance was received by complainant from consignor on certain shipments in order to equalize freight rate from some other point of production. Upon contention of carriers that if reparation is awarded on these shipments there should be deducted from amount thereof this allowance. HELD: Complainant paid to carriers full amount of freight charges and is entitled to full amount of reparation. To go into the matter of allowances between parties would lead away from direct results of act of carriers in exaction of unreasonable rates, into domain of indirect or remote consequences, and perhaps into

questions of equity as between vendor and vendee. See also 40 I. C. C. 747. Wortham-Carter Publishing Co. v. Director General, 102 I. C. C. 729, 744.

(x) A shipper is damaged when he pays the unreasonable transportation charges, and it is not necessary to go beyond the first step. Albers Bros. Milling Co. v. Director General, 104 I. C. C. 330, 332.

(y) Fact that complainant's competitors were placed in a position more favorable than that of complainant does not of itself establish that complainant was damaged. Complainant here is not shown to have been damaged by any undue prejudice which may have existed. H-O Cereal Co. v. A., T. & S. F. 100 I. C. C. 297, 299.

(z) If the rate was unreasonable, complainant suffered damage when it paid such rates. No further proof of damage is necessary. Raleigh Chamber of Commerce v. N. S. R. R. 109 I. C. C. 52, 54.

(aa) Before any party can recover damages under the act he must allege and show not merely the wrong of the carrier but that the wrong has in fact operated to his injury. Crosby v. St. L. S. F. Ry., 112 I. C. C. 239, 243.

(bb) Both the Commission and the courts have held that proof of damage in undue prejudice cases must be by such evidentiary facts as would be required to sustain such a recovery in a court of law. Complainant must show how the discrimination found to exist affected him to his damage. He must establish the fact of his damage, as well as the amount of the damage he claims. Wright Lumber Co. v. A. A. R. R. 112 I. C. C. 337, 339.

ALL OTHER CITATIONS

Chicago Bridge & Iron Works v. Director General, as Agent, 85 I. C. C. 99; Halliday Milling Co. v. Director General, as Agent, 85 I. C. C. 687; Cutler-Hammer Mfg. Co. v. Director General, as Agent, 88 I. C. C. 600.

§11. Rate via Competing Route.

See Evidence §47; Routing and Misrouting §5.

(a) The existence of a lower rate over other routes and the subsequent reduction to that basis of the rate over a particular route of movement are not sufficient to establish the unreasonableness of the previous rate. National Supply Co. v. N. Y. C. R. R., 95 I. C. C. 462, 463.

(b) The existence of a lower rate over other routes and the subsequent reduction to that basis of the rate over a particular route of movement are not sufficient in themselves to establish the unreasonableness of the previous rate. Mauk Lumber Co. v. Director General, 98 I. C. C. 599, 600.

§12. Readjustment of rates.

See Evidence §66; Relative Rates.

(a) Where rates found unreasonable constitute part of a general readjustment of rates in an extensive territory, reparation will be denied. Knoxville Traffic Bureau v. S. Ry. Co., 89 I. C. C. 708, 719.

(b) The law affords no remedy to defendants with respect to shipments of printing and other classes of paper which moved at rates which are less than those found reasonable. It would be manifestly unfair, therefore, to require defendants to make reparation on the classes of paper on which the rates were reduced. The Commission has frequently declined to award reparation where increases as well as reductions in rates result from a general readjustment such as the one in question. Western Newspaper Union v. A. T. & S. F. Ry., 96 I. C. C. 5, 13.

(c) The Commission has consistently denied reparation in cases where general readjustments have been made in extensive territories, involving increases and reductions. Butter, eggs, dairy products and poultry, 96 I. C. C. 19, 42.

(d) Reparation will not be awarded under general rate adjustments. Walsh Fire Clay Products Co. v. C. & A. R. R., 98 I. C. C. 458, 459.

(e) While as a general rule awards of reparation will not be made where the rates affected have been the subject of a general readjustment, this does not apply where the rates charged exceeded those found reasonable by such substantial amounts as to be intrinsically unreasonable under any adjustment. Alton Mercantile Co. v. A. & W. Ry., 98 I. C. C. 581, 582.

(f) Reparation frequently has been denied on shipments moving prior to the effective date of rates reduced by the Commission where the previous rates had long been in force and readjustment through an extensive territory was required. United Fig & Date Co. v. A. C. L. R. R., 101 I. C. C. 138, 145.

(g) Rates which might properly have been made under an adjustment in compliance with decision of commission can not be used as a basis for awarding reparation under section 1 of the act. National Coffee Co. v. G., C. & S. F., 92 I. C. C. 14, 16.

(h) Upon contention by carriers that reparation should not be awarded because rates involved were revised in connection with a comprehensive readjustment which included increases as well as reductions, HELD: Principal annunciated has no application where complaints were filed with commission before the comprehensive readjustment was contemplated and involve rates to specific destinations. Wichita Board of Commerce v. Director General, 92 I. C. C. 370, 371.

(i) Commission has long adhered to policy that in the public interest reparation should be denied when rates reduced by its orders have been in effect for long periods and when those orders required readjustment of rates throughout an extensive territory and effected shippers at many points. See also 40 I. C. C. 517; 77 I. C. C. 683. Hawkeye Fuel Co. v. S. & E. Ry. & P. Co., 93 I. C. C. 157, 159, 160.

(j) In cases involving a general readjustment of rates substantial justice would not be advanced by awarding reparation to those making such demands. Parkersburg Rig & Reel Co. v. M. P., 93 I. C. C. 667, 669.

(k) Where increases as well as reductions in rates result from a general readjustment of rates reparation will be denied. See Sunderland Bros. Co., 48 I. C. C. 377; Delaware, Lackawanna & Western Coal Co., 46 I. C. C. 506. Western Newspaper Union v. A., T. & S. F., 95 I. C. C. 5, 13.

(l) Where a general readjustment of rates, involving increases as well as reductions, is required to be established by the commission, retroactive effect to such rates as a basis for an award of reparation will be declined. Texas Co. v. K. C. S., 95 I. C. C. 81, 85.

(m) The commission has consistently denied reparation in cases where general rate readjustments have been made in extensive territories, involving increases and reductions. Alton Mercantile Co. v. A. & W. Ry., 95 I. C. C. 645, 656.

(n) Where increases as well as reductions in rates result from a general readjustment of rates reparation will be denied. See Sunderland Bros. Co., 48 I. C. C. 377; Delaware, Lackawanna and Western Coal Co., 46 I. C. C. 506. Western Newspaper Union v. A. T. & S. F., 96 I. C. C. 5, 13.

(op) Where a general readjustment of rates, involving increases as well as reductions, is required to be established by the commission, retroactive effect to such rates as a basis for an award of reparation will be declined. Texas Co. v. K. C. S., 96 I. C. C. 81, 85.

(q) Reparation will not ordinarily be awarded to the basis of a finding made in a general investigation resulting in a widespread readjustment of rates on shipments which moved prior to the effective date of the order. Western Pine Mfrs. Asso. v. Director General, 102 I. C. C. 753, 755.

(r) In cases where a readjustment of rates is required throughout an extensive territory involving both increases and reductions and affecting shippers at many points substantial justice would not be advanced by awarding reparation. West Coast Lumbermens Asso. v. A. & S. Ry., 104 I. C. C. 695, 702.

(s) Rates on peanuts from points in Alabama, Florida, Georgia, South Carolina and Tennessee to Chicago, Ill., Milwaukee, Wis., Canton and Cleveland, O., South Bend, Ind., and Dubuque, Iowa, found unjust and unreasonable for future to extent indicated herein. Reparation denied because of change in long-continued basis in effect north of Ohio River, and because of extensive territory involved, following 53 I. C. C. 59, 65. United Fig & Date Co. v A. C. L. 101 I. C. C. 138.

(t) Reparation denied due to fact that rate factors in issue are included in an extensive readjustment. Procter & Gamble Distributing Co. v. St. L.-S. F. 101 I. C. C. 563, 581.

(ta) Upon contention that reparation should not be awarded to basis of rates established pursuant to decision in Min-

nesota & Ontario Paper Case, 66 I. C. C. 571, because that case involved a general readjustment of such nature as to come within category of cases where reparation is usually denied. FOUND: Since decision in the Paper case reparation has been awarded in a number of proceedings to basis established pursuant to that decision. Reparation awarded here. Wortham-Carter Publishing Co. v. Director General, 102 I. C. C. 729, 737, 743, 744.

(tb) Reparation will not ordinarily be awarded to basis of finding made in a general investigation resulting in a widespread readjustment of rates on shipments which moved prior to effective date of commission's order. See 69 I. C. C. 11 and other cases cited. Western Pine Mfrs. Asso. v. Director General, 102 I. C. C. 753, 755.

(u) In many decisions the Commission has adhered to the principle that in a comprehensive and systematic readjustment of rates prescribed by it within a large section of territory claims for reparation will not ordinarily be allowed. Cook v. A. T. & S. F. Ry. 109 I. C. C. 493, 496.

(v) Where readjustments of rates have been initiated by carriers, the exercise of their judgment in good faith and within reasonable limits should not be at peril of liability of reparation; and that the awarding of reparation by no means necessarily follows the reduction of a rate by their voluntary action. Western Paper Makers Chemical Co. v. G. & S. I. Ry., 112 I. C. C. 221, 222.

ALL OTHER CITATIONS

Co-Operative Oil & Paint Co. v. Director General, as Agent, 88 I. C. C. 747.

§13a. State Shipments.

See State Rates and Regulations.

(a) Some of the reparation statements submitted embraced intrastate shipments which moved both prior and subsequent to Federal control. As to such shipments the commission is without authority to award reparation. Before these statements were finally submitted to the carriers for checking, prior to the entry of any reparation order which might be issued, such shipments should have been eliminated. Chicago Live Stock Exchange v. A., T. & S. F., 100 I. C. C. 266, 273.

§16. Voluntary or subsequent reduction.

See Evidence §64; Reasonableness of Rates §32½.

(a) The Commission has repeatedly held that a subsequent reduction of a rate is not of itself ground for reparation. Lynchburg Chamber of Commerce v. N. C. & St. L. Ry., 91 I. C. C. 586, 587.

(b) While the reduction of a rate is not by itself a basis for an award of reparation, the higher rate was applicable solely because of the use to which the commodity was put. Durant Motors v. A. Ry. Express, 91 I. C. C. 695, 696.

(c) Complainant attacked commodity rate charged of $3.91 on three cars of coal shipped in September, 1920 from Wayco, O., to Randolph, N. Y., as unreasonable, unjustly discriminatory and in violation of the fourth section. Wayco is on the P. & W. V., Randolph is on the Erie about 16 miles east of Jamestown, N. Y., and 13 miles east of Falconer, N. Y. One car moved over P. & W. V., West Side Belt, B. & L. E., and Erie. Other two moved W. & L. E., in connection with the same originating and delivering lines. Shipments were originally billed to Jamestown, which took a rate of $2.51. Shipments were reconsigned to Randolph charged at combination on Falconer or Jamestown. The rate to Jamestown subsequently became effective to Randolph. HELD, rate attacked unreasonable to extent it exceeded $2.61 reparation awarded. Randolph Furniture Works v. E. R. R., 92 I. C. C. 245.

(d) Neither the voluntary nor compulsory reduction of a rate by a carrier necessarily entitles shippers under the unreduced rate to reparation. The Commission has long adhered to the policy that in the public interest reparation should be denied when rates reduced by orders of the Commission have been in effect for long periods and when those orders required readjustment of rates throughout an extensive territory and affected shippers at many points. Hawkeye Fuel Co. v. S. & E. Ry. P. & Co., 93 I. C. C. 157, 159.

(e) Complainant attacked combination class and commodity rates charged on a car of sweet potatoes shipped Jan. 1, 1920 from Dardanelle, Ark., to Spokane, Wash., as unjust and unreason-

able. Shipment moved to Russelville, Ark., 5 miles thence to Spokane, 2,009 miles charged 16.5c class C to Russellville and commodity rate of 94c beyond. The 94c rate also applied from Dardanelle to Spokane with the Rock Island as the originating carrier. This rate became applicable via route shipment moved Sept. 20, 1921. HELD, rate attacked unreasonable to extent it exceeded 94c, reparation awarded. Fort Smith Commission Co. v. Director General, 95 I. C. C. 149.

(f) The fact that the rates prayed were subsequently established affords no adequate basis for an award of reparation. Barker Evans Paint Co. v. Director General, 98 I. C. C. 414, 418.

(gh) Reparation not awarded to basis of a subsequently established joint thru rate based upon the aggregate of intermediates over the short lines which was lower than the joint rate paid over the more indirect route of movement. Kirschbraun & Sons v. G. N. Ry., 100 I. C. C. 28, 33.

(ij) Rates on asphalt from San Francisco to Great Falls and Billings, Mont., found unreasonable to extent water factor, San Francisco to Portland, exceeded lower proportional rate contemporaneously in effect on same commodity between same points via another water carrier, which lower rate was subsequently made applicable over route of movement. Reparation awarded. Warren Construction Co. v. G. N. P. S. S. Co., 92 I. C. C. 302.

(k) Rate on returned paper winding cores found unreasonable to extent it exceeded rate contemporaneously in effect on newsprint paper. Subsequent to movement carrier provided in its tariff that rate on cores returned to mill point from which originally shipped wound with paper would not exceed the rate on newsprint paper in reverse direction. Reparation awarded. Nelson Estate v. C., M. & St. P., 93 I. C. C. 607.

(lm) Complainant attacked commodity rates charged on cars of paper and paper articles from New Orleans to Dallas, Tex., between Dec. 21, 1921 and Sept. 1, 1922 as unjust and unreasonable. Charged $1.08 prior to July 1, 1922 and 97c thereafter until Sept. 14, 1922 when the rate was reduced to 68c. This latter rate was established to maintain a rate relationship of long standing between New Orleans and St. Louis, Mo., on traffic to Texas common points. HELD, rate attacked unreasonable to extent it exceeded 75.5c prior to July 1, 1922 and 68c thereafter, reparation awarded. Palmer & Company v. H. & T. C. Ry., 102 I. C. C. 372.

(n) The mere reduction of a rate is insufficient to prove that the former higher rate was unreasonable, and in the absence of proof of damage to the shipper the fact that the carriers have charged or received rates which violate the long and short haul rule of the fourth section is not of itself a sufficient basis for an award of reparation. Eads Bros. Furniture Co. v. B. & O. R. R., 102 I. C. C. 381, 383.

(o) The subsequent reduction of a rate over the route of movement, or the contemporaneous maintenance of lower rates over other routes, does not of itself warrant an award of reparation. Utah Idaho Sugar Co. v. C. & N. E. Ry., 102 I. C. C. 388, 389.

(p) The reduction was voluntarily accorded by the carriers and in itself affords no basis for condemning the class basis formerly applicable. Kennedy & Parsons Co. v. C. & N. W. Ry., 102 I. C. C. 591, 594.

(q) It would appear unwise for this Commission to adopt a policy by which, upon the voluntary reduction of a rate, a shipper who had previously paid the higher rate should recover as damages whatever difference there might be between the rate which he was compelled to pay and the rate newly established by the railroad, where application had not been made either to the railroad or to the Commission for a reduction of the rate prior to the time at which the railroad itself made such reduction and where it does not clearly appear that the rate was at the time unreasonable. Texas Co. v. T. & P. Ry., 107 I. C. C. 147, 150.

(r) While the subsequent reduction of a rate does not show the prior rate to be unreasonable, neither does it act as a bar to reparation when the former rate was clearly unreasonable. Knoxville Iron Co. v. L. & N. R. R., 107 I. C. C. 627, 634.

(s) Defendants are right in their contention that the subsequent reduction of a rate does not show the prior rate to be unreasonable and that a violation of

the long and short haul clause of the fourth section without a showing of injury is insufficient to support an award of reparation. Murphy v. A. C. L. R. R., 107 I. C. C. 651, 652.

(t) The mere subsequent reduction in rates affords no basis for an award of reparation. Marion Machine, Foundry & Supply Co. v. C. & N. E., 101 I. C. C. 71, 73.

(u) Combination rates on mine-run coal from Coil and Sunset Mine, Ky., to Bonne Terre, River mines, and Leadwood, Mo., found unreasonable to extent they exceeded a joint rate subsequently established. Due to a miners' strike, carriers, in order to move traffic and relieve or avoid congestion, assured complainant that they would establish a joint rate if he would allow shipments to go forward. Complainant would not have permitted shipments to move prior to publication of the joint rates but for representations of carrier that it would get the benefit of that rate inasmuch as it could have availed itself of lower combination rate via another route. Reparation awarded. St. Joseph Lead Co. v. L. & N., 101 I. C. C. 352.

(v) Complainant attacked class D rate of 62.5c per 100 pounds charged on four cars of manganese ore from Philipsburg, Mont., to Portland, Ore., in Nov. 1918, as unreasonable and unduly prejudicial, the rates charged having been reduced to a basis satisfactory to the complainant. Shipments moved N. P., to Spokane, Wash. and S. P. & S. beyond, 708 miles. Rate claimed as reasonable $5 per ton, established Feb. 5, 1919. Defendant viewed the situation as promising enough to establish the commodity rate, and would have made it available for these shipments had it not been for delays incident to the formality of tariff publication. HELD, rate charged unreasonable to extent it exceeded $5.60, the rate to Tacoma. Reparation awarded. Humphreys v. Director General, 109 I. C. C. 157.

(w) Complainant attacked commodity rates charged on gypsum rock, carloads, from Plasterco and Saltville, Va., to Spocari, Ala., as unreasonable and unduly prejudicial as compared with the rates to Chattanooga Tenn., and Leeds and Birmingham, Ala. Saltville and Plasterco are local points on a branch of the N. & W. in southern Virginia, 37 and 35 miles northeast of Bristol, Va.-Tenn. Spocari is a local point on the Southern between Selma and York, Ala., 48 miles west of Selma and 29 miles east of York. Leeds is on the Southern between Birmingham and Atlanta, Ga., 18 miles east of Birmingham. Applicable rates prior to July 1, 1922, 24.5c; July 1, 1922 to June 1, 1924, 22c; June 1, 1924 to date 18.5c. Shipments moved initially over the N. & W., to Bristol, thence either over Southern direct to Spocari or over Southern to Chattanooga, A. G. S., to Birmingham and Southern beyond. Distance over former route from Saltville is 562 miles and over latter route 576 miles. Gypsum rock is a low grade commodity and its rate should be lower than the average on all freight. Undue prejudice has been removed by the publication of the 18.5c rate to Spocari. HELD, rates attacked unreasonable to extent they exceeded 20.5 c prior to July 1, 1922 and 18.5 c after that date to June 1, 1924, present rate not unreasonable, reparation awarded. Gulf States Portland Cement Co. v. N. & W. Ry., 109 I. C. C. 231.

(x) The subsequent voluntary reduction of a rate does not of itself warrant an award of reparation. Baker & Holmes Co. v. Pennsylvania R. R. 109 I. C. C. 396, 398.

§17. Willingness of Carrier to Pay.

(a) Rates can not be condemned upon admissions of unreasonableness of the character made in this case, nor can reparation be authorized unless it is shown that the act has been violated. Western Sugar Refinery v. S. P. Co., 101 I. C. C. 113, 115.

(b) Unfulfilled promises of representatives of carriers that reduced rates would be made effective is not justification for an award of reparation. Florence Chamber of Commerce v. A. & V. Ry., 107 I. C. C. 84, 96.

(c) Application was made informally by defendants to make refund of the charges collected in excess of those that would have accrued under the subsequently established rate. Conference Ruling No. 396 outlines the Commission's position with respect to authorizing reparation in instances where the carriers subsequently establish and maintain a rate upon a basis to which reparation is sought. Western Sugar Refinery v. S. P. Co. 101 I. C. C. 113, 115.

IV. LIABILITY FOR REPARATION.

See Express Companies XII.

§17½. Interest or Court Costs.

(a) It is true that a common carrier, prior to an award of reparation by the Commission can not make refund to a shipper of charges collected for transportation in interstate or foreign commerce over and above what that carrier might concede to be a reasonable rate, but it has never been seriously contended that the Commission has no authority to award interest against such a carrier as an element of damage. Numerous cases may be cited wherein the courts have approved the findings and orders of the Commission awarding damages against common carriers with interest from the dates of payment of the unreasonable charges. Shreveport Creosoting Company v. L. & P. Ry., 92 I. C. C. 519, 523.

(b) The Supreme Court held in 238 U. S. 473, that awards of reparation, including interest, under section 8 of the Act are compensatory damages and not penalties or forfeitures. Under the doctrine of 356 U. S. 554 interest may be included in awards of reparation against defendant. That case it is true, deals with liability under the federal control act and not the transportation act, but the latter can not be deemed to have made a change in this respect. Shreveport Creosoting Co. v. L. & P. Ry., 92 I. C. C. 519, 525.

(c) In reimbursing the shipper for the loss suffered through exaction of an unreasonable rate interest is awarded as an element of the compensatory damages due him, and not for any default or delay in payment of the damages. Such damages may reasonably include interest and costs. Shreveport Creosoting Co. v. L. & P. Ry., 92 I. C. C. 519, 526.

(d) The Act directs that the full amount of damages suffered by a shipper shall be paid to him. In the opinion of the Commission, as an element of compensatory damages, interest runs from the time the unreasonable charge is collected; otherwise the shipper would not be reimbursed for the full amount of damages he suffered through the detention by the carrier of money belonging to him, and of the use of which he has been unlawfully deprived. Shreveport Creosoting Co. v. L. & P. Ry., 92 I. C. C. 519, 527.

(e) By a stipulation entered of record certain complainants waived payment of interest if reparation is awarded, and others waived interest in excess of 3 per cent. HELD: Reparation awarded in accordance with such stipulation as to interest. Jones & Laughlin Steel Co. v. P. & L. E. R. R. Co., 91 I. C. C. 300, 306.

(f) The Commission has power to allow interest as part of damages sustained in consequence of exaction of unreasonable rates by director general during Federal control. Shreveport Creosoting Co. v. L. & P. Ry., 92 I. C. C. 519.

(g) In the Meeker case 236 U. S. 434, and Mills case, 238 U. S. 473, the Supreme Court held that awards of reparation, including interest, under section 8 of the interstate commerce act are compensatory damages and not penalties or forfeitures, and under doctrine of the Ault case, 256 U. S. 554, interest may be included in awards of reparation against director general. While the Ault case deals with liability under the Federal control act and not the transportation act, the latter can not be deemed to have made a change in this respect. See Davis v. Slocomb, 263 U. S. 158. Shreveport Creosoting Co. v. L. & P. Ry., 92 I. C. C. 519, 520, 525.

(h) Director General contended that commission can not include interest in an award of reparation against him for damages sustained in consequence of collection of an unreasonable rate during Federal control, basing such conclusion upon further contention that the transportation act superseded the Federal control act except as to those provisions incorporated by reference into the transportation act. HELD: With this contention, which amounts to a repeal by inference, the commission does not agree. Shreveport Creosoting Co. v. L. & P. Ry., 92 I. C. C. 519, 525.

(i) Under fourth paragraph of Section 10 of Federal control act the director general is prevented from interposing defense that he is not liable for interest on reparation claims. That paragraph specifically provides that "the commission may make such findings and orders as are authorized by the Act to regulate commerce as amended." Congress must be presumed to have known of the commission's long-established practice of awarding interest in findings and orders against carriers for damages arising from collection of unreasonable rates, and, by above-quoted provision, must be considered to have authorized

awards of interest in cases dealing with unreasonable charges collected during Federal control. Shreveport Creosoting Co. v. L. & P. Ry., 92 I. C. C. 519, 525.

(j) Upon contention of Director General that interest can not be awarded in an action against the Government in consequence of collection of an unreasonable rate during Federal control unless specifically provided by act of Congress, HELD: Contention seems to have been decided to the contrary in Seaboard Air Line Ry. v. U. S., 261 U. S. 299. Shreveport Creosoting Co. v. L. & P. Ry., 92 I. C. C. 519, 526, 527.

(k) In accordance with terms of an agreement entered into between complainant and director general, reparation awarded without interest. California Sales Co. v. Director General, 92 I. C. C. 619.

(l) Upon contention of Director General that complainant is not entitled to interest, on ground that complaint does not specifically pray for interest and that commission does not have legal power to award interest upon reparation claims made against him, HELD: Prayer of complainant that defendant be required to pay it a certain sum, "or such other sum as * * * the commission shall determine that complainant is entitled to as an award of damages," is sufficiently broad to include interest; and contention of director general as to commission's authority to award interest is disposed of in 92 I. C. C. 519. Crown Willamette Paper Co. v. Director General, 100 I. C. C. 397, 400, 401.

§19. Parties to Make Refund.

See Routing and Misrouting §19.

(a) Awards or reparation are not dependent upon the solvency or insolvency of carriers concerned. If a through rate, joint or combination, is found unreasonable and reparation is awarded the order entered runs against the carriers, collectively, that participate in the transportation. Riverside Mills, 40 I. C. C. 501; United Paperboard Co., 62 I. C. C. 60. Pinson Brokerage Co. v. C. & G. R. R. Co., 89 I. C. C. 125, 126.

(b) Complainant attacked combination rates charged on three cars of coal shipped in December 1916 and November 1917, from Williams, Okla., to Kansas City, Mo., via midland Valley to Muskogee, Okla., M. O. & G., to Baxter, Kas., or Joplin, Mo., Frisco as unreasonable. In 66 I. C. C. 588 the Commission found rates unreasonable and awarded reparation against defendants other than the K. O. & G. The order was reopened for reconsideration of the question of whether the K. O. & G., should be included in the order. The record now shows that on July 8, 1919 the K. O. & G., purchased the property of the M. O. & G., at a sale under receivership and foreclosure proceedings in the District Court, free of all encumbrances save only such claims as were filed in those proceedings within a period which expired Nov. 12, 1919; and complainants filed no claim therein covering the shipments here under consideration. It follows that the K. O. & G. is not liable for any part of the reparation. HELD, reparation awarded against the M. V., and Frisco. Midland Coal Co. v. M. V. R. R., 91 I. C. C. 571.

(c) In certain cases where combination rates have been found unreasonable, a reasonable rate for the future prescribed, and reparation awarded, the Commission has approved apportionment of the damages among the carriers upon the basis of agreed divisions of the joint rate subsequently established in compliance with the order. Midland Coal Co. v. M. V. R. R., 91 I. C. C. 571, 573.

(d) None of the carriers had control over any factor making up the combination rate except that maintained by it, nor did either contribute in any way to the injury except to the extent of whatever unreasonableness may have existed in its particular rates. To find in such a case that carriers are jointly and severally liable, if there are some unreasonableness in the individual rates of each carrier, would be to require two carriers to bear the injury done by the third where the former had no control over the actions or rates of the latter, and under circumstances which render it impossible for the carriers thus injured to obtain contribution from the other carrier. Midland Coal Co. v. M. V. R. R., 91 I. C. C. 571, 573.

(e) The charging of an unreasonable rate is a tort and parties to such a rate are jointly and severally liable for damages resulting from its collection and recovery may be had. Omaha Refining Co. v. Director General, 91 I. C. C. 575, 576.

(f) The Director General is liable for compensatory damages, as distin-

guished from punitive damages or penalties, in the same manner and to the same extent as if he were a corporate common carrier, and that such damages may reasonably include interest. Shreveport Creosoting Co. v. L. & P. Ry., 92 I. C. C. 519, 524.

(g) Combination rates were assessed under circumstances of which participating carriers were only liable for such unreasonableness as existed in their individual factors. Complainant named as a party defendant successor in interest of one carrier participating in transportation but did not name predecessor company. HELD: No order for reparation can be issued against predecessor company because not named as a party defendant and under circumstances of this case no other participating carriers are liable for damages of that company. Midland Coal Co. v. M. V. R. R. Co., 91 I. C. C. 571.

(h) Shipments moved over Missouri, Oklahoma and Gulf Ry., whose property was subsequently acquired by Kansas, Oklahoma and Gulf Ry Co., under receivership and foreclosure proceedings, free of all encumbrances save only such claims as were filed within a specified period. Upon complaint before Commission naming successor but not predecessor company as a party defendant: FOUND: Since complainant filed no claim against successor company covering shipments here involved within period specified under receivership and foreclosure proceedings, such company can not be held liable for reparation due to unreasonableness in rates of its predecessor company. Midland Coal Co. v. M. V. R. R. Co., 91 I. C. C. 571.

(i) Where an unreasonable joint rate has been collected liability of parties to such action is joint and several, and Commission may award reparation against one defendant road which participated in traffic, even though other roads which made parties defendant. See 6 I. C. C. 378 and 21 I. C. C. 20. Midland Coal Co. v. M. V. R. R. Co., 91 I. C. C. 571, 572, 573.

(j) Upon contention that reparation many not be awarded against Director General in connection with shipments originating during Federal control and delivered after termination thereof, as there is no direct evidence that he received any portion of unreasonable charges collected. HELD: Director General established unreasonable rate, participated in carriage at that rate, and is not released of his liability for violating the Act by any arrangement he may have made as to disposition of amount collected. Omaha Refining Co. v. Director General, 91 I. C. C. 575, 576.

(k) Shipments originated during Federal control but were delivered after that period had terminated. Upon contention of Director General that Commission may not award reparation on such shipments because corporate carriers are not made defendants. HELD: Applying well-established principle that charging of an unreasonable rate is tort, and that parties to such a rate are jointly and severally liable for damages resulting from its collection, recovery may be had from Director General in connection with such shipments. Darnell Taenzer case, 245 U. S. 531; International Nickel Co., 66 I. C. C. 627. Omaha Refining Co. v. Director General, 91 I. C. C. 575, 576.

(l) Director general contended that, because he was not named defendant in informal complaint and was not so named until formal complaint was filed, in so far as he was concerned the claim was barred under section 206 (c) of the transportation act, 1920. However, the informal complaint was presented to him for consideration but adjustment thereon was declined. Moreover, during pendency of the informal proceeding with his consent the commission ordered that in proceedings praying for reparation under said section, wherein director general was not named, he be made a defendant for all intents and purposes of the section. Under this state of facts failure to name director general in informal complaint was immaterial. Midland Coal Co. v. St. L. S. F., 92 I. C. C. 283, 284.

(m) The Ault case, 256 U. S. 554, establishes the principle that the director general is liable for compensatory damages, as distinguished from punitive damages or penalties, in same manner and to same extent as if he were a corporate common carrier, and that such damages may reasonably include interest. Shreveport Creosoting Co. v. L. & P. Ry., 92 I. C. C. 519, 524, 525.

(n) Reparation statement indicates that two shipments were delivered subse-

quent to the period of Federal control and the right of recovery upon these shipments lay against the Denver & Rio Grande Western, successor to the Denver & Rio Grande, and not against the director general, who was made the sole defendant herein, these shipments, therefore, are barred. Western Metals Co. v. Director General. 100 I. C. C. 314, 315.

ALL OTHER CITATIONS

Empire Lumber Co. v. Director General, as Agent, 88 I. C. C. 424; Sloss-Sheffield Steel & Iron Co. v. L. & N. R. R. Co., 88 I. C. C. 641.

§20. Release of Liability.

(a) Defendant is not relieved of his liability for violation of the act by any arrangement he may have made as to disposition of the amount collected. Omaha Refining Co. v. Director General, 91 I. C. C. 575, 576.

V. PROCEDURE.

§20¾. In General.

See Procedure Before Commission.

(a) Testimony by complainant's witness with reference to payment of freight charges will not be reviewed by the commission where such evidence is hearsay and is objected to by defendant on that ground. Southern Cotton Oil Co. v. Director General, as Agent, 89 I. C. C. 154, 155.

(b) Affidavits submitted by interveners at hearing purporting to establish fact that they "actually paid and bore charges" on shipments including in their claims, defendant objecting thereto on ground that no opportunity to cross examine affiants afforded. HELD. Affidavits, when objected to by defendants, can not be received as evidence of damage. Fairmont Creamery Co. v. Director General, as Agent, 89 I. C. C. 359, 360.

ALL OTHER CITATIONS

Beaumont Chamber of Commerce v. Director General, as Agent, 85 I. C. C. 139; Murray v. Director General, as Agent, 85 I. C. C. 422; Cohen v. A. T. & S. F. Ry. Co., 88 I. C. C. 143; Sloss-Sheffield Steel & Iron Co. v. L. & N. R. R. Co., 88 I. C. C. 640.

§21. Formal Proceedings.

See Cars and Car Supply VI; Claims.

(a) Defendants argue that complaints filed by traffic bureaus, should be dismissed because of lack of interest on part of complainants, since freight charges are not paid by them or their members. HELD: Such complainants found to have a legitimate interest in securing an adjustment of rates that will not prefer other ports over their own Moreover, section 13 of the act provides that no complaint shall be dismissed because of absence of direct damage to complainant. Charleston Traffic Bureau v. A. G. S. R. R. Co., 89 I. C. C. 501, 502.

ALL OTHER CITATIONS

Doniphan Brick Works v. Director General, as Agent, 88 I. C. C. 438; Armour & Co. v. Director General, as Agent, 88 I. C. C. 569.

§23. Court Pleadings and Procedure.

See Allowances §14½; Actions at Law; Courts.

(a) If by reason of commercial contracts, entered into under prior misrepresentation on the part of the carrier, complainant found itself in such a position that it could not abate the demurrage assessed, question of damage arising from such a situation is for the courts to consider. Krauss Bros. Lumber Co. v. I. C. R. R. Co., 96 I. C. C. 760, 761.

§25. Statements for Reparation.

See Evidence.

(a) Upon further hearing, complainant having submitted evidence in substantial compliance with Rule V of the Rules of Practice, reparation awarded on shipments moving subsequent to original hearing to basis of rates found reasonable in original report, 73 I. C. C. 567. Lancaster Steel Products Corp. v. Director General, 92 I. C. C. 1.

(b) In original report, 66 I. C. C. 571, reparation was awarded and complainants and intervener were directed to submit statements covering their shipments in accordance with Rule V of Rules of Practice, but defendants objected to proof in affidavit form as to shipments made subsequent to date of original hearing. Upon further hearing, reparation awarded on shipments as to which proof of paying and bearing of freight charges had not theretofore been made. Wichita Board of Commerce v. Director General, 92 I. C. C. 370.

(c) Complainants, to whom reparation awarded, authorized to submit reparation statement under Rule V of the Rules of Practice setting forth details of shipments made subsequent to the hearing, accompanied by proof in affidavit form that shipments were made and freight charges thereon were paid by them, with understanding that if defendants object to proof in affidavit form complainants will be accorded further hearing on question of reparation. Ontario Paper Co. v. C. N. Rys., 95 I. C. C. 66, 75; Best Foods v. C. R. R. Co. of N. J., 95 I. C. C. 738, 740.

(d) Proof consisting only of affidavits was objected to by defendants and not received in evidence. Upon representation of complainants that defendant, since the hearing, has undertaken to handle similar claims on special docket, and accepted affidavit proof, complainant authorized to file Rule V statements, accompanied by affidavits further hearing to be sought if defendant still objects to form of proof. Jockusch v. G., C. & S. F. Ry., 96 I. C. C. 500.

(e) Upon further hearing, original report 81 I. C. C. 131, reparation awarded seven members of complainant association on account of collection of unlawful charges on shipments of wool and mohair, in the grease, from points west of the Missouri river to Boston, Mass. Carriers notified to unite in the preparation of reparation statements in accordance with Rule V of Rules of Practice. If documentary evidence necessary to preparation of such statement can not be adduced within a reasonable time, further hearing may be had upon request. Boston Wool Trade Asso. v. Director General, 98 I. C. C. 48.

(f) Shipments made subsequent to hearing authorized to be included in reparation statement under Rule V of Rules of Practice if accompanied by proof in form of an affidavit that shipments were made and freight charges were paid and borne by complainant, with understanding that if carriers object to proof in affidavit form such shipper may request further hearing with respect to subject of reparation. Lillie Mill Co. v. L. & N., 102 I. C. C. 67, 71; Houston Packing Co. v. A., T. & S. F., 102 I. C. C. 385, 387; Baton Rouge Rice Mill v. N. O., T. & M., 102 I. C. C. 507, 510; Miss. R. R. Comm. v. A. & V., 102 I. C. C. 540, 552.

ALL OTHER CITATIONS

Beaumont Chamber of Commerce v. Director General, as Agent, 85 I. C. C. 139; Utah Gilsonite Co. v. A. T. & S. F. Ry. Co., 85 I. C. C. 557; Schaefer v. L. V. R. R. Co., 85 I. C. C. 605.

RESTRICTED RATES

See Absorption of Charges §3; Advanced Rates §17 (h); Class Rates §1 (k) (o); Classification §7 (c), §12⅞ (a); Commodity Rates §5 (3w); Concentrating Rates and Privileges; Facilities and Privileges §10 (a), §15 (f); Live Stock Shipments (r); Passenger Fares and Facilities §3a (a); Proportional Rates I (b), II (ccb), VI (a), VII (a); Rail and Water Rates (w) (3s); Routing and Misrouting §6; Switch Tracks and Switching §3 (s) (t) (u); Through Routes and Joint Rates §20a, §24, §25.

(a) Class rates charged on matches from Oswego, N. Y., to certain team-track delivery points in Philadelphia, found inapplicable. Lower commodity rate to Baltimore, published in tariff which provided that "rate to any station not provided with a specific rate, and which is directly intermediate to a station having a specific rate, will be the rate shown to next more distant station," found applicable. Although shipments for Baltimore would not ordinarily pass through Philadelphia delivery points here involved, it would have been physically possible to have so moved them, and there was no restriction against such routing. Shipments found overcharged and reparation awarded. Diamond Match Co. v. Director General, 92 I. C. C. 68.

(b) Shipments of apples and pears moving on through rates may be stopped in transit at points in c. f. a. territory for privilege of storage, regardless of point of origin, provided storage point is on a direct line and directly intermediate between point of origin and final destination. Proposal of the B. & O. to restrict application of joint rates on such commodities stored in transit at c. f. a. points to shipments moving into and out of transit points over its own rails, found not justified. Numerous increases and an abnormal rate situation would result, which carriers made no attempt to justify. Storage in Transit of Apples and Pears, 95 I. C. C. 101.

(ba) Proposed changes in rules covering transit on forest products at Minneapolis, St. Paul, Minnesota Transfer, St. Louis Park, and other points in Minnesota and Wisconsin, and proposed changes in intermediate rule restricting application thereof, found not justified. Under existing tariff forest products moving under through rates may be stopped in transit for creosoting or treating. Under proposed rules transit will not apply when both transit point and final destination are within same switching district, such shipments being treated as switching movements subject to switching charges. Proposed modification of intermediate rule to restrict its application to stations "on the same line of railway" would result in elimination of intermediate application of joint rates in many instances. Moreover, both changes would create departures from the fourth section. Transit Privileges on Lumber, 95 I. C. C. 154.

(c) Irrespective of intentions of framers, tariffs will be construed according to their language. If it is carriers' intention to limit rates so as to exclude specific commodities they should do so in clear and unequivocal language. Any ambiguity or uncertainty in a tariff will be resolved against its makers. Louisiana Red Cypress Co. v. M. L. & T. R. R. & S. S. Co., 95 I. C. C. 159, 160.

(d) Shipments of lumber from Falco, Ala., to Manitou Beach and Northville, Mich., found overcharged. While shipments moved via direct routes a lower rate applicable under Rule 5 (b) of Tariff Circular 18-A and unrestricted in its application, was contemporaneously in effect via a circuitous route. If carriers participating in tariff carrying the lower rate desired to restrict its use over certain routes they should have done so by the use of proper tariff notations. A failure to do so left all routes open should shippers desire to use them. Reparation awarded. M'Gowin-Foshee Lbr. Co. v. A., F. & G., 95 I. C. C. 451.

(e) The view has been long followed in tariff construction that if carriers participating in a tariff do not intend rates to apply over certain routes they must restrict their use by proper notation in the tariff. Failure to restrict routing leaves all routes open should shippers desire to use them. M'Gowin-Foshee Lbr. Co. v. A., F. & G., 95 I. C. C. 451, 452.

(f) Rates assessed on grain and products moving from points west of Buffalo to destinations on Maine Central in Washington and Somerset Counties, Me., via Washington Junction and Oakland, during Federal control found inapplicable in so far as proportionals for movements beyond Washington Junction and Oakland were applied. These proportionals were applicable only when there were no joint rates in effect from points of origin. Applicable rates were those under tariffs naming rates from points of origin and billing books to which reference was made in those tariffs. Shipments found overcharged and reparation awarded. Thaxter & Co. v. Director General, 95 I. C. C. 693.

(g) No specific joint rates were published from Petersburg, Pa., to Pueblo, Colo. Tariff naming joint rates from Petersburg to Columbus, N. Mex., in which Pueblo was not specified, carried an intermediate-point rule. The joint rates were not restricted to any particular route, nor did the tariff in any way limit movements up to the Pueblo gateway. The route via that gateway was not unreasonable or unduly circuitous, all defendants herein were parties to the Columbus rates, and in connection with other participating carriers made up the latter point "a line or route" on which Pueblo was directly intermediate. FOUND: Under the circumstances, rates to Columbus were applicable to Pueblo and shipments here involved were overcharged. Reparation awarded. Frazier Saddlery v. M. P. R. R. Co., 96 I. C. C. 1.

(h) Where tariffs are silent as to routing the rates named herein apply over all reasonably available routes of participating carriers. Frazier Saddlery v. M. P. R. R. Co., 96 I. C. C. 1, 2.

(i) Proposed restriction of the application of distance class rates between points in Nebraska, except Omaha, and points in Wyoming, so as to make them inapplicable from and to points on the line of the C. B. & Q. lying generally east of Lincoln, Crete, Beatrice, and Wymore, Nebr., resulting in higher specific class rates becoming applicable, found not justified. Casper Chamber of Commerce v. C. & N. W. Ry. Co., 96 I. C. C. 736.

(j) Proposed restriction of absorption of switching charges on coal from L. & N. stations and mines in Tennessee and Kentucky to points within the switching limits, suburbs, and industrial

limits of Atlanta, Ga., which would result in increased rates to Atlanta, found not justified. The present level of rates from L. & N. mines in Tennessee and Kentucky to Atlanta industrial district is not unreasonably low, particularly as the L. & N. transports the traffic over its own line under operating conditions which are favorable, and as it restricts the rate to the route over its own line, although there are other routes in connection with the Southern Ry., which are feasible and which can be used to advantage without an increase in the rate. Coal and Coke from Kentucky and Tennessee Mines to Atlanta, 98 I. C. C. 11.

(k) Combination rates on fuel oil from Pryse, Ky., to Newport News, Va.. found unreasonable to the extent it exceeded a lower combination contemporaneously in effect via the route of movement, one factor of which was so limited as to exclude its application to destinations in Virginia. Subsequent to the movement. the application of this factor was extended to include these destinations. Newport News Shipbuilding & Dry Dock Co. v. L. & N. R. R. Co., 100 I. C. C. 1.

(l) Proposed revision of rates from Atlanta to Buffalo and Pittsburgh proper, makes no provision for its application to the Buffalo-Pittsburgh territory. though no reason appears for so restricting the rates. Respondents directed to effect the application of proposed rates to the Buffalo-Pittsburg territory in season to take effect at same time as the suspended schedules. Furniture from Southern Points, 100 I. C. C. 127, 148.

(m) Joint rates on tin plate from McKeesport, Pa., Yorkville, O., and Cumberland, Md., to New London, Wis., moving via Ludington, Mich. thence by car ferry to Manitowoc or Kewaunee, Wis. thence by rail to destination, found not unduly prejudicial but unreasonable to extent that they exceeded the combination of proportional and local factors which would have applied in the absence of joint rates proportional factors which would have been applicable were so restricted as to result in violations of section 4 from McKeesport and Yorkville, but not from Cumberland. Reasonable rates prescribed for the future, and reparation denied. Borden Co. v. A. A. R. R. Co. 100 I. C. C 153.

(n) Following Joseph Iron Co., 37 I. C. C., 591; 40 I. C. C. 525, proportional rates found not so properly restricted as to make its application definite or ascertainable, and that the restriction thus failing, the rates found an intermediate within the meaning of section 4. Defendant attempts to distinguish the cited cases from the present one on the ground that here the through rate is published in a commodity tariff, which is a natural place to look for it. But the test is whether the restriction itself gives a definite reference by which the presence or absence of the through rate may be ascertained, thus the rates here are in violation of the aggregate-of-intermediates clause of section 4 and are prima facie unreasonable. Borden Co. v. A. A. R. R. Co., 100 I. C. C. 153, 154, 155.

(o) Proposed increased class rates from Virginia cities and points taking same rates, or rates made differentially higher, to destinations on the Charleston division of the Baltimore & Ohio found not justified. First-class rate from Lynchburg to Grafton on the main line of the B. & O. is lower than the present first class and the proposed rate to points on the Charleston division, and. since no restrictions upon the routing are made in the tariff, this rate is applicable over the Charleston division. Following Zelnicker Supply Co., 80 I. C. C. 651, and Dixie Portland Cement Co., 96 I. C. C. 47, respondents contention that no increase in discrimination against intermediate points under the fourth section results because no arrangements for divisions are in effect over these routes to Grafton, and routing over this line would not be observed, can not be sustained. Class Rates from Eastern Points to Points in West Va., 100 I. C. C. 215.

(p) Combination rate assessed on a shipment of lumber from Rose Lake, Idaho, to Danvers, Ill., found inapplicable and illegal to extent it exceeded the rate applicable to both Chicago Heights and Peoria, Ill. Danvers is intermediate between Peoria and Chicago Heights, and while the tariff carrying the rate to these points did not prescribe a specific rate to Danvers, it carried an intermediate clause. The commission has frequently found that if carriers desire to restrict the application of a joint rate to any particular route they should do so by clear and unequivocal language. With no routing restrictions shown in the tariff naming the joint rate sought, the

shipment is properly entitled to such rate. Reparation awarded. Rose Lake Lumber Co., Ltd., v. O. S. L. R. R. Co., 100 I. C. C. 221.

(q) Combination rate assessed on cork sheets or slabs without binder, from Camden, N. J., to El Centro and Brawley, Calif., found inapplicable. Joint rate alleged applicable was restricted by exception to exclude shipments passing enroute through points taking group K., L. or M. rates and complainant's shipments were therefore not entitled to the joint rate. They were, however, entitled to a lower combination based on St. Louis, applicable under rule 5 (b) of Tariff Circular 18-A. Refund of overcharges directed. Armstrong Cork & Insulation Co. v. Reading Co., 100 I. C. C. 468.

(r) Following 81 I. C. C. 338 and 91 I. C. C. 632, proposed restricted application of joint rates on grain and grain products from certain primary markets such as St. Paul and Minneapolis, Minn., Chicago and Peoria, Ill., and St. Louis, Mo. and intermediate territory between those points and Missouri River cities, to destinations in Colorado, Kansas, Missouri, Nebraska, Oklahoma, and Wyoming, to shipments originating beyond primary markets named, effecting increased rates to basis of combination rates on Missouri River and on local traffic from Chicago and other primary markets in same amount as such latter rates are increased, and resulting in many instances of violations of aggregate-of-intermediates clause of fourth section of the act, found not justified. Grain from Western Trunk Lines, 100 I. C. C. 745.

(s) Proposal of Union Pacific system to restrict routing in connection with joint rates on livestock originating on its lines in Utah, Wyoming, Idaho, and Montana destined to Missouri River and east thereof, designed for purpose of retaining to itself the long haul on this traffic, found not justified. Proposed restriction would result in shipments from some points on respondent's lines being permitted feeding-in-transit privileges at certain feeding lots located on lines other than those of respondent, while shippers of livestock originating in northern Utah and Idaho would be deprived of this privilege and compelled to pay higher rates unless shipments were routed over the Union Pacific. Undue preference of certain shippers and localities and undue prejudice against others would result. Routing of Livestock, 100 I. C. C. 751.

(t) Fifth-class rates on sugar from Philadelphia, Pa., and New York., to St. Louis, Mo., found inapplicable in that a lower commodity rate was contemporaneously in effect. The item in tariff publishing commodity rate contained a note restricting rates to proportional application only in so far as east Mississippi River crossings are concerned. It may have been the intention of carriers to so restrict application of the rates to all points listed in the item but the tariff does not effectuate that intention in so far as St. Louis is concerned. The language of the tariff rather than intention of the framers is controlling. Defendants state that the use of rates on local shipments to St. Louis will result in fourth-section violations, but this does not constitute a ground for holding that they apply other than in accordance with the terms of the tariff. Refund of overcharges directed. National Candy Co. v. P. R. R., 101 I. C. C. 43.

(u) Proposal to restrict application of proportional or reshipping rates on grain and products from Argo, Ill., and other stations in the Chicago switching district, to Boston and destinations taking that rate and to destinations in eastern Canada, via Milwaukee, and make applicable to the rail-and-lake traffic through Milwaukee, the higher combination of rates on St. Louis, found justified. Present Argo rates are being used on traffic for which they were never intended, resulting in disadvantages to certain carriers and avoidance of terminal charges at Chicago by certain lines. Proposed schedules would remedy such disadvantages. Grain and Products from Argo, 101 I. C. C. 303.

(v) Shipment of molasses moving from Morton, Miss., to New Orleans, thence reconsigned to Blytheville, Ark., found overcharged. A rate lower than that assessed, and unrestricted in its application, applied via another more direct route. There was nothing contained in tariff naming such lower rate which would have precluded complainant from routing its shipment through New Orleans had it been billed direct from Morton to Blytheville. Moreover, if it was defendant's purpose to restrict ap-

plication of the lower rate to any particular route and the reconsigning privileges in connection therewith to any particular point, it should have been done by clear and unequivocal language. See 47 I. C. C. 59. Reparation awarded. Scott County Farm Bureau v. A. & V 101 I. C. C. 357.

(w) Proposal to restrict application of rule covering rates on cement to intermediate points in western trunk-line territory, so as to apply only where no specific through rate on the same commodity from same point of origin to same point of destination is published in some other tariff, found not justified. Present rule applies rates to Thebes and Ullin, Ill., as maxima to points in southeast Missouri on the Frisco, while proposed rule would not do so, for reason that specific rates are published in other tariffs. Protestants have for some time been endeavoring to have rates to southeast Missouri adjusted and respondents have wholly failed to justify rates to points in that territory which would be higher than to points in southern Illinois. Intermediate Points Rule on Cement, 102 I. C. C. 76.

(x) Shipment of pig iron from Thomas, Ala., to Iola, Kans., reconsigned to Okmulgee, Okla., found overcharged. While route over which shipment moved is circuitous, the transporting carriers are shown as parties to tariff carrying the lower rate without restriction as to routing. Refund of overcharge directed. United Iron Works v. M. P., 102 I. C. C. 107.

(y) Combination rate charged on shipments moving into transit point via one carrier, the outbound movement being performed by a different line, found not unreasonable or unduly prejudicial. Governing tariff at time of movement restricted transit privilege to shipments moving outbound from transit point over rails of carrier performing the inbound haul, and fact that such tariff has since been amended so as to allow transit at joint rates when outbound movement is performed by a connecting line is not sufficient to warrant a finding that higher combination formerly in effect was unreasonable. Wichita Terminal Elevator Co. v. C., R. I & P., 102 I. C. C. 115.

(z) Proposed restriction of proportional rates on cottonseed cake, meal, and other cottonseed products from various groups of origin in Arkansas, Missouri, and Oklahoma to Memphis, Cairo, Thebes, and East St. Louis, and of proportional rates on cottonseed meal, hulls, and cake from Blytheville, Jonesboro, Osceola, and intermediate Arkansas points to Memphis, under provision that rates named will only apply on traffic destined to points beyond to which no through rates are published, which would result in increased rates from Arkansas points to a large number of destinations north of Ohio River to which no joint rates are published and to which present combination on Memphis makes the lowest rate, found not justified. Cottonseed Products from Southwest, 102 I. C. C. 219.

(aa) Proposed increased rates on poles (electric light, telephone, and telegraph), piling, and box and crate shooks, from Sand Point, Kootenai, and Culver, Idaho, to certain group points in California on the Western Pacific and Sacramento Northern Railroads, found not justified. The proposed tariff carries no requirement of specific or complete routing, but contains an unequivocal routing provision to which carriers attempt to apply a restricted construction, to which the commission can not lend its approval. Forest Products to California and Nevada, 102 I. C. C. 224.

(bb) Rate charged on a shipment of apples moving from Brewster, Wash., to Fort Smith, Ark., found inapplicable. A lower rate contemporaneously applied via a route considerably shorter than the route of movement but tariff in which it was published carried no restrictions as to routing. Such lower rate was, therefore, applicable via route of movement. See 47 I. C. C. 59. Reparation awarded. Browne-Hinton Wholesale Grocery Co. v. G. N. 102 I. C. C. 237.

(cc) Shipments of anthracite coal moving from Providence, Pa., to Matawan, N. J., thence reconsigned to Asbury Park, N. J., were assessed joint rates and reconsignment charges plus additional charges because of the movement through Matawan. Contention that additional charges were properly assessed under reconsignment tariffs, which provide for their application where return or additional hauls are involved and where rate from original point of shipment to final destination is not applicable through reconsignment point, it

being shown that the customary route between origin and final destination is via South Amboy and Sea Girt, not sustained. Tariff naming through rate having contained no routing restriction, such rate was applicable via route of movement, and charges assessed were illegal to extent of additional charges collected. See 47 I. C. C. 59 and other cases cited. Reparation awarded. Hartwell & Lester v. D. & H. Co., 102 I. C. C. 703.

RIVER CROSSINGS

See Bridges and Tolls; Class Rates §2 (tt); Evidence §52½; Proportional Rates.

(a) It is clear from the evidence in this case that the west side carriers as a whole can not be operated successfully on the lower basis of rates maintained by the east side lines and would be placed at a serious disadvantage if they were to attempt to compete with those carriers for river point traffic at equal rates, observing such rates as maxima at intermediate points on their lines and other stations necessarily affected. National Asso. of Furniture Mfrs. v. A. A. R. R., 98 I. C. C. 501, 507.

(b) Rates on phosphate rock from Mount Pleasant, Columbia, and Siglo, Tenn., to New Albany, Ind., a north-bank Ohio River point, found unreasonable and unduly prejudicial in favor of Louisville, Ky., a south-bank Ohio River point, to extent that they exceeded or exceed rates to Louisville by more than differential subsequently established by carriers, and which resulted in removal of undue prejudice herein found to exist. Reparation awarded. Calumet Fertilizer Co. v. L. & N. R. R. Co., 91 I. C. C. 31.

(c) For many years it has been tendency of carriers to equalize rates to the several Ohio river crossings on long hauls, but to charge differentials or local rates to north-bank points on short-haul traffic. Calumet Fertilizer Co. v. L. & N. R. R. Co., 91 I. C. C. 31, 34.

(d) Whether, as a matter of rate making, in the construction of through rates on the distance-scale basis, an allowance of a given number of miles should be made for river transfer service, or arbitraries in cents per 100 pounds be added to the rate computed on basis of strict mileage, is incapable of mathematical demonstration. Mileage for Mississippi Crossings, 93 I. C. 462, 475.

(e) Defendants authorized, in making rates under distance scale prescribed for application between points west of the Mississippi river, on the one hand, and Memphis and east-bank Mississippi River crossings south thereof, on the other, to add bridge or ferry tolls not exceeding 2 cents per 100 pounds to rate based upon the distances to or from west-bank points. No allowance should be made for crossings north of Memphis unless and until upon a more complete record the propriety of these allowances is definitely determined. The commission has never approved allowances for crossings at East St. Louis, Cairo, and Thebes, Ill. Oklahoma Corp. Commission v. A. & S. Ry. Co., 98 I. C. C. 183, 250.

(f) The river combination method of making rates to Southeast is general and of long standing. See 81 I. C. C. 96 and 77 I. C. C. 73. Piedmont Oil Co. v. A. & V. Ry., 102 I. C. C. 583, 584.

ROUTING AND MISROUTING

I. CONTROL AND REGULATION.
- §1. Jurisdiction of Commission.

II. CARRIER'S DUTY TO TRANSPORT.
- §1½. In general.
- §2. Accustomed or natural route.
- §2a. Commission service orders.
- §3. Conflict in billing between rate and route.
- §3½. Conflict between billing and shipping ticket.
- §4. Direct and cheapest available route.
- §4¼. Existence of embargo.
- §4½. Interstate or intrastate route.
- §5. Lower rate via competing line or route.
- §5½. Particular junction or terminal.
- §6. Right of carrier to route or restrict routes.
- §6½. Rail-and-water route.
- §7. Shipper's instructions.
- §7½. Washouts.
- §7½a. What routes open.

III. LIABILITY FOR MISROUTING.
- §7¾. In general.
- §8. Burden of proof.
- §8½. Missing transit or other privilege.
- §9. Measure of damages.

§10. Parties to make refund.
§11. Reparation in general.
§12. Unpublished rate.
§13. State courts.
§14. Procedure.

CROSS REFERENCES

See Bills of Lading §9, §9½, §10; Branch Lines II, §5; Crimes §23; Embargoes; Evidence §47; Express Companies V; Reconsignment; Reparation §11; Tariffs §18; Through Routes and Joint Rates §6.

I. CONTROL AND REGULATION.

See Control and Regulation.

§1. Jurisdiction of Commission.

See Interstate Commerce Commission I; Jurisdiction of Commission.

(a) Shipper, who made no request, as authorized by Interstate Commerce Act, §1, par. 4, as amended by Act Feb. 28, 1920, §400 (Comp. St. Ann. Supp. 1923, §8563), for rates between points as to which there was no published tariff, cannot recover freight charges paid over a longer route which was the most direct of any route on which rates were published, nor had the Interstate Commerce Commission authority to allow shipper a refund representing the excess over reasonable rates on the shorter route. Swift & Co. v. New York Cent. R. Co., 3 Fed (2d) 826.

(b) Nowhere in the acts which the commission administers is it empowered to recognize one route and to deny recognition to another. The meaning and purport of recognition is nowhere stated. Rail Lake-and-Rail Rates via Canada, 96 I. C. C. 633.

II. CARRIERS' DUTY TO TRANSPORT.

§1½. In General.

(a) Complainant attacked commodity rates charged on a car of sorghum seed shipped on Jan. 11, 1922, from Kansas City, Mo., to Montgomery, Ala., as unjust, unreasonable and inapplicable. Shipment moved via Frisco, to Birmingham thence Central of Georgia, charged 77c, composed of proportional commodity rate of 19c to Memphis and sixth class rate of 58c beyond. Rate of 29.5c was in effect to Mobile and sixth class 31.5c beyond. Shipper routed shipment C. of G., at Birmingham. The 29.5c factor applied over the Frisco to Birmingham thence Southern to Mobile. The 31.5c applied from Mobile to Montgomery over Southern to Birmingham thence C. of Ga., to Montgomery. The Frisco was a party to the Mobile rate as far as Birmingham; the Central a party to the Mobile-Montgomery rate from Birmingham to Montgomery. The lower combination would have applied had the shipment actually moved to Mobile and back again to Birmingham and thence to Montgomery. It is obvious, therefore, that it was the duty of the carrier under the rule to apply the Mobile rate, notwithstanding that that route was not designated by the shipper, and shipment was overcharged. HELD: Rate attacked not unreasonable but rate applicable was 61c, reparation awarded. Schloss & Kahn Groc. Co. v. St. L. S. F. Ry., 93 I C. C. 67.

(b) Complainant attacked combination rates charged on silicate of soda, carloads, from Grasselli, N. J., to Thomson, N. Y., since Dec. 1, 1921, as unreasonable, unjustly discriminatory and unduly prejudicial. Grasselli is on the Jersey Central, 436 miles from Thomson, a local point on the G. & J. Shipments moved over Jersey Central to Wilkesbarre, Pa., D. & H., to Johnsonville, and G. & J. beyond. Charged fifth class 35.5c to Johnsonville plus fifth class proportional beyond of 10.5c. There was a rate of 42c from Grasselli to Thomson over Jersey Central, D. & H., B. & M., and G. & J. No routing was specified in the bill of lading. Shipments were misrouted. The commodity rates from Grasselli to points in central territory are about 73% of the fifth class rates except to the so-called 60% points, to which the rates are 80% of fifth class. The present rate of 31c is about 81% of fifth class. Points located on the G. & J., are entitled to the same rates as points on the D. & H., in the same territory. HELD: Shipments misrouted, and reparation awarded on basis of rates subsequently established. United Paperboard Co. v. C. R. R. Co. of N. J., 95 I. C. C. 680.

(c) Complainant attacked combination rate of 70c charged on three cars of cull apples shipped Dec. 4 and 5, 1919, from Lewiston, Ida., to San Francisco, Calif., as unreasonable. Ship-

ments were tendered at Lewiston on N. P., bills of lading routed N. P., and S. P. They moved over Camas Prairie to Riparia, Wash., N. P., to Pasco, Wash., S. P. & S., to Portland, Ore., S. P. beyond, charged 50c to Portland and proportional 20c beyond. Contemporaneously a combination rate of 50c, composed of 30c to Portland and 20c beyond applied over C. P., to Riparia, O. W. R. R. & N. to Portland and S. P. beyond. The same rate applied whether the movement beyond Pasco was over the S. P. & S. or N. P., via Tacoma. HELD: Shipment not misrouted, rate attacked not unreasonable, complaint dismissed. California Packing Corp. v. Director General, 96 I. C. C. 239.

(d) Where tariffs are silent as to routing the rates named therein apply over all reasonably available routes of participating carriers. Frazier Saddlery v. M. P. R. R. Co., 96 I. C. C. 1, 2.

(e) Shipment from Pittsburg, Duquesne station, Pa., to Tulsa, Okla., was diverted, through carrier's error to Waynoka, instead of Wynona, Okla., necessitating a back haul to Wynona. Tariffs of participating carriers named, without applicable restrictions, same rate from origin to both Waynoka and Wynona, and this rate, plus diversion charge found applicable. Reparation awarded. Tidal Osage Oil Co. v. Director General, 96 I. C. C. 112.

(f) By the route shipments of secondhand refrigerators from Camp Dix (Wrightstown), N. J., to Sheffield, Ala., actually moved a car-ferry transfer from Cape Charles to Norfolk, Va., was necessary, which in complainant's opinion is equivalent to a rail-and-water movement. This contention not sustained, Conf. Ruling 316, and in the absence of specific instructions for rail-and-water route defendants were only under the obligation to protect the rate applicable over route specified by shipper. Florence Chamber of Commerce v. N. S. R. R. Co., 98 I. C. C. 594, 595.

(fa) Shipments of lumber moving from La Grange, Ga., to Philadelphia, Pa., found misrouted. Originating carrier's agent gave erroneous and conflicting instructions to route shipments "Philadelphia, Pa., Chester Station," and "Chester Station, Philadelphia, Pa," under impression that shipments for Philadelphia should be so routed. Such instructions were inserted in bills of lading by shipper, resulting in shipments moving to Chester and necessitating their reconsignment to Philadelphia. Reparation awarded. Clark Lbr. Co. v. A., B. & A., 102 I. C. C. 252.

(g) The bill of lading was accepted and signed by the representative of complainant on the latters behalf and is binding on the parties. Crown Cork & Seal Co., v S. P. Co., 102 I. C. C. 331, 332.

(ga) The difference in quality of service and in nature and liabilities of participating carriers is not as great where a differential route is optional as in that where a rail-and-water route is the alternative. In latter situation marine insurance and transfer of freight from car to vessel, among other things, must be taken into consideration. Petertyl v. N. Y. & H., 102 I. C. C. 693, 696.

(gb) Shipments of anthracite coal moving from Providence, Pa., to Matawan, N. J., thence reconsigned to Asbury Park, N. J., were assessed joint rates and reconsignment charges, plus additional charges because of the movement through Matawan. Contention that additional charges were properly assessed under reconsignment tariffs, which provide for their application where return or additional hauls are involved and where rate from original point of shipment to final destination is not applicable through reconsignment point, it being shown that the customary route between origin and final destination is via South Amboy and Sea Girt, not sustained. Tariff naming through rate having contained no routing restriction, such rate was applicable via route of movement, and charges assessed were illegal to extent of additional charges collected. See 47 I. C. C. 59 and other cases cited. Reparation awarded. Hartwell & Lester v. D. & H. Co., 102 I. C. C. 703.

(h) Complainant attacked carload commodity rates on wheat and coarse grains from Minnesota points to Chicago, Ill., Milwaukee, Wisconsin, and other Wisconsin destinations subsequent to Dec. 31, 1921 as unreasonable. Some moved via Northwestern, Milwaukee or jointly C. G. W., and Milwaukee charged 22.5c on wheat and 20.5c on coarse grains. All of the shipments moved through Winona, Minn., point of interchange between the C. G. W., and Milwaukee. There were in effect from Winona to all of the destinations proportional rates of 13c on wheat and 11.5c on coarse grains applicable, however, only

on shipments on which there were surrendered, on date of reshipment duplicate inbound freight bills representative of the outbound movement. These proportional rates, in connection with the local rates under the minimum intrastate scale inbound, made combinations on Winona ranging from 0.5c to 3c lower than the published through rates. The contention with respect to misrouting is that, inasmuch as the shipments were not specifically routed by complainants, it was the duty of the initial carrier to send the shipments over the joint routes, over which, complainants contend, the lower combinations would have applied. There is no claim for misrouting in connection with shipments over the joint route of the C. G. W., and Milwaukee. The lower combinations did not apply over any route except upon surrender of the inbound billing at Winona. It is no answer to say, as do complainants that surrender of freight bills in the possession of carriers was unnecessary and impossible and that the tariff restriction was, therefore, a nullity. Complainants shipments were billed through to destination and there was no inbound billing to Winona to surrender. HELD, rates attacked not unreasonable and shipments not misrouted, complaint dismissed. Lewiston Elevator Co. v. C. G. W. R. R. 104 I. C. C. 473.

ALL OTHER CITATIONS

Mifflin-Hood Brick Co. v. Director General, as Agent, 88 I. C. C. 205.

§2. Accustomed or Natural Route.

(a) Complaint alleged that two cars of tankage shipped from Chemical, Ill., to Montgomery, Ala., on Sept. 2 and 8, 1922, were misrouted. Chemical is a local station on the Illinois Traction north of Granite City, Ill. The only routing instructions given by the shipper were Western of Alabama delivery. The shipments moved over the I. T. to East St. Louis, L. & N. beyond via Evansville, Ind. No joint rates were in effect, charged $1.89 to Evansville and $5.07 beyond. Contemporaneously a combination rate of 29.5c was in effect from Chemical to Montgomery via East St. Louis, Ill., and M. & O. or via East St. Louis, I. C., Cairo, Ill., and M. & O. made up of 13.5c to Wicklieff, Ky., and 16c beyond. The agent was justified in routing the shipments via one of the recognized gateways through which the rates were made the same. HELD: Shipments not misrouted, complaint dismissed. Alabama Chemical Co. v. Illinois Traction, 98 I. C. C. 451.

(b) Direct connection between two carriers. Under these circumstances there was no duty upon the initial carrier to route the shipments over a route embracing the line of a intervening carrier, even though such a route would make a lower combination. Clark Equipment Co. v. C. B. & Q. R. R., 98 I. C. C. 465, 466.

(c) Complainant attacked combination rate charged on 16 cars of scrap iron between March 14 and May 28, 1923, from Thirty Seventh St. station, New York, to Bethlehem, Pa., as unreasonable, discriminatory and prejudicial. Routed Pennsylvania-Lehigh Valley no junction being designated. Delivered to L. V. at Metuchen, N. J., distance 101 miles, charged $2.65 to Metuchen and $1.89 beyond. When the shipments moved there was in effect over the Pennsylvania to Phillipsburg, N. J., and L. V., beyond a combination of $4.16. No similar shipments have ever moved from 37th St. to Bethlehem. There is no indication of any future movement. HELD: Shipments misrouted, reparation awarded. Rudolph & Co. v. P. R. R., 101 I. C. C. 111.

(d) Further contention that routing in bill of lading was impossible of execution because incomplete, initial carrier not being named; that it was therefore the duty of carrier to forward shipments over the cheapest available route; and that as he did not do so he must now protect lower rate, not sustained, following Stebbins, 42 I. C. C. 150, and Unit Stove & Furnace Co., I. C. C. 543. Moreover, movement over cheaper route would have required the service of an intermediate carrier not specified in routing instructions and would have excluded one of the carriers so named from participating in the movement. California Packing Corp. v. Director General, 96 I. C. C. 239, 240, 242.

(e) Upon contention by defendants that they are not liable for misrouting because their agents either did not know, or could not by exercise of reasonable care and diligence learn, of existence of cheaper rates and routes sought, and that

routes and rates assailed were established several years prior to movement, pursuant to commission's findings in 39 I. C. C. 94, and were those customarily applied on this traffic, HELD: Defendants' agents were by law charged with knowledge of the rates sought on the dates of shipment as well as subsequent to commission's decisions, for the combination rule was lawfully published and, until canceled, was binding. Moreover, Conf. Ruling 214 (g), to effect that there is a limit beyond which agent of carrier can not be reasonably expected to know as to terminal delivery and local rates at distant points and on lines of distant roads to or with which he has no specific joint through rates, was not intended to relieve carriers' agent of duty of exercising reasonable care and diligence in securing information that will insure correct routing of shipments. Crowell Lumber & Gr. Co. v. Director General, 96 I. C. C. 259, 261, 262.

(f) Exercising its administrative function, and applying conversely the Solum case, 247 U. S. 477, 488, and Conf. Ruling 91, wherein it is stated that a carrier is not guilty of misrouting where it sends an unrouted shipment by a more expensive route although a lower rate could have been secured over an unreasonably longer and more indirect route, a lower-rated Canadian differential route over which shipments could have moved in absence of intermediate routing instructions found not to have been an unreasonable one, and shipments found misrouted. Petertyl v. N. Y. N. H. & H., 102 I. C. C. 693, 695, 696.

§2a. Commission Service Orders.

(a) Commission's decision in 69 I. C. C. 90, to effect that where shippers failed to exercise their right of routing shipments same should be forwarded over the more expeditious route, even though in many instances longer routes are more expeditious because of passenger-train schedules, dealt with traffic moving wholly by express, but same principle is applicable on traffic moving in baggage or baggage and express service. Kirschbraun & Sons, Inc., v. G. N. Ry. Co., 100 I. C. C. 28, 38.

(b) Because of emergency existing at the time shipment moved, growing out of unfavorable labor conditions and shortage of fuel, the commission required by service order No. 22 that traffic should be forwarded to destination over routes most favorable without regard to routing made by shippers or carriers. Under the routing instructions given by complainant the shipment could not have been sent over the route traversed inasmuch as the Jersey Central does not connect with the Southern Railway and complainant did not specify routing between those carriers. In addition, the route traversed was in consonance with the requirements of the commission's order under authority of section 15 (4) of the act to meet emergencies such as existed at the time of this movement. Complainant concedes that the commission has no jurisdiction over damages resulting from delay, but contends that the damages here resulted from misrouting. There was no misrouting in this case. Lambertson Co. v. C. R. R. Co. of N. J., 100 I. C. C. 259, 260.

(c) Shipment of lumber from Picayune, Miss., to the Thirty-seventh Street Station of the Pennsylvania at New York, N. Y., was diverted under authority of commission's service order No. 1 to the Twenty-seventh Street Station of the Lehigh Valley. Delivering carrier endeavored unsuccessfully to notify consignor and finally shipment was sold for a sum insufficient to pay accrued charges. Contention of complainant that service order authorized only a change in route of movement to destination, resulting in misrouting, not sustained. At time of shipment there was an embargo on lumber destined to stations on the Pennsylvania east of Newark, N. J., and initial carrier erred in its acceptance. Under all circumstances the Twenty-seventh Street Station of the Lehigh Valley was the practical point of delivery and changes made must be regarded as of routing rather than of destination, the real difficulty arising from failure of complainant to receive notice of change. Shipment found not to have been misrouted. National Lumber Co. v. N. O. & N. E. R. R. Co. 100 I. C. C. 334.

§3. Conflict in Billing Between Rate and Route.

See Bills of Lading §9, §9 (3); Export Rates and Facilities II; Through Routes and Joint Rates III.

(a) Where a bill of lading contains an impossible of impracticable routing

it is the carrier's duty to call this fact to the attention of the shipper, or failing in this, to disregard the routing specified and forward the shipment over the cheapest available route. California Packing Corp. v. Director General, 96 I. C. C. 239, 240.

(b) Bills of lading specified both rate and route, but rate specified was not applicable over any route. Carriers named in routing instructions formed a complete route from origin to destination. Shipments were moved via a higher-rated route consistent with instructions but involving use of an additional carrier not named in routing. HELD: Shipments misrouted since carrier failed to forward via point of direct connection, without use of additional carrier, over which lowest rate applied consistent with routing instructions. Rand & Co. v. L. & N. W. R. R. Co., 91 I. C. C. 723.

(c) The obligation lawfully rests upon the carriers agent to refrain from executing a bill of lading which contains provisions that can not lawfully be complied with or provisions which are contradictory and therefore impossible of execution. Clark Lumber Co. v. A. B. & A. R. R. 102 I. C. C. 252, 254.

§4. Direct and Cheapest Available Route.

See Agency (d).

(a) Complainant attacked as misrouting lumber from Wilson Point, Conn., to Traverse City, Mich., between February and July 1921. The 20 cars were consigned to the same party notify complainant, routing specified in the bill of lading named the New Haven as originating and P. M., as delivering line. No intermediate routing was set out and shipment moved entire distance through the United States over standard routes, charged 58c sixth class until July 1, 1921 subsequently 58.5c. Under the routing specified in the bill of lading the shipments could have moved over a differential route, a large part of which passes through Canada and over which the sixth class rate of 56.5c and 57.5c. While the differential lines may be assumed to be 322 miles longer than the short line route, this circuity is only 33% greater than the standard line distance. The agent was not justified without additional authorization in routing all of the shipments by the route over which the higher rate applied simply because of the explicit directions to route the initial shipment in that manner. HELD, first car not misrouted, balance misrouted, reparation awarded. Petertyl v. N. Y. N. H. & H. R. R., 91 I. C. C. 699.

(bc) Complainant attacked combination commodity rates charged on three cars of compressed cotton from Magnolia, Ark., to Louisville, Ky., in May 1921 as illegal. Shipments were delivered to the L. & N. W., at Magnolia, with routing instructions via St. L. S. W., L. & N., delivered. Each bill of lading contained notations to the effect that the rate included cost of compression and was $1.155, which rate was not applicable over any route. Shipments moved to McNeil, Ark., over L. & N. W., St. L. & S. W. to East St. Louis, L. H. & St. L., to Louisville, and L. & N., beyond, charged $1.095 to East St. Louis and 44c beyond. Rate was $1.20 from Magnolia to Louisville over L. & N. W., and St. L. S. W., to Memphis, and L. & N., beyond. HELD, charges legally applicable but shipments misrouted in that they were not forwarded via Memphis, reparation awarded to basis of $1.20. Rand & Company v. L. & N. W. R. R., 91 I. C. C. 723.

(d) Complainant attacked combination commodity rates charged on one car of lubricating oil shipped in January 1920 from Okmulgee, Okla., to Cleveland, O., as inapplicable and unreasonable. Shipment originally routed by complainant via Frisco to East St. Louis, Big Four beyond, but routing was subsequently amended to show W. & L. E., as delivering line. Agent billed car in error to Pittsburg, Pa., from which point it was rebilled to Cleveland, movement via Frisco to Kansas City, C. G. W., to Chicago, B. & O., to Pittsburg thence B. & O., P. & L. E., or W. & L. E., to destination, charged 62c, rate to Cleveland plus rate from Pittsburgh to Cleveland. There were not any joint rates on lubricating oil to Cleveland. There was a rate of 22.5c applicable over route movement to East Dubuque, 22.5c proportional rate being. HELD, rate attacked inapplicable to extent it exceeded 45c, reparation awarded. Empire Refineries, Inc. v. Director General 92 I. C. C. 59.

(ef) Complainant attacked combination rate of $1.28 charged on a car of

oil well supplies shipped on June 1, 1921, from Jakehamon, Tex., to El Dorado, Ark., as unreasonable and unduly prejudicial to extent it exceeded 98c. Jakehamon is on the W. F. R. & Ft. W., 108.5 miles southwest of Fort Worth, Tex. El Dorado is on the M. P. and Rock Island, 114.7 miles southeast of Texarkana, Tex. The shipment was delivered to the initial railroad without routing instructions. It moved over that road to Dublin, Tex., thence Ft. W. & R. G. to Fort Worth, Tex., thence Rock Island 821.4 miles, charged $1.36. There was available a combination via Texarkana, of $1.28 made up of 74.5c to Texarkana and 53.5c beyond. Effective March 4, 1922, a joint commodity rate of 98c was published but not applicable via the first named road. There is no evidence to show that the rate applicable over route of movement was unreasonable. HELD: Shipment was misrouted, rate applicable via route shipment should have moved unreasonable to extent it exceeded $1.15, reparation awarded. Transcontinental Oil Co. v. C. R. I. & P. Ry., 95 I. C. C. 168.

(g) In the absence of routing by the shipper it is the duty of the agent of the carrier to forward shipments over the cheapest reasonable available route, and this duty attaches in turn to the agent of each succeeding carrier through to destination. But the duty is not an absolute one. In Conference rule 214 G the Commission admonished shippers to bear in mind that there is a limit beyond which an agent of a carrier would not reasonably be expected to know as to terminal delivery or local rates at distant points and on lines of distant roads to or with which he has no specific joint through rate. The Commission has said this ruling was not intended to relieve carrier's agents of the duty of exercising reasonable care and diligence in securing information that will insure the correct routing of shipments. Crowell Lumber & Grain Co. v. Director General, 96 I. C. C. 259, 261.

(h) Complainant attacked combination class rates applicable on a car of mining machinery shipped in August, 1919, from Yerington, Nev., to Salt Lake City as unreasonable. Shipments tendered unrouted and moved via Nevada Copper Belt to Wabuska, Nev., S. P. to Weso, Nev., and W. P. , applicable rate $1.725 composed of class A rates of 12.5c from Yerington to Wabuska, 83.5c to Weso, and 77.5c beyond. The lines of the S. P. from Wabuska to Ogden, Utah and O. S. L. beyond, formed a reasonable route. A commodity rate of 69c was applicable via this route from Hazen and this factor added to 12.5c and 26.5c to Hazen made a thru rate of $1.08 over this route. HELD: Shipment misrouted, reparation awarded to basis of $1.08. Bogue Supply Co. v. N. C. B. Ry, 96 I. C. C. 434.

(i) Complainant attacked combination commodity rate charged on canned corn shipped Sept. 29, 1922, from Sac City, Iowa, to Clarksville, Ark., as unjust and unreasonable. Shipment moved via C. & N. W. to Omaha, Nebr., and M. P. beyond, 728 miles. No routing was specified on bill of lading. Rate charged 20.5c to Omaha and 57.5c beyond. Rate of 67.5c was applicable via Carroll, Ia., C. G. W. to Omaha and M. P. to Clarksville, 10c to Carroll and 57.5c beyond. The distances over the two routes do not differ greatly, altho one includes two carriers and the other three. The route via Carroll while involving some circuity, can not be deemed an unreasonable one. HELD: Shipment misrouted, reparation awarded. Foster & Co. v. C. & N. W. Ry., 96 I. C. C. 589.

(j) In the absence of specific routing, it is the duty of the agent to send the shipment over the cheapest reasonable route. Foster & Co. v. C. & N. W. Ry., 96 I. C. C. 589, 590.

(k) Shipments were tendered unrouted and carrier forwarded via a route taking a combination rate higher than via another available route. HELD: Shipments misrouted. Grasselli Chemical Co. v. Director General, 91 I. C. C. 61.

(l) Misrouting found to result and reparation awarded where shipment was tendered to carrier unrouted and such carrier failed to forward it via cheapest available route. Refinite Co. v. Director General, 91 I. C. C. 563.

(m) A differential route through Canada, 322 miles, or 33 per cent greater than so-called standard route, found not unreasonable route. Petertyl v. N. Y., N. H. & H. R. R. Co., 91 I. C. C. 699, 700.

(n) Where various shipments destined

to same point are delivered to a carrier without routing instructions for one shipment only, carrier is guilty of misrouting if it fails to send unrouted shipments over another route over which a lower rate is applicable. Goodkind Bros., 21 I. C. C. 17, 18. Petertyl v. N. Y., N. H. & H. R. R. Co., 91 I. C. C. 699, 701.

(o) It is well settled that a shipper is entitled to have his shipments move over the cheapest route consistent with his routing instructions and the Commission has said it is the duty of the carrier to exercise reasonable care and diligence in securing information that will insure correct routing even though the shipments are destined to points on lines of distant roads with which it has no specific through rates. It does not appear that the agent made any effort to ascertain which was the cheapest route consistent with the routing instructions. Weldon Williams & Lick v. P. R. R., 101 I. C. C. 174, 175.

(p) Where bills of lading contain no routing instructions it is initial carrier's duty to forward shipment over cheapest reasonable available route. Conf. Ruling 214 C. Prairie Oil & Gas Co. v. A., T. & S. F., 92 I. C. C. 248, 249.

(q) Following principles annunciated in commission's order of April 26, 1918, In the Matter of Routing Shipments, where a carrier for its own convenience forwards shipments via an unnatural route, shipper is entitled to benefit of rates applicable over route by which shipment would ordinarily have been sent. Mason By-Products Co. v. Director General, 92 I. C. C. 646, 650.

(r) Shipment of sorghum seed from Kansas City to Montgomery, specifically routed by shipper "C. of G. at Birmingham, Ala." and shipment so moved. Combination rate based on Memphis assessed. Had shipment moved to Birmingham, thence over Southern Ry. to Mobile and back through Birmingham to destination lower combination would have applied. HELD: Notwithstanding that route through Mobile was not designated by shipper, it was duty of carrier under rule 5(b) of Tariff Circular 18-A to apply the Mobile rate which was applicable to and from Birmingham, the interchange point directly intermediate to base point upon which lowest combination made. Shipment found overcharged and reparation awarded. Schloss & Kahn Grocery Co. v. St. L.-S. F., 93 I. C. C. 67.

(s) Shipment delivered to carrier unrouted. Tariff provided two routes carrying proportionals, the higher applying "all-rail," the lower, "rail-lake-and-rail." Carriers forwarded shipment all-rail and assessed higher proportional. HELD: Misrouting resulted as carriers operated car-ferry routes over which lower "rail-lake-and-rail" proportional applied. A car-ferry route is an "all-rail" route, and expression "rail-lake-and-rail route" describes a rail-and-water break-bulk route. Such terms, however, were not so used in the tariff, no steamship line being named as a participating carrier, thus rendering the rail-lake-and-rail rate inapplicable over a break-bulk route. Expression "rail-lake-and-rail" merely distinguished car-ferry routes from those literally all-rail, and it was carriers' duty, in absence of instructions, to have forwarded over the lower-rated car-ferry route. Reparation awarded. Bergstrom Paper Co. v. Director General, 93 I. C. C. 591.

(t) Shipments of lumber from Falco, Ala., to Manitou Beach and Northville, Mich., found overcharged. While shipments moved via direct routes a lower rate, applicable under Rule 5(b) of Tariff Circular 18-A and unrestricted in its application, was contemporaneously in effect via a circuitous route. If carriers participating in tariff carrying lower rate desired to restrict its use over certain routes they should have done so by the use of proper tariff notations. A failure to do so left all routes open should shippers desire to use them. Reparation awarded. M'Gowin-Foshee Lbr. Co. v. A., F. & G., 95 I. C. C. 451.

(u) Shipments were specifically routed at solicitation of carrier's agent upon his assurance that lower rate applicable via another available route also applied via route of movement. However, a higher rate applied over route of movement. Upon allegation that complainant was coerced into prescribing the routing specified, and was deprived of its freedom of choice of routes, FOUND: Situation presented is essentially a misquotation of a rate by carrier's agent, which is an insufficient basis upon which to award reparation. See 202 U. S. 242 and other cited cases. Nor can it be held that shipments were misrouted, for had routing been left open or tariff routing and re-

strictions observed complainant would have been protected in the lowest applicable rate between the two termini. Philadelphia Quartz Co. v. Director General, 95 I. C. C. 593.

(v) Bills of lading did not specify routing. Shipments found misrouted due to failure of initial carrier to forward via cheapest available route. Rates applicable over both route of movement and route over which shipments should have moved found unreasonable. Reparation awarded against all participating carriers to basis of rate subsequently established over route shipments should have moved and additional reparation awarded against originating carrier for misrouting. Transcontinental Oil Co. v. C., R. I. & P., 95 I. C. C. 168; United Paperboard Co. v. C. R. R. Co. of N. J., 95 I. C. C. 680.

(w) Formal complaint as originally filed alleged unreasonableness on shipments of cull apples moving during Federal control. At the hearing complaint was amended to include an allegation of misrouting. Contention that because routing specified by shipper was disregarded in the interest of speed and efficiency, under the terms of General Order No. 1. of the director general, misrouting resulted and a lower rate applicable between point of origin and destination should be protected, not sustained. Rate assessed was the same as that applicable over route prescribed in routing instructions and complainant has not shown that it was damaged by the alleged misrouting. California Packing Corp. v. Director General, 96 I. C. C. 239.

(x) Further contention that routing in bill of lading was impossible of execution because incomplete, initial carrier not being named; that it was therefore the duty of carrier to forward shipments over the cheapest available route; and that as he did not do so he must now protect lower rate, not sustained, following Stebbins, 42 I. C. C. 150, and Unit Stove & Furnace Co., 87 I. C. C. 543. Moreover, movement over cheaper route would have required the service of an intermediate carrier not specified in routing instructions and would have excluded one of the carriers so named from participating in the movement. California Packing Corp. v. Director General, 96 I. C. C. 239, 240, 242.

(yz) In the absence of routing by shipper it is the duty of agent of the carrier to forward shipments over the cheapest available route, and this duty attaches in turn to the agent of each succeeding carrier through to destination. Intermediate carriers, moreover, have right to decline shipments until complete routing instructions are furnished by originating carrier, thus placing the responsibilty of routing upon that line. Crowell Lumber & Grain Co. v. Director General. 96 I. C. C. 259, 261.

(aa) Shipment of mining machinery from Yerington, Nev., to Salt Lake City, Utah, moving during Federal control, was tendered unrouted. Intermediate carrier, which forwarded shipment over higher of two available routes, held liable for misrouting. Reparation awarded. Bogue Supply Co. v. N. C. B. R. R. Co., 96 I. C. C. 434.

(bb) During Federal control, the director general customarily handled eastbound traffic in Nevada, via Western Pacific, but where lower rated reasonable routes existed unrouted shipments should have been handled by the lower rated routes. In the absence of specific routing, a shipper is entitled to protection of the lowest rate over a reasonable route. Bogue Supply Co. v. N. C. R. R. Co., 96 I. C. C. 434, 435.

(cc) Unrouted shipment of sweet potatoes from Quitman, Ga., to Tampa, Fla., was assessed distance rates applicable over defendant's line. Shipment found misrouted, complainant being entitled to lower combination basing on Jacksonville, and restricted to apply in absence of specific rates. Suddath v. A. C. L. R. R. Co., 96 I. C. C. 569.

(dd) Shipment of canned corn from Sac City, Iowa, to Clarksville, Ark., tendered unrouted and carrier forwarded via route taking a combination rate higher than via another available route. Under circumstances similar to those disclosed, the commission has uniformly found that, in the absence of specific routing, it is the duty of the carrier's agent to forward shipment over cheapest reasonable route. Conf. Ruling 214 (c) and cases there cited. HELD: Shipment misrouted and reparation awarded. Foster & Co. v. C. & N. W. Ry., 96 I. C. C. 589.

(ee) Complainant shipped 16 cars of stock cattle from Limon, Colo., to Atkinson, Neb., charged 58.5c, being combina-

tion on Lincoln, Neb., that combination on Omaha was 53c, and rate collected inapplicable and unreasonable to extent it exceeded 53c. Shipments originated on Rock Island and delivered to Northwestern at Lincoln. The cattle were unloaded for rest, feed and water at Fremont, Neb., and forwarded over the Northwestern to destination. Unless complainants designated the routing it was the duty of the Rock Island to route the shipment over the lowest rated route, that is, via Omaha. The Rock Island has no feed yards at Lincoln, and to avoid the absorption of the switching charge to the stockyards on the Burlington for feeding, the Rock Island immediately delivered the shipment to the Northwestern at that point, there still being time for the latter to reach its feed yards at Fremont within the statutory limit. HELD, shipment misrouted by Rock Island, reparation awarded. Omaha Chamber of Commerce v. C. R. I. & P. Ry. 102 I. C. C.103.

(eea) Shipment of stock cattle from Limon, Colo., to Atkinson, Nebr., stopped in transit for rest, feed, and water, moved over a route at a rate in excess of that which applied over another available route. FOUND: Shipment misrouted in that it was the duty of originating carrier to forward it over the lowest-rated route, in absence of specific proof or evidence that the higher-rated route was designated by shipper. Reparation awarded. Omaha Chamber of Commerce v. C., R. I. & P., 102 I. C. C. 103.

(eeb) Various shipments were tendered without intermediate routing, originating and delivering lines only being specified. When first shipment was received initial carrier requested instructions as to intermediate routing and consignor directed movement over standard route. Initial carrier, however, moved all shipments in accordance with instructions governing first car. HELD: Carrier was not justified in routing all shipments via higher-rated standard route simply because of explicit directions governing initial shipment. Those subsequent to first should have moved via cheapest route consistent with bill of lading instructions, which was a Canadian differential route and not an unreasonable one. Shipments, exclusive of first, found misrouted and reparation awarded. Former report, 91 I. C. C. 699, affirmed. Petertyl v. N. Y., N. H. & H., 102 I. C. C. 693.

(ff) In 91 I. C. C. 699, Commission found one car of locust lumber, shipped Dec. 4, 1921 from Wilson Point, Conn., to Traverse City, Mich., not misrouted but that 19 subsequent shipments to the same destination were misrouted. The 20 cars were delivered to the New Haven without complete routing instructions, in most instances only that road as the initial line and the P. M., as delivering line being specified. No intermediate routing was set out, and the agent of the New Haven sent them over the standard routes through the United States. The applicable rate over the routes traversed were 58c prior to July 1, 1921 and 58.5c thereafter. Under the routing specified in the bills of lading the shipments could have moved over a socalled differential route passing through Canada over which the applicable rate was 56.5c prior to that date and 57.5c thereafter. The differential route was about 322 miles, or 33% longer than the standard route. Under normal conditions this would mean a difference in time of a day, or possibly a little more. At the time of shipment traffic over the standard routes was congested. Complainant stated that service by the differential routes is quite satisfactory. Obviously the difference in the quality of service and in the nature and liabilities of the participating carriers is not as great where a differential route is optional as in that where a rail and water route is the alternative. In the latter situation marine insurance and the transfer of freight from car to vessel, among other things, must be taken into consideration. HELD, in the absence of tariff provision defendant was not justified in shifting the burden of specifying the routing upon the shipper in order to secure the benefit of the lowest available rate. HELD, original decision affirmed. Petertyl v. N. Y. N. H. & H. R. R. 102 I. C. C. 693.

(gg) In the absence of specific through routing by shipper, which carrier is willing to observe, it is the duty of the agent of the carrier to route shipment via the cheapest route known to him of the class designated by the shipper—that is, all rail, or rail and water—and via which he has rates which he can lawfully use. Petertyl v. N. Y. N. H. & H. R. R. 102 I. C. C. 693, 694.

(hh) In the absence of shipping in-

structions it is ordinarily the duty of the carrier to ship by the cheaper route. But the duty is not an absolute one. The obligation of the carrier is to deal justly with the shipper, not to consider only his interests and to disregard wholly its own and those of the general jublic. If, all things considered, it would be unreasonable to ship by the cheaper route, the carrier is not compelled to do so. The duty is upon the carrier to select the cheaper route only if other considerations are reasonably equal. Resort to the more expensive route may be justified. Petertyl v. N. Y. N. H. & H. R. R. 102 I. C. C. 693, 695.

(hha) Conference Ruling 214 (c) provides that in absence of specific through routing by shipper it is duty of carrier's agent to route shipments via cheapest route, that is, all-rail, or rail-and-water. Contention that words "that is, all-rail, or rail-and-water" were intended to be illustrative and not to define only two possible classes of route, not sustained. Natural meaning attached to wording of ruling indicates that it was intended to state explicitly the kinds of classes embraced therein. Petertyl v. N. Y., N. H. & H., 102 I. C. C. 693, 694, 695.

(hhb) Exercising its administrative function, and applying conversely the Solum case, 247 U. S. 477, 488, and Conf. Ruling 91, wherein it is stated that a carrier is not guilty of misrouting where it sends an unrouted shipment by a more expensive route although a lower rate could have been secured over an unreasonably longer and more indirect route, a lower-rated Canadian differential route over which shipments could have moved in absence of intermediate routing instructions found not to have been an unreasonable one, and shipments found misrouted. Petertyl v. N. Y., N. H. & H., 102 I. C. C. 693, 695, 696.

(ii) When the direct route is not available shippers should not be debarred from reasonable rates over the accessible route. Orford Soap Co. v. B. & M. R. R. 107 I. C. C. 338.

(jj) Complainant attacked combination rate charged on a car of lumber Oct. 31, 1918 from Westwood, Calif., to Pensacola, Fla., as illegal. Shipment moved S. P., U. P., and Wabash to East St. Louis, thence L. &. N., to Atmore, Ala., and was delivered to the G. F. & A. charged 97.5c. At the time of movement there was in effect a rate of 57c from Westwood to New Orleans, 17.5c from New Orleans to Atmore, and 6.5c beyond. Although the shipment did not move to New Orleans, under rule 5b of tariff circular 18A the lowest combination based on New Orleans was applicable. The tariff publishing the rate to St. Louis provided that the through rate would be determined by adding 5c to the combination of rates in effect on June 24, 1918. The applicable rate over the route of movement was therefore, 76c, 52c to New Orleans 14c from New Orleans to Atmore 5c beyond, plus 5c under the combination rule. HELD, applicable rate was 76c, reparation awarded. Red River Lumber Co. v. Director General 107 I. C. C. 671.

(kk) Commission's decision in 69 I. C. C. 90, to effect that where shippers failed to exercise their right of routing shipments same should be forwarded over the most expeditious route, even though in many instances longer routes are more expeditious because of passenger-train schedules, dealt with traffic moving wholly by express, but same principle is applicable on traffic moving in baggage or baggage and express service. Kirschbraun & Sons, Inc., v. G. N. Ry. Co., 100 I. C. C. 28, 38.

(ll) Charges assessed on milk and cream in 10 gallon cans, for single-line haul in baggage service from points in Iowa, to Omaha, Nebr., via circuitous routes and reasonable maximum rates, constructed upon basis of specific joint-line distance scales, with the addition of drayage charges where drayage is necessary in order to transfer shipments between separate passenger depots of connecting rail carriers, prescribed for future. Kirschbraun & Sons, Inc., v. G. N. Ry. Co., 100 I. C. C. 28, 40.

(mmnn) Complainant alleged that a car of potatoes shipped Oct. 3, 1921 from Almora, Minn., to Tinley Park, Ill., was misrouted and rate sought to be collected unreasonable. Shipment was tendered to agent of the Soo Line at Almora Oct. 3, 1921 and was consigned to complainants order at Tinley Park. Instructions to hold the car at Burr Oak yard, Blue Island, Ill., were written on the bill of lading. The agent of the Soo line routed the car "Soo Chicago and C. R. I. P. Ry." and inserted that routing in the bill of lading. The car moved over that route and charged 44c, applicable Soo Line to Minneapolis,

Minn., Rock Island beyond, and subsequently bill for undercharges was sent complainant on basis of 54c. Burr Oak Yard is 7.8 miles east of Tinley Park on the Rock Island and had the shipment been routed over the Soo Line to Minneapolis thence Rock Island it would have been necessary to transport the car 7.8 miles beyond Tinley Park to Burr Oak yard for inspection and back haul car 7.8 miles to Tinley Park or to disregard the shippers instructions for inspection at Burr Oak yard. The rate of 44c was not applicable in connection with such a back haul movement. Burr Oak yard is directly intermediate between Almora and Tinley Park over the route of movement. Shipment not misrouted. Applicable rate over route of movement was 50c, made up of 21c to Minneapolis and 29c beyond. HELD, shipment not misrouted, carrier should collect undercharges, rate of 50c not unreasonable, complaint dismissed. Thoeming & Co. v. M. St. P. & S. S. Ry. 107 I. C. C. 658.

(oo) Complainant attacked combination rate charged on a car of bulk corn Jan. 23, 1923 from Spirit Lake, Ia. to Bloomington, Ill., reconsigned to Buffalo, N. Y. Complainant gave no routing instructions to Bloomington, the original destination. Defendant routed the car over its line to LaSalle, Ill., and I. C., beyond, no joint rate being applicable, charged 21c to LaSalle, and 11c beyond. The rate finally charged to Black Rock was 21c to LaSalle and 29.5c beyond. The rate from Spirit Lake to Bloomington through Peoria was 30.5c constructed 21c to Peoria and 9.5c L. E. & W., beyond. The through rate from Spirit Lake to Black Rock through Peoria was 40c, constructed 20.5c to Peoria and 19.5c beyond. If defendant had routed this shipment through Peoria, complainant would have been entitled not only to the lower rate effective over that route to Peoria but to the lower rate to Black Rock as well. The fact that it could not foresee the further transportation from Bloomington to Black Rock can not deprive complainant of all the incidents of transportation and charge effective over the route the shipment should have moved. HELD, shipment misrouted, reparation awarded. Bloomington Asso. of Commerce v. C. R. I. & P. Ry., 109 I. C. C. 191.

(pp) Complainant attacked as illegal rate charged on a car of berries from Sumner, Wash., to Kansas City. Mo Shipment made July 18, 1923 consigned to complainant at Wichita, Kas., bill of lading being issued by the N. P., and bore routing instructions "stop at Hutchinson, Kas., for partial unloading. via Billings and Denver, Passenger train service." N. P., has no rails to Denver, Hutchinson or Wichita; and beyond Billings, Mont., the car was handled by express, the tariff containing no restrictions pertaining to routes from Denver to Hutchinson, Wichita or Kansas City and no route beyond Denver was indicated in the billing. From Denver the car was moved by express company over the main line of the Santa Fe to Hutchinson where, in accordance with billing instructions it was set out for partial unloading July 23, 1923 and was inspected and reiced, but no portion of the contents removed. On the same day the car was forwarded from Hutchinson and arrived at Wichita same day. The inspection of the contents of this car, early in the morning of July 23 at Hutchinson disclosed that berries were soft and moldy and unfit for sale in the Hutchinson and Wichita markets. Thereupon, instructions were telephoned to N. P., agent at Sumner July 23 to divert this car from Wichita to the same consignee, complainant, at Kansas City. These instructions were confirmed by the written order delivered to the Sumner agent at 2 P. M. Owing to the difference between Pacific time at Sumner and central time at Wichita 1:45 P. M. at Sumner corresponds with 3:45 P. M. at Wichita. These instructions, therefore, were given 1 hour, 50 miles after the car had arrived at Wichita. Later, on the same day at 6:30 P. M. the local express agent at Wichita was notified in writing to divert this car to Kansas City and, in accordance with these instructions, the car moved out of Wichita at 10:35 P. M. the same day, presumably arriving at Kansas City the next morning July 24 before 8 o'clock HELD, applicable rate was combination of $2.90 to Wichita and $1.56 beyond, overcharge should be refunded, complaint dismissed. Gwin White & Pierce v. N. P. Ry., 109 I. C. C. 756.

(qq) Complainant attacked combination rates on ties, carloads from Bealeton, brandy, Culpepper, Remington and Warrentown Va., to Canton, O., between October 5 and December 31, 1923 unreasonable, unduly prejudicial and in violation of section four. Ship-

ments moved Southern via Potomac yard Va., and connecting lines to Canton. The points of origin are from 17 to 47 miles from Orange, which is about 619 miles from Canton over C. & O., and Pennsylvania, HELD, shipment overcharged and misrouted, reparation awarded. Lafayette Lumber Co. v. S Ry., 112 I. C. C. 341.

ALL OTHER CITATIONS

Cotton & Cotton Linters to Louisiana and Texas Ports, 85 I C. C. 5; Mifflin-Hood Brick Co. v. Director General, as Agent, 88 I. C. C. 205; Cummings v. Director General, as Agent, 88 I. C. C. 429.

§4¼. Existence of Embargo.

See Embargoes.

(a) Complainant attacked rate of $3, commodity, charged on 65 cars of anthracite coal from Winton, Pa., to North Adams, Mass., in April 1920 as unreasonable. A rate of $2.40 was in effect from Winton to North Adams over the N. Y. O. & W., to Cornwall, N. Y., West Shore to Albany, N. Y., and B. & A., to North Adams. Complainant ascertained prior to the movement that this route was embargoed by the B. & A., and accordingly advised the shipper to tender the shipments with instructions to move them over another route, described on the bills of lading as "O. & W. B. & M". On April 13, 1920 complainant secured a permit from the N. Y. C., authorizing movement over the embargoed route. Shipments were tendered with routing as shown. Contemporaneously rates on anthracite of $2.70 with the D. & H., as originating carrier and $2.80 with the D. L. & W., as originating carrier, were in effect from Winton to Adams. The present rate is $3.28 via all routes. HELD, rates attacked unreasonable to extent they exceeded $2.60 per ton, reparation awarded. Weston Dodson & Co. v. N. Y. O. & W. Ry., 91 I. C. C. 659.

(b) Complainant attacked charges assessed on two cars of lumber shipped on August 30 and Sept. 1, 1920 from La Grange, Ga., to Philadelphia, Pa., as unjust and unreasonable. Shipments were delivered to A. B. & A. Bill of lading of August 30, shows destination as Philadelphia, Pa., Chester station, and that of Sept. 1, as Chester station, Philadelphia. The bill of lading for the former car designated routing via A. B. & A., Southern Pennsylvania delivery, which routing was inserted upon advice of the agent of the initial line. The latter car was routed A. B. & A., Southern by complainant. Chester is not a station within Philadelphia but is about 13 miles south of that city. The destinations as shown on the bills of lading were named upon the advice of the agent of the initial line, he being under the impression that due to certain embargoes, which are not definitely explained of record, shipments for Philadelphia should be so routed. The shipments were forwarded to Chester and subsequently reforwarded to Port Richmond, Philadelphia on the P. & R. Charged 63.5c rates to and from Chester. In the instant case it is obvious that the express intention of complainant was to have its traffic move to Philadelphia. It was due entirely to the advice furnished by the agent of the A. B. & A., that the erroneous and conflicting instructions were inserted in the bills of lading. HELD, shipments misrouted, reparation awarded. Clark Lumber Co. v. A. B. & A. R. R. 102 I. C. C. 252.

§4½. Interstate or Intrastate Route.

See Evidence §13 (6).

(ab) Complainant attacked commodity rates charged on a car of rye shipped on July 28, 1922, from Wegdahl, Minn., to Duluth, Minn., reconsigned to Superior, Wis., as misrouted. Shipment was tendered for transportation without routing instructions and should have been forwarded over the cheapest available route to Duluth. There were two routes available, one interstate over which the rate was 17.5c and the other intrastate over which rates of 14.5c applied in intrastate and 17.5c on interstate. HELD: Shipment misrouted and shipment should have been sent over the intrastate route to Duluth, the destination shown in the bill of lading at that time. This did not result in damage to complainant for had the shipment moved over the intrastate route to Duluth, upon being forwarded to Superior it would have become interstate in character and a rate equal to the one applicable over the route of movement would have applied. Complaint dismissed. Wegdahl Elevator Co. v. C. M. & St. P. Ry., 96 I. C. C. 87.

(c) Complainant formerly shipped intrastate shipments via joint-line interstate routes to obtain benefit of rates

lower than those applying intrastate. Carriers subsequently limited application of interstate tariff to interstate traffic. Upon complainant assailing rates charged on shipments moving intrastate via intrastate routes, HELD: Limitation is interstate tariff precluded its application to complainant's shipments. Moreover, the commission's jurisdiction over intrastate rates is prescribed by sections 3 and 13 of the act, and it has no authority under the law to pass upon the measure of such rates except as provided in those sections. Nebraska Cement Co. v. C. & N. W., 92 I. C. C. 457.

(d) Rates on bituminous coal over interstate routes from mines in the Linton and Clinton groups in Indiana to Marion, Kokomo, Elwood, Michigantown, and Warren, Ind., found not unreasonable as compared with lower rates over intrastate routes, which rates were subsequently increased to basis of the interstate rates, or as compared with rates from Illinois mines to Indiana destinations. Wright & Wimmer v. C., T. H. & S. E., 93 I. C. C. 183.

(e) Shipment from Wegdahl, Minn., to Duluth, Minn., reconsigned to Superior, Wis., tendered without routing instructions. Initial carrier forwarded shipment between intrastate points over an interstate route. FOUND: Inasmuch as at time of initial movement destination shown was an intrastate point, misrouting resulted due to failure of carrier to forward over a lower rated intrastate route. However, no damage to complainant resulted for had shipment so moved to Duluth, upon being forwarded to Superior it became interstate in character and rate equal to that charged applied. Wegdahl Elevator Co. v. C., M. & St. P., 96 I. C. C. 87.

(f) Combination rates assessed on crude clay from Langley, S. C., to Cartersville, Ga., found not unreasonable as compared with lower intrastate rates applicable on clay for substantially similar distances. Thompson, Weiman & Co. v. S. Ry., 102 I. C. C. 247.

§5. Lower Rate Via Competing Line or Route.

See Evidence §47; Reasonableness of Rates §27½.

(a) Complainant attacked combination commodity rates charged on 7 cars of soda ash shipped from Saltville, Va., to Rensselaer, N. Y., between Nov. 1919 and Jan. 17, 1920, as unjust and unreasonable to extent it exceeded 29c. Shipments were unrouted and moved via N. & W., via Kenova, W. Va., to Columbus, O., Pennsylvania lines to Cleveland, O., and N. Y. C., beyond, distance 1,119 miles, charged 23c to Buffalo and sixth class 17c beyond. Contemporaneously there was combination rates of 36c via N. & W., to Hagerstown and connecting lines beyond, shipments misrouted. The 29c rate on soda ash from Saltville to Albany was applicable on caustic soda, and also to Rensselaer, subsequently made effective on soda ash. HELD, rates attacked unreasonable via Hagerstown to extent it exceeded 29c, reparation awarded. Grasselli Chemical Co. v. Director General, 91 I. C. C. 61.

(b) Complainant attacked combination rate charged on one car of crude oil shipped from Lander, Wyo., to Ardmore, S. D., on July 12, 1918, as unjust and unreasonable. No routing specified by shipper, and shipment moved via C. & N. W., to Rin, Wyo., Burlington beyond, 468 miles, charged 26.5c to Orin and 27.5c beyond. There was a commodity rate of 6.5c via Northwestern to Casper, Wyo., 27.5c beyond via the Burlington, 469 miles. The shipment could have moved over this route, and it was defendants duty to forward it by the cheapest available route. HELD, shipment misrouted, reparation awarded to basis of 34c. Refinite Co. v. Director General 91 I. C. C. 563.

(c) At time of movement the carriers were operated under a unified and co-ordinated national control and not in competition. In view of this fact, the Commission has held in cases where different rates were in effect over two routes between the same points that if the routes are practically the same in length and subject to the same transportation conditions, it was unreasonable for the Director General to maintain a higher rate over one route than contemporaneously applied over the other. Philadelphia Quartz Co. v. Director General, 95 I. C. C. 593, 596.

(d) Even though there may have been during federal control two rates between the same points in the same direction applying over different routes, each comprising carriers under federal

control, that fact does not establish the unreasonableness of the higher of the two rates, and if, the shipment is routed by the shipper so as to be subject to the application of the higher rate, defendant can not be called upon to protect the lower rate. California Packing Corp. v. Director General, 96 I. C. C. 239, 243.

(e) Complainant attacked commodity rates charged on nine cars of soft coal from Pinnacle and Mount Harris, Colo., to Bradish, Dodge, Ewing, Newmans Grove, Raeville and Scribner, Neb., between Jan. 7 and Nov. 26, 1920, as in excess of those applicable and in violation of the fourth section. Pinnacle and Mount Harris are on the D. & S. L. in the Oak Hills district. Destinations are local to the C. & N. W. U. P. connects with the C. & N. W. at Albion and Norfolk, Nebr., and at Fremont. Shipments moved Salt Lake to Denver, U. P., to Fremont or Norfolk and Northwestern beyond. Joint commodity rates, applicable over the routes of movement were assessed. The tariff naming these rates also named joint commodity rates on the same traffic applicable over the Salt Lake to Denver and thence U. P. to Albion, Norfolk and Fremont and the application of the combination rule to the rates to and from Albion or Fremont named in the tariffs produces lower through rates than those charged. The Salt Lake received shipments without routing instructions from the shipper. It issued the bills of lading which specified CNW delivery or UP-CNW but no rates or junction points. The Salt Lake delivered all of the shipments to U. P. at Denver. The lowest rates on those to Dodge and Scribner applied in connection with the Burlington and not with the U. P. The shipments to Bradish, Ewing and Newmans Grove and Raeville were properly delivered to the U. P., because the route beyond in connection with that line afforded the lowest rates thereon, but it failed to forward them through the junction point via which such rates applied. It had a right to decline to accept these shipments until complete routing instructions were furnished by the Salt Lake and thus place the responsibility of routing upon that line. HELD: Shipments misrouted; Director General liable for the misrouting of the shipments to Dodge, Ewing and Scribner prior to Mar. 1, 1920: Salt Lake liable for misrouting to Scribner; U. P. liable for misrouting to Bradish, Ewing, Newmans Grove and Raeville, reparation awarded. Crowell Lumber & Grain Co. v. Director General, 96 I. C. C. 259.

(f) Complainant attacked sixth class rate of 83.5c charged on a car of sweet potatoes, in sacks, August 9, 1922, from Quitman, Ga., to Tampa, Fla., as unjust, unreasonable, unjustly discriminatory and in excess of aggregate of intermediates. Shipment moved via A. C. L. Rate charged applicable 311 miles via Live Oak, Fla. Distance via Jacksonville, 397 miles. Rate applicable via Jacksonville 18.5c to that point and 21.5c beyond, HELD: Shipment misrouted, reparation awarded. Suddah v. A. C. L. R. R., 96 I. C. C. 569.

(g) Shipment of lubricating oil from Okmulgee, Okla., to Cleveland, Ohio, was specifically routed by shipper. Carrier's agent at point of origin erroneously billed car to Pittsburgh, from which point it was subsequently rebilled to Cleveland. Rate from Okmulgee to Cleveland plus rate from Pittsburgh to same destination assessed found inapplicable to extent it exceeded lower rate applicable via route of movement to East Dubuque, Ill., and a proportional beyond, since tariff naming proportional factor contained no restriction against movement via Pittsburgh. Reparation awarded. Empire Refineries v. Director General, 92 I. C. C. 59.

(h) Rate on shipment moving via route specified by shipper found not unreasonable or otherwise unlawful as compared with lower rate applicable over another and shorter route. Shipper could have had benefit of lower rate by routing over cheaper route, and no necessity is shown for establishment of the lower rate over the circuitous route of movement. Crabbs, Reynolds, Taylor Co. v. B. & O., 92 I. C. C. 621.

(i) Lumber from Demopolis, Ala., to Louisville, recognized to Bluefield, W. Va., moved under combination rates. Over another practicable route beyond Louisville a lower combination applied to Roanoke, Va., and under rule 5 (b) of Tariff Circular 18-A such lower rate was available to Bluefield. HELD: Shipment misrouted in that it was not forwarded from Louisville over lower-rated route. Reparation awarded. Standard Lbr. Co. v. Director General, 93 I. C. C. 58.

(j) A lower rate over a route other

than route of movement does not constitute a violation of the long-and-short-haul provision of section 4 of the act. Wagner Motor Co. v. M. C. R. R., 93 I. C. C. 195, 196.

(k) Shipment delivered to carrier unrouted. Tariff provided two routes carrying proportionals, the higher applying "all-rail," the lower "rail-lake-and-rail." Carriers forwarded shipment all-rail and assessed higher proportional. HELD: Misrouting resulted as carriers operated car-ferry routes over which lower "rail-lake-and-rail" proportional applied. A car-ferry route is an "all-rail" route, and expression "rail-lake-and-rail route" describes a rail-and-water break-bulk route. Such terms, however, were not so used in tariff, no steamship line being named as a participating carrier, thus rendering rail-lake-and-rail rate inapplicable over a break-bulk route. Expression "rail-lake-and rail" merely distinguished car-ferry routes from those literally all-rail, and it was carrier's duty, in absence of instructions, to have forwarded over lower-rated car-ferry route. Reparation awarded. Bergstrom Paper Co. v. Director General, 93 I. C. C. 591.

(l) Rate applicable on gasoline and kerosene, in tank-car loads, from Tulsa, Okla., to Clayton, N. Mex., via Pueblo, found unreasonable to extent they exceeded lower rates contemporaneously in effect via routes other than route of movement. Reparation awarded. Texas Co. v. A., T. & S. F., 93 I. C. C. 691.

(m) Applicable rate on shipments forwarded via route designated by shipper found not unreasonable as compared with lower rate contemporaneously in effect via other routes. The existence of a lower rate over other routes does not of itself warrant a condemnation of the rate charged. Carriers forwarded shipments over route specified by consignor as it was their duty to do, and had consignor not routed shipments, or designated one of the routes over which the lower rate applied, damage alleged would have been avoided. Goodrich Bros. Hay & Grain Co. v. C., C., C. & St. L., 95 I. C. C. 5.

(n) Rate on sweet potatoes from Dardanelle, Ark., to Spokane, Wash., found unreasonable to extent it exceeded the contemporaneous Group E commodity rate applicable over another route, and subsequently established via route of movement. Reparation awarded. Ft. Smith Commission Co. v. Director General, 95 I. C. C. 149.

(o) Shipments moved as routed by shipper. Contemporaneously lower rate applied via another route, which lower rate carriers subsequently established via route of movement. HELD: Existence of lower rate over other routes and the subsequent reduction to that basis of the rate over a particular route of movement are not sufficient to establish unreasonableness of the previous rate. National Supply Co. v. N. Y. C., 95 I. C. C. 461.

(p) Combination rate on silicate of soda during Federal control, from Livny, Calif., to Los Angeles, Calif., via Fresno, found unreasonable to extent it exceeded lower rate contemporaneously in effect via a longer distant route through Stockton. Following American Agricultural Chemical Co., 66 I. C. C. 650, shipments moved at time when carriers were operated under a unified and coordinated national control and not in competition and it was unreasonable for the director general to maintain a higher rate over one route than contemporaneously applied over another where such routes were practically same in length and subject to same transportation conditions. Reparation awarded. Philadelphia Quartz Co. v. Director General, 95 I. C. C. 593.

(q) Shipments of cement moved from Richard City, Tenn., to Normal, Tenn., via an interstate route through Memphis. Shipments should have moved via another available route through Stevenson, Ala., over which latter route Normal is intermediate to Memphis. FOUND: While the normal route is through Memphis the route through Stevenson was actually open and its use in the tariff unrestricted. The maintenance, therefore, of a higher rate thereover to Normal than to Memphis was in violation of the long-and-short-haul provision of section 4 of the act. Dixie Portland Cement Co. v. N., C. & St. L., 96 I. C. C. 47.

(r) Shipment from Chester, Pa., to Tulsa, Okla., originally routed via rail to Philadelphia, and water and rail beyond was diverted at Philadelphia, upon shipper's request, to all-rail route, and upon arrival at Tulsa, was diverted to Wynona, Okla. Charges collected found inapplicable to extent they exceeded a lower combination, plus diversion charges, from Chester, Pa., via St. Louis, to Wynona, although factor of rate found applicable was restricted to shipments "consigned

through" from Chester to Wynona "via all-rail routes." Reparation awarded. Tidal Osage Oil Co. v. Director General, 96 I. C. C. 112.

(s) Rate on coal from Ohio mines to Huntington, Ind., moving over the Erie, found not to have been unreasonable, unjustly discriminatory, or unduly prejudicial as compared with lower rate contemporaneously in effect over the Wabash. Complainant received coal from Ohio over either road but when it arrived over the Wabash and was delivered to team track of Erie, a switching charge was assessed, therefore complainant could not profitably take advantage of the lower rate. During the period of movement the Wabash rate was increased to equal the Erie rate. Bash & Co. v. B. & O., 96 I. C. C. 178, 182.

(t) Rate on coal from mines in Kentucky to Wabash, Ind., via route of movement, found not to have been unreasonable, unjustly discriminatory, or unduly prejudicial as compared with lower rate via another route, which was longer. The rates over the two routes have always been the same, except that during the period for which reparation is sought a lower rate over the longer route was erroneously published. This error was subsequently corrected, raising the rate over the longer route to the level of the rate over the route of movement. Bash & Co. v. B. &. O., 96 I. C. C. 178, 184.

(u) Shipment of canned corn from Sac City, Iowa, to Clarksville, Ark., tendered unrouted and carrier forwarded via route taking combination rate higher than via another available route. Under circumstances similar to those disclosed, the commission has uniformly found that, in the absence of specific routing, it is the duty of the carrier's agent to forward shipment over cheapest reasonable route. Conf. Ruling 214 (c) and cases there cited. HELD: Shipment misrouted and reparation awarded. Foster & Co. v. C. & N. W. Ry., 96 I. C. C. 589.

(v) Two carloads of tankage shipped from Chemical, Ill., to Montgomery, Ala., moved over a route at a rate in excess of that which applied over another route. Consignor did not designate any specific route and agent of carrier had no knowledge of existing lower rate owing to fact that his files did not contain tariff carrying the second factor making up the lower combination. HELD, shipments were not misrouted, as agent was justified under circumstances in routing them via one of the recognized gateways through which the rates were made the same. See 19 I. C. C. 448. Alabama Chemical Co. v. Illinois Traction, Inc., 98 I. C. C. 451.

(w) Contention that as there are no routing restrictions in the tariff, the joint rate from point of origin to final destination was applicable on a shipment reconsigned en route, even though it moved over a circuitous route, not sustained. Liberty Cooperage & Lbr. Co. v. C., I. & L. Ry. Co., 98 I. C. C. 461.

(x) Contention that where shipments were routed by the shippers without specifying the junction point, the routing was sufficient designation of a route over which the aggregates of the intermediate rates were lower than the joint rate not sustained Under the circumstances shown to have existed, there was no duty upon initial carrier to route the shipments over a route embracing the line of an intervening carrier, even though such a route would make a lower combination. See 73 I. C. C. 471. Clark Equipment Co. v. C., B. & Q. R. R. Co., 98 I. C. C. 465, 466.

(y) Complainants knowledge of the existence of lower rates over other routes can not deprive them of the right to reasonable rates over the routes of movement. Canton Bridge Co. v. B. & O. R. R. 107 I. C. C. 141, 144.

(z) Scrap iron from Thirty-seventh Street Station, New York, N. Y., to Bethlehem, Pa., routed by shipper "Pennsylvania-Lehigh Valley" without designating a junction point, moved over a route under combination rates higher than those which applied over another practicable route. FOUND: Shipments misrouted in that they were not forwarded over lower-rated route. Reparation awarded. Rudolph & Co. v. P. R. R., 101 I. C. C. 111.

(aa) Shipment of printing press from Paterson, N. J., to Fort Smith Ark., tendered as a carload shipment with routing directions, was forwarded via a route over which a rate applied higher than that over another available route identical with route of movement west of St. Louis, Mo. FOUND: Shipment misrouted in that agent at point of origin apparently made no effort to ascertain which was the cheapest route consistent with routing instructions, and in a haul such as here involved the

route over which lower rate applied may not be considered an unnatural route on account of distance or because including the lines of three additional carriers. Reparation awarded. Weldon, Williams & Lick v. E. R. R. Co., 101 I. C. C. 174.

(bb) Rate assessed on slack coal from Rock Springs, Wyo., to Cornish, Utah, and diverted in transit to McMillan, Idaho, found unreasonable as compared with lower rates in effect from Wyoming and Utah groups to Idaho points for substantially equal distances and to extent it exceeded a joint rate contemporaneously in effect from Rock Springs to McMillan, over another route which lower rate was subsequently made applicable over route of movement. Reparation awarded. Colony Coal Co. v. O. S. L., 101 I. C. C. 330.

(cc) Combination rates on mine-run coal from Coil and Sunset mine, Ky., to Bonne Terre, Rivermines, and Leadwood Mo., found unreasonable to extent they exceeded a joint rate subsequently established. Due to a miners' strike, carriers, in order to move traffic and relieve or avoid congestion, assured complainant that they would establish a joint rate if he would allow shipments to go forward. Complainant would not have permitted shipments to move prior to publication of the joint rate but for representations of carriers that it would get the benefit of that rate inasmuch as it could have availed itself of a lower combination rate via another route. Reparation awarded. St. Joseph Lead Co. v. L. & N., 101 I. C. C. 352.

(dd) Shipment of molasses moving from Morton, Miss., to New Orleans, thence reconsigned to Blytheville, Ark., found overcharged. A rate lower than that assessed, and unrestricted in its application, applied via another more direct route. There was nothing contained in tariff naming such lower rate which would have precluded complainant from routing its shipment through New Orleans had it been billed direct from Morton to Blytheville. Moreover, if it was defendants' purpose to restrict application of the lower rates to any particular route and the reconsigning privileges in connection therewith to any particular point, it should have been done by clear and unequivocal language. See 47 I. C. C. 59. Reparation awarded. Scott County Farm Bureau v. A. & V., 101 I. C. C. 357.

(ee) Rates on wet brewers' grain from Philadelphia to Newark found unreasonable to extent it exceeded lower rate subsequently established, which lower rate was contemporaneously in effect over another route and in the reverse direction over defendants' own route. Reparation awarded. Penn Grains & Feed Co. v. R. Co., 102 I. C. C. 100.

(ff) Shipment of pig iron from Thomas, Ala., to Iola Kans., reconsigned to Okmulgee, Okla., found overcharged. While route over which shipment moved is circuitous, the transporting carriers are shown as parties to tariff carrying the lower rate without restrictions as to routing. Refund of overcharge directed. United Iron Works v. M. P., 102 I. C. C. 107.

(gg) Rate charged on a shipment of apples moving from Brewster, Wash., to Fort Smith, Ark., found inapplicable. A lower rate contemporaneously applied via route considerably shorter than the route of movement but tariff in which it was published carried no restrictions as to routing. Such lower rate was, therefore, applicable via route of movement. See 47 I. C. C. 59. Reparation awarded. Browne-Hinton Wholesale Grocery Co. v. G. N., 102 I. C. C. 237.

(hh) Joint rate charged on lubricating oil moving from points in Texas to Dayton, Ohio, found not unreasonable or otherwise unlawful. Unreasonableness alleged is based on ground that it exceeded the aggregate of intermediates via a route other than route of movement, but shipments were neither routed via the lower-rated route nor is there any showing that they so moved. Complainant offered no evidence to show unreasonableness of the joint rate except to cite 18 I. C. C. 162, wherein the principle was laid down as to what constitutes a fair measure of reasonableness of a joint rate that exceeds the combination between the same points via the same route. Here, however, the principle that no presumption of unreasonableness attaches to a joint through rate applicable over a particular route because a lower combination applies over another route, governs. Refiners Oil Co. v. P. R. R., 102 I. C. C. 249.

(ii) Exercising its administrative function, and applying conversely the

Solum case, 247 U. S. 477, 488, and Conf. Ruling 91, wherein it is stated that a carrier is not guilty of misrouting where it sends an unrouted shipment by a more expensive route although a lower rate could have been secured over an unreasonably longer and more indirect route, a lower-rated Canadian differential route over which shipments could have been moved in absence of intermediate routing instructions found not to have been an unreasonable one, and shipments found misrouted. Petertyl v. N. Y., N. H. & H., 102 I. C. C. 693, 695, 696.

ALL OTHER CITATIONS

Midland Coal Co. v. F. S. & W. R. R. Co., 85 I. C. C. 146; West End Chemical Co. v. L. A. & S. L. R. R. Co., 85 I. C. C. 339; Portland Flouring Mills Co. v. G. N. Ry. Co., 88 I. C. C. 94; Iroquois Pulp & Paper Co. v. G. & J. Ry. Co., 88 I. C. C. 255; Steuart, Son & Co. v. Director General. as Agent, 88 I. C. C. 469; Shafer Lbr. Co. v. Director General, as Agent, 88 I. C. C. 472; Bender Striebig & Co. v. I. C. R. R. Co., 88 I. C. C. 474; Early-Foster Co. v. A. T. & S. F. Ry. Co., 88 I. C. C. 507.

§5½. Particular Junction or Terminal.

See Junction Point Rates.

(a) Cars were specifically routed by shipper but no junction point specified. Failure of carrier to forward shipments in conformity with such instructions via junction point through which lowest rate applicable found to result in misrouting. Reparation awarded. Nestle's Food Co. v. Director General, as Agent, 89 I. C. C. 340, 341.

(b) Complainant alleged misrouting of car of coal shipped in January 1922 from Jewell, Va., to Minneapolis, Minn. Shipment was consigned to the Gust Johnson Lumber Co., destination on the bill of lading was Minneapolis and routing Minnesota Transfer. Instead of delivering it to the Minnesota Transfer Ry. at Minnesota Transfer defendant took it to its hold yard in south Minneapolis. The waybill did not show Minnesota Transfer. Notice of arrival was given by telephone to complainant, who directed delivery at Minnesota Transfer, and defendant billed the car back at distance rate of 10 miles of $1.08, plus a reconsignment charge of 7 dollars. The routing Minnesota Transfer indicated with sufficient clearness that delivery on the rails of the Minnesota Transfer Ry. was desired. HELD, shipment misrouted reparation awarded. Gust Johnson v. C. M. & St. P. Ry., 91 I. C. C. 561.

(c) Shippers must bear in mind that there is a limit beyond which an agent of a carrier could not reasonably be expected to know as to terminal delivery or local rates at distant points and on lines of distant roads to or with which he has no specific joint through rates. Consignors and consignees should co-operate with agents of carriers in avoiding misunderstandings and errors in routing and must expect to bear some responsibility in connection therewith. Alabama Chemical Co. v. Illinois Traction, 98 I. C. C. 451, 452.

(d) It would be an extension of defendants duty beyond reasonable limits to require it to be responsible for the failure of its agent to make inquiry as to whether a lower combination could be figured on some relatively obscure point beyond the gateways. Alabama Chemical Co. v. Illinois Traction, 98 I. C. C. 451, 452.

(e) Complainant attacked combination class rates of $1.36 charged on five cars of second-hand Army refrigerators shipped during June and July, 1923, from Wrightstown, N. J., to Sheffield, Ala., as unjust, unreasonable and in violation of the fourth section to extent it exceeded $1.22. Shipper routed them P. & A., Pemberton, P. S., Norfolk, N. S., Charlotte, Sou. Ry., 1,231 miles; but owing to admitted misrouting by the initial carrier the shipments were delivered by it to the Pennsylvania at Hightstown, N. J., instead of Pemberton, N. J. Charged combination fourth class of 14c to Pemberton plus $1.22 applicable over route of movement. Over the other route a combination rate of $1.315 applied, composed of fourth class rate of 9.5c to Lewistown, N. J., and fourth class of $1.22 beyond. HELD: Shipments misrouted, reparation awarded. Florence Chamber of Commerce v. N. S. R. R., 98 I. C. C. 594.

(f) Bill of lading showed "Minneapolis, Minn.," as destination and routing "Minnesota Transfer." Defendant, instead of delivering shipment to Minnesota Transfer Ry. at Minnesota Transfer, delivered it to its own hold yard in south Minneapolis. Complainant directed delivery at Minnesota Transfer upon tracks of Minnesota Tranfer Ry., which serves his place of business, and defendant billed

car back at applicable distance rate, plus reconsignment charge. HELD: As routing "Minnesota Transfer" indicated with sufficient clearness that delivery on rails of the Minnesota Tranfer Ry was desired, shipment found misrouted. Reparation awarded. Gust Johnson Lumber Co. v. C. M. & St. P. Ry. Co., 91 I. C. C. 561.

(g) Bills of lading specified originating and delivering lines but no intermediate routing. Shipments moved through United States over standard route, but could have moved over a lower-rated Canadian differential route. Upon receipt of first car initial carrier requested instructions as to intermediate routing and consignor directed movement over standard route. All shipments were moved in accordance with instructions governing first shipment. HELD: Carrier was not justified in routing all shipments via higher-rated route simply because of explicit directions as to initial shipment. Shipments subsequent to first should have been forwarded via cheapest reasonable route consistent with bill of lading instructions and differential route was not an unreasonable one. Shipments, exclusive of first, found misrouted and reparation awarded. Petertyl v. N. Y., N. H. & H. R. R. Co., 91 I. C. C. 699.

(h) Shipment of sorghum seed from Kansas City to Montgomery, specifically routed by shipper "C. of G. at Birmingham, Ala.," and shipment so moved. Combination rate based on Memphis assessed. Had shipment moved to Birmingham, thence over Southern Ry. to Mobile, and back through Birmingham to destination a lower combination would have applied. HELD; Notwithstanding that route through Mobile was not designated by shipper, it was duty of carrier under rule 5(b) of Tariff Circular 18-A to apply the Mobile rate, which was applicable to and from Birmingham, the interchange point directly intermediate to the base point upon which lowest combination made. Shipment found overcharged and reparation awarded. Schloss & Kahn Grocery Co. v. St. L.-S. F., 93 I. C. C. 67.

(i) Rates on shipments of coal from West Virginia mines to Gary and Michigan City, Ind., which were not specifically routed as to intermediate carriers but specified Michigan Central delivery, found not to have been unreasonable, unjustly discriminatory, or unduly prejudicial. During the period of movement no specific routing on shipments consigned for Michigan Central delivery was in force, but tariffs publishing lower rates on basis of which reparation is sought did not provide for Michigan Central delivery. Subsequent to period of movement the lower-rated route was made available for Michigan Central delivery. Bash & Co. v. B. & O., 96 I. C. C. 178, 182.

(j) Shipments of coal from Pinnacle and Mount Harris, Colo., destined to various points in Nebraska, were tendered unrouted. Bills of lading which specified "C-N-W delivery" or "UP-CNW" but specified neither rates nor junction points were issued by initial carrier who delivered all shipments to Union Pacific. Governing tariff provided two routes and published combination rule providing for construction of through rates to and from junction points. Shipments to Dodge and Scribner, Nebr., found misrouted by originating carrier and reparation awarded to basis of lower rates contemporaneously applicable over another available route. Shipments to Bradish, Ewing, Newman's Grove, and Raeville, found misrouted by intermediate carrier and reparation awarded because not forwarded through the junction point via which lowest rate applied. Crowell Lumber & Grain Co. v. Director General, 96 I. C. C. 259.

(k) Conf. Ruling 214 (g), to effect that there is a limit beyond which agent of carrier can not be reasonable expected to know as to terminal delivery and local rates at distant points and on lines of distant roads to or with which he has no specific joint through rates, was not intended to relieve carriers' agents of duty of exercising reasonable care and diligence in securing information that will insure correct routing of shipments. Crowell Lumber & Grain Co. v. Director General, 96 I. C. C. 259, 261.

(l) It would be an extension of carrier's duty beyond reasonable limits to require it to be responsible for failure of its agent to make inquiry as to whether a lower combination rate could be figured on some relatively obscure point beyond the recognized gateways in the absence of specific routing instructions from shipper and where the files of its agent do not contain tariff showing a lower rate than that existing over route of movement. See 19 I. C. C. 448 and Conf. Ruling 214 (g). Alabama Chemical Co. v. Illinois Traction, Inc., 98 I. C. C. 451, 452.

(m) Commission has repeatedly said that it is the duty of the carrier to exercise reasonable care and diligence in securing information that will insure correct routing even though the shipments are destined to points on lines of distant roads with which no specific through rates are maintained. Weldon Williams & Lich v. E. R. R. Co., 101 I. C. C. 174, 175.

(n) Shipments of lumber moving from La Grange, Ga., to Philadelphia, Pa., found misrouted. Originating carrier's agent gave erroneous and conflicting instructions to route shipments "Philadelphia, Pa., Chester Station," and "Chester Station, Philadelphia, Pa.," under impression that shipments for Philadelphia should be so routed. Such instructions were inserted in bills of lading by shipper, resulting in shipments moving to Chester and necessitating their reconsignment to Philadelphia. Reparation awarded. Clark Lbr. Co. v. A. B. & A., 102 I. C. C. 252.

(o) Shipment of bottle caps moving from New Orleans via Morgan Line to New York, thence rail via B. & O. to Highlandtown, Baltimore, found not misrouted. When delivered to the Morgan Line at New Orleans, shipping ticket contained no routing instructions but bill of lading issued by that carrier showed routing as "B&O." While the lower all water rate applied to and from New York in connection with the Clyde Line, the latter's terminal at Baltimore is not at Highlandtown, and delivery at that terminal would not have been in accordance with the bill of lading. Conf. Ruling 509. Crown Cork and Seal Co. v. S. P., 102 I. C. C. 331.

ALL OTHER CITATIONS

Early-Foster Co. v. A. T. & S. F. Ry. Co., 88 I. C. C. 507.

§6. Right of Carrier to Route or Restrict Routes.

See Long and Short Hauls §4 (3h); Restricted Rates.

(a) Rate on lemons from New York, N. Y., to Philadelphia, Pa., found not unreasonable as compared with lower rates contemporaneously in effect via routes other than route of movement. American Stores Co. v. P. R. R. Co., 89 I. C. C. 41.

(b) Existence of lower rates over routes other than a particular route of movement and subsequent reduction of the rate over the particular route are not sufficient to establish that the previous rate was unreasonable. American Stores Co. v. P. R. R. Co., 89 I. C. C. 41, 43.

(c) Desire of a carrier to get the long hauls on traffic does not warrant it in maintaining rates that are unreasonable or otherwise unlawful to particular consuming territories. A shipper is entitled to forward its products to any market over any route it selects at reasonable rates. United Verde Extension Mining Co. v. A., T. & S. F. Ry. Co., 89 I. C. C. 95, 100.

(d) Proposal to restrict joint rates on lumber from Pacific coast points to stations on Copper Range R. R. to shipments handled via C., M. & St. P. Ry. via McKeever, Mich., or delivered to that carrier at Missouri River gateways, found not justified. In justification respondents urge that Copper Ranger has divisional arrangements with the Milwaukee but none with the Duluth, South Shore & Atlantic, with which it connects at Houghton, Mich., and that the Copper Range receives a shorter haul frequently involving the participation of an additional carrier when traffic moves through Houghton. However, under proposed restriction, traffic to the Twin Cities could not be forwarded under joint rates to points on Copper Range because the Milwaukee would not receive shipments at Missouri gateways. Routing on Lumber 89 I. C. C. 351.

(e) Respondents proposed to restrict the routing in connection with commodity rates maintained on printing or book paper, carloads, from Kalamazoo, Mich., Plainwell, Otsego, and White Pigeon, Mich., to Freeport and other points in northern Illinois and Wisconsin. The proposed schedules would have the effect of increasing rates to Mount Morris, Ill., and other intermediate points. The short line distance from Kalamazoo to Rockford over the N. Y. C., to Chicago, thence I. C., is 241 miles. As the application of the 21.5c rate is unrestricted it also applies over the N. Y. C., to Chicago, C. & A., to Peoria and C. & N. W., beyond, 485 miles. Mount Morris is a local point on the Burlington 25 miles southeast of Freeport, intermediate between Kalamazoo and Freeport over the N. Y. C., to Chicago, Burlington to Forreston, Ill.,

thence I. C. The direct lines from Chicago to Freeport are the I. C., C. M. & St. P., and C. & N. W. In restricting to these lines the application of the commodity rate from Kalamazoo to Freeport the proposed routing restriction would eliminate the Burlington routing and thus result in the application of the sixth class rate 24.5c to Mount Morris. Upon the application of a commodity rate of 21.5c to Mount Morris over the Burlington the order of suspension will be vacated. Routing on paper from Michigan, 91 I. C. C. 452.

(f) Carriers are entitled to the protection of their long haul only when it is over a reasonably direct route. Hariss Irby & Vose v. B. S. L. & W. R. R., 92 I. C. C. 304, 305.

(g) In 81 I. C. C. 272, a proposed restriction by the G. N. of the routing of corn, in carloads, from defined territory in South Dakota, to Montana, Idaho, Washington and Oregon destinations was approved by the Commission. G. N. proposed to restrict to its corn lines beyond Aberdeen, S. D. the application of a 59c rate on corn from stations in South Dakota on C. M. & St. P. and C. & N. W. between Yankton and Aberdeen and west from Huron to the Missouri river and beyond as far as Belvidere on the former to the destination territory. These stations are in group F territory from which a 64c rate applies westbound with back haul via Minneapolis or St. Paul, Minn., and milling in transit thereat. The 59c rate from this limited territory was intended for direct movement through western gateways, and not via the Twin Cities. HELD: The publication for the G. N. of note 6 in the tariff not justified. Routing via North Dakota Junctions, 93 I. C. C. 411.

(h) If it had been the intention to restrict the routing provisions of the tariff so as to exclude the Midland Continental or other intermediate carriers, provision should have been made therefor in clear and unequivocal language. Routing via North Dakota Junctions, 93 I. C. C. 411, 414.

(i) Respondents proposed to cancel the route in connection with the Southern Ry. under the joint commodity rates on peaches, carloads, from Georgia and Alabama and Chattanooga, Tenn., on the C. of Ga., G. F. & A., and W. & T., to interstate destinations. Under the present tariffs like joint commodity rates to the respective eastern destinations are available over three routes beyond the Central's rails to Potomac yard, where eastern traffic is delivered to a connecting carrier. If the suspended schedules were allowed to become effective the joint commodity rates would no longer be applicable via Atlanta and Southern, leaving in effect the lowest combination rates, except from common points from which joint class rates would apply. The Southern desires to withdraw from the business unless the traffic is delivered to it in steady volume. HELD: Proposed schedules not justified. Peaches from Alabama, Georgia and Tennessee, 93 I. C. C. 534.

(j) A carrier is entitled to handle traffic originated by it over the route which will give it the long haul, provided that such route is reasonable and practicable. Goodrich Bros. Hay & Grain Co. v. C. C. C. & St. L. Ry., 95 I. C. C. 5, 6.

(k) The view has been long followed in tariff construction that if carriers participating in a tariff do not intend rates to apply over certain routes they must restrict their use by proper notation in the tariff. Failure to restrict routing leaves all routes open should shippers desire to use them. McGowin Foshee Lumber Co. v. A. F. & G. Ry., 95 I. C. C. 451, 452.

(l) Respondents proposed restrictions in the routing of cement from Kansas City and Sugar Creek, Mo., Superior, Neb., Bonner Springs and Sunflower, Kas., Ada Dewey, and Hartshorne, Okla., to destinations in Kansas and Oklahoma, causing increased rates. The rates on cement are based on 87 I. C. C. 451. There are specific rates, substantially higher than those under this scale, from the Kansas gas belt to destinations in Arkansas on the Frisco, between Rogers and Fort Smith. Since these Arkansas destinations are intermediate to Oklahoma destinations over existing routes from the Kansas gas belt, the adjustment reflects fourth section departures. The specific rates to the destinations in Arkansas are applicable only over designated routes via Monett, Mo., while those to destinations in Oklahoma are subject to no routing restrictions. By routing shipments from the Kansas gas belt to destination in Arkansas through Oklahoma junctions, via which the specific rates to the Arkansas destinations

do not apply, shippers are able to avail themselves of the lower rates to Oklahoma by virtue of the intermediate rule carried in the tariff naming the rates to Oklahoma. The proposed routing restrictions would eliminate existing fourth section departures in so far as routes over the Frisco are concerned. The same result could be accomplished by reducing the rates to destinations in Arkansas. Respondents offered nothing to justify the increased rates which would result from the proposed routing restrictions. It appears that they are under an erroneous impression that shippers ought not to be permitted to indulge in indirect routing in order to escape the payment of rates which respondents themselves impliedly concede can not be justified. HELD, suspended schedules not justified. Routing Cement, 98 I. C. C. 94.

(m) As a matter of sound policy under the law, a carrier is not justified in attempting to restrict its traffic to movement between points on its own line. Orange Chamber of Commerce v. A. & W. Ry., 98 I. C. C. 101, 108.

(n) The shippers and not the carriers possess the right to designate the routing of traffic. Divisions of joint rates and fares of M. & N. A. Ry., 98 I. C. C. 119, 141.

(o) C. B. & Q. R. R., respondent, proposed routing restrictions which would have the effect of rendering joint rates on grain from certain points in transcontinental groups F and G to destinations in California inapplicable via primary markets on the Missouri River, such as Omaha, Neb., and Sioux City, Iowa. In respect of traffic to California, practically all points in Nebraska except those in the northwestern portion of that state and in a narrow strip in close proximity to the Missouri river are in transcontinental group G. Those along the Missouri river are in group F and those in the northwestern portion appear not to be involved here. The rates on wheat and coarse grains, from these groups to California are 68 and 61c. The tariff in which the rates are published contains no routing instructions applicable to that portion of the transportation east of Ogden, Utah, or El Paso, Tex., and accordingly grain may be shipped from point in Nebraska west of the Missouri river to California via Omaha or Sioux City. The proposed routing restrictions would make the com-Commission has recognized that carriers souri river cities applicable on grain traffic handled via those cities from points in group G when the eastbound movement to those cities is over lines other than those of respondent, the resultant increases in rates varying from about 7.5c to 19.5c. In view of the failure to make the restriction applicable to items in which rates on grain products are published, apparently such products would not be affected thereby and grain could continue to move via all lines from Group G to the Missouri river cities, be there milled into grain products, and subsequently shipped to California as heretofore. Group G rates would continue to apply on grain originating on respondents line. There is commercial necessity for permitting grain produced in Group G to move eastward to the Missouri river cities before being shipped to California. Indeed, this necessity appears to extend to points more than 150 miles west of the Missouri river cities. Provided reasonable charges are assessed for the total transportation, the Commission is of the opinion that grain should be permitted to move from all of Group G via the Missouri river cities to California, and that carriers should not be permitted to increase their charges to an unreasonable basis which will prohibit, or nearly prohibit, that movement. HELD, schedules not justified but carriers should maintain joint through rates from Group G via the Missouri river cities to California upon a reasonable basis for the through transportation involved. No attempt will be made to fix reasonable charges for such movements, but compensation may be maintained for the out of line service either by assessing out of line charges based on the distances out of the direct line of movement, or a higher rate from Group G when the movement is through Group F. Grain to Pacific coast, 98 I. C. C. 158.

(p) Respondents proposed to make certain changes and restrictions in the routing of lumber originating on the Central of Georgia, or delivered to that carrier by certain short line connections, when destined to points in central, Buffalo-Pittsburgh, and eastern territories. The present routing permits certain movements of lumber from the Centrals

rails by means of which shippers avail themselves of reconsignment service accorded by intermediate carriers and ultimate destinations are reached at the published joint rates, the distribution from the reconsignment point extending trunk line and eastern territories. The proposed routing restrictions attempt to limit the available routes to more direct lines. The proposed schedules, in so far as they would apply to destinations covered by the eastern lumber tariff are faulty and admittedly in error in that they provide routing through Augusta by the Clinchfield route and via Cincinnati, which is obviously wasteful and unnecessary. They are also faulty in that the Clinchfield route would be closed to certain points intermediate to destinations within the belt to which that route would remain open, thereby continuing and creating departures from the long and short haul clause of the fourth section of the act. The Johnson City route is shorter than the N. & W., route and in some instances is shorter than the N. & W., route and in some instances shorter than the Clinchfield route. No reason appears why the Johnson City route should not remain open to the destinations to which it is proposed to keep open the Clinchfield and N. & W., routes. Indeed, considering that the Johnson City route is now open in connection with the Southern and that the Central and Southern participate in rates over these routes, it would seem that the failure of the Central to provide for this routing would make the tariff contradictory in its terms. HELD, schedules not justified, but carriers may publish tariffs in accordance with the suggestions contained herein. Restrictions in routing of lumber, 98 I. C. C. 529.

(q) Notwithstanding fact that an originating carrier misquoted a rate to a shipper, it is not obliged to turn shipment over to competing carriers at point of origin and forego a haul thereon. McLean Lumber Co., 22 I. C. C. 349. Newsom v. M. & O. R. R. Co., 91 I. C. C. 68, 70.

(r) Proposal to restrict routing in connection with commodity rates on printing or book paper from Kalamazoo, Plainwell, Otsego, and White Pigeon, Mich., to Freeport and other destinations in northern Illinois and Wisconsin, for purpose of precluding application of commodity rates via unreasonably circuitous routes not covered by divisional arrangements, found not justified. Commission has repeatedly condemned attempts to make application of rates dependent upon existence of division arrangements ,and, although elimination of circuitous routes is desirable from a transportation standpoint, resulting increased rates would be unreasonable and would result in undue prejudice to Michigan manufacturers and in undue preference of Wisconsin paper producers. Routing on Paper from Michigan, 91 I. C. C. 452.

(s) Proposed change in routing of traffic between Texas and southwestern territory and eastern and New England territories, by cancellation of all class and commodity rates applicable as proportionals from or to Port Arthur, Tex., and as joint rates in connection with rail lines, of Transmarine Corporation, a water carrier, and proposed substitution of Beaumont, Tex., for Port Arthur as a port of call for its vessels, found justified. Routing on through traffic will only be changed from "via Port Arthur" to "via Beaumont," and only change in rates will be cancellation of rates to or from Port Arthur, and substitution of increased rates to or from that point applicable via Beaumont, when in connection with Transmarine Corporation. Routing to and from Eastern and New England Territories, 91 I. C. C. 455.

(t) Proposed restriction of routing on grain and products originating upon lines of Missouri Pacific in Kansas and Nebraska and destined to Texas, so that one-factor rates south of Kansas City will not apply via Frisco, M. K. T., or Kansas City Southern, found justified. Commission has recognized that carriers may ordinarily insist upon long haul for traffic which they originate provided routes afforded by them are not unreasonably long. No undue prejudice or preference will result, for if proposed tariffs are permitted to become effective only routes of which Missouri Pacific is initial carrier will be available south of Kansas City. Grain from Western Trunk Line Points, 91 I. C. C. 632, 647.

(u) Proposed restriction of commodity rates on sash, in mixed carloads with common unglazed doors and millwork, from certain points in Iowa, Illinois and Wisconsin to trunk-line and New England territories, so as not to apply on common glazed sash, found not justified.

Glazed Sash to Trunk Line and New England Territories, 91 I. C. C. 731.

(v) Respondents proposed to restrict the application of joint rates in livestock, in carloads, between certain points in Utah, Idaho, Montana and Wyoming on the Union Pacific system on the one hand and points on and east of the Missouri river on the other, to certain routes. The joint rates affected by the suspension apply between points on respondents lines north of Ogden and west of Granger, also west of Salt Lake City and south of Payson, Utah, on the one hand, and Kansas City, St. Joseph, Omaha and the other Missouri river cities and points east thereof, on the other hand. There is practically no movement westbound. Respondent proposed to cancel the routing of livestock under those rates via Denver, Pullman, and Pueblo, Colo., and east of those gateways over the Santa Fe, the Burlington and Rock Island, and M. P., and thus confine it to the Union Pacific. The cancellation would not affect shipments to or from points between the Colorado gateways and the Missouri river. If the schedules under suspension are permitted to become effective there will be no increase in charges on shipments routed over respondents lines, but on livestock routed over other lines east of the Colorado gateways combination rates would apply and would result in an increase of from 25 to 40c per 100 pounds over the present rates. Respondents lines constitute the shortest routes between the points of origin and destination here considered and furnish the most expeditious service in transporting livestock between them. HELD: Proposed schedules not justified. Routing of Livestock, 100 I. C. C. 751.

(w) Proposal of M. & O. R. R. to restrict routing in connection with joint rates on lumber from certain points in Alabama and Mississippi to points on C. & O. Ry., designed for purpose of retaining to itself the long haul on this traffic, found not justified. Proposed restriction would restrict markets in which shippers might dispose of their products, and in many cases result in combinations where lumber is reconsigned from Louisville. Lumber from Alabama and Mississippi Points, 92 I. C. C. 156.

(x) Proposed cancellation of routing via M. & O. R. R., in connection with joint rates on lumber from points on Gulf, Mobile & Northern, and Jackson & Eastern to points on C. & O. Ry., found not justified. Only justification offered was that there is not enough revenue in the business to pay for handling, the M. & O. apparently being dissatisfied with divisions it receives out of joint rates. Lumber from Alabama and Mississippi Points, 92 I. C. C. 156.

(y) Proposal to restrict territory of origin in rules governing stop-off in transit of lumber westbound at Black Rock, Buffalo, and North Tonawanda, N. Y., while no similar restriction is proposed at Falconer and Jamestown, N. Y., and Cory, Pa., competing points, found not justified. Proposal is induced by fear of unsatisfactory divisional arrangements with connecting carriers, but this is not recognized as a sufficient justification for increased rates. Moreover, there is no warrant for extending to Buffalo, Black Rock, and North Tonawanda different treatment from that accorded Falconer, Jamestown, and Cory. Transit Privileges on Lumber at Buffalo. 92 I. C. C. 181.

(z) Shipments of corn from defined territory in South Dakota to western destinations, principally in the State of Washington, found overcharged. While it was intention of carriers to restrict routing provisions of tariffs carrying lower rates so as to exclude certain intermediate carriers embraced in route of movement, and to restrict routing via their own lines, they did not do so in clear and unequivocal language. Reparation awarded. Routing via North Dakota Junctions, 93 I. C. C. 411.

(aa) On further hearing of Intermediate Routing, 81 I. C. C. 272, restriction by Great Northern of routing of corn from defined territory in South Dakota over its own lines from Aberdeen, S. Dak., to Montana, Idaho, Washington, and Oregon destinations found not justified. The Great Northern does not originate the traffic and considerations for keeping open routes over the Midland Continental R. R. are shown by present record to be as persuasive as they were in 78 I. C. C. 328, wherein commission declined to sanction a proposal of the Northern Pacific to eliminate that line as an intermediate carrier from Group F points to destinations in Montana on the Great Northern's line. Routing via North Dakota Junctions, 93 I. C. C. 411.

(bb) If it is intention of carriers to restrict routing provisions of tariffs so as to exclude certain carriers, provi-

sion should be made therefor in clear and unequivocal language. See 74 I. C. 489, 490; 81 I. C. C. 725, 727. Routing via North Dakota Junction, 93 I. C. C. 411, 414.

(cc) Proposed elimination of Salt Lake & Utah R. R. as an intermediate participating carrier in routing of westbound transcontinental traffic, found not justified. Its elimination from through routes on traffic moving into Salt Lake City over the Union Pacific's lines will result in increased rates over that route to points on the Salt Lake & Utah. Moreover, various transit services would remain available to competing shippers served by the D. & R. G. under transcontinental rates, whereas shippers on the Salt Lake would be compelled to pay higher combinations. Respondent offered no justification for the resulting increases. Routing via Salt Lake & Utah R. R., 95 I. C. C. 237.

(dd) Shipments of cement moved from Richard City, Tenn., to Normal, Tenn.; via an interstate route through Memphis. Shipments could have moved via another available route through Stevenson, Ala., over which latter route Normal is intermediate to Memphis. FOUND: While the normal route is through Memphis the route through Stevenson was actually open and its use in the tariff unrestricted. The maintenance, therefor, of a higher rate thereover to Normal than Memphis was in violation of the long-and-short-haul provision of section 4 of the act. Dixie Portland Cement Co. v. N., C. & St. L., 96 I. C. C. 47.

(ee) Shipment from Chester, Pa., to Tulsa, Okla., originally routed via rail to Philadelphia, and water and rail beyond was diverted at Philadelphia, upon shipper's request, to all-rail route, and upon arrival at Tulsa, was diverted to Wynona, Okla. Charges collected found inapplicable to extent they exceeded a lower combination, plus diversion charges, from Chester, Pa., via St. Louis to Wynona, although factor of rate found applicable was restricted to shipments "consigned through" from Chester to Wynona, "via all-rail routes." Reparation awarded. Tidal Osage Oil Co. v. Director General, 96 I. C. C. 112.

(ff) Rates on shipments of coal from West Virginia mines to Gary and Michigan City, Ind., which were not specifically routed as to intermediate carriers but specified Michigan Central delivery found not to have been unreasonable, unjustly discriminatory, or unduly prejudicial. During the period of movement no specific routing on shipments consigned for Michigan Central delivery was in force, but tariffs publishing lower rates on basis of which reparation is sought did not provide for Michigan Central delivery. Subsequent to period of movement the lower-rated route was made available for Michigan Central delivery. Bash & Co. v. B. & O., 96 I. C. C. 178, 182.

(gg) Following principle announced in 83 I. C. C. 93, and 85 I. C. C. 40, proposed cancellation of proportional class rates applicable from Rock Island, Ill., and Davenport, Iowa, on shipments from points east of the Indiana-Illinois State line to interior Iowa destinations, which would effect increase in rates on class traffic moving over the Peoria route, found not justified. The existing proportional class rates for service west of the Mississippi River were established without any condition that the carrier applying them should first have a haul east of the river. Proportional Rates from Upper Mississippi Crossings, 96 I. C. C. 715.

(hh) Proposed restrictions in routing of cement from points within the Kansas gas belt and certain other points, to destinations in Oklahoma and Kansas which would result in increases in rates by elimination of routes through Arkansas, found not justified. While the proposed restrictions would eliminate existing fourth-section departures in so far as routes over the Frisco are concerned, the same result could be accomplished by reducing the rates to destinations in Arkansas, and respondents offered nothing to justify the increased rates which would result. Routing Cement Between Western Trunk Line Points, 98 I. C. C. 94.

(ii) Proposal to restrict the routing on grain from certain points in transcontinental Groups F and G to California destinations, the effect of which would be to cancel joint rates via primary markets on Missouri River, leaving in effect over such routes higher combination of rates from Group G. points via Missouri River cities when the eastbound movement to those cities is over lines other than those of respondent, and involving an out-of-line haul, found not justified. But this finding does not require respondent or other carriers similarly situated to continue to transport

such grain via Missouri River cities at rate applicable for direct movements, following 43 I. C. C. 90 and other cases cited. Grain to Pacific Coast, 98 I. C. C. 158.

(jj) Proposal to restrict routing on lumber from points served by Central of Georgia and certain short-line connections to destinations in central, Buffalo-Pittsburgh and eastern territories, designed to limit the available routes to more direct lines and eliminate routing over other intermediate carriers and other short hauling, found not justified. Proposed schedules are shown to be faulty and admittedly in error; they would continue and create departures from the long-and-short-haul clause of fourth section of the act, and elimination of the Johnson City route would make the tariffs contradictory in terms. Restriction in Routing of Lumber, 98 I. C. C. 529.

(kk) Proposal to restrict routing on lumber from points served by Central of Georgia and certain short-line connections to destinations in central Buffalo-Pittsburgh, and eastern territories, designed to limit available routes to more direct lines, eliminating routing over other intermediate carriers and other short hauling, found not justified. Proposed schedule would, among other things, limit destination territory via Kenova, W. Va. and Ohio River crossing which routes protestants desire kept open in order to retain the use of St. Paul, Va., as a reconsigning point. Since other reconsigning points are available under applicable rates, no good purpose would be served by keeping St. Paul available to such a wide territory as at present. It should, however, be kept available to all destinations within the belt, so as to obviate departures from the long-and-short-haul clause of the fourth section. Restriction in Routing of Lumber, 98 I. C. C. 529.

(ll) The Commission has repeatedly found that unreasonably high rates may not be maintained in order to control the routing of traffic. Arbogast & Bastian v. L. V. R .R. 107 I. C. C. 105, 108.

(mm) Proposed tariff changes in rates, fares, and charges over the Natchez route issued in connection with the discontinuance of the Mississippi Central's operations and trackage arrangements between Hattiesburg, Miss., and Mobile, Ala., found not justified in certain respects and justified in others. The record with respect to the rates on phosphate, fertilizers, and naval stores outbound from Mobile and petroleum inbound is insufficient to warrant specific treatment of these commodities. The Natchez route from Mobile over the G., M. & N. and the B. & H. S. will be available to shippers from or to Mobile and the conclusions herein will be without prejudice to any findings in future proceedings with respect to the measure of such rates. Cancellation of Rates and Routes via Mississippi Central, 100 I. C. C. 71, 78.

(nn) Proposed increased class rates from Virginia cities and points taking same rates, or rates made differentially higher, to destinations on the Charleston division of the Baltimore & Ohio found not justified. First class rate from Lynchburg to Grafton on the main line of the B. & O. is lower than the present first-class and the proposed rate, to points on the Charleston division, and, since no restrictions upon the routing are made in the tariff, this rate is applicable over the Charleston division. Following Zelnicker Supply Co., 80 I. C. C. 651, and Dixie Portland Cement Co., 96 I. C. C. 47, respondents contention that no increase in discrimination against intermediate points under the fourth section results because no arrangements for divisions are in effect over these routes to Grafton, and routing over this line would not be observed, can not be sustained. Class Rates from Eastern Points to Points in West Virginia, 100 I. C. C. 215.

(oo) Proposal of Union Pacific system to restrict routing in connection with joint rates on livestock originating on its lines in Utah, Wyoming, Idaho, and Montana destined to Missouri River and east thereof, designed for purpose of retaining to itself the long haul on this traffic, found not justified. Proposed restriction would result in shipments from some points on respondent's lines being permitted feeding-in-transit privileges at certain feeding lots located on lines other than those of respondent, while shippers of livestock originating in northern Utah and Idaho would be deprived of this privilege and compelled to pay higher rates unless shipments were routed over the Union Pacific. Undue preference of certain shippers and localities and undue prejudice against others would result. Routing of Livestock, 100 I. C. C. 751.

(pp) Proposed increased rate on brick and clay products from Nashville, Tenn., to Paducah, Ky., to the basis approved by the commission in Brick and Clay Products in the South, 88 I. C. C. 543, found justified except to the extent that the rate proposed on common brick exceeds a certain amount over the route specified via Hopkinsville, Ky. Schedules ordered canceled without prejudice to the filing of other schedules in which respondents may apply the rate herein found reasonable on common brick over the more circuitous routes between Paducah and Nashville. Brick from Nashville to Paducah, Ky., 101 I. C. C. 11.

(qq) Shipments of sugar from San Francisco to Leadville, Colo., moved as routed by shipper over a so-called "uneconomical and circuitous" route at a rate higher than that contemporaneously in effect over other more direct routes available, which lower rate was subsequently made applicable, over route of movement. Complainant admits its own error in specifying higher-rated route but charges initial carrier with negligence for failure to point out at time of shipment that higher rate applied over specified route. HELD: Alleged error was apparently attributable to complainant's own carelessness rather than to negligence of initial carrier and rates can not be condemned upon the mere fact that a lower rate was subsequently established over route of movement. Rate assailed found not unreasonable, unduly prejudicial or otherwise unlawful. Western Sugar Refinery v. S. P. Co., 101 I. C. C. 113.

(qqa) Proposed increased rates on poles (electric light, telephone, and telegraph), piling, and box and crate shooks, from Sand Point, Kootenai, and Culver, Idaho, to certain group points in California on the Western Pacific and Sacramento Northern Railroads found not justified. The proposed tariff carries no requirement of specific or complete routing, but contains an unequivocal routing provision to which carriers attempt to apply a restricted construction, to which the commission can not lend its approval. Forest Products to California and Nevada, 102 I. C. C. 224.

ALL OTHER CITATIONS

Transit Privileges on Transcontinental Grain, 85 I. C. C. 43; Bituminous Coal from Mines in Illinois, 85 I. C. C. 105; Rating on Empty Barrels, 85 I. C. C. 154; Routing of Lumber from A. T. & N. R R. Stations, 85 I. C. C. 527; Kneeland-Bigelow Co. v. Director General, as Agent, 85 I. C. C. 659.

§6½. Rail-and-Water Route.

See Rail-and-Water Rates.

(a) Complainant attacked as misrouting on a car of clay shipped Dec. 11 1918 from Langley, S. C., to Neenah, Wis., as unreasonable. Shipment delivered unrouted to Southern, and moved over that road to Cincinnati, O., Big Four to Coster, Ill., E. J. & E., to Leithton, Ill., Soo Line beyond, charged applicable rate of $6.70. Rates were based upon proportionals to and from Cincinnati, the higher of the two applying over all rail routes the lower rail lake and rail. P. M., and G. T., were participants in the tariff. Both operate car ferries across Lake Michigan, a rate of $6.30 being applicable over rail lake and rail routes. No steamship line was named as a participating carrier and accordingly the rail lake and rail rate could have had no application over a rail and water break bulk route. It appears that the expression "rail lake and rail" was used to describe the car ferry routes and to distinguish them from the routes which were literally "all rail." HELD, shipment misrouted, reparation awarded. Bergstrom Paper Co. v. Director General 93 I. C. C. 591.

(b) Shipment delivered to carrier unrouted. Tariff provided two routes carrying proportionals, the higher applying "all-rail," the lower "rail-lake-and-rail." Carriers forwarded shipment all-rail and assessed higher proportional. HELD: Misrouting resulted as carriers operated car-ferry routes over which lower "rail-lake-and-rail" proportional applied. A car-ferry route is an "all-rail" route, and expression "rail-lake-and-rail route" describes a rail-and-water break-bulk route. Such terms, however, were not so used in the tariff, no steamship line being named as a participating carrier, thus rendering the rail-lake-and-rail rate inapplicable over a break-bulk route. Expression "rail-lake-and-rail" merely distinguished car-ferry routes from those literally all-rail, and it was carriers' duty, in absence of instructions, to have forwarded over the lower-rated car-ferry route. Reparation awarded. Bergstrom Paper Co. v. Director General, 93 I. C. C. 591.

(c) Rate on two carload shipments of canned tomatoes from Berlin and Conowingo, Md., to Monroe, La., found to have been unreasonable to extent it exceeded rate contemporaneously applicable rail-water-and-rail routes other than route of movement. Waiver of undercharges authorized. Sugar Bros. Co., Ltd., v. P. R. R. Co., 98 I. C. C. 613.

§7. Shipper's Instructions.

See Bills of Lading §10; Through Routes and Joint Rates VI.

(a) Desire of a carrier to get the long hauls on traffic does not warrant it in maintaining rates that are unreasonable or otherwise unlawful to particular consuming territories. A shipper is entitled to forward its products to any market over any route it selects at reasonable rates. United Verde Extension Mining Co. v. A., T. & S. F. Ry. Co., 89 I. C. C. 95, 100.

(b) Cars were specifically routed by shipper but no junction point specified. Failure of carrier to forward shipments in conformity with such instructions via junction point through which lowest rate applied found to result in misrouting. Reparation awarded. Nestle's Food Co. v. Director General, as Agent, 89 I. C. C. 340, 341.

(c) Complainant attacked combination rate charged on a car of household goods shipped August 13, 1921 from Murphysboro, Ill., to Lanexa, Va., as unreasonable, unduly prejudicial and in violation of the fourth section. Defendant informed complainant rate was $1.625 applicable via M. & O., Southern and C. & O., and complainant specified that route and rate in the bill of lading and prepaid the freight. Shipment moved M. & O., to Corinth, Miss., Southern to Richmond, Va., and C. & O., beyond distance 1,099 miles and combination on Cairo of $1.985 applied. A rate of $1.63 applied over all routes in connection with the I. C., and C. & E. I., and effective Oct. 20, 1921, the M. & O., established this rate. If the shipment had been handled by the M. O., to East St. Louis, Ill., delivered there to the Southern the haul would have been 1,037 miles. HELD, rate of $1.985 applicable, not unreasonable, complaint dismissed. Mrs. Pattie Newsom v. M. & O. R. R., 91 I. C. C. 68.

(d) In 87 I. C. C. 31, the Commission found that 11 cars of crushed stone shipped from Dell Rapids, S. D., to Max, Iowa, and reconsigned to Sioux City, Iowa, were misrouted by defendant and awarded reparation. Shipments were refused by consignee at Max, and were reconsigned to Sioux City without routing restrictions. Defendant moved shipment from Max to destination over its line via Canton, S. D., 126 miles, and collect class E rate of 9c. A lower rate of $1.455 was applicable over a two line route of 70.7 miles, made up of to Sheldon over defendants line, 13.5 miles, 67.5c; Sheldon to Sioux City over Omaha line, 57.2 miles, $1.08, less 30c as authorized in Kellys I. C. C. U. S. 1. Clearly, if complainants had directed routing of the shipments over the two line route defendant could not have ignored lawfully such routing instructions under authority of the provisions of section 15. It may be that the Commission could not have required the establishment of this route if it had not existed, but as it did exist and was available to complainants, the provisions of the section quoted have no application here. HELD, original findings affirmed. L. G. Everist v. C. M. & St. P. Ry., 92 I. C. C. 473.

(e) Complainants are aware of the ruling that where a consignor specifies the routing that he desires his shipments to take by naming a carrier which, in connection with the originating line, form a through route from point of origin to destination, the initial carrier can not be charged with having misrouted the shipment if it bills it over that route instead of selecting a cheaper route in which those carriers participate but with a third carrier intervening. Wright & Wimmer v. C. T. H. & S. E. Ry., 93 I. C. C. 183, 184.

(f) Complainant attacked combination commodity rates charged on two cars of hard coal shipped August 13, 1920 from West Nanticoke, Pa., to Ingalls, Ind., as unjust, unreasonable, unjustly discriminatory, unduly prejudicial and in violation of the fourth section. Shipments moved as routed over Pennsylvania to Cleveland, O., and Big Four beyond, 698.3 miles, applicable rate $3.30 to Cleveland and $2.14 beyond. If the shipments had been delivered to the Pennsylvania unrouted they would have moved over that line to Anderson, Ind., and Big Four beyond, distance 653.9

miles, at joint rate of $4.30. Record shows that defendants forwarded the shipments over the route specified by the consignor as it was their duty to do. HELD, rate attacked not unreasonable or otherwise unlawful, complaint dismissed. Goodrich Bros. Hay & Grain Co. v. C. C. C. & St. L. Ry. 95 I. C. C. 5.

(g) Where a consignor specifies the routing that he desires his shipment to take by naming a carrier which, in connection with the originating line, forms a through route from point of origin to destination, the initial carrier can not be charged with having misrouted the shipment if it bills it over that route instead of selecting a cheaper route in which those carriers participate but with a third carrier intervening. California Packing Corp. v. Director General, 96 I. C. C. 239, 341.

(h) Relying on joint rate and route quoted by originating carrier's agent, complainant specified such rate and route in bill of lading, and prepaid charges. However, there was no joint rate in connection with originating line, and higher combination rate was applicable. Undercharges collected at destination. Route of movement was shortest route in connection with originating line, and applicable rate was lowest available rate via any route over which originating line could have received a haul. Notwithstanding fact that originating carrier misquoted rate to complainant, it was not obligated to turn shipment over to competing carrier at point of origin and forego a haul thereon. Newsom v. M. & O. R. R. Co., 91 I. C. C. 68.

(i) The right of a shipper under section 15 of the Act to designate the routing of his shipments is subject to such reasonable exceptions and regulations as the Commission shall from time to time prescribe. National Lumber Co. v. N. O. N. E. R. R., 100 I. C. C. 334, 335.

(j) Complainant attacked combination rate charged on a car of sugar shipped from San Fransisco to Leadville, Colo, on Jan. 13, 1922, as unjust, unreasonable and unduly prejudicial. Shipment was routed by complainant S. P. Co., U. P., C. & S., and moved S. P. to Ogden, Utah, thence U. P., via Borie, Wyo., to Denver, Colo., thence C. & S., distance 1,523 miles, charged $1.615 based on joint rate of 96c to Denver and 65.5c beyond. A rate of 96c was applicable from and to the points under consideration over S. P. to Ogden and D. & R. G. W. beyond, about 1293 miles. Complainant relieved defendants of their duty by routing the shipment. The exact reason, if there was any, for routing the shipment as shown in the bill of lading is not disclosed. Three years after the shipment moved, the rate of 96c was published via route shipment moved. HELD: Rate attacked not unreasonable, complaint dismissed. Western Sugar Refinery v. S. P. Co., 101 I. C. C. 113.

(k) Complainant elected to route the shipment; no duty rested upon it to specify any routing. Had the shipment been tendered without routing instructions the duty would have been imposed upon defendants to have forwarded it over the route over which the lowest rate applied. Western Sugar Refinery v. S. P. Co., 101 I. C. C. 113, 114.

(l) Complainant attacked combination class rates charged on a printing press shipped Feb. 21, 1923, from Paterson, N. J., to Fort Smith, Ark., as unreasonable and in violation of the fourth section. Official, southern and western classifications rate printing presses, carloads, fifth, sixth and class A, respectively, minimum 24,000 pounds. Shipment was tendered as a carload with routing directions C-O M. K. & T., at St. Louis, Ft. S. & W., at Crowder, Okla. It moved over the Erie to Ohio City, O., T., St. L. & W., to St. Louis, M. K. & T., to Crowder, and Ft. S. & W., beyond, charged fifth class 66c to St. Louis and class A 90.5c beyond. Over a route identical with the route of movement west of St. Louis and to that point composed of the Erie to Croxton, N. J., Pennsylvania in connection with the R. F. & P., to Richmond, Va., and C. & O. and B. & O. beyond, a combination of $1.26 applied composed of 31c to Richmond plus 95c to Fort Smith. There is no basis for the claim that the rate attacked violates the fourth section. The allegation of unreasonableness is in reality based solely on the contention that the shipment was misrouted in not having been forwarded by way of Richmond. The length of the route through Richmond exceeds that of the route of movement by only about 140 miles and in a haul such as here involved, aggregating in excess of 1,700 miles, the route over which the lower rate applied may not be considered an unnatural route on this account because including the

lines of three additional carriers. HELD: Shipment misrouted, reparation awarded. Weldon Williams & Lick v. P. R. R., 101 I. C. C. 174.

(m) Shipment of lubricating oil from Okmulgee, Okla., to Cleveland, Ohio, was specifically routed by shipper. Carrier's agent at point of origin erroneously billed the car to Pittsburgh, from which point it was subsequently rebilled to Cleveland. Rate from Okmulgee to Cleveland plus rate from Pittsburgh to same destination assessed found inapplicable to extent it exceeded lower rate applicable via route of movement to East Dubuque, Ill., and a proportional beyond, since tariff naming proportional factor contained no restriction against movement via Pittsburg. Reparation awarded. Empire Refineries v. Director General, 92 I. C. C. 59.

(n) Shipments were specifically routed by shipper, but carrier forwarded via a route over which lower rate applied. HELD: Shipments found misrouted but shipper not damaged thereby. Prairie Oil & Gas Co. v. A. T. & S. F., 92 I. C. C. 248, 249.

(o) Where bills of lading contain no routing instructions it is initial carrier's duty to forward shipments over cheapest reasonable available route. Conf. Ruling 214c. Prairie Oil & Gas Co. v. A., T. & S. F., 92 I. C. C. 248, 249.

(p) Shipments were refused by consignee at originally billed destination, whereupon they were reconsigned without routing instructions. Carrier moved shipments from reconsignment point, retaining to itself the entire haul, instead of forwarding via a shorter two-line route over which a lower rate applied. HELD: Had complainants directed routing over lower-rated route carrier could not lawfully have ignored such instructions, and having failed to indicate any routing it was carriers duty to forward over the cheaper route. Shipments found misrouted and reparation awarded. Original report, 87 I. C. C. 31, affirmed. Everist v. C., M. & St. P., 92 I. C. C. 473.

(q) Shipments were specifically routed at solicitation of carrier's agent upon his assurance that lower rate applicable via another available route also applied via route of movement. However, a higher rate applied over route of movement. Upon allegation that complainant was coerced into prescribing the routing specified and was deprived of its freedom of choice of routes, FOUND: Situation presented is essentially a misquotation of a rate by a carrier's agent, which is an insufficient basis upon which to award reparation. See 202 U. S. 242 and other cited cases. Nor can it be held that shipments were misrouted, for had routing been left open or tariff routing and restrictions observed, complainant would have been protected in the lowest applicable rate between the two termini. Philadelphia Quartz Co. V. Director General, 95 I. C. C. 593.

(r) Shipments of wrought-iron pipe from Leeray, Tex., to Bristow, Okla., reconsigned from Okemah, Okla., with specific instructions that routing beyond Fort Worth be in connection with the M-K-T through Crowder, Okla. Diversion requested could not be effected in one shipment which had passed point of interception before reconsignment orders received and that shipment moved via Frisco through Weleetke, Okla. Applicable rate on shipments routed via M-K-T found unreasonable and unduly prejudicial to extent it exceeded lower rate contemporaneously maintained via other lines for comparable distances in same general territory and rate in effect between origin and destination in opposite direction and subsequently established in both directions. Combination rate assessed on shipment routed via Frisco found not unreasonable or unduly prejudicial. Reparation awarded and collection of undercharges ordered waived. Sinclair Oil & Gas Co. v. C. & N. E. Ry., 96 I. C. C. 286.

(s) The shippers and not the carriers possess the right to designate the routing of traffic. The Missouri and North Arkansas denied that it even undertook to control routing in order that it might receive the most favorable division of joint rates, and there is no proof to the contrary. Divisions of Joint Rates and Fares of M. & N. A. Ry. Co., 98 I. C. C. 119, 141.

(t) Contention that where shipments were routed by the shippers without specifying the junction point, the routing was a sufficient designation of a route over which the aggregates of the intermediate rates were lower than the joint rate, not sustained. Clark Equipment Co., v. C. B. & Q. R. R. Co. 98 I. C. C. 465, 466.

(u) Shipments of secondhand refrigerators from Camp Dix (Wrightstown) N. J., to Sheffield, Ala., found to have

been misrouted in that routing instructions of shipper were not complied with. Reparation awarded. Florence Chamber of Commerce v. N. S. R. R. Co., 98 I. C. C. 594.

(v) Rate applicable on five carloads of second hand refrigerators over route specified by shipper from Camp Dix (Wrightstown), N. J. to Sheffield, Ala., found not unreasonable as compared with contemporaneous rates over other available routes from surrounding points to Sheffield. Florence Chamber of Commerce v. N. S. R. R. Co., 98 I. C. C. 594.

(w) By the route shipments of secondhand refrigerators from Camp Dix (Wrightstown), N. J., to Sheffield, Ala., actually moved, a car-ferry transfer from Cape Charles to Norfolk, Va., was necessary which in complainant's opinion is equivalent to a rail-and-water movement. This contention not sustained, Conf. Ruling 316, and in the absence of specific instructions for rail-and-water route defendants were only under the obligation to protect the rate applicable over route specified by shipper. Florence Chamber of Commerce v. N. S. R. R. Co., 98 I. C. C. 594, 595.

(x) Complainant alleged misrouting of a car of bottle caps, in Oct. 1923, from New Orleans to Highlandtown, Md., Highlandtown is on the B. & O., within Baltimore. Shipment delivered to the Morgan Line, a water carrier, from New Orleans to New York. Each load was accompanied with a shipping ticket showing the consignee as the Crown Cork & Seal Co., Highlandtown, Md., but containing no routing instructions. When the complete shipment had been delivered, defendants agent took up the receipted tickets and issued a bill of lading in lieu thereof signed by defendants agent and by representative of complainant. In this bill of lading the only routing shown was B. &. O. Shipment moved via Morgan Line to New York and B. & O., beyond, charged 79.5c to New York and 34c beyond. An all water rate of 79.5c was in effect to Baltimore via Morgan Line to New York and Clyde line beyond. The latters terminal at Baltimore is not Highlandtown, and delivery at that terminal would not have been in accordance with the bill of lading. HELD, shipment not misrouted, complaint dismissed. Crown Cork & Seal Co. v. S. P. Co., 102 I. C. C. 331.

(xa) Shipment of bottle caps moving from New Orleans via Morgan Line to New York, thence rail via B. & O. to Highlandtown, Baltimore, found not misrouted. When delivered to the Morgan Line at New Orleans shipping ticket contained no routing instructions but bill of lading issued by that carrier showed routing as "B. & O.." While a lower all-water rate applied to and from New York York in connection with the Clyde Line, the latter's terminal at Baltimore is not at Highlandtown, and delivery at that terminal would not have been in accordance with bill of lading. Conf. Ruling 509. Also another lower water-and-rail rate cited by complainant was shown not to apply from the Clyde's Line at Baltimore. Moreover, notation on bill of lading "B. & O." indicated that a line haul by that carrier was desired, and bill of lading signed by complainant's representative on its behalf is binding on the parties. See Unrep. Op. 2224; 52 I. C. C. 671, 681; 82 Fed. 681. Crown Cork & Seal Co. v. S. P. Co., 102 I. C. C. 331.

(y) The notation on a bill of lading B. & O., indicated that a line haul over the B. & O., was desired. Crown Cork & Seal Co. v. S. P. Co., 102 I. C. C. 331, 332.

(ya) Shipment found misrouted where no routing instructions were specified by shipper and a tariff check developed that shipment could have moved between origin and destination via a route taking a rate lower than that applicable via route of movement. Wimberly Grocery Co. v. P. R. R., 102 I. C. C. 637.

(yb) Various shipments were tendered without intermediate routing, originating and delivering lines only being specified. When first shipment was received initial carrier requested instructions as to intermediate routing and consignor directed movement over standard route. Initial carrier, however, moved all shipments in accordance with instructions governing first car. HELD: Carrier was not justified in routing all shipments via higher-rated standard route simply because of explicit directions governing initial shipment. Those subsequent to first should have moved via cheapest route consistent with bill of lading instructions, which was a Canadian differential route and not an unreasonable one. Shipments, exclusive of first, found misrouted and reparation

awarded. Former report, 91 I. C. C. 699, affirmed. Petertyl v. N. Y., N. H. & H., 102 I. C. C. 693.

(z) Shipment of sugar from San Francisco to Leadville, Colo., moved as routed by shipper over a so-called "uneconomical and circuitous" route at a rate higher than that contemporaneously in effect over other more direct routes available, which lower rate was subsequently made applicable over route of movement. Complainant admits its own error in specifying higher-rated route, but charges initial carrier with negligence for failure to point out at time of shipment that higher rate applied over specified route. HELD: Alleged error was apparently attributable to complainant's on carelessness rather than to negligence of initial carrier and rates can not be condemned upon the mere fact that a lower rate was subsequently established over route of movement. Rate assailed found not unreasonable, unduly prejudicial or otherwise unlawful. Western Sugar Refinery v. S. P. Co., 101 I. C. C. 113.

(aa) No duty rests upon a shipper to specify any routing, and where he elects to route his shipments he relieves carriers of that duty. Western Sugar Refinery v. S. P. Co., 101 I. C. C. 113, 114.

(bb) Complainant attacked class rates charged on 10 cars of waxed wrapping paper, printed and unprinted, between June 26 and Dec. 6 1922 from Garfield, N. J., to Lynchburg, W. Va., as unreasonable, unduly prejudicial and in violation of section four. Real contention is that shipments were not misrouted. Lynchburg is served by the Southern, N. & W., and C. & O. Except as to the two shipments routed P. A. L. rail and water, the evidence is insufficient to warrant a finding of misrouting as to those two shipments, while it is true there was no joint rail and water route over the P. A. L., to Lynchburg such a route was open to Danville, Va., an intermediate point on the Southern. If defendants had followed the bill of lading routing instructions as far as practicable the two shipments routed would have been subjected to a combination fifth class rate of 80.5c based on Danville. Instead defendants transported those shipments by a route over which a lower rate applied. Such shipments were misrouted, but complainant is not shown to have been damaged thereby. HELD, applicable rates not unreasonable or otherwise unlawful, complaint dismissed. Traffic Bureau v. P. R. R. 112 I. C. C. 59.

ALL OTHER CITATIONS

Dells Paper & Pulp Co. v. Director General, as Agent, 85 I. C. C. 609; Consolidated Coal Co. v. M. P. R. R. Co., 88 I. C. C. 523.

§7½a. What Routes Open.

(a) Rates between any given points where no restriction is made as to routing apply over all routes of the carriers parties to the tariffs naming the rates, whether such routes are circuitous or not, if there be no back haul. Likewise transit arrangements applicable in connection with such rates, where no special restriction as to transit is contained in the tariff, are coextensive with the routes over which the rates apply, provided routes are not employed which necessitate a back haul. Maloney Tank Mfg. Co. v. B & O. R. R., 95 I. C. C. 725, 726.

(b) Rates to intermountain and transcontinental territory generally apply via any and all gateways. The Commission has frequently held that where tariffs are silent as to routing the rates apply over all reasonable available routes of participating carriers. Frazier Saddlery Co. v. M. P. R. R., 96 I. C. C. 1, 2.

(c) Tariff named rates on watermelons from Macon, Ga., to Asheville, N. C., lower than to Murphy, an intermediate point, via certain routes. No traffic moves via such routes but as tariff contained no restrictions as to routing, a technical fourth-section violation, unprotected by an appropriate application, exists which should be promptly removed. Fain Grocery Co. v. L. & N. R. R. Co., 91 I. C. C. 374, 376.

(d) On numerous occasions the Commission has found that if carriers desire to restrict the application of a joint rate to any particular route they should do so by clear and unequivocal language. With no routing restrictions shown in the tariff naming the joint through rate sought, the shipment is properly entitled to such rate. Rose Lake Lumber Co. v. O. S. L. R. R., 100 I. C. C. 221, 222.

(e) Complainant alleged that by reason of failure of defendants to carry out their contract of carriage of a car of potatoes shipped August 29, 1922, from Freehold, N. J., to Statesville, N. C., sections 1 and 15 of the Act were violated.

Car was placed on a team track for loading Aug. 21. According to the records of the Jersey Central, the car was completely loaded August 23. Shipping order and bill of lading were not turned over to the agent of the Jersey Central until August 29. The only routing instruction on the bill of lading was Southern Ry. The Jersey Central waybilled the shipment Jersey Central, Bound Brook, N. J., P. & R., Pack Jct., Pa., B. & O. Potomac Yard, Va., Southern Ry. The car arrived at Potomac Yard 11:45 a. m. Sept. 2. That was slightly ahead of average time. It was delivered to the Southern at 3:47 p. m. the same day. Because of labor trouble, and accumulation of freight for the Southern Ry. the car was detained in Potomac Yard until 8 a. m. Sept 5, and was then diverted to the R. F. & P. It left Potomac Yard over that line Sept. 5. It was delivered to the S. A. L. at Richmond, Va., Sept. 6 and turned over by that carrier to the C. & O., Sept.10. The car was delivered to the Southern at Marion, N. C., Sept 12 and arrived at Statesville, Sept. 16. Because of the emergency existing at the time this shipment moved, growing out of unfavorable labor conditions and shortage of fuel, the Commission required by service order 22 that traffic should be forwarded to destination over routes most favorable without regard to routing made by shippers or carriers. Consignee refused the shipment because of the delay. Under the routing instructions given by complainant the shipment could have been sent over the route traversed inasmuch as the Jersey Central does not connect with the Southern Ry. and complainant did not specify routing between those two carriers. In addition, the route traversed was in consonance with the requirements of the order made under authority of section 15 (4) of the Act to meet emergencies such as existed at the time of this movement. HELD: No violation of any provision of the Act has been shown, complaint dismissed. Lambertson Co. v. C. R. R. of N. J., 100 I. C. C. 259.

(f) Complainant alleged that a car of lumber shipped June 25, 1920, from Picayne, Miss., to New York, N. Y., was diverted or misrouted and that as a result the lumber was lost, to complainant's damage. Shipment was consigned to complainant at the 37th station of the Pennsylvania at New York. It was made for complainant's Laurel office by the Jordan River Lumber Co., from which the lumber was purchased, and complainant was shown as consignor. It moved over the N. O. N. E. to Meridian, Miss., and Southern thence to Alexandria, Va., arriving there July 9th. Its acceptance by the initial carrier was in error for the reason that since March 20, 1920, there had been an embargo on lumber destined to Pennsylvania stations east of Newark, N. J. The Pennsylvania declined to accept it at Alexandria until the routing was changed to provide for movement over the L. V. from Phillipsburg, N. J., to the 27th station of the L. V., at New York which is about one half mile from the Pennsylvania 37th St. station. It finally moved from Alexandria on or about July 17, 1920, and arrived in New York August 18. Complainant evidently was aware of the difficulty of getting the shipment through over the Pennsylvania, as, apparently upon request of complainant's traffic manager at Birmingham, the Pennsylvania on August 11, wired the Southern that permit had been issued for movement to the 37th St. station as routed. The shipment was then in transit over the other route. The routing was changed under authority of service order No. 1. The 27th street station of the L. V. was the practical point of delivery under all circumstances, and the change made by defendants must be regarded as one of routing rather than one of destination. The real difficulty arose from the failure of complainant or its vendee to receive notice of the change, and that was due primarily to the fact that complainant was shown as both consignor and consignee and could not be reached by mail either at point of origin or at destination. HELD: Shipment not misrouted, complaint dismissed. National Lumber Co. v. N. O. N. E. R. R., 100 I. C. C. 334.

(g) Complainant attacked combination rate charged on a car of molasses in crated cans shipped March 15, 1923, from Morton, Miss. to New Orleans, La., and reconsigned to Blytheville, Ark., as illegal and unreasonable. Shipment moved A. & V. to Meridan, Miss., thence N. O. & N. E. to New Orleans where it was recognized and moved to Blytheville via T. & P. and St. Louis Southwestern, rate charged 83c made up of 10 and 19.5c to New Orleans and 53.5c beyond. Applicable rate was 60c made up of 23.5c to New Orleans and 36.5c beyond. At time movement the 36.5c commodity rate applied from Morton to Blytheville. The

tariff in which this rate was published contained no restrictions against routing through New Orleans, and all of defendants whose lines comprised the route of movement were parties thereto. Blytheville is northwest of Morton. The shipment moved south to New Orleans, 262 miles, and thence north to Blytheville, 710 miles, a total distance of 972 miles; the distance over the direct route between these points is 315 miles. There was nothing in the tariff naming the joint commodity rate of 36.5c which would have precluded complainant from routing the shipment through New Orleans had it been billed direct from Morton to Blytheville. HELD: Rate charged illegal to extent it exceeded 36.5c, reparation awarded. Scott County Farm Bureau v. A. & V. Ry., 101 I. C. C. 357.

(h) If it was defendant's purpose to restrict the application of the joint rate to any particular route and the reconsigning privileges authorized in connection therewith to any particular point, it should have been done by clear and unequivocal language. Scott County Farm Bureau v. A. & V. Ry., 101 I. C. C. 357, 358.

(ij) Governing tariff provided no routing restrictions and allowed fabricating in transit at points in direct line to final destination. Shipments here involved moved via circuitous routes over one of which a back haul to and from transit point was required. FOUND: There being no routing restrictions in connection with the transit arrangements, joint rates applicable in connection therewith applied over all routes of carriers parties to tariff naming the rates where no back haul was involved, and combinations were applicable in connection with such routes where back hauls necessitated. Refund of overcharges directed. Maloney Tank Mfg. Co. v. B. & O., 95 I. C. C. 725.

(k) No specific joint rates were published from Petersburg, Va., to Pueblo, Colo., tariff naming joint rates from Petersburg to Columbus, N. Mex., in which Pueblo was not specified, carried an intermediate-point rule. The joint rates were not restricted to any particular route, nor did the tariff in any way limit movements up to the Pueblo gateway. The route via that gateway was not unreasonable or unduly circuitous, all defendants herein were parties to the Columbus rates, and in connection with other participating carriers made up to the latter point "a line or route" on which Pueblo was directly intermediate. FOUND: Under the circumstances, rates to Columbus were applicable to Pueblo and shipments here involved were overcharged. Reparation awarded. Frazier Saddlery v. M. P. R. R. Co., 96 I. C. C. 1.

(l) Where tariffs are silent as to routing the rates named therein apply over all reasonably available routes of participating carriers. Frazier Saddlery v. M. P. R. R. Co., 96 I. C. C. 1, 2.

(m) Shipment from Pittsburg, Duquesne station, Pa., to Tulsa, Okla., was diverted, through carrier's error to Waynoka, instead of Wynona, Okla., necessitating a back haul to Wynona. Tariffs of participating carriers named, without applicable restrictions, same rate from origin to both Wynoka, and Wynona, and this rate, plus diversion charge, found applicable. Reparation awarded. Tidal Osage Oil Co. v. Director General, 96 I. C. C. 112.

(n) Upon contention that commission ruled in 58 I. C. C. 205, 59 I. C. C. 119, and other cases, that during Federal control all lines were operated as a single system and that a rate applying over one route of federally controlled lines should apply over another route, if distances and operating conditions were favorably comparable, and that this ruling applicable via a route other than that of movement entitled shipper to lower rate, HELD: This contention goes beyond the scope of cited cases, and fact that two rates applied between the same points over different routes, both routes under Federal control, does not establish unreasonableness of higher rate and defendant can not be called upon to protect the lower rate. Moreover, such action would subject the Director General as operator of route over which higher rate applied to liability as operator of route over which lower rate applied. In Davis v. Donovan, 265 U. S. 257, his liability "was carefully limited to such as would have been incurred by some particular carrier if there had been no Federal control." California Packing Corp. v. Director General, 96 I. C. C. 239, 242, 243.

(o) Although routes were unusual, they were open, and the fourth section is violated. Sinclair Oil & Gas Co. v. C. & N. E. Ry., 96 I. C. C. 286, 288.

(p) The Commission has frequently found that rates between any given points, where no restrictions are made

as to routing, apply over all routes of the carriers parties to the tariff naming the rates, whether such routes are circuitous or not, if there be no back haul. Likewise transit arrangements applicable in connection with such rates, where no special restriction as to transit is contained in the tariff, are coextensive with the routes over which the rates apply, provided routes are not employed which necessitate a back haul. Jonesville Milling Co. v. N. Y. C. R. R. 109 I. C. C. 601, 602.

ALL OTHER CITATIONS

Elimination of Routes on Transcontinental Traffic, 85 I. C. C. 108.

III. LIABILITY FOR MISROUTING.

§7¾. In General.

(a) Formal complaint as originally filed alleged unreasonableness on shipments of cull apples moving during Federal control. At the hearing complaint was amended to include an allegation of misrouting. Contention that because routing specified by shipper was disregarded in the interest of speed and efficiency, under the terms of General Order No. 1 of the director general, misrouting resulted and a lower rate applicable between point of origin and destination should be protected, not sustained. Rate assessed was the same as that applicable over route prescribed in routing instructions and complainant has not shown that it was damaged by the alleged misrouting. California Packing Corp. v. Director General, 96 I. C. C. 239.

(b) Complainants contention is that the damage resulting from the alleged misrouting constitutes an overcharge within the meaning of section 206 of the transportation act, 1920, as amended Feb. 24, 1922. The Commission has considered that question informally on several occasions and have found that such damages are not "overcharges above the legal tariff charges" as contemplated by that amendment. Armour & Company v. Director General 107 I. C. C. 310, 311.

§8¼. Missing Transit or Other Privilege.

See Facilities and Privileges §15.

(a) Complainant attacked charges assessed on a car of coal shipped from Boonville, Ind., to Elkhart, Ind., and reconsigned to South Bend, Ind., as unreasonable. Shipment tendered April 26, 1923 to Southern Ry. at Boonville consigned to Elkhart. Bill of lading specified Big Four as delivering carrier. Shipment moved over Southern to Louisville, Ky., thence Big Four to Elkhart. Upon arrival at Elkhart it was reconsigned to South Bend and moved to that point over N. Y. C., charged $2.08 to Elkhart, 365 miles and $1.01 beyond 15 miles. Shipment was forwarded over a route which accorded the lowest available rate from and to those points via Big Four. Defendants can not be held for misrouting because complainant was unable to effect a reconsignment, of which the carriers had no notice prior to the reconsignment order, at the through rate available over other routes. HELD, rate attacked not unreasonable, complaint dismissed. Russell v. N. Y. C. R. R. 109 I. C. C. 193.

§9. Measure of Damages.

See Reparation §18.

ALL CITATIONS

Empire Lumber Co. v. Director General, as Agent, 88 I. C. C. 424.

§10. Parties to Make Refund.

See Parties; Reparation §19.

(a) Where initial carrier is primarily responsible for misrouting, reparation will be awarded against it, and not against delivering carrier merely because such delivering carrier advised shipper not to change his routing instructions. Petertyl v. N. Y., N. H. & H. R. R Co., 91 I. C. C. 699, 701.

§11. Reparation in General.

See Claims §1 (c) (ss); Reparation.

(a) Overcharge claim on shipment moving during Federal control filed informally more than one year after termination thereof. Formal complaint subsequently filed brought in additional issue of misrouting. HELD: Overcharge claim since filed within two years and six months after Federal control terminated, found not barred, but misrouting claim is barred because not filed within one year after that period had terminated. Empire Refineries v. Director General, 92 I. C. C. 59, 60.

(b) Shipments of milk and cream from Iowa points to Omaha, Nebr., moved over indirect route via Tara, Iowa, some of the shipments being unrouted and others being routed via Illinois Central. Charges based upon applicabe rates were collected. Upon contention that shippers are entitled to through express rates to Omaha via Onawa or

Sioux City, or to joint baggage and express rates equal to express rates applicable over these routes prior to decision in Express Rates on Milk and Cream, 74 I. C. C. 427, HELD: Contention has force in connection with demand for reasonable route and rate for future but its cogency is not apparent as to shipments made in the past. Furthermore, as to shipments which were unrouted there is no distinction in principle between this case and the situation presented in 24 I. C. C. 626, wherein commission refused to award reparation to basis of subsequently established joint through rate based upon the aggregate of intermediates over short lines which was lower than joint rate over more indirect route of movement. Kirschbraun & Sons, Inc., v. G. N. Ry. Co., 100 I. C. C. 28, 32, 33.

(c) Rates on pianos, c l. and l. c. l., from Hammond, Ind., and Steger and Oregon, Ill., to Birmingham, Ala., found not unreasonable or unlawful. Complainant contends that some of the shipments were misrouted depending upon his interpretation of the tariffs contemporaneously in effect naming lower rates from the same points to Mobile, Ala., claiming that such rates were applicable to Birmingham under the so-called intermediate rule contained in those tariffs. It is found that complainant paid the higher rates charged without protest for a long period, did not present his complaint until more than six months after the charges on the last shipment were paid and one day after the intermediate rule was changed so as to preclude his contention, and presented no request to the commission for suspension of the new rule which, under the construction contended for effected increased rates on his traffic. This tends to show that complainant was not misled to his damage by the intermediate rule under consideration and no evidence as to unreasonableness was presented. Forbes & Sons Piano Co. v. A. G. S. R. R. 101 I. C. C. 74.

(d) The claim for misrouting is barred from consideration because not presented within one year after the termination of federal control. Harman & Hulsey v. Director General. 112 I. C. C. 275, 276.

ALL OTHER CITATIONS

Empire Lumber Co. v. Director General, as Agent, 88 I. C. C. 424.

§14. Procedure.

See Procedure Before Commission.

(a) Request of counsel for parties outside the proceeding to file a brief as friends of commission, discussing principle of misrouting under consideration, granted. Petertyl v. N. Y., N. H. & H., 102 I. C. C. 693.

ALL OTHER CITATIONS

Howe v. C. & N. W. Ry. Co., 85 I. C. C. 760.

SAFETY APPLIANCE ACTS

See Cars and Car Supply §7¾; Employers' Liability Acts; Personal Injuries.

(a) In 69 I. C. C. 258 the Commission prescribed and adopted specifications and requirements for the installation of automatic train stop or train control devices and required 49 carriers by railroad subject to the act to install such devices, upon a passenger locomotive division included between points on their respective lines specified in the order. On March 21, 1924 the Commission reopened the proceeding for hearing with respect only to the second order, as it affects the remaining 42 roads, and denied in all other respects the petitions of the carriers. The record indicates that progress has been and is being made in eliminating undesirable features in operation, upon the installations in regular service, and upon the test installations of various types, although this progress has not been such as might have been made if the carriers generally during the past two years had made larger installations and more expensive tests. Nearly two years have elapsed since the Commission found, as a matter of fact, after a long series of tests, that devices of the ramp type were practicable under actual service conditions; that they properly perform the functions for which they are designed; and that, when properly installed and maintained, they increase the safety of train operation. The Commission has given consideration to the particular circumstances and conditions affecting the installation of automatic train stop or train control devices upon the lines of the respondents herein, and in view of the action which it has already taken with respect to installation of such devices upon the lines of the larger carriers and the extent thereof, HELD, with respect to the 42 carriers now be-

fore it, its second order should not be vacated and set aside as prayed by said respondents, but that the effective date thereof should be suspended until further orders. Automatic train control devices, 91 I. C C. 426.

(b) Commission instituted an investigation under section 26 of the act, which authorizes the Commission, after investigation, to order the installation of automatic train stop or train control devices, or other safety devices, which comply with specifications and requirements prescribed by the Commission, upon the whole or any part of the railroad of any carrier by railroad subject to the act. The reports of inspectors have indicated a lack of improvement in power brake conditions commensurate with the requirements of safe and efficient operation. Throughout this proceeding the necessity for better maintenance of present power brake equipment in order to secure proper operation and safely to control trains was repeatedly stressed, and this necessity was recognized by both carriers and employees. It is beyond question or argument that piston travel should be maintained within proper limits, triple valves should be kept properly cleaned, brake pipe and brake cylinder leakage should be kept below certain prescribed amounts, and retaining valves with their pipe connections should be kept in good condition; furthermore, rules should provide and proper tests should be made to insure that trains will not leave terminals with defective, inoperative or cut out brakes on any cars. It is most necessary from the standpoint of safety that trains on grades be controlled exclusively by means of power brakes. From the record in this case it appears that brake devices are available by means of which trains can be controlled on descending grades by simply increasing or decreasing the brake cylinder pressure or required, without the necessity of releasing to recharge the train brake system. This function is clearly desirable. HELD, improvements in the operation of power brakes for both passenger and freight trains are essential and must be effected. Improvements in power brake appliances can be made and increased safely in train operation can and must be obtained. A power brake system for passenger and freight trains should insure that only a service application of the train brakes will occur when a service reduction of brake pipe pressure is made. A power brake system for passenger and freight trains should provide means whereby effective emergency brake cylinder pressures will be obtained when an emergency reduction of brake pipe pressure is made from a fully charged brake system. A power brake system for passenger and freight trains should provide means whereby effective emergency brake cylinder pressures will be obtained when an emergency reduction of the brake pipe pressure is made after a full service brake pipe reduction has been made. A power brake system for passenger and freight trains should provide means whereby effective emergency brakes cylinder pressures will be obtained when an emergency reduction of brake pipe pressure is made following release after a full service brake application. A power brake system for passenger and freight trains should provide means whereby the engineman can control the release of pressure from brake cylinders and effect such release by graduated steps or gradually in order that he may increase or decrease brake cylinder pressures as required to control at relatively uniform rates the speed of trains. A power brake system for passenger and freight trains should provide for obtaining and maintaining brake cylinder systems within prescribed limits for specified periods of time during brake applications. Power brakes and appliances for operating, 91 I. C. C. 481.

(c) The statute imposing a penalty on a railroad corporation for using cars with defective safety appliances is not invalid, as denying equal protection of law, by penalizing the corporation, and not servants who should have inspected and repaired cars. United States v. Western & A. R. R., 297 Fed. 482.

(d) Inspection of cars by inspectors on the premises of a railroad without invitation or permission is not a violation of Const. Amend. 4, relating to unreasonable searches; inspection being made to determine whether safety appliances were in proper repair, under Act March 2, 1893, §6 (Comp. St. §8610), and Act May 27, 1908, §1, no paper or property having been seized, and no house or even private place having been entered. United States v. Western & A. R. R., 297 Fed. 482.

(e) A statute imposing penalties on railroads using cars with defective safety appliances does not take property for public use without compensation, nor deprive a carrier of its property without due process of law. United States v. Western & A. R. R., 297 Fed. 482.

(f) In a suit for penalty for using cars with defective safety appliances, it is no defense that, by reason of a strike and state of violence approaching war, inspection and repair of cars was impossible. United States v. Western & A. R. R., 297 Fed. 482.

(g) Safety Appliance Act 14, 1910, §2 (Comp. St. §8618), making it unlawful for a common carrier to "haul or permit to be hauled, or used on its line," any car not equipped with required appliances, HELD, inapplicable to a locomotive temporarily withdrawn from service and undergoing minor repairs in a roundhouse preparatory to early return to service, in view of section 4 (Comp. St. §8621). Baltimore & O. R. Co. v. Hooven, 297 Fed. 919.

(h) The test of liability under Safety Appliance Act April 14, 1910, §2 (Comp. St. §8618), is not the engagement of the vehicle in interstate commerce, and the right of a private individual to recover is not dependent on whether he was engaged in interstate commerce, but the act is applicable to all vehicles used on any railroad which is a highway of interstate commerce, whether the vehicles themselves are engaged in interstate commerce or not; it being necessary merely that the car is "in use on its line." Baltimore & O. R. Co. v. Hooven. 297 Fed. 919.

(i) The duty imposed on interstate railroads by the Safety Appliance Act April 14, 1910, §2 (Comp. St. §8618), is an absolute and unqualified one, both to install the safety appliances and to maintain them in a secure condition. Baltimore & O. R. Co. v. Hooven, 297 Fed. 919.

(j) Order of Commission entered January 14, 1924, requiring certain carriers to install automatic train-control devices upon passenger-locomotive divisions, modified so as to suspend effective date of such order until further order of Commission. Automatic Train Control Devices, 91 I. C. C. 426.

(k) Original report, 69 I. C. C. 258, wherein Commission prescribed and adopted specifications and requirements for installation of automatic train-stop or train-control devices and required certain carriers to install such devices upon passenger locomotive divisions of their lines, modified so as to permit use of permissive or manual-control feature in connection therewith. Automatic Train-Control Devices, 91 I. C. C. 426.

(l) Upon investigation by Commission on its own motion; FOUND: That improvements in operation and maintenance of power brakes for passenger and freight cars are necessary; that better control by engineman over service and emergency applications of brakes should be provided; and that a power-brake system should provide (1) means whereby effective emergency-brake application may be obtained immediately following a full-service application and also immediately following a release after a full-service application, (2) means whereby engineman may control release of brakes by graduated steps or gradually, and (3) for obtaining and maintaining brake-cylinder pressures within prescribed limits for specified periods of time during brake applications. In addition, full specifications and requirements covering functions, maintenance and operation of power brakes should be adopted. Power Brakes and Appliances., 91 I. C. C. 481.

(m) Use of hand brakes for control, or to assist in control, of trains on grades is clearly contrary to requirements of law, is not in accord with best current practice, and can and must be discontinued. Power Brakes and Appliances, 91 I. C. C. 481, 516.

(n) So-called short-cycle method of controlling trains on grades by means of power brakes described. Power Brakes and Appliances, 91 I. C. C. 481, 516.

(o) It is most necessary from standpoint of safety that trains on grades be controlled exclusively by means of power brakes. That it is entirely feasible to accomplish this is shown by demonstrations which have been conducted by Bureau of Safety, as well as by current practice of a majority of carriers having heavy grades on their lines. Power Brakes and Appliances, 91 I. C. C. 481, 517, 518.

(p) This report is made after inspection and test of the automatic train control system of the Union Switch & Signal Co., on the first division of the Oregon

Washington Railroad & Navigation Company, extending from East Portland, Ore., to The Dalles, Oreg., a distance of 83.6 miles. That portion of the division between East Portland and Crates, Ore., a distance of 81.1 miles is single track and that between Crates and The Dalles, a distance of 2.5 miles, is double track. HELD: The installation meets the requirements of specifications and order in 69 I. C. C. 258, except as noted below, and it is approved, except as indicated. 1. Those locomotives, the train control equipment of which is not in accordance with U. P. plan S. D. 220 B must be equipped in accordance with such plan, to warrant approval. 2. All locomotives must be provided with cut out switches which will, when operated, open the common return of the cut out relay holding coil. 3. All locomotives must be provided with pressure maintaining valves. 4. Provision must be made requiring enginemen to acknowledge at succeeding stop signals. 5. The pneumatic portion of this device containing the functional parts essential to brake application, and which are located outside the cab, must adequately be protected against freezing, because if these valves should be sealed closed in normal position, the result might be serious. 6. The electro-pneumatic valve stem in use apparently offers opportunity for sticking and freezing shut. The improved type should be substituted. 7. The main reservoir cut out cock draining the air supply to pipe No. 1 should either be so designed as to result in an automatic brake application if closed, or a single cut out cock in the main reservoir pipe should be substituted for the one first described and that in the pipe leading to the engineer's brake valve. Automatic Train Control Devices, 101 I. C. C. 487.

(q) Railroad which seldom transported interstate goods, and which possessed single track located wholly within state, though connecting with interstate line at one point, HELD: Not connected with interstate commerce so as to bring servant's action for injuries within Federal Safety Appliance Act (U. S. Comp. St. §§ 8613-8615). McMahan v. Montour R. Co., (Pa., 1925) 128 Atl. 918.

(r) Rules and regulations authorized by the Interstate Commerce Commission to fix the standard of safety appliances, when approved and filed, are the exclusive law of transportation to which they apply. Atlantic Coast Line R. Co. v. Napier, 2 Fed. (2d) 891.

(s) Safety Appliance Act, March 2, 1893, 27 Stat. 531, amended by Act April 1, 1896, and Act March 2, 1903 (Comp. St. §§ 8613-8615), is mandatory, and court must apply its penalties, when violation is shown. United States v. Gulf C. & S. F. Ry. Co., 4 Fed. (2d) 722.

(t) Logging cars, not belonging to interstate railroad, but transported over its tracks, wholly within state under control of railroad's train dispatcher, was within Safety Appliance Act March 2, 1893, as amended by Act April 1, 1896, and Act March 2, 1903 (Comp. St. §§ 8613-8615), which applies to all equipment moving on line of interstate railroad, regardless of nature of shipment. United States v. Gulf C. & S. F. Ry. Co., 4 Fed. (2d) 722.

(u) Amendment of Safety Appliance Act excluding cars used on street railways held declaratory. Borelli v. International Ry. Co., 240 N. Y. S., 54, 147 N. E. 356.

(v) Safety Appliance Act (U. S. Comp. St. §8605 et seq.) HELD to impose duty of maintaining couplers in operative condition, and not merely to require installation of couplers. Carter v. St. Louis, T. & E. R. Co., (Mo., 1925) 271 S. W. 358.

(w) Under U. S. Comp. St. §§8659, 8660, defenses of contributory negligence and assumption of risk in action for injuries by one employed in interstate commerce are not available where railroad's negligence consisted of violation of Safety Appliance Act (U. S. Comp. St. §8605 et seq.) Carter v. St. Louis, T. & E. R. Co., (Mo., 1925) 271 S. W. 358.

(x) Following investigation made under section 26 of the act, automatic train-stop system of the Miller Train Control Corporation installed on Chicago Division of C. & E. I. Ry., and as a result of inspection and test thereof, the installation found to meet requirements of commission's specifications and order in original case, Automatic Train-Control Devices, 69 I. C. C. 258 and is therefore approved, with certain exceptions which have been called to carrier's attention with instructions as to corrections to be made in certain specific respects. In the matter of Automatic Train-Control Devices, 96 I. C. C. 345.

(y) Complaint failed to name pre-

ferred interests or localities, and did not properly present the issue of undue prejudice. Rule III, Rules of Practice. Carnegie Steel Co. v. Director General, 96 I. C. C. 527, 528.

(z) Upon petition filed by Great Northern, respondent, order of Jan. 14, 1924 was reopened as it affects said carrier. The first order requiring installations of automatic train control devices was entered June 13, 1922 and the second order of Jan. 14, 1924 required the G. N., to install, on or before Feb. 1, 1926, an automatic train stop or train control device on one full passenger locomotive division between St. Paul and Glasgow, Mont. Pursuant to this order the carrier selected the division between Williston and Wolf Point, Mont. 106 miles apart. The character and number of trains operated over the G. N., west of Minot warrant the installation of some form of automatic train stop or train control device. It is pertinent to state here that an elaborate complicated, or expensive system of train control is not required to meet the specifications of the order. The purpose of such device, briefly stated, is to protect a train from accidents by stopping the train automatically when the engineman fails to act. The installation of a device to do this in connection with a system of automatic block signals is neither difficult nor unduly burdensome in view of the protection that will be accorded employees and passengers. HELD, request denied. Automatic train control devices 102 I. C. C. 433.

(za) Petitions of Great Northern Ry. Co. that commission's order, 69 I. C. C. 258 and 91 I. C. C. 426, requiring installation of an automatic train-stop or train-control device on a passenger-locomotive division be vacated and set aside in so far as it affects that carrier, denied. The character and number of trains operated over the line of that carrier warrant the installation of some form of such a device, and its installation is neither difficult nor unduly burdensome in view of protection that will be accorded employees and passengers. Automatic Train-Control Devices, 102 I. C. C. 433.

(aa) This report is made after inspection and test of the automatic train stop system of the National Safety Appliance Co. on the Houston division of the Galveston Harrisburg & San Antonio Ry. In 69 I. C. C. 258 the Commission required 49 carriers by railroad therein named, including the G. H. & S. A. Ry. to install automatic train stop or train control devices on portions of their respective roads designated in order, in accordance with specifications and requirements prescribed by the Commission. The installation inspected and tested was completed on Jan. 11, 1925. It extends from Rosenburg, Tex., to Glidden, Tex., a distance of 50.7 miles single track. There are 38 locomotives equipped. HELD, certain recommendations and requirements are outlined by the Commission and the G. H. & S. A. Ry. is expected to comply therewith. Automatic Train Control Devices 104 I. C. C. 549.

(bb) This report is made after inspection and test of the automatic train stop system of the National Safety Appliance Co. on the Western division of the Pacific system of the Southern Pacific Co. The installation inspected and tested was completed June 8, 1925. It extends from Oakland, Calif., to Tracy, Calif., a distance of 75.6 miles, of which 24.5 miles is double track and 51.1 miles single track. There are 98 equipped locomotives. HELD, the Southern Pacific is expected to comply with the recommendations of the Commission and as to progress made. Automatic train control devices 104 I. C. C. 558.

(cc) This report is made after inspection and test of the automatic train stop system of the National Safety Appliance Co. on the Southwestern division of the St. Louis San Francisco Ry. This device was placed in service on this carrier between Nichols, Mo., and Brookline, Mo., a distance of 5 miles on April 16, 1923 and was extended to Logan, Mo., by Sept. 15, 1924 a distance of 20 miles, with 22 equipped locomotives. The installation inspected and tested was completed on June 30, 1925, extending from Nichols, Mo., to Monett, Mo., a distance of 40 miles, of which 35.6 miles is single track and 4.4 miles double track. There are 31 locomotives equipped with the device. HELD, the St. L. S. F. Ry. to conform to the recommendations and suggestions of the Commission and to keep the Commission informed of the progress made. Automatic Train Control Devices 104 I. C. C. 565.

(dd) In 85 I. C. C. 403, 406, the Commission found the device as installed

upon the Rock Island met all the requirements of the specifications and order in 69 I. C. C. 258, except as indicated in the report. The situations described in the report which were to be corrected were eight in number. These have been again inspected by inspectors of the Commission and results reported. HELD, all the situations noted have been satisfactorily corrected and all the requirements have been met. Automatic train control devices 104 I. C. C. 577.

(ee) This report is made after inspection and test of the automatic train stop system of the Sprague Safety Control & Signal Corporation on the Minot division of the Great Northern Ry. The devise under consideration is an automatic train stop of the intermittent magnetic induction type with forestalling feature. This device was first placed in service by the G. N., between Minot, N. D., and Berthold, N. D., a distance of 23 miles with six equipped locomotives. The installation inspected and tested was completed in Oct. 1925. It extends from Minot, N. D., to Williston, N. D., a distance of 120.3 miles, of which 98.07 miles is single track and 22.25 miles double track. There are 35 locomotives equipped with the device. HELD, with exception of certain recommendations made as to tests, etc., G. N., to proceed to conform to such recommendations and report to the Commission. Automatic Train Control Devices 107 I. C. C. 385.

(ff) After inspection and test of the automatic train-control system of the Union Switch & Signal Co. installed on a division of the O., W. R. R. & Nav. Co., consisting of a two-speed device of the continuous-induction type, FOUND: That its installation, with certain exceptions, meets requirements of the commission's specifications and order in 69 I. C. C. 258. Automobile Train Control Devices, 101 I. C. C. 487.

(gg) Proceeding reopened for further hearing upon complaint of Sprague Safety Control & Signal Company that the automatic train stop device of the General Railway Signal Co. selected by the N. Y. C. for installation upon its line of railroad under orders entered in this proceeding 69 I. C. C. 258, 91 I. C. C. 426 is inherently unsafe under the operating conditions of said railroad in violation of the act. The Commission is of the opinion that the matter of automatic train stop or train control devices is controlled by the specific provisions of section 26 and that the question of the safety of such devices is governed by the specifications and requirements of orders of the Commission thereunder, and not by the general provisions of section 1 dealing with safe and adequate car service. Failure to install such a device as required by orders under section 26 would, however, constitute a violation of such orders and subject the carrier to the penalities provided for by that section. The safety and adequacy of installations of such devices are governed by the specifications and requirements of those orders, which furnish the criteria by which such installations may be judged. HELD, law has not been violated, complaint dismissed. Automatic Train Control devices. 112 I. C. C. 259.

ALL OTHER CITATIONS

Automatic Train-Control Devices, 85 I. C. C. 403.

SEASON RATES

See Reasonableness of Rates §35.

(a) Considering volume of traffic, its seasonal nature, and expense of assembling and returning equipment, fourth-class rates on fresh tomatoes from points in Silver Creek district in New York to Pittsburgh, Pa., found unreasonable to extent they exceeded 80 per cent of fourth class. Reasonable maximum rates prescribed and reparation awarded. Heinz Co. v. Director General, 91 I. C. C. 358.

(b) Movement of sugar beets is seasonal and seldom extends over a period of more than 90 days. Beets commence to move about first week in October, and factories endeavor to move all their beets before December 15. Heaviest movement occurs from October 5 through to November 20. Continental Sugar Co. v. N. Y. C. R. R. Co., 91 I. C. C. 677, 679.

SHERMAN ACT

See Anti-Trust Laws; Evidence §10.

SIDE TRACKS AND SPUR TRACKS

See Switch Tracks and Switching §11; Transportation §5.

(a) It is a matter of common knowledge that term "spur track" is given a

somewhat wider meaning than "a track" leading from a line of railway, and connected with it at one end only, synonymous with "stub track," the definition of standard lexicographers. Cleveland, C. C. & St. L. Ry. Co. v. Commerce Commission ex rel. J. K. Dering Coal Co., (Ill., 1925), 146 N. E. 606.

(b) Contention that under section 1, paragraphs (18) to (22) of the act, the commission has no jurisdiction in matter of proposed abandonment of mine sidings, relying largely on paragraph (22) which provides that authority conferred by paragraphs (18) to (21) shall not extend to sidetracks located wholly within one State or to street, suburban, or interurban electric railways not operated as part of a general steam-railroad system, not sustained. Provisions of foregoing paragraph limit commission's jurisdiction only with respect to specified paragraphs and do not come into conflict with the provisions of paragraph (9) under which commission may authorize the construction, maintenance, and operation of switch connection with private sidetracks of shippers when such connection is, in opinion of commission, reasonably practicable, can be safely put in, and will furnish sufficient business to justify its construction and maintenance. Hood Coal Co. v. M. V. T. Co., 101 I. C. C. 719, 720, 721.

(c) Proposal of Monongahela West Penn Public Service Co., to cancel interstate rates on coal from mines on its line and to eliminate mine sidings from its list of stations, found justified. Sidetracks concerned have not been used for approximately two years, with little likelihood of future operation except under abnormal market conditions, and in justice to carrier it should not be compelled to maintain switch connection and continue present rates because of the remote possibility of a return of favorable market conditions under which mines previously operated. Moreover, contracts between shippers and the Monongahela provided, among other things, that carrier should have the right, at any time after 30 days' written notice, to discontinue use of siding, terminate the contract, and remove tracks, and written notice had been duly served. Hood Coal Co., v. M. V. T. Co., 101 I. C. C. 719, 723.

SLEEPING CAR COMPANIES.

See Passenger Fares and Facilities.

(a) Injury to passenger's back by sneezing, or attempting to suppress sneezing, because she had to travel in drafty chair car without heat operated by railroad company, cannot be said to be proximate and natural result of breach of defendant Pullman company of contract to furnish berth, "proximate cause" being the active efficient cause which sets in motion a train of events that in their natural sequence might and ought to be expected to produce an injury as undisturbed by any independent intervening cause. O'Neil v. Pullman Co. (Mo. 1924) 260 S. W. 798.

(b) Where because of breach of defendant Pullman company's contract to furnish berth plaintiff was compelled to ride in chair car, court properly refused peremptory instruction offered by defendant, plaintiff being entitled in any event to nominal damages. O'Neil v. Pullman Co. (Mo., 1924) 260 S. W. 798.

(c) Breach of contract by Pullman company to furnish berth did not entitle passenger to damages for mental pain, though breach made it necessary to ride in chair car. O'Neil v. Pullman Co. (Mo., 1924) 260 S. W. 798.

(d) Sleeping car company's duty to passenger is to cause constant watch to be kept during usual hours for sleeping for protection of passengers from injury, and not merely to exercise reasonable care after apprehension of danger arises. Pullman Co. v. Culbreth, 2 Fed. (2d) 540.

(e) In passenger's action against sleeping car company for assault by other passenger, in which the company was charged with negligent omission of duty, evidence tending to show that none of employees came promptly to plaintiff's assistance HELD: To raise jury question. Pullman Co. v. Culbreth, 2 Fed. (2d) 540.

(f) That Pullman Company would not allow passengers to ride on their car unless they had purchased transportation tickets from railroad shows a joint enterprise. Pullman Co. v. Waln, 4 Fed. (2d) 1.

(g) That railroad company may be liable as common carrier to passengers occupying Pullman car does not relieve

Pullman Company from any duty it may have assumed or been charged with by reason of its joining railroad in joint enterprize. Pullman Co. v. Waln, 4 Fed. (2d) 1.

(h) Pulman Company, engaging in joint enterprise with railroad, is liable to passengers for failure to perform any duty imposed by railroad or assumed by it which contributed to safety of passengers while in transit. Pullman Co. v. Waln, 4 Fed. (2d) 1.

(i) That railroad rule required conductor to pass through train and see that all vestibule doors were closed HELD: Not to relieve Pullman Company from its duty under rules imposed by railroad to see that outside and trap doors were closed while train was in motion. Pullman Co. v. Waln, 4 Fed. (2d) 1.

(j) That side and trap doors were let open, and resulted in injuries to Pullman car passengers, HELD: Facts from which jury could infer lack of care on part of Pullman Company in performing part of common joint duty to traveler in which it had united with railroad. Pullman Co. v. Waln, 4 Fed. (2d) 1.

(k) Passenger, who fell from moving train through failure of Pullman Company's employees to close side and trap doors to vestibule of car as soon as train was put in motion, and husband HELD: To have right of action against Pullman Company alone. Pullman Co. v. Waln, 4 Fed. (2d) 1.

(l) In action by husband and wife against Pullman Company for injuries sustained by wife from fall from moving train, through failure of Pullman employees to close doors in vestibule of car, agreement between companies and rules of both Pullman and railroad companies affecting duty to close such doors HELD: Admissible. Pullman Co. v. Waln, 4 Fed. (2d) 1.

(m) Pullman Company is chargeable with highest degree of reasonable care consistent with practical operation of its cars for purposes intended. Caldwell v. Pullman Co. (S. C. 1925) 128 S. E. 504.

(n) Pullman Company is chargeable with the same high degree of accountability for wrongful and tortious acts of its servants as is a common carrier. Caldwell v. Pullman Co., (S. C. 1925) 128 S. E. 504.

(o) Upon investigation, FOUND: That present surcharge accruing to rail carriers in addition to regular passenger fare for the transportation of passengers in sleeping and parlor cars is not unreasonable. Carriers earn less per car-mile, on the average, from their Pullman business than from their coach business, even when surcharge collections and various financial benefits accruing from existing Pullman contracts are take into consideration. The added cost to carriers and greater value to passenger of the Pullman service justify the additional charge; moreover, when the time comes for requiring railroads to accept less passenger revenue than they now receive, those who experience the relative discomforts of ordinary coach travel, rather than those who select the most expensive and luxurious form of transportation, are entitled to prior consideration. Charges for Passengers in Sleeping and Parlor Cars, 95 I. C. C. 469.

(p) The surcharge in addition to the regular fare for the transportation of passengers in sleeping and parlor cars as authorized in Increased Rates, 1920, 58 I. C. C. 220, has not had effect of reducing travel in Pullman cars. On the contrary such travel has been increasing to a greater extent relatively than travel in coaches. Charge for Passengers in Sleeping and Parlor cars, 95 I. C. C. 469, 472.

(q) The surcharge in addition to regular passenger fare for the transportation of passengers in sleeping and parlor cars ought not to be regarded as an independent third charge upon the passenger. It was devised as a simple and convenient method for computing an addition to the basic passenger fare for those who ride in Pullman cars, and is thus equivalent to an increase in the rate per mile. Charge for Passengers in Sleeping and Parlor Cars, 95 I. C. C. 469, 478.

SPACE RATES

See Mails (m).

SPECIAL CONTRACTS

I. CONTROL AND REGULATION.
§1. Constitutionality of act.
II. LEGALITY AND EFFECT SINCE PASSAGE OF ACT.
§2. In general.
§2½. Previous validity.
III. LIABILITY.
§3. Criminal liability.
§4. Damages for breach.

(1) Jurisdiction of Commission.
(2) In general.
§5. Discrimination through contract.

IV. ACTIONS TO ENFORCE.
§5½. In general.
§6. Defenses.

V. AS EVIDENCE OF REASONABLE RATES.
§7. In general.

CROSS REFERENCES

See Cars and Car Supply; Evidence §15, §27; Exclusive Contracts; Express Companies §8, §37½; Leases; Loss and Damage I, §8, §9; Passenger Fares and Facilities §12; Released Rates; Stock Yard Companies; Trackage Contracts.

I. CONTROL AND REGULATION.

See Control and Regulation.

§1. Constitutionality of Act.

See Constitutional Law; Exclusive Contracts.

(a) A contract by a railroad company to transport logs for a lumber company at an agreed rate, though made in connection with a sale to the lumber company of the land from which the logs were to be cut, and for the purpose of securing increased lumber traffic, HELD: Subject to the regulatory power of the national and state governments over rates. Northern Pac. Ry. Co. v. St. Paul & Tacoma Lumber Co., 4 Fed. (2d) 359.

II. LEGALITY AND EFFECT SINCE PASSAGE OF ACT.

See Legality of Rates.

§2. In general.

(a) Contracts in violation of the Interstate Commerce Act (U. S. Comp. St. § 8563 et seq.) are void, and the carrier, when dealing with rates, is not estopped from asserting the illegality of payments in contravention of the act. Pennsylvania R. Co. v. Cameron (Pa. 1924) 124 Atl. 638.

(b) Interstate Commerce Act (Comp. St. § 8563 et seq.) HELD inapplicable to contract to furnish ships for transportation from Mobile to Pacific Coast, in absence of continuous shipment or through bill of lading from inland point. American Cast Iron Pipe Co. v. Atlantic, Gulf & Pac. S. S. Corp., 2 Fed. (2d) 397.

(c) Contract between shipper and carrier, fixing compensation to be paid for transportation, though made under state or federal authority, is subject to right of state or Congress to modify or annul. Hawkeye Portland Cement Co. v. Chicago, R. I. & P. Ry Co. (Ia. 1924), 201 N. W. 16.

(d) An agreement by a contractor constructing embarkation facilities for the Government to pay rental to a railroad for use of an engine to move and spot cars from the railroad yards where they were held because of congestion at its own siding where the railroad was supposed to deliver them is without consideration as such service is already covered by the line haul rate and the carrier can not, therefore, recover such rental. Chesapeake & O. Ry. Co. v. Westing House, Church, Kerr & Co (Va. 1924) 123 S. E. 352.

(e) Agreement of contractor constructing embarkation facilities for government to pay rental to a railroad for use of engine to move and spot cars HELD without consideration, and ineffective, where services rendered were those already fully paid for in line haul rate. Chesapeake & O. Ry. v. Westing House, Church, Kerr & Co. (Va., 1924) 123 S. E. 352.

(f) Though it be not provided for in the contract, still, if a subsequent change is made in the law whereby performance of the contract becomes unlawful, its principle, if the seller of coal is prevented from shipping to the purchaser because of a subsequent car service order of the Interstate Commerce Commission, the seller is excused from the performance of the contract even though the contract did not provide against such a contingency. Stoner & Co. v. Blocton Export Coal Co. (Miss. 1924) 100 So. 5.

(g) A contract by a railroad company to transport logs for a lumber company at an agreed rate is subject to the action of state authorities changing the lawful rate on such shipments, and it not destroyed by such action, but its terms are modified as was presumably contemplated by the parties. Northern Pac. Ry. Co. v. St. Paul & Tacoma Lumber Co., 4 Fed. (2d) 359.

(h) A contract made in 1888 by a manufacturer of lumber to ship a certain

proportion of its product over the lines of a railroad company, which implied an agreement by the railroad company to furnish cars for such shipments, was not invalid as in violation of Interstate Commerce Act, §§ 2, 3 (Comp. St. §§ 8564, 8565), prohibiting discrimination and undue preferences, as requiring the company to furnish the cars regardless of the rights of other shippers, but its obligation is to be construed as one to furnish cars on reasonable and lawful demand therefor. Northern Pac. Ry. Co. v. St. Paul & Tacoma Lumber Co., 4 Fed. (2d) 359.

(i) In view of Interstate Commerce Act, as amended by Act June 29, 1906 §2 (U. S. Comp. St. § 8569), operating agreement between trunk line railway and terminal railroad fixing charges for services and use of facilities of latter, where only rate published was that of railway company, which included in its rates to points of delivery or origin on terminal company's tracks. HELD: Invalid as not such agreement as is required for establishment of joint rate. Chicago & E. I. Ry. Co. v. Chicago Heights Terminal T. R. Co. (Ill., 1925), 147 N. E. 666.

(j) The service contracted for and performed under agreement between carrier and coal exchange, being the transportation of coal and its delivery into vessels, value of services to shippers was not impaired by dumping cars out of order, so as to make contract invalid, unless shipper was given lower rate. Smokeless Fuel Co. v. Chesapeake & O. Ry.Co., (Va., 1925) 128 S. E. 624.

(k) Claimant shipped two cars of cabbage to New York and upon learning that another car was to arrive on that day that these were supposed to requested the carrier to divert them to Jersey City. This was customary in the produce trade but was not understood to be a bona fide diversion but a request to delay the car at Jersey City. The carrier failed to obey the request but delivered the cars to New York by reason of which they brought a lower price than had they been delayed. In a suit for conversion the court held that an agreement to divert as a request to delay the shipment was a special contract which was not legal under the Interstate Commerce Act unless carried in the published tariff of the carrier and open to everyone. Eastern Shore of Virginia Produce Exchange v. New York, P. & N. R. Co. (Va., 1925), 126 S. E. 674.

(l) If carrier makes a contract to deliver within a particular time, it must publish a rate for such service open to all, otherwise it extends an advantage to one not extended to all, in violation of Elkins Act Feb. 19, 1903, §1 (1) (U. S. Comp. St. § 8597), amending Act Feb. 4, 1887. Eastern Shore of Virginia Produce Exchange v. New York, P. & N. R. Co. (Va., 1925), 126 S. E. 674.

(m) To permit the consignor to send a shipment consigned to themselves constitutes the extension of a special privilege to the shipper in so far as that part of instructions leading to the notifying of parties concerned unless there is on file a tariff which permits such a practice. Wall v. American Ry. Express Co. (Mo., 1925), 272 S. W. 76.

III. LIABILITY.

§4. Damages for Breach.

(2) In General.

(a) Where performance of a contract by a railroad company to transport logs for a lumber Company at an agreed rate. was made impossible by the action of state authorities in establishing a higher rate, it cannot be held liable on the contract for the lawful rate collected in excess of the contract rate. Northern Pac. Ry. Co. v. St. Paul & Tacoma Lumber Co., 4 Fed. (2d) 359.

(b) A condition subsequent in a deed, providing for the reversion of real property in case any certain act is done or omitted, is inoperative where the doing or omission is compelled by public authority. Los Angeles Passenger Terminal Cases, 100 I. C. C. 421, 449.

(c) In so far as the alleged violation of section 3 is concerned the Commission is of the opinion that the acts complained of do not come within the prohibition of section 3. That section does not apply to the making of contracts by a carrier for the purchase of equipment. The fact that the equipment is apparatus for automatic train stop or train control devices which the Commission has authority, under section 26, to require a carrier to install in accordance with specifications and requirements prescribed by it, does not extend the applicability of the prohibitions of section 3 to matters connected with the selection or purchase of such equipment. Automatic train control devices. 112 I. C. C. 259, 260.

IV. ACTIONS TO ENFORCE.

See Actions at Law.

§5½. In General.

(a) Nor can the mill owner recover consequential damages which may result because of the failure of the railroad company to perform the contract since the passage of said acts. Whitaker Glessner Co. v. Wheeling Terminal Ry. Co. (W. Va., 1925), 127 S. E. 639.

(b) Where a railroad company has filed with the Interstate Commerce Commission and with the Public Service Commission of this state acceptable tariffs in proper form, duly published as required by the Act of Congress regulating interstate commerce (U. S. Comp. St. § 8563 et seq.) and the Public Service Commission Act of this state, respectively, regulating charges for hauling slag, cinders, ashes, and wastage from iron and steel mills located on its railway, a contract between an iron mill owner and the railroad company, executed before the passage of said acts, by which the latter agreed to haul away the wastage from the mill at its own expense, in part consideration of a deed to a right of way for its tracks over the land of the former, cannot be specifically enforced. Whitaker Glessner Co. v. Wheeling Terminal Ry. Co. (W. Va., 1925) 127 S. E. 639.

(c) Carriers serving the city of Atlanta acquired certain land from the city on which they erected terminals. Part of the land was not used and certain produce merchants of the city were induced to locate there in a building built by the carriers called Produce Row and the principle purpose of which was to obtain the routing of traffic over the lines of the carriers. The plaintiff became a tenant and his lease expired December, 1923. The carriers were dissatisfied with the amount of tonnage he handled owing to routing of his freight and the fact that he permitted certain outsiders to send their cars into his part of the side track and notified him that they would not renew his lease. HELD: The trial judge had a right to refuse to grant an injunction which the plaintiff requested to prevent eviction. Williams-Thompson Co. v. Louisville & N. R. Co. (Ga., 1925), 126 S. E. 833.

V. AS EVIDENCE OF REASONABLE RATES.

§7. In general.

(a) A contract between carrier and shipper contemplating the establishment of a certain rate for a particular service is not conclusive in determining the maximum reasonable rate for the service. Union Sulphur Co. v. T. & N. O. R. R., 98 I. C. C. 76, 81.

SPECIAL RATES AND SERVICES

See Additional Charges and Services; Car Ferry; Cars and Car Supply §9¼, §9½, §9⅝, §9¾, §9⅞; §10, §10½, §11, §11½, §11¾, §11⅞; Distance Rates §3 (4q); Expedited Service; Facilities and Privileges §9, §10, §12½; Passenger Fares and Facilities §7¾; Precooling; Protective Service; Reasonableness of Rates §31; Reconsignment; Refrigeration §3; Reparation §14; Stock Yard Companies; Stoppage in Transit; Switch Tracks and Switching §5; Transportation §8; Warehousing; Weights and Weighing.

(a) With the possible exception of livestock traffic and such commodities as move in refrigerator cars, the record indicates that the vegetable traffic requires special services, equipment, and facilities that are not required by other commodities referred to, thereby increasing the difficulties and costs of transportation. Mississippi R. R. Commission v. A. & R. R. R. Co., 98 I. C. C. 55, 63.

SPECIAL TRAINS

See Circus Trains; Passenger Fares and Facilities §7¾.

SPLIT-DELIVERY

(a) So-called "split-delivery" cars defined and service rendered in connection therewith outlined. Loading and Unloading C. L. Frieght, 101 I. C. C. 394, 403, 405.

SPOTTING

See Allowances §8 (5); Facilities and Privileges §12½; Switch Tracks and Switching.

STATE RATES AND REGULATION

See Accounting §2; Act to Regulate Commerce; Advanced Rates §5 (7¼); Bills of Lading §11½ (a); Cars and Car Supply §33; Class Rates §2 (tt); Classification §28 (x); Courts III, V; Demurrage §1½; Discrimination §2½, §8 (6), §11, §12½; Equalization of Rates §5, §13 (6), V; Evidence §13 (6), §25; Express Companies §1½; Interstate Commerce I, §2, §4, §5, §10; Interstate Commerce Commission §10, III; Jurisdiction of Commission; Loss and Damage, §2, §3, §5; Reasonableness of Rates §3; Reparation §½ (f); Routing and Misrouting §4½, §13; Tariffs §17; Through Routes and Joint Rates, §16½, §19, §22; Undercharges §7½; Water Carriers §4½.

(a) A reduction in rates on cotton would have a very serious effect on the ability of many short lines serving Mississippi to earn sufficient revenue to serve the public efficiently as many short roads serving that state are unable to stand any appreciable losses in revenue. Traffic density of these short roads is low and while they are seeking to stimulate greater production of farm produce the tonnage has not yet reached a heavy state. Some short lines are unable to pay operating costs; the rates from many points on such roads are held down by force of cross-country competition with points situated on stronger trunk-lines; and to compel them to bear any greater strain would undoubtedly cause an impairment of service inimical to the general welfare of Mississippi. Mississippi R. R. Commission v. A. & V. Ry. Co., 89 I. C. C. 47, 69.

(b) Ordinarily the commission does not have jurisdiction over intrastate rates in absence of a showing of substantial disparity which operates as a real discrimination against and obstruction to interstate commerce. Direction rests with State authorities to deal with interstate rates on general levels found by the commission to be fair to interstate commerce. Wisconsin R. R. Commission, 257 U. S. 563. Lake Dock Coal Cases, 89 I. C. C. 170, 200, 201.

(c) Maintenance of fertilizer basis of rates on nitrate of soda intrastate in Louisiana and Texas is not of itself a reason for requiring extension of that basis to movements of nitrate of soda from New Orleans, La., to Arkansas. New Orleans Joint Traffic Bureau v. A. & V. Ry. Co., 89 I. C. C. 223, 226.

(d) Rates on rough quarried Bedford limestone from Bedford district of Indiana to St. Paul and Minneapolis, Minn., found not unreasonable as compared with rates on rough and dressed stone from Bedford to various other points, and from points in various states to the Twin Cities, for comparable distances. Young v. C., I. & L. Ry. Co., 89 I. C. C. 428.

(e) Differences in transportation and traffic conditions must be taken into account in considering comparisons of intrastate rates in different states. Nebraska Livestock Case, 89 I. C. C. 444, 451.

(f) The commission has no jurisdiction over rates and charges collected for intrastate transportation subsequent to Federal control. Kingan & Co. v. Director General, as Agent, 89 I. C. C. 550.

(g) Based upon cost figures, minimum charge of $5 per car for movement of livestock at Indianapolis, Ind., from stockyards to complainant's plant, during Federal control, found not unreasonable. The transportation involves a road haul and two terminal handlings as well as preferred service in trainload lots and the return of approximately 100 per cent empties. If very small allowances for terminal and line-haul expenses were applied to a movement of this character, it would result in much higher cost per car than charge here assessed. Kingan & Co. v. Director General, as Agent, 89 I. C. C. 550.

(h) Complainant attacked commodity rates on sand and gravel carloads, between May 1, 1918 and Nov. 25, 1919 from Carpenterville to Edison Park and Park Ridge, Ill., as unjust, unreasonable, unjustly discriminatory and unduly prejudicial and preferential. Carpentersville is on a branch of the C. & N. W., extending from the junction at West Chicago with the Galena division of that carriers main line westbound, northerly to Crystal Lake, where it intersects the Wisconsin division of the main line from Chicago to St. Paul. It is about 18 miles from West Chicago and 10 miles from Crystal Lake. Park

Ridge and Edison Park are stations 1 mile apart on the Wisconsin division in the so called outer zone of the Chicago district, 40 and 41 miles from Carpentersville via Crystal Lake, the short line distance. Charged 2c prior to June 24, 1918 and 3c thereafter, while to Mayfair 5 miles south of Edison Park, rates of 1.5c and 2.5c were applicable, Edison Park and Park Ridge being intermediate via Crystal Lake. The tariff publishing the rate of 1.5c restricted the routing via West Chicago, no further restriction beyond. It was possible to protect the rate of 1.5c to Mayfair over a route beyond West Chicago via Proviso and Des Plaines, and over this route Edison Park and Park Ridge are intermediate to Mayfair. The rates to the latter point were applicable to Edison Park and Park Ridge. HELD, legal rates were 1.5c and 2.5c, reparation awarded. Richardson Sand Company v. Director General, 89 I. C. C. 555.

(i) Upon further hearing and reargument, previous report, 69 I. C. C. 282, charges on traffic from points west of Hudson River to the J. L. Kelso Co. warehouse on the Union Freight R. R., in Boston, Mass., found unreasonable and unduly prejudicial to extent they exceeded rates on like traffic to deliveries on the Boston & Albany, Boston & Maine, and New York, New Haven & Hartford railroads in the Boston district. Line-haul carriers refuse to absorb charges on the Union while making deliveries at all other points in and about Boston at the Flat Boston rates. Reparation awarded. Boston Wool Trade Asso. v. Director General, as Agent, 89 I. C. C. 589, 593.

(j) Rate on salt between West Cambridge, Mass., and East Cambridge, Mass., during Federal control found unreasonable as compared with lower rates on soda ash, which is twice the value of salt and of lighter loading. Boston Wool Trade Asso. v. Director General, 89 I. C. C. 596, 599.

(k) Complainant attacked combination rates charged on carloads of lumber and box shooks, during the period Oct. 31, 1918 to Feb. 29, 1920, from McCloud, Calif., to points in California on the S. P., Santa Fe, L. A. & S. L., W. P., Northwestern Pacific, Visalia Electric and Pacific Electric as inapplicable. Shipments moved from McCloud via the McCloud River railroad to Sisson, Calif., the junction points with the S. P., and thence by way of the latter carrier to destinations on its line or junction points with other delivering lines. Charged combination rates over Sisson and various other junction points. Contention is that lower through rates, constructed in accordance with combination rules contemporaneously published in defendants tariffs, were applicable to the shipments. In 62 I. C. C. 643 and 73 I. C. C. 551 the Commission held that where one of the tariffs used in making combination rates on through shipments contains a rule that such rates will be subject to a single increase, there is a holding out to shippers of the rate so constructed, which the carrier publishing the rule is obliged to protect. HELD, during the period Feb. 15 to August 24, 1919, the rates charged were applicable. The rates charged were inapplicable between Oct. 31, 1918 to Feb. 14, 1919 to extent they exceeded rates establishing by use of combination rule and between August 25, 1919 and Feb. 29, 1920 rates were applicable as constructed by use of combination rule, reparation awarded. McCloud River Lumber Co. v. Director General, 89 I. C. C. 645.

(l) Complainant attacked commodity rates charged on sugar beets carloads to Blissfield, Mich., Fremont and Findlay, O., as unjust and unreasonable, unduly preferential and unjustly discriminatory in favor of intrastate commerce. Blissfield is on the N. Y. C., and T. & W. Electric line; Findlay by the L. E. & W., C. C. C. & St. L., and B. & O.; Fremont by the L. E. & W., and W. & L. E. Blissfield is 21.6 miles north of Toledo, O., and Findlay and Fremont are 44 miles south and 30 miles east of Toledo, respectively. The movement to the Findlay and Freemont plants is practically all intrastate. The interstate movement to Blissfield is about two thirds of the total movement to that plant, and is 27.2% of the total tonnage to all three plants. Beets move in open top equipment, are not loaded at regular freight stations, but at special sidings built at or between regular stations. There is practically a 100% empty movement. The sugar beet traffic is peculiarly a short haul movement, and seldom moves for distances in excess of 100 miles, average haul 40 miles. Present single line interstate scale was established when the sugar beet industry was in its infancy, there being no regularity as to joint line rates, the only reduction being the 10% reduction in July, 1922. Record is

clear that there is no transportation condition justifying different rates on interstate traffic than apply intrastate for hauls of the same length. HELD, interstate rates attacked unreasonable and unduly prejudicial and unjustly discriminatory against interstate commerce. This should be removed by establishment of distance rates ranging from 60c for 10 miles and under to 135c for 100 miles, single line, joint hauls an additional charge of 20c to be added, reparation awarded. Continental Sugar Co. v. N. Y. C. R. R., 91 I. C. C. 677.

(m) Complainant attacked class rate charged on 24 tank cars of refined cottonseed oil between August 1918 and February 1920 from Los Angeles to San Francisco and South San Francisco, Calif., as unjust and unreasonable. Shipments moved via S. P., 467 miles, charged fifth class of 34.5c. On February 29, 1920 defendants established a commodity rate of 28c which was the rate in the opposite direction on cottonseed, fish, nut, seed and soya bean oils. The volume of traffic is northbound. HELD, rate attacked unreasonable to extent it exceeded 28c, reparation awarded. Los Angeles Soap Co. v. Director General, 91 I. C. C. 691.

(n) D. & R. G. W., respondent proposed certain changes in its interstate and intrastate rates on petroleum and its products, in carloads, from Pueblo and Walsenburg, Colo., to destinations on its line. Rates are usually made on basis of combinations to and from Pueblo and Walsenburg. Effective Dec. 20, 1922 proportional rates were established from Pueblo and Walsenburg 2.5c lower than the local commodity rates and published so as to reflect but a single increase in the through rates, thereby eliminating the use of the socalled combination rule without a change in the existing through rates. Subsequently the combination rule was canceled. On Jan. 20, 1924 pursuant to order of the Colorado Commission respondent made reductions in its fifth class rates from Pueblo and Walsenburg to most of the Colorado destinations on its line. In the schedules under suspension, respondent proposed to cancel the local and proportional commodity rates, leaving the new fifth class rate in effect, state and interstate, local and proportional. Respondent proposed to continue local commodity rates from Florence to various points on its line, which are materially lower than the fifth class rate. It is clearly shown that there is no justification for the proposed increase in the proportional rates to the fifth class basis, and the increases resulting therefrom in the through combination rates. It does appear that some readjustment of the rates under consideration is necessary in view of the changes in the fifth class rates. HELD, schedules not justified. Petroleum between Colorado, New Mexico and Utah, 91 I. C. C. 734.

(o) Complainant attacked commodity rates charged on pig iron, carloads from South Chicago, Ill., to Acme, Ill., during federal control as unreasonable, unjustly discriminatory and in violation of long and short haul section. Shipments moved as routed by shipper over the C. S. L. to Whiting, Ind., and I. H. B., to junctions with the line haul carriers, charged $1.32 prior to June 25, 1918, and $1.70 on and after that date. A rate of $1.15 prior to June 25, 1918 and $1.40 thereafter applied from South Chicago to Keokuk, Iowa. On Dec. 20, 1919 a rate of $1.40 was established via all routes. HELD, rates attacked unreasonable to extent they exceeded $1.15 prior to June 25, 1918 and $1.40 thereafter, reparation awarded. Keystone Steel & Wire Co. v. Director General, 91 I. C. C. 741.

(p) Complainant attacked commodity rate of 60c charged on sand, carloads, from Thornburgh to Cleveland, O., between May 1919 and February 1920 as unreasonable and unduly prejudicial. Thornburgh is a local station on the B. & O., 11 miles south of the public square in Cleveland. Prior to February 1920 it was 1 or 2 miles south of the limits of the switching district, but on that date the switching rates were 30c to industries on the B. & O., and 40c on shipments to industries on other lines. The distances from Thornburg to points of delivery in Cleveland are practically the same as those from pits within the switching district and the services performed for shippers within and immediately outside the switching district were not substantially dissimilar during federal control. HELD, rate charged not unreasonable, but unduly prejudicial reparation denied through lack of proof. Cleveland Sand & Gravel Company v. Director General, 92 I. C. C. 45.

(q) Complainant attacked commodity rates charged on 58 cars of wooden ties shipped intrastate from Missouri to

St. Louis, Mo., between June 13, 1919 and February 27, 1920, as unjust, unreasonable and illegal. Shipments moved M. P., and Frisco, charged commodity rates published on wooden ties in M. P., I. C. C. A 4018 and Frisco I. C. C. 7227. The carriers named were parties to Lelands I. C. C. 1182 in which a distance scale of commodity rates prescribed by the Missouri Commission for the intrastate movement was published under protest. HELD, shipments overcharged to extent they exceeded the distance tariff contemporaneously published, reparation awarded. Walsh Tie & Lumber Co. v. Director General, 92 I. C. C. 311.

(r) Complainant attacked intrastate rates on cement, carloads, shipped from Superior, Neb., to destinations in Nebraska between April 1, 1920 and May 3, 1922, as unreasonable, unduly prejudicial and unjustly discriminatory. Superior is served by the Northwestern, Burlington, M. P., and Santa Fe, complainants plant being on the Burlington. The destinations are on the Northwestern. The direct route of that carrier from Superior is entirely within Nebraska, over which the distance to Fremont is 147 miles. Through interstate rates are available over the Santa Fe, M. P., or Burlington in connection with the Northwestern, the most direct being that of the Burlington to Geneva, Neb., and the Northwestern beyond, over which the distance is 14 miles greater than over the Northwestern direct. All of the shipments moved intrastate over the Northwestern, and charges were collected at intrastate rates. Lower rates were in effect from Superior to those destinations over interstate routes, which were the scale 111 rates prescribed in 48 I. C. C. 201, 53 I. C. C. 225. In 69 I. C. C. 644, the interstate rates from Superior to these Nebraska points were based on an average of the present scale 11 and scale 111 rates. Effective Jan. 1, 1923, the intrastate rates on the same basis were prescribed by the Nebraska Commission. HELD, complaint dismissed. Nebraska Cement Co. v. C. & N. W. Ry., 92 I. C. C. 457.

(s) The jurisdiction of the Commission over intrastate rates is prescribed by sections 3 and 13 of the act. The Commission has no authority to pass upon the measure of such rates except as provided in those sections. Nebraska Cement Co. v. C. & N. W. Ry., 92 I. C. C. 457, 460.

(t) In 60 I. C. C. 337, the Commission prescribed rates and charges for all freight service, except on coal for distances of less than 30 miles, for intrastate application in Indiana, which would remove undue prejudice found to exist against persons and localities outside the state and remove unjust discrimination found to exist against interstate commerce. Upon petition evidence was received with respect to rates for the movement of coal from mines located within Terre Haute, Ind., yard limits and the switching limits of the Big Four to points within said yard limits and switching limits; rates on baled straw, carloads, from Veedersburg, Hillsboro, and Layton, Ind., to Marion, Ind., rates on coal from the Linton district in Indiana to Putnamville, Ind., rates on coal from mines in the Linton, Brazil and Princeton districts to Irvington, Ind., rates on brick from Veedersburg and Martinsville, Ind., to Irvington; and rates on coke from points within the switching limits of Indianapolis to Irvington. Coal was shipped from the Wabash, Riverside and lower Vein mines on the Big Four located 2.02, 2.87 and 2.83 miles from its freight station and within its Terre Haute switching limits to various points in Terre Haute but in each case over routes entirely within the state, and for distances of less than 30 miles. At the termination of federal control there was a uniform rate into Terre Haute of 60c on one line hauls. On Oct. 4, 1920 the Indiana Commission fixed a rate of 55c for hauls of 10 miles and less and a rate of 65c for hauls of more than 10 miles and not more than 30 miles, and provided that for any switching movement not incident to a road haul the charge on coal should not exceed $10 per car. HELD, the order of Jan. 28, 1921 did not require any change in coal rates for hauls of 30 miles or less within Indiana, and there is therefore no necessity for any finding or order respecting the situation here considered in this proceeding at this time. Prior to 58 I. C. C. 220, the rate on coal from the Linton district to Putnamville was 90c. Interstate rates were increased 40%. The Indiana Commission did not permit a corresponding increase in the intrastate rates in Indiana, but on coal for distances in excess of 30 miles permitted an

increase of 33⅓%. Under the order in this proceeding the rate became $1.26 reflecting a 40% increase from 90c. The average distance from the shipping points in the Linton group to Putnamville is about 60 miles. The $1.26 rate also applied from the Linton district to Indianapolis, an average distance of about 105 miles. During the period of the movement of brick from Veedersburg and Martinsville to Irvington the rates had not been subjected to any increase under order of this Commission, inasmuch as no corresponding interstate rates had not been so treated. No finding with respect to this commodity is therefore necessary. Prior to 58 I. C. C. 220 fifth class rates were applicable on straw from Veedersburg, Hillsboro and Layton to Marion. Interstate rates were increased 40%. The Indiana Commission did not permit a corresponding increase, but prescribed a scale of rates about 15% lower than the interstate scale on the same commoditv. The distances are 134. 129 and 137 miles. Rates charged were 21c prior to Jan. 1, 1922 and 19c thereafter. The rate of 13.5c which was published on Feb. 20, 1922 was the rate under the above scale, plus the general increases for distances of 125 to 150 miles. The record shows that in this general territory straw usually moved on commodity rates and the assessments of class rates was unusual. HELD, rates on coal from Linton, Brazil, Princeton to Irvington and from Linton to Putnamville, coke from Indianapolis to Irvington and straw from Veedersburg, Hillsboro and Layton, Ind., to Marion, Ind., in effect on Jan. 28, 1921 did not cause any undue or unreasonable advantage, preference, or prejudice as between persons or localities in intrastate commerce, on the one hand, and interstate or foreign commerce, on the other hand, or any undue, unreasonable, or unjust discrimination against interstate commerce. Indiana rates, fares, and charges, 92 I. C. C. 487.

(u) Complainant attacked rate of 9.5c charged on 149 cars of cement shipped from Crestmore, Calif., to San Pedro, Calif.. for exnort to Chile between August 2, 1918 and June 30, 1919, as unreasonable, unjustly discriminatory, unduly prejudicial and in violation of fourth section. Crestmore is on the Salt Lake near Riverside, Calif., 56 miles east of Los Angeles. San Pedro is served by the Pacific Electric, the S. P., and Salt Lake, 25 miles south of Los Angeles. Shipments moved over Salt Lake to Rialto, Calif., 6 miles, thence Pacific Electric to destination. Shipments were tendered to the Salt Lake on bills of lading specifying routing "P. E." Joint domestic rate of 9.5c was charged. Prior to June 25, 1918, a rate of 3.75 was applicable on shipments destined for ocean carriage beyond San Pedro was in force over the route of movement. On that date, under G. O. 28, this rate was increased to 6c but was restricted to apply only on shipments intended for ocean movement from San Pedro to other points in the United States. On Feb. 20, 1920 this rate was again published to apply in connection with export shipments. Present rate on export traffic is 7c. HELD, rate attacked unreasonable to extent it exceeded 6c, reparation awarded. Riverside Portland Cement Co. v. Director General, 92 I. C. C. 667.

(v) Complainant attacked commodity rates charged on saw logs shipped from Meredith, Ore., to Springfield, Ore., during June, July, August and Sept., 1918 as unreasonable. Rates charged, published per unit of 1,000 feet, board measure, were $1.75 prior to and $2.19 on and after June 25, 1918, or 2.18c prior to and 2.75 on and after that date per 100 pounds. Meredith is on the Coos Bay branch of the S. P., 31.5 miles west of Springfield on the main line. On Feb. 11, 1918 a rate of $1.60 was established from Cram, 0.6 miles east of Meredith. The latter was then not shown as a station in the tariff. The record indicates that complainant and defendants were of the opinion that the rates from Cram would be applicable to these shipments from Meredith. A rate from Meredith was first established on Nov. 25, 1918, of $2 the same as that then applicable from Cram. HELD, rate attacked unreasonable, complaint dismissed. Booth Kelly Lumber Co. v. Director General, 92 I. C. C. 711.

(w) That a contract by a railroad company granting special rates to a shipper on local traffic was made before admission of the state does not exempt it from the operation of a law, subsequently enacted by the state prohibiting discrimination in rates and creating a public service commission with power to regulate rates. St. Paul & Tacoma Lumber Co. v. Northern Pac. Ry. Co. 296 F. 749.

(x) Act July 2, 1864, incorporating the Northern Pacific Railroad Company, HELD not to exempt a contract made by the company granting a special intrastate rate from the regulatory police power of the state. St. Paul & Tacoma Lumber Co. v. Northern Pac. Ry. Co. 296 F. 749.

(y) Pub. Laws 1912, c. 807, §4, providing for prevention of smoke nuisance, and subjecting to fine any person hindering inspection of engines and boilers, HELD within state's police power, and, in absence of action by Congress, not to violate commerce clause of federal Constitution, art. 1, §8, in authorizing inspection of boilers of vessels on navigable waters. State v. Leary (R. I., 1924) 125 A. 353.

(z) Pub. Laws 1912, c. 807, §4, providing for prevention of smoke nuisance, and subjecting to fine any person hindering inspection of engines and boilers, as applied to vessels on navigable waters within territory of state, HELD not to interfere with maritime jurisdiction of federal courts under Const. U. S. art. 3, §2, and U. S. Comp. St. §10445, limiting criminal jurisdiction of federal courts. State v. Leary (R. I. 1924) 125 A. 353.

(aa) The regulations by Congress properly made under the commerce clause of the Constitution, are comparable to the exercise of the police power by the states. United States v. Western & A. R. R. 297 F. 482.

(bb) The state has authority to declare a lumber company railroad a common carrier on its own application, and in accepting such company as a common carrier, and the Corporation Commission, in imposing on it, with its consent, the duties, privileges, and liabilities of such relation to the public, was acting for the state through its prescribed machinery. Corporation Commission v. Atlantic Coast Line R. Co. (N. C. 1924), 121 S. E. 767.

(cc) Commerce clause of federal Constitution (article 1, §8, cl. 3), of its own force, restrains states from imposing direct burdens on interstate commerce. State of Missouri ex. rel. Barrett, v. Kansas Natural Gas Co., 44 Sup. Ct. 544. Kansas Natural Gas Co. v. State of Kansas ex. rel. Helm, 44 Sup. Ct. 544. State of Kansas ex rel. Jackson v. Central Trust Co. of New York, 44 Sup. Ct. 544.

(dd) In absence of congressional legislation, a state may constitutionally impose taxes, enact inspection or quarantine laws, and, generally, laws of internal police, though they may have an incidental effect on interstate commerce. State of Missouri ex. rel. Barrett, v. Kansas Natural Gas Co., 44 Sup. Ct. 544. Kansas Natural Gas Co. v. State of Kansas ex. rel. Helm, 44 Sup. Ct. 544. State of Kansas ex. rel. Jackson v. Central Trust Co. of New York, 44 Sup. Ct. 544.

(ee) Abstract rules of construction stated in opinions of Interstate Commerce Commission in proceedings before it cannot affect Public Utilities Commission's decision as to whether freight rates or other charges are unreasonable and discriminatory. Jeremy Fuel & Grain Co. v. Public Utilities Commission (Utah, 1924) 226 Pac. 456.

(ff) In view of Comp. Laws 1917, §4838, authorizing Public Utilities Commission to order reparations only where no discrimination will result, Supreme Court would not direct Commission to allow or disallow reparations on shipments of coal sold by dealers in accordance with alleged excessive tariff rates paid by them. Jeremy Fuel & Grain Co. v. Public Utilities Commission (Utah 1924) 226 Pac. 456.

(gg) Complainant attacked commodity rates charged on 89 cars of bituminous coal from Mount Olive and Staunton, Ill., to West Pullman, Ill., between August 25 and Oct. 20, 1919, as unreasonable, unjustly discriminatory and unduly prejudicial. Shipments moved via Wabash to Chicago, and Belt Ry. and C. W. P. & S., beyond, charged $1.31 plus $2.50 per car plus 10c per ton. Points of origin are in the Springfield group. Complainant admitted that the rates from Illinois mines to Chicago are low, and that the unreasonableness of the attacked rate can not be demonstrated by comparison with rates to other destinations. HELD, rates attacked not unreasonable or otherwise unlawful, complaint dismissed. Consolidated Coal Co. v. Director General, 93 I. C. C. 53.

(hh) Complainant attacked sixth class rate charged on 6 cars of old rags from New York, N. Y., to Binghamton, N. Y., during March 1923, as unreasonable and in violation of long and short haul clause. Shipments moved via D. L.

& W., charged sixth class of 25c on old rags. Shipments consisted of used Army knapsacks purchased by complainant from a dealer in surplus war material. The knapsacks after removal therefrom of the leather strips and metal buckles were sold by complainants to manufacturers of paper. When the shipments moved knapsacks were rated first class, any quantity, rate being 66.5c, undercharged. HELD, rate of 25c applicable, not unreasonable or in violation of the fourth section, complaint dismissed. Levenes Sons v. D. L. & W. Ry., 93 I. C. C. 103.

(ii) Complainant attacked commodity rates on bituminous coal over interstate routes from Linton and Clinton groups in Indiana to Marion, Kokomo, Elwood, Michigantown and Warren, Ind., as unreasonable, unjustly discriminatory and unduly prejudicial. Shipments originated on the C. T. H. & S. E., delivered either to the T. St. L. & W., at Humrick, Ill., or L. E. & W., at Cheneyville, Ill. Prior to August 26, 1920 and since March 5, 1921 rates from Indiana groups to the destinations named were, and they now are, the same over both interstate and intrastate routes. During the intervening period rates over the intrastate routes were lower than those applicable interstate, due to the failure of the Indiana Commission to permit any increase until Oct. 4, 1920 and to its refusal to permit, even on that date, the same increases as were authorized in 58 I. C. C. 220. From Oct. 5, 1918 to August 25, 1920 the rate, intrastate and interstate, from the Clinton and Linton groups to all of the points named except Warren was $1.25; to Warren the rates were $1.40 from the Clinton and $1.45 from the Linton group. It has been customary to use the interstate routes through Humrick and Cheneyville rather than the intrastate routes, as the latter necessitate the use of a third carrier from Terre Haute to Frankfort. The consignors routed the shipments in the customary way, and the carriers were justified in assuming that movement over the usual routes was desired. HELD, shipments not misrouted, rates attacked not unreasonable, complaint dismissed. Wright & Wimmer v. C. T. H. & S. E. Ry., 93 I. C. C. 183.

(jj) Complainant attacked combination rate charged on 68 cars of tan bark shipped intrastate from Ross Spur, Wis., to Sheboygan, Wis., between Dec. 31, 1918 and Feb. 22, 1919 as unjust and unreasonable. Ross Spur is on the Milwaukee branch extending from Boulder Junction, Wis., northward to Blue Hill, Mich., distance of 13.5c. Sheboygan is served by the Northwestern. Shipments delivered to the Milwaukee unrouted. All but one moved over that line to Plymouth, Wis., Northwestern beyond 375 miles, the remaining shipment moved over Milwaukee to Wausau, Wis., Northwestern beyond, 251 miles, charged combination rate of 16c, composed of 3.5c from Ross Spur to Boulder Junction and 12.5c beyond. Tanbark takes lumber rates in Wisconsin, which are generally grouped as to points of origin and destination. It is the carriers policy to apply the group rates from branch lines serving points at which lumber or other forest products taking lumber rates originate and the same rates generally apply for single line and two line hauls. A rate of 14c was subsequently established via Wausau, Wis. HELD, rate attacked not unreasonable, complaint dismissed. American Hide & Leather Co. v. Director General, 93 I. C. C. 265.

(kk) Complainant attacked state rates charged on carloads of decomposed granite shipped between August 15 and Oct. 9, 1918, from Pacoima, Calif., to East San Pedro, Calif., as unlawful, unjust and in violations of sections 1 and 6 of the act. Shipments moved over S. P. to Los Angeles and L. A. & S. L., beyond, charged 60c to Los Angeles and 70c beyond, both of these factors being increased 1c per 100 pounds on June 25, 1918. A rate of $1.10 was applicable constructed by adding to the June 24, 1918 rates of 35c to Los Angeles and 54c beyond, a single increase of 1c per 100 pounds as per tariff of the L. A. & S. L. HELD, rate applicable $1.10, reparation awarded. Southwestern Shipbuilding Co. v. Director General, 93 I. C. C. 337.

(llmm) Complainant attacked distance commodity rates charged on cars of wood, shipped between July 26, 1919 and Feb. 28, 1920 from Mount Vernon, McIntosh, Palermo, Slades and Toinette, Ala., to Calvert, Ala., as unjust and unreasonable. Shipments were billed as wood moved over Southern to Calvert, where they were ground macerated, and other-

wise treated for the purpose of extracting oil, rosin and turpentine. Distance commodity rates on lumber were in effect from and to the above points, charged minimum charge per car of $15. The tariffs provided no rates specifically applicable to the traffic. HELD reasonable charges would be those applicable on lumber without regard to a minimum charge per car, reparation awarded. National Reduction Corp. v. Director General, 95 I. C. C. 284.

(nn) Complainant attacked commodity rates of 8 and 10c charged on steel wire, carloads from Monessen to Economy, Pa., as unreasonable and unduly preferential and prejudicial to extent they exceed 6.5c. Monessen is on the L. & E., and the route to Economy is via Homestead Transfer, and Pennsylvania R. R., 57 miles. Following 89 I. C. C. 606, rate was made 7c. HELD, rate attacked not unreasonable or unduly prejudicial, complaint dismissed. Pittsburgh Steel Co. v. Director General, 95 I. C. C. 637.

(oo) Complainant attacked commodity rate of 45.5c charged on one car of strawberries shipped May 31, 1920 from Sarcoxie, Mo., to Kansas City, Mo., as unreasonable to extent it exceeded third class rate of 41.5c. Sarcoxie is in southeastern Missouri on the Frisco. The tariff provided a list enumerating only such articles as are given specific commodity rates; articles not specified will take class rates. Strawberries were not specified; but strawberries were accorded commodity rates in Lenand 1356 effective Dec. 31, 1919. HELD, commodity rate charged applicable, complaint dismissed. Singer v. St. L. S. F. Ry., 95 I. C. C. 667.

(pp) Complainant attacked commodity rate charged on 110 cars of bituminous coal shipped between Dec. 16, 1918 and July 27, 1919 from Panhandle, O., to Mingo Junction, O., as unjust, unreasonable, unjustly discriminatory and unduly prejudicial. Shipments moved N. Y. C., to Dillonvale, O., thence W. & L. E., 30 miles, charged combination of 80c to Dillonville and 60c beyond. Mining operations at Panhandle were begun in 1918 and on Sept. 27, 1918 complainant applied to the Director General for a joint commodity rate but it was not until Dec. 7, 1919 that a commodity rate of $1 was published. HELD, rate attacked unreasonable to extent it exceeded $1, reparation awarded. Beacon Coal Co. v. Director General, 95 I. C. C. 687.

(qq) Complainant attacked commodity rates charged on domestic lump coal, carloads, between July 2, 1921 and March 31, 1922 from Mutual, Utah to Twin Falls, Idaho Falls, Hansen, Filer, Godwin and Kimberly, Idaho as unreasonable, unjustly discriminatory and unduly prejudicial. Mutual is on the D. & R. G. W., and traffic from that point is billed from Helper, Utah, shipments moving over D. & R. G. W., and O. S. L. It was the intention of defendants that lump coal rates should apply but the tariff was not so restricted. Effective May 7 1922 the tariff was amended so as to provide that mine run coal should include only coal as it comes from the mine, unscreened, unsized, and without any preparation whatever. HELD, rates applicable were rates on mine run coal, reparation awarded. Detweiler Coal Co. v. D. & R. G. W. Ry., 96 I. C. C. 88.

(rr) Complainant attacked class rates charged on 363 barrels of limecola syrup from Montgomery, Ala., to Mobile, Ala., during federal control as inapplicable. Charged third class of 30c prior to June 25, 1918 and 37.5c thereafter. Complainant contended that the commodity rates of 15 and 19c, respectively, applicable to syrup in wood or in tin cans, boxed, any quantity, as applicable. The commodity rates made the class rate inapplicable to syrup. HELD, charges attacked inapplicable, reparation awarded. Allen v. Director General, 96 I. C. C. 561.

(ss) Complainant attacked commodity rates charged on six tank cars of petroleum residuum from Wichita, Kas., to Elbing and Peabody, Kas., between August 1 and Nov. 1, 1918 as unreasonable. Charged 9c, all points on the Rock Island, Elbing 25.4 miles and Peabody 33.2 miles from Wichita. No comparisons were offered to show that the rates attacked were unreasonable. HELD, rate charged not unreasonable, complaint dismissed. Sterling Oil & Refining Co. v. Director General, 96 I. C. C. 586.

(tt) Upon petitions Increased Rates, 1920, 58 I. C. C. 220, and 60 I. C. C. 337, Indiana rates, fares and charges, were reopened with respect to rates on coal from the Clinton, Linton, Brazil, Princeton, and Boonville districts in Indiana to Crawfordsville, Sheridan, Lo-

gansport, Monticello, Anderson and Fort Wayne, Ind., and on sand and gravel from Terre Haute, Ind., to St. Marys of the Woods, Ind., and from Neal Gravel Company pit to Attica, Ind. Prior to Oct. 1918, rates were maintained on coal between particular points in Indiana, but there was no general line of coal rates. A general structure of rates was established in that month as a consequence of the coal zoning system which had been inaugurated and under which eastern coal was zoned out of Indiana, making that state more dependent on local coal. The rates here considered were built up on those rates. The record does not establish that they were relatively excessive, because of this fact, and respondents explain that the rates established in 1918 were made with proper relation to the rates already in effect. The rates here considered were increased under the authority of the Indiana Commission to lesser degree than were the interstate rates in the same territory, and this record fails to show that the resulting relationship of interstate and intrastate rates was proper. On the other hand it appears that, because of competitive conditions, the relation between the intrastate rates here considered and the interstate rates between the same points and from Illinois and other states to these destinations was so close that the failure to increase the intrastate rates would have had a direct effect upon the interstate rates and traffic. RATES ON SAND AND GRAVEL. St. Marys of the Woods is a local point on the Big Four about 4 miles west of Terre Haute and 2 miles from the yard limits. Prior to August 26, 1920 the applicable rate was 50c. On that date the interstate rate became 70c, but no increase was made in the intrastate rate. On Oct. 5, 1920 the intrastate rates were made 55c under authority of the Indiana Commission. On March 15, 1921 under I. C. C. order the rate became 70c. This rate remained in effect until Nov. 16, 1921. On that date it was reduced to 58c and petitioners seek an order which will enable the Indiana Commission to pass upon the reasonableness of the prior rate. There were, according to the record, no interstate movements to St. Mary's during this period, or any other movements except those with which the petitioners are concerned, and it can not be found that the failure to increase the rate to St. Marys to the same extent that the interstate rates were increased would necessarily have had any effect upon interstate traffic or have resulted in discrimination against interstate commerce. HELD, the record does not warrant any change in the order on coal but rates on sand do not cause any undue prejudice against interstate commerce. Indiana Rates, fares and charges, 96 I. C. C. 644.

(uu) S. A. L., and F. C. & G., proposed to cancel commodity rates on wet phosphate rock, carloads, from interior producing points on their lines in Florida to Jacksonville, Fla., when for export or to be dried and reshipped by rail or water. Effective Feb. 12, 1921 respondents published commodity rates on wet phosphate rock, carloads, from Florida points to Jacksonville, to be dried and reshipped by rail or water. Effective April 9, 1921 they published rates on wet phosphate rock in carloads to Jacksonville for export. The rates to Jacksonville made effective on those dates were the same as amount as the rates from the same territory of origin to Fernandina, a point to which commodity rates on wet phosphate rock had been published for many years. The Seaboard had long maintained at Fernandina extensive phosphate rock terminals, built long before deep water was available at Jacksonville. It had and has no such terminals at Jacksonville. Fernandina is 28 miles more distant than Jacksonville from the points of origin over respondents lines, and the rates to Fernandina are applicable through Jacksonville. The chief reason given by respondents for cancellation of the rates to Jacksonville is the absence of movement. This record shows a substantial movement in 1924 and the probability of continued movement in increased volume. HELD, proposed tariffs not justified. Wet phosphate rock to Jacksonville, 96 I. C. C. 711.

(vv) Respondents proposed to reduce the rates on cement, in carloads, from Kansas City and Sugar Creek, Mo., and Bonner Springs, Kas., to St. Joseph, Mo., Leavenworth and Atchison, Kas., and intermediate points. Complainant attacked commodity rates on cement, carloads from Iola district to northeastern Kansas and northwestern Misouri, as unreasonable and unduly prejudicial. Re-

spondents state reductions are proposed for the purpose of meeting an intrastate rate of 7c from Sugar Creek and Kansas City to St. Joseph over the Santa Fe via Henrietta, Mo., and also over Santa Fe in connection with the Burlington via Kansas City. Present interstate rates from Sugar Creek and Bonner Springs to St. Joseph and Atchison are 9c and to Leavenworth 8c. The schedules under suspension propose rates of 7c from Kansas City, Bonner Springs and Sugar Creek to the destinations named. HELD, reductions proposed not justified. Cement from Kansas City to St. Joseph, 96 I. C. C. 718.

(ww) Complainant attacked commodity rate charged on 11 cars of hollow building tile, between Dec. 2 and 20, 1919 from Alberhill, Calif., to Saticoy, Edfu and Santa Paula, Calif., as unjust and unreasonable. Shipments moved over Santa Fe and S. P., charged 22.5c, which prior to June 25, 1918 was 18c. On that date it was increased 25% under G O 28. On May 23, 1919 the 2c flat increase provided in that order on brick except enameled or glazed, was extended to items shown in tariffs taking brick commodity rates, and on Sept. 24, 1919, the 2c flat increase was further extended to clay and clay products where the rates on those commodities were the same as or based on arbitraries higher than the rates on brick, other than enameled or glazed. Distance from Alberhill to Saticoy and Edfu was 174 miles and to Santa Paula 167 miles. The attacked rates are higher than rates on lime, cement, and plaster between various points in California for similar distances, which commodities are comparable from the standpoint of value and transportation hazards with hollow building tile. The 17c rate requested by complainant is that which was in effect on fire and wire cut face brick between the points in issue. HELD, rate attacked unreasonable to extent it exceeded 17c, reparation awarded. Los Angeles Pressed Brick Co. v. Director General, 98 I. C. C. 45.

(xx) Complainant attacked commodity rate charged on 325 cars of sand between Jan. 1, 1918 and Dec. 15, 1919 from Falls Creek, Pa., to Vandergrift, Pa., as unreasonable, movement being intrastate. The shipments were switched by the B. R. & P., a distance somewhat less than a mile to the interchange with the Pennsylvania at Falls Creek and moved thence over the rails of the latter line to destination, about 108 miles. The rate from Falls Creek to Vandergrist was increased on April 8, 1918, from $1.05 to $1.20 and was further increased on June 25, 1918 to $1.40. Complainant paid in addition the switching charge of B. R. & P., of $4.50 per car. Prior to June 17, 1919 the Pennsylvania absorbed switching charges at Falls Creek only on stone from certain industries named in the tariff when the rate was $1.50 per ton or over. On that date sand also was included and the consignor of complainants shipments was named. On Dec. 29, 1919 the tariff was amended to provide for absorption of switching charges on all freight in lots of 12,000 pounds or over when loaded to full cubical capacity of the car, in one car, when the freight charges to or from the Pennsylvania tracks at Falls Creek, Pa., are $15 per car or over. HELD, charges attacked not unreasonable, complaint dismissed. United Engineering & Foundry Co. v. Director General, 98 I. C. C. 447.

(yy) Complainant attacked fourth class rate charged on empty wooden boxes returned from Los Angeles to various points in California between July 17, 1918 and Feb. 25, 1920 as unreasonable and unlawful. The cars used, 25 in all, were, with probably three exceptions, loaded to full visible capacity. All were tendered to the carriers as carloads. They were charged prior to Dec. 30, 1919 at minimum fourth class rate of 15c on minimum of 20,000 pounds, and on and after that date the class B or class E rate, with its minimum. Under section 1 of rules 18 and 15 of the classification the lowest charges, either at the carload rates and minima or the less carload rates and actual weights, were applicable. HELD, charges attacked inapplicable overcharges based on less carload rates at actual weight, subject to minimum of $15 per car, reparation awarded. Klein Simpson Fruit Co. v. Director General, 98 I. C. C. 547.

(zz) Prior to Transportation Act and federal control, Interstate Commerce Commission had no control over intrastate transportation or rates, except as their enforcement discriminated against interstate commerce. New York and Pennsylvania Co. v. New York Cent. R. Co. (Penn. 1924) 126 Atl. 382.

(3a) Local freight rates were in abeyance during federal control and, as far as interstate commerce was concerned, were subject to control of Interstate Commerce Commission until September 1, 1920, but after March 1, 1920, intrastate rates were subject to control of state Public Service Commissions, without requiring approval of Interstate Commerce Commission. New York & Pennsylvania Co. v. New York Cent. R. Co. (Penn. 1924) 126 Atl. 382.

(3b) Under Public Service Commission Act (Pa. St. 1920, § 18057 et seq.) failure to appeal from decision of commission makes decision conclusive in subsequent proceeding for reparation, covering excessive charges demanded and paid. New York & Pennsylvania Co. v. New York Cent. R. Co. (Penn. 1924) 126 Atl. 382.

(3c) To prevent unlawful discrimination against interstate commerce, state board of railroad commissioners may properly increase intrastate rates to conform to rates determined to be reasonable by federal agencies, any contracts for special rates notwithstanding. Hawkeye Portland Cement Co. v. Chicago R. I. & P. Ry. Co. (Ia. 1924) 201 N. W. 16.

(3d) Under Const. art. 6, §§1, 28, and 31, the Railroad and Warehouse Commission, or its successor, the Public Service Commission, has no jurisdiction or authority to determine the purely judicial question involved in a claim for damages by a shipper arising out of an excessive freight charge. State v. Public Service Commission (Mo. 1924) 259 S. W. 445.

(3e) Imported shipments of fertilizer and fertilizer materials delivered and stored in warehouses at Wilmington, N. C., and subsequently shipped under new bills of lading to North Carolina destinations, found to be intrastate traffic and not within Commission's jurisdiction. At time shipments were stored there was no original or continuing intention to ship goods to any particular inland destination, but they were to be sold wherever a sale might be found, otherwise they were stored and transportation ceased. Shipments here involved fall within class of shipments "where a local shipment follows quickly upon in interstate shipment and yet is not to be deemed part of it, even though some further shipment was contemplated when original movement began." See Settle Case, 260 U. S. 166. Goldsboro Chamber of Commerce v. A. C. L. R. R. Co., 91 I. C. C. 315, 321.

(3f) Fifth class rate on refined cottonseed oil from Los Angeles, Calif., to San Francisco and South San Francisco, Calif., during Federal control, found unreasonable to extent it exceeded lower commodity rate applicable in opposite direction on cottonseed, fish, nut, seed, and soyabean oils, in packages, c. l., and on cocoanut oil, in tank-car loads, which lower rate was subsequently established in both directions. Reparation awarded. Los Angeles Soap Co. v. Director General, 91 I. C. C. 691.

(3g) Rates on pig iron from South Chicago, Ill., to Acme (Peoria), Ill., during Federal control, found unreasonable as compared with lower rate from South Chicago to Keokuk, Iowa, a farther distant point, which lower rate was subsequently established from South Chicago to Acme, thereby removing any fourth-section departures that may have existed. Reparation awarded. Keystone Steel & Wire Co. v. Director General, 91 I. C. C. 741.

(3h) Rate on hollow building tile from Kankakee, Ill., to Chicago, Ill., during Federal control, found not unreasonable. Rate assailed compares favorably with rates prescribed by Commission in National Paving Brick Mfrs. Asso., 68 I. C. C. 213, for interstate short hauls on articles in uniform brick list, including hollow building tile, for application within c. f. a. territory, including all points in Illinois. Illinois Fire-Proof Construction Co. v. Director General, 91 I. C. C. 753.

(3i) In 58 I. C. C. 220, the Commission authorized increases in interstate rates of 40 per cent in the eastern group. The Indiana Commission authorized increases in rates in coal of 33⅓%. In 60 I. C. C. 337, the Commission prescribed rates in Indiana, except on coal for distances of less than 30 miles, which would remove undue prejudice found to exist against persons and localities outside the state and remove unjust discrimination found to exist against interstate commerce. The proceeding was reopened and the Commission is requested to except from the order the rates on coal from Boonville, Chandler, Francisco, Oakland City, and Winslow, Ind., to Tell City and Cannel-

ton, Ind., in order that the Indiana Commission may be permitted to pass on the March 15, 1921, and April 7, 1922. The reasonableness of those rates between points of origin and destination are on the Southern, 15.8, 24 and 30 miles west of Huntingburg. The rate charged was that established March 15, 1921, in response to the order. The rates which the petitioners will ask the Indiana Commission to find reasonable are those prescribed in 73 I. C. C. 27, increased 40%, namely, 70c from Boonville and Chandler to Tell City, and from Boonville to Cannelton; and 80c from Winslow and Oakland City to Tell City and Cannelton and from Francisco to Tell City. HELD: Rates in effect on Jan. 28, 1921, did not cause any undue or unreasonable preference against interstate commerce. Indiana Rates, Fares and Charges, 100 I. C. C. 169.

(3j) Complainant attacked commodity rate charged on 38 cars of coal shipped between Sept. 4 and Oct. 17, 1919, from East Birmingham, Ala., to Jasper, Ala., as unreasonable, unjustly discriminatory and unduly prejudicial. Shipments moved Southern to Parish, Ala., thence Northern Alabama 51 miles, charged 80c. Rate charged was the so-called normal or commercial rate on coal from and to these points. Complainant prior to movement requested establishment of lower rates and on Sept. 10, 1919, a rate of 55c was made effective. HELD: Rate attacked not unreasonable, complaint dismissed. Sheffield Iron Corp. v. Director General, 101 I. C. C. 31.

(3k) Complainant attacked commodity rate of 80c per ton on sand and gravel, carloads, from Scottsville, N. Y., to Kodak Park Siding, Rochester, N. Y., in Nov. and Dec., 1919, as unjust, unreasonable and unjustly discriminatory. Kodak Park Siding is within the general switching limits of Rochester, 1.2 miles south of Barnard, N. Y., and 5.2 miles north of Rochester proper on the New York Central. Shipments originated on the Pennsylvania and were delivered to the N. Y. Co., at a connection in Rochester which is 4.52 miles from Kodak Park Siding. Distance handled 14 miles, rate charged 80c to Barnard, a farther distant point. Complainant makes the contention that Kodak Park Siding is located within Kent St. territory and is therefore entitled to the rate applicable to Kent St. station. This contention is without merit. The tariffs of the N. Y. C. show that Kodak Park Siding is in Group E Switching territory of Rochester while Kent St. is in Group A. HELD, rate charged applicable, complaint dismissed. Eastman Kodak Co. v. Director General, 101 I. C. C. 103.

(3l) On hearing before State Railroad Commission to determine reasonableness of passenger rates, where issue framed by Commission itself involved only question of reducing rates over main line to 3 cents and over a so-called Nevada and California line to 4 cents, an order reducing rates on "main line and the standard gauge branch lines" to 3 cents was broader than the issue involved, and invalid. Southern Pac. Co. v. Bartine, 1 Fed. (2d) 323.

(3m) The burden is on a party attacking rate before Nevada Railroad Commission to show its unreasonableness; defendant carrier being entitled to be heard, to have process to compell the attendance of witnesses, to introduce evidence, and to rebut or explain evidence adduced against it. Southern Pac. Co. v. Bartine, 1 Fed. (2d) 323.

(3n) Consideration by Railroad Commission, in fixing passenger rates, of data compiled by Interstate Commerce Commission, but not introduced in evidence, HELD: Improper, and sufficient to invalidate order based thereon, notwithstanding such matter was clearly relevant and material, had it been properly admitted. Southern Pac. Co. v. Bartine, 1 Fed. (2d) 323.

(3o) Under Act May 29, 1884 (Comp. St. §§ 8690-8697), authorizing Commissioner of Agriculture to take measures to prevent spread of disease of cattle from one state into another, the government could supervise dipping of domestic cattle in county of state bounded by other state; such supervision having direct tendency to prevent spread of disease into other state. Thornton v. United States, 2 Fed. (2d) 561.

(3p) Laws Ga., 1910, p. 125, authorizing state veterinarian to assume charge of work of cattle tick eradication in cooperation with Federal authorities, and Laws Ga., 1918, p. 256, providing for dipping of cattle in accordance with recommendations by United States Bureau of Animal Industry, HELD: Acceptance of regulations and methods of Commissioner of Agriculture of United States under Act Cong. May 29, 1884 §3 (Comp. St.

§8691). Thornton v. United States, 2 Fed. (2d) 561.

(3q) Laws Ga., 1924, p. 173, requiring railroad steam locomotives to be equipped with automatic fire box doors, HELD: Invalid as to locomotives engaged in interstate commerce; Act March 4, 1915 (Comp. St. § 8604a) and Act of June 7, 1924, amending Act Feb. 17, 1911, § 2 (Comp. St. § 8631), and rules of interstate Commerce Commission, having exclusively occupied the field as to safety appliances on locomotives engaged in interstate commerce. Atlantic Coast Line R. Co. v. Napier, 2 Fed. (2d) 891.

(3r) Under Laws Minn., 1921, c 278, §§6, 9, regulating the fares of street railway company, the Railroad and Warehouse Commission has complete authority to fix rates so long as not confiscatory under the Fourteenth Amendment or in excess of the maximum fixed by the act. Duluth St. Ry. Co. v. Railroad and Warehouse Commission, 4 Fed. (2d) 543.

(3s) The Interstate Commerce Commission is vested with extraordinary power in the matter of regulating interstate commerce, but there is still left a clear field of operation for the states in the matter of requiring just and reasonable freight and passenger service for intrastate business so long as such requirements are not inconsistent with lawful orders of the Interstate Commerce Commission in the interests of interstate commerce. State v. Seaboard Air Line Ry. Co. (Fla., 1925), 104 So. 602.

(3t) By the law of this state all orders of the Railroad Commission are held to be prima facie reasonable and just, unless the parties resisting them present evidence on which the court may adjudicate the legality of the order. State v. Seaboard Air Line Ry. Co. (Fla., 1925), 104 So. 602.

(3u) Denial of jury trial in mandamus action by city to compel railroads to eliminate grade crossings is not violative of the Fourteenth Amendment, nor Federal Act to Regulate Commerce (Comp. St. §8563 et seq.); neither the Federal laws nor Constitution giving a right to trial by jury when local statutes and practice prescribe otherwise. Southern Ry. Co. v. City of Durham, N. C., 45 Sup. Ct. 51.

(3v) Laws N. Y., 1922, cc 580, 581, making it a crime to sell or expose for sale with intent to defraud meat or meat preparation falsely represented to be "kosher" or product "sanctioned by orthodox Hebrew religious requirements," HELD: Not violative of commerce clause of United States Constitution, in so far as they relate to meat and meat preparations shipped into state. Hygrade Provisions Co. v. Sherman, 45 Sup. Ct. 141; Lewis & Fox Co. v. Same, Satz v. Same, 45 Sup. Ct. 141.

(3w) In matters where the national importance is imminent and direct, even where Congress is silent, the states may not act at all. Sanitary Dist. of Chicago v. United States, 45 Sup. Ct. 176.

(3x) A state cannot, by legislative act, convert property used exclusively in business of private carrier into a public utility, or make owner a public carrier, since in so doing it would take private property for public use without just compensation, in violation of due process clause of Fourteenth Amendment. Michigan Public Utilities Commission v. Duke, 45 Sup. Ct. 191.

(3y) A state cannot fetter right to carry on interstate commerce within its borders by the imposition of unnecessary and unreasonable conditions or regulations. Michigan Public Utilities Commission v. Duke, 45 Sup. Ct. 191.

(3z) Pub. Acts Mich., 1923, No. 209, §§1, 2, 7, making all persons engaged in business of transportation of persons or property for hire by motor vehicle over public highways common carriers, prohibiting them from engaging in such business without permit, and requiring them to carry insurance or execute indemnity bonds, HELD: Burden on interstate commerce, not within police power as applied to private carrier engaged exclusively in interstate commerce. Michigan Public Utilities Commission v. Duke, 45 Sup. Ct. 191.

(4a) Pub. Acts Mich., 1923, No. 209, making persons engaged in transportation of persons or property by motor vehicles on public highways common carriers, HELD: Unconstitutional, as violative of due process clause of Const. Amend. 14, as applied to private carrier engaged exclusively in transportation of property for certain concerns, under contracts with them. Michigan Public Utilities Commission v. Duke, 45 Sup. Ct. 191.

(4b) Intrastate shipment of goods under bill of lading limiting liability to declared value according to forms of interstate Commerce Commission after en-

actment of second Cummins Amendment to Interstate Commerce Act (Act Aug. 9, where Interstate Commerce Commission had ordered railroads to adopt rules not discriminating against interstate commerce. Lancaster v. McCarty, 45 Sup. Ct. 342.

(4c) State commission in recommending that application for abandonment of line be granted, requested that when question of sale of the road is finally considered the order of sale be in alternate form, both as a going concern and as junk, in order to give people along the line an opportunity to buy and operate the road. HELD: Question is one properly to be brought before court having jurisdiction in the premises. Abandonment of Pelham & Havana R. R., 90 I. C. C. 51, 52.

(4d) In considering whether or not a proposed acquisition of control of one carrier by another is in the public interest, the commission must consider not only the interests of the people of the State in which an applicant is located but also the interests of the people of other states, including those states served by railroads connecting with lines of carrier to be controlled. Acquisition of D. & R. G. W. Common Stock, 90 I. C. C. 161, 166.

(4e) Shipments of wooden ties from various points in Missouri to St. Louis, during Federal control, found overcharged. Carriers publishing tariffs under which rates were assessed failed to cancel an agency tariff, to which they were parties, in which a distance scale of commodity rates prescribed by the state commission for intrastate movement was published, and which provided that rates named therein "will take precedence over rates in other publications which are higher." Rates on same commodity between same points via same route should not be included in different tariffs at same time. Walsh Tie & Lumber Co. v. Director General, 92 I. C. C. 311.

(4f) Intrastate rates on salt from Jacksonville and other Florida basing points to interior points in Florida, lower than the corresponding interstate rates applicable on through shipments from Ohio and Michigan producing points found to result in undue prejudice to shippers and localities in interstate commerce, undue preference of shippers and localities in intrastate commerce, and in unjust discrimination against interstate commerce. Salt Cases of 1923, 92 I. C. C. 388, 434, 438.

(4g) Complainant formerly shipped intrastate shipments via joint-line interstate routes to obtain benefit of rates lower than those applying intrastate. Carriers subsequently limited application of interstate tariff to interstate traffic. Upon complaint assailing rates charged on shipments moving intrastate via intrastate routes, HELD: Limitation in interstate tariff precluded its application to complainant's shipments. Moreover, the commission's jurisdiction over intrastate rates is prescribed by section 3 and 13 of the act, and it has no authority under the law to pass upon the measure of such rates except as provided in those sections. Nebraska Cement Co. v. C. & N. W., 92 I. C. C. 457.

(4h) Limitation, in order of Illinois Commerce Commission that proposed track from mine already having shipping facilities to connect with a second railroad not adjacent to it, should be used only to haul coal from mine, unless commission's consent for other use was had, did not change character of such track as an extension of road, to that of a private spur track, since when built the track would be open to use of all shippers on adjustment by commission of proportionate cost thereof. Cleveland, C. C. & St. L. Ry. Co. v. Commerce Commission, ex rel., J. K. Dering Coal Co. (Ill. 1925), 146 N. E. 606.

(4i) Under Const. art. 1, §17, street railway rates are subject to legislative control by municipality, which may authorize higher rate than maximum fixed by franchise without impairing obligation of contract, of which reservation of such control is part, subject to proviso that rates fixed must not be so unreasonable as to practically destroy value of company's property, in violation of the process and equal protection clauses of federal constitution. Dallas Ry. Co. v. Getter (Texas, 1925), 271 S. W. 1106.

(4j) State may not directly regulate, prohibit, or burden interstate commerce. Interstate Transit Co. v. Derr Co. (Mont. 1924), 228 Pac. 624.

(4k) All reasonable regulations, properly within the police power of a state and not in conflict with any act of Congress, may be applied by the states to carriers engaged in interstate commerce. Interstate Transit Co. v. Derr Co. (Mont. 1924), 228 Pac. 624.

(4l) States cannot enact laws for

specific end of regulating interstate commerce, but may enact laws for protection of general public against apprehended harm including that caused by those engaged in interstate commerce. In Re Opinion of the Justices (Mass., 1925), 147 N. E. 681.

(4m) Bingham Co-operative Marketing Act, providing for tobacco growers' co-operative marketing association, HELD, not encroachment or jurisdiction of federal government over interstate commerce, since Clayton Amendment to Sherman Anti-Trust law relinquishes superior rights to regulate interstate commerce with reference to agricultural products. Liberty Warehouse Co. v. Burley Tobacco Growers' Co-op. Assn. (Ky., 1925), 271 S. W. 695.

(4n) Grain Grading Act N. D. 1923, prohibiting buying of wheat by grade unless buyer secures from state grading license for himself or his agent, requiring buyer to separate dockage and return it to producer, unless distinctly valued and paid for, requiring buyer who buys on credit to execute to state a bond securing payment for all wheat so purchased, to keep record of all wheat bought, showing grade given, price paid at elevator, and grade fixed and price received at terminal market, and to furnish such data to state supervisor when requested, and authorizing supervisor to investigate and supervise the marketing of grain, and to make and enforce orders, rules and regulations necessary to carry out provisions of act, HELD, a direct interference with and a burden on interstate commerce, and an attempt by the state to prescribe rules under which an important part of such commerce shall be conducted, in violation of commerce clause of Constitution (article 1, §8, cl. 3), in view of annual shipment from state in interstate commerce of more than 125,000,000 bushels of wheat, constituting about 90 per cent of that produced within the state. Shafer, Atty. Gen. of N. D. v. Farmers Grain Co. of Embden, 45 Sup. Ct. 481.

(4o) Under the commerce clause of the Constitution (article 1, §8, cl. 3), a state cannot prescribe rules under which an important part of interstate commerce shall be conducted. Shafer, Atty. Gen. of N. D. v. Farmers Grain Co. of Embden, 45 Sup. Ct. 481.

(4p) Grain Grading Act N. D. 1923, constituting a burden on interstate commerce in violation of commerce clause of Constitution (article 1, §8, cl. 3), is not valid because of evils sought to be remedied thereby, since the power of correction rests with Congress and not with the state. Shafer, Atty. Gen. of N. D. v. Farmers Grain Co. of Embden, 45 Sup. Ct. 481.

(4q) Grain Grading Act N. D. 1923, violative of commerce clause of Constitution (article 1, §8, cl. 3), is not valid as an attempt on the part of the state, through inspection regulations, to assist in carrying out the purposes of the United States Grain Standards Act. (Comp. St. §8747½-8747½K.) Shafer, Atty. Gen. of N. D. v. Farmers Grain Co. of Embden, 45 Sup. Ct. 481.

(4r) When the Corporation Commission has published an order prescribing the freight rates to be charged by common carriers within this state, and such order, so promulgated, provides for certain rates to be charged on certain kinds, grades, or values of cattle, in an action to recover damages for the killing of any cattle so shipped, through the negligence of the carrier, HELD, the order of the corporation commission is competent evidence to prove the rates so fixed, and to prove the cattle shipped were within a certain class, and valuation placed thereon by the shipper and the lawful rates for such class or valuation. Shaff v. Kramer (Okla., 1925), 235 Pac. 517.

(4s) Federal Transportation Act 1920, §208(a) (U. S. Comp. St. Ann. Supp. 1923, §10071¼d), prohibiting, during certain period, reduction of rates without approval of Interstate Commerce Commission, did not preclude the Railroad Commission from awarding reparation of excessive rates on shipments transported during such period, under Public Utilities Act, §71. Southern Pac. Co. v. Railroad Commission (Calif., 1924), 231 Pac. 28.

(4t) Under Public Utilities Act Railroad Commission has both legislative and judicial powers; power to fix rates being legislative, and the power to award reparation being judicial. Southern Pac. Co. v. Railroad Commission (Calif., 1924) 231 Pac. 28.

(4u) Under Ky. St. §§816, 821, 822, 825, 828, 829 (Acts 1916, c. 18, §14), railroad commission had jurisdiction to regulate joint rate of a railroad company and steamboat company; Acts 1920, c. 26, Acts 1922, c. 102, merely being declaratory of existing law. Southern Ry. Co. v. Louisville Cooperage Co. (Ky., 1924), 266 S. W. 382.

(4v) The courts will not, under Ju-

dicial Code, §266 (Comp. St. §1243), enjoin enforcement of order of state public service commission prohibiting railroad from discontinuing switching service for certain shipper, on theory that continuance of service results in undue discrimination, where the matter has not been investigated and passed on by the Interstate Commerce Commission. Western & A. R. R. v. Georgia Public Service Commission, 45 Sup. Ct. 409.

(4w) Under Transportation Act 1920, §402, subd. 22 (Comp. St. Ann. Supp. 1923, §8563), state Public Service Commission had authority to prohibit discontinuance of switching service on side track, though 85 per cent of the business done on the side track is interstate commerce. Western & A. R. R. v. Georgia Public Service Commission, 45 Sup. Ct. 409.

(4x) Public Service Commission's order prohibiting railroad from discontinuing switching service, HELD not confiscatory, in violation of Const. Amend. 14, even if cost of switching was in excess of price received therefor, in absence of showing that added facilities furnished by the switching did not benefit railroad by increasing its business. Western & A. R. R. v. Georgia Public Service Commission, 45 Sup. Ct. 409.

(4y) Rule of Public Service Commission of Georgia, prohibiting railroad from discontinuing service rendered shippers without commission's consent, adopted pursuant to Civ. Code Ga. 1910, §2664, HELD within police power of the state. Western & A. R. R. v. Georgia Public Service Commission, 45 Sup. Ct. 409.

(4z) Rule of Public Service Commission of Georgia, prohibiting dicontinuance of facilities and privileges enjoyed by shippers without consent of commission, HELD a reasonable rule, justifying commission's refusal to sanction discontinuance of switching service by railroad until a petition therefor had been filed with the commission and a showing made. Western & A. R. R. v. Georgia Public Service Commission, 45 Sup. Ct. 409.

(5a) Regulation of intrastate rates rests primarily with the state and the commission should interfere with such rates only upon a clear showing that they violate the provisions of the interstate commerce act pertaining to discrimination against interstate commerce. Certain-Teed Products Corp. v. A. & L. M. Ry., 95 I. C. C. 273, 279.

(5b) Combination rate on silicate of soda during Federal control, from Livny, Calif., to Los Angeles, Calif., via Fresno, found unreasonable to extent it exceeded lower rate contemporaneously in effect via a longer distant route through Stockton. Following American Agricultural Chemical Co., 66 I. C. C. 650, shipments moved at time when carriers were operated under a unified and coordinated national control and not in competition, and it was unreasonable for the director general to maintain a higher rate over one route than contemporaneously applied over another where such routes were practically same in length and subject to same transportation conditions. Reparation awarded. Philadelphia Quartz Co. v. Director General, 95 I. C. C. 593.

(5c) The commission has no jurisdiction to pass upon the unlawfulness, under section 6 of the act, of purely intrastate rates on shipments moving subsequent to Federal control. Campbell Construction Co. v. L. C. & S. E. Ry., 95 I. C. C. 603.

(5d) Rate on canned goods from Mobile to Montgomery, when used as a factor in constructing rates moving by water from interstate points of origin found unreasonable as compared with distance rates prescribed in Memphis Southwestern Investigation, 77 I. C. C. 473, and with Alabama Intrastate rates contemporaneously in effect. Reasonable rate prescribed and reparation awarded. Schloss & Kahn Grocery Co. v. L. & N., 95 I. C. C. 618.

(5e) Rates on steel wire from Monnessen to Economy, Pa., during Federal control, found not unreasonable or unduly prejudicial as compared with other short-haul rates on iron and steel articles in the Pittsburg district. Rates attacked are lower than fifth-class, the basis found reasonable by the commission in a number of cases cited for application on iron and steel articles for hauls of similar and greater distances. Pittsburgh Steel Co. v. Director General, 95 I. C. C. 637.

(5f) The commission is without jurisdiction to award reparation on intrastate shipments made during the guaranty period. Pittsburgh Steel Co. v. Director General, 95 I. C. C. 637.

(5g) Rate on bituminous coal from Panhandle, Ohio, to Mingo Junction, Ohio, during Federal control, found unreasonable as compared with rates be-

tween other points in Ohio for like distances, and to extent it exceeded lower rate requested by complainant prior to movement and established subsequent thereto. Reparation awarded. Beacon Coal Co. v. Director General, 95 I. C. C. 687.

(5h) Rates on logs from Goodrich, Whittlesey, Park Falls, and Rib Lake, Wis., to Black Creek, Wis., during Federal control, found unreasonable and reparation awarded. Konz Box & Lbr. Co. v. Director General, 95 I. C. C. 741.

(5i) Rates on hollow building tile from Alberhill, Calif., to Saticoy, Edfu, and Santa Paula, Calif., moving during Federal control, found unreasonable to extent they exceeded the rate contemporaneously in effect on fire and wire-cut face brick between the same points following National Paving Brick Mfrs. Asso., 68 I. C. C. 213, and the Memphis—Southwestern Investigation, 77 I. C. C. 474. Reparation awarded. Los Angeles Pressed Brick Co. v. Director General 98 I. C. C. 45.

(5j) Intrastate rates on cottonseed cake, meal, hulls, and oils, c. l., between all points in Texas and between all points in Oklahoma, and on cottonseed between points in Texas and between points in Oklahoma not exceeding 500 miles, found unduly prejudicial to interstate shippers and unduly preferential of intrastate shippers, to extent intrastate rates may be lower than corresponding interstate rates contemporaneously maintained for and Santa Paula, Calif., moving during like distances, resulting in unjust discrimination against interstate commerce between points in Texas and between points in Oklahoma. Undue preference and prejudice ordered removed and basis prescribed. Oklahoma Corp., Commission v. A. & S. Ry. Co., 98 I. C. C. 183, 201, 202.

(5k) Following American Sand & Gravel Co., 88 I. C. C. 1, rates on sand, gravel, and crushed rock from certain points in Minnesota to certain destinations in North Dakota found unreasonable to extent they exceed rates based upon the scale set forth in the appendix to the report, which, except for a small increase for distances over 130 miles, is equal to the present Nebraska interstate and intrastate scale for the distances here considered, plus an arbitrary of 1 cent per 100 pounds for joint-line hauls. The transportation conditions in the territory under consideration in the cited case are not so materially different from those existing between the points here considered as to warrant any different level of rates for application to these low-grade commodities which are of such great necessity for the building and maintenance of roads and other public and private projects. Reasonable basis of rates prescribed and reparation award. Hopeman Material Co. v. N. P. Ry. Co., 98 I. C. C. 361.

(51) Upon contention of complainants that from the comparative operating conditions in the portions of Minnesota and North Dakota here considered the Minnesota intrastate scale of rates applicable on sand, gravel, and crushed rock should be held to be a reasonable level of rates for application on these commodities from Missouri points to North Dakota destinations. FOUND, the record supports the conclusion that there is no justification for the maintenance of any higher level of rates in the one than in the other, and complainants contention would be correct if the intrastate scale was on a reasonable maximum basis. The commission takes into consideration the level of intrastate rates in reaching a conclusion as to the reasonableness of interstate rates in the same general territory, but it is not bound to adopt the intrastate level of rates as proper for application to interstate traffic. Hopeman Material Co. v. N. P. Ry. Co., 98 I. C. 361, 366.

(5m) Maintenance by defendant carriers of intrastate rates from certain points in Alabama to Mobile, Ala., on bar iron, manufactured iron, cast-iron pipe, rails, track material, barbed wire, and nails from Birmingham, Ala., and points grouped therewith taking same rates, lower than interstate rates contemporaneously maintained on same commodities from same points of origin to Pensacola, Fla., found to result in undue preference of and advantage to Mobile, and in unjust discrimination against interstate commerce. Pensacola Chamber of Commerce v. L. & N. R. R. Co., 98 I. C. C. 567.

(5n) Interstate class rates from St. Paul, Minneapolis and Duluth, Minn., Superior, Wis., and related points taking same rates, to Valley City and Jamestown, N. Dak., found unreasonable and unduly prejudicial as compared with lower Minnesota intrastate rates. Fargo Commercial Club v. A. & W. Ry. Co., 98 I. C. C. 691.

(5o) Any difference or disparity between class rates from St. Paul, Minneapolis, Minnesota Transfer, Cloquet, Duluth, and West Duluth, Minn., and Superior and South Superior, Wis., to Fargo, N. Dak., and Moorhead, Minn., and rates between certain points in Minnesota and from Fargo to destinations in Minnesota distant 150 miles and less from Fargo over short-line routes, greater than that existing between rates from and to same points under the scale of Maximum distance class rates prescribed herein as just and reasonable for future, would result in unjust discrimination against interstate commerce to and from Fargo. Fargo Commercial Club v. A. & W. Ry. Co., 98 I. C. C. 691, 715, 716.

(5p) In 60 I. C. C. 92 the Commission found certain rates and charges for freight services, required by state authority to be maintained by the respondent carriers within Illinois, to be unduly preferential of intrastate traffic, and ordered the same increased to remove such preference. The order was limited, however, to the establishment of rates or charges for the transportation of property in intrastate commerce not greater than corresponding rates or charges in interstate commerce. On petition, the Commission reopened this proceeding upon the sole question, whether the intrastate rates on lumber, ties and mine props, carloads, from Ava to Sesser, Christopher, West Frankfort, Johnston City and Buckner, all in Illinois, in effect on Jan. 11, 1921, were so related to interstate rates on the same commodities from, into, or through Illinois as to have been unduly preferential of localities or of shippers of such traffic under interstate rates, or any of them, or unduly prejudicial to localities or to shippers or receivers of such traffic under the interstates rates, or any of them, or to have resulted in unjust discrimination against interstate commerce. The rates in effect on Jan. 11, 1921 those found unreasonable by the state commission, and even the rate bases found reasonable by it as of that date and upon which reparation was awarded, are shown to have been and to be higher than rates applicable for interstate transportation from and to Illinois points to and from points in neighboring states for similar distances on like traffic. HELD, rates in effect Jan. 11, 1921 and those afterwards found reasonable as of that date by the Illinois Commerce Commission do not cause any undue disadvantage to interstate commerce. Interstate rates within Illinois, 102 I. C. C. 232.

(5pa) Upon further hearing, rates in effect January 11, 1921, and those afterwards found reasonable as of that date by the Illinois Commerce Commission for the intrastate transportation of lumber, railroad ties, mine props, mine collars, mine ties, and mine wedges from Ava to Sesser, Christopher, West Frankfort, Johnston City, and Buckner, Ill., did not and will not cause any undue or unreasonable advantage, preference, or prejudice as between persons or localities in intrastate commerce, on one hand, and interstate or foreign commerce, on other hand, or any undue, unreasonable, or unjust discrimination against interstate or foreign commerce. Prior order 60 I. C. C. 92, modified. Intrastate Rates within Illinois, 102 I. C. C. 232.

(5pb) Complaint bringing in issue intrastate rates subsequent to Federal control which do not subject traffic in interstate or foreign commerce to unjust discrimination, dismissed. In absence of undue or unreasonable advantage, preference, or prejudice as between persons or localities in intrastate commerce on one hand and interstate or foreign commerce on the other, or of any undue, unreasonable, or unjust discrimination against interstate commerce, the commission is without jurisdiction to consider intrastate rates in effect subsequent to Federal control. Gulf Refining Co. v. S. Ry., 102 I. C. C. 274.

(5q) In the absence of undue or unreasonable advantage preference or prejudice as between persons or localities in intrastate commerce on the one hand and interstate or foreign commerce on the other, or of any undue, unreasonable, or unjust discrimination against interstate commerce, the Commission is without jurisdiction to consider intrastate rates in effect subsequent to federal control. Gulf Refining Co. v. Southern Ry., 102 I. C. C. 274, 276.

(5r) Complainant attacked commodity rates on fuel oil in tank cars from Richmond Beach, Wash., to Wenatchee and Leavenworth, Wash., as unjust and unreasonable. The oil constituting the shipments on which reparation is asked was purchased by complainant from a California oil company under a contract providing for the distribution of the oil from Richmond Beach, which is on Puget

Sound about 15 miles from Seattle, Wash. The oil was shipped, without any previous rail haul from California ports to Richmond Beach in tank steamers owned and operated by the oil company exclusively for the transportation of its own commodities. No tariffs are filed by the oil company for such service, and its tank steamers do not operate on any regular schedule. Upon arrival at Richmond mond Beach the oil was discharged thru pipe lines into storage tanks owned by the oil company. Tank cars are never loaded from ships side at Richmond Beach. It is impossible to identify any particular oil originating in California and stored at Richmond Beach as the oil to be delivered to any particular purchaser. Upon order of complainant oil was loaded into tank cars from the storage tanks at Richmond Beach and shipped under straight bills of lading to consignees and to destinations specified by complainant. There is no arrangement between the oil company and defendant relative to the continuous carriage of oil from California to points beyond Richmond Beach. The rail transportation is entirely within the state of Washington. Defendant has no tariff on file authorizing the storage of oil in transit at Richmond Beach. HELD, Commission is without jurisdiction, complaint dismissed. Washington Dehydrated Food Co., v. G. N. Ry. 102 I. C. C. 363.

(5ra) Complaint alleging unreasonableness of intrastate rates on fuel oil previously transported via tank steamers from interstate points of origin dismissed for want of jurisdiction, no common control, management or arrangement for continuous carriage or shipment existing between rail carriers and tank steamers, the latter being owned and operated exclusively for transportation of its own commodities. Washington Dehydrated Food Co. v. G. N. Ry., 102 I. C. C. 363.

(5rb) Maintenance by C. & N. W. of multiple-trip and commutation fares for transportation of passengers in intrastate commerce within Illinois lower than corresponding fares applicable to interstate transportation of passengers to, from, or through the State, found unduly preferential of intrastate passengers, unduly prejudicial to interstate passengers, and unjustly discriminatory against interstate commerce. Intrastate Rates in Illinois, 102 I. C. C. 479.

(5rc) Upon further argument finding in original report, 64 I. C. C. 507, that rate on limerock from Flint, Calif., to Tolenas, Calif., during Federal control, was not unreasonable as compared with lower rates between other intrastate points for similar and greater distances as circumstances and conditions attendant upon transportation from Flint to Tolenas is substantially dissimilar from those obtaining from and to such other points, affirmed. Pacific Portland Cement Co. v. Director General, 102 I. C. C. 515.

(5s) In 64 I. C. C. 507 the Commission found the commodity rate of 70c on limerock, carloads, from Flint, Calif., to Tolenas, Calif., between June 25, 1918 and Feb. 29, 1920 not unreasonable or unduly prejudicial, and dismissed the complaint. Rehearing was had. Complainants cement plant is on the C. T. & T., owned by complainant at Cement, Calif., 2 miles from Tolenas, the junction point with the S. P. The quarries from which complainant obtains its limerock are on the Mountain Quarries R. R., also owned by it, which connects with the S. P., at Flint, 72 miles from Tolenas. Upon complainants request the S. P., published a rate of 50c from Flint to Tolenas, which rate complainant enjoyed from 1912 when it began shipments, until June 25, 1918. On that date the rate was increased to 70c under G. O. 28 of the Director General. HELD, rate attacked not unreasonable or unduly prejudicial, complaint dismissed. Pacific Portland Cement Co., v. Director General 102 I. C. C. 515.

(5sa) While weight and respect are accorded to views of State authorities, decisions of State commissions in proceedings before them are not controlling in respect of issues raised in cases before this commission. Pacific Portland Cement Co. v. Director General, 102 I. C. C. 515, 517.

(5sb) Surcharges for the transportation of passengers in sleeping and parlor cars required by State authority to be maintained within North Carolina, and which are lower than the corresponding interstate charges authorized in Increased Rates, 1920, 58 I. C. C. 220, 241, 242, found to result in undue preference of intrastate passengers, undue prejudice of interstate passengers, and unjust discrimination against interstate commerce. Surcharge for Sleeping or Parlor Cars in N. C., 102 I. C. C. 537.

(5sc) Maintenance by St. L.-S. F. Ry.

of a higher charge for switching interstate traffic at Arkansas City, Kans., than for performing a like and contemporaneous service in switching intrastate shipments, found unduly prejudicial to interstate shippers, unduly preferential of intrastate shippers, and unjustly discriminatory against interstate commerce, on ground that such service is identical whether traffic is interstate or intrastate in character. Arkansas City Sand Co. v. St. L.-S. F., 102 I. C. C. 559.

(5t) Complainant atacked commodity rates charged on 35 cars of sand and gravel, 65 cars of dirt and 20 cars of clay shipped between April 1 and August 7, 1920 from Shieleys Pit, Minn., to St. Paul, Minn., as unreasonable. Applicable rates on the dirt, class E 5c, on sand and gravel 2.5c and on clay 2c, reparation being asked to basis of 1c per 100 pounds, minimum $6 per car, subsequently established. The fact that in the instant case a state commission has declared in a proceeding commenced subsequent to the termination of the guaranty period that certain intrastate rates collected during that period were unreasonable, and that the Commission is asked to approve that finding, does not enlarge the jurisdiction conferred under section 208a of the act. That section provides in respect of rates in effect on Feb. 29, 1920 that prior to Sept. 1, 1920 no such rate shall be reduced unless such reduction is approved by the Commission. Giving these words a strict construction, it is apparent that direct jurisdiction over reductions in intrastate rates was limited to action taken prior to Sept. 1, 1920. Under no provisions of the transportation act or of the interstate commerce act is the Commission given authority to review and approve a finding of a state commission made subsequent to Sept. 1, 1920 and to issue an order awarding reparation based on the finding and order of such commission. HELD, complaint dismissed. Armour & Company v. G. N. Ry 104 I. C. C. 34.

(5u) The authority of the Commission to pass upon the alleged unreasonableness of an intrastate rate and a prayer for reparation based thereon ceased with the relinquishment of federal control. Armour & Co. v. G. N. Ry. 104 I. C. C. 34, 36.

(5v) Upon further hearing, former report 58 I. C. C. 164, FOUND: That the collection of separate charges from complainants and interveners for the service of unloading and loading intrastate shipments of livestock at Chicago stockyards in addition to the line-haul rates, during the period of Federal control, was unlawful and unreasonable. Reparation due and parties entitled thereto determined herein. Chicago Live Stock Exchange v. A., T. & S. F. 100 I. C. C. 266.

(5w) Some of the reparation statements submitted embraced intrastate shipments which moved both prior and subsequent to Federal control. As to such shipments the commission is without authority to award reparation. Before these statements were finally submitted to the carriers for checking, prior to the entry of any reparation order which might be issued, such shipments should have been eliminated. Chicago Live Stock Exchange v. A., T. & S. F. Ry. 100 I. C. C. 266, 273.

(5x) The constitution of Missouri, as interpreted by the Supreme Court, 244 U. S. 191, prohibits charging more for a shorter than for a longer haul on Missouri intrastate traffic. Schedules designed to prevent such violations ordered canceled without prejudice to establishment of rates in accordance with findings. Class Rates between Missouri and Interstate Points, 100 I. C. C. 274, 278.

(5y) Upon further hearing, original report 81 I. C. C. 1, finding that minimum charge of $15 per car established under General Order No. 28 of director general, and assessed on lumber from San Pedro, Calif., to Wilmington, Calif., during Federal control, was not unreasonable as compared with lower minimum charge subsequently established, or as compared with charges for similar movements in immediate vicinity, affirmed. Service rendered was a short road-haul although a switch engine furnished the power. Subsequent establishment of lower charge can not be taken as an admission that former charge was unreasonable. Nor can lower charges for switching services elsewhere lead to conclusion that this charge was not reasonable for local nonswitching service. Consolidated Lbr. Co. v. Director General 101 I. C. C. 284.

(5z) On intrastate traffic, moving during Federal control under combination rates, the commission's jurisdiction is limited to rates over that portion of the haul over lines under Federal control. See also 60 I. C. C. 683 and 69 I. C. C.

87. Carnegie Steel Co. v. Director General 101 I. C. C. 638, 643, 644.

ALL OTHER CITATIONS

Ohio State Rates on Sand, Gravel, Stone and Paving Brick, 85 I. C. C. 66; Rating on Empty Wooden Barrels, 85 I. C. C. 154; Kanotex Refining Co. v. M. V. R. R. Co., 85 I. C. C. 200; South Dakota R. R. Commrs. v. C. & N. W. Ry. Co., 85 I. C. C. 217; Muse Lumber Co. v. Director General, as Agent, 85 I. C. C. 267; Sloss-Sheffield Steel & Iron Co. v. Director General, as Agent, 85 I. C. C. 367; Staley Mfg. Co. v. Director General, as Agent, 85 I. C. C. 418; Simms Oil Co. v. H. & T. C. R. R. Co., 85 I. C. S. 537; Kneeland-Biglow Co. v. Director General, as Agent, 85 I. C. C. 659; Pacific Mills, Ltd., v. Director General, as Agent, 85 I. C. C. 677; General Chemical Co. v. Director General, as Agent, 85 I. C. C. 693; Midwest Refining Co. v. Director General, as Agent, 85 I. C. C. 719; McGrew Coal Co. v. Director General, as Agent, 85 I. C. C. 735; Hoskins Lumber Co. v. Director General, as Agent, 85 I. C. C. 740; American Sand & Gravel Co. v. C. & N. W. Ry. Co., 88 I. C. C. 1; Newport Milling Co. v. Director General, as Agent, 88 I. C. C. 17; Northwestern Clay Mfg. Co. v. R. I. S. Ry. Co., 88 I. C. C. 131; Gottlieb-Bertsch Co. v. Director General, as Agent, 88 I. C. C. 177; Pulp Wood Co. v. Director General, as Agent, 88 I. C. C. 196; Mifflin-Hood Brick Co. v. Director General, as Agent, 88 I. C. C. 205; Seaboard By-Product Coke Co. v. Director General, as Agent, 88 I. C. C. 261; Jeremy Fuel & Grain Co. v. Director General, as Agent, 88 I. C. C. 399; Trojan Powder Co. v. Director General, as Agent, 88 I. C. C. 447; Barrett Co. v. Director General, as Agent, 88 I. C. C. 459; Brick and Clay Products in the South, 88 I. C. C. 543; Alabama Passenger Fares and Charges, 88 I. C. C. 621; Alexander Milling Co. v. Director General, as Agent, 88 I. C. C. 677; Republic Iron & Steel Co. v. Director General, as Agent, 88 I. C. C. 691; Keystone Roofing Mfg. Co. v. Director General, as Agent, 88 I. C. C. 707.

STATIONS

See Passenger Fares and Facilities §1 (a); §13.

STATUTE OF LIMITATIONS

See Claims I; Loss and Damage §13½; Procedure Before Commission §2 (s), §10 (3) (a); Reparation §7; Undercharges §10.

STATUTES

(a) It is a rule of construction that all statutes are to be considered prospective, unless the language is expressly to the contrary, or there is a necessary implication to that effect. Cohn v. C. M. & St. P. Ry., 96 I. C. C. 257, 258.

(b) A statute of limitation is construed as operating prospectively only where in the particular case, if retroactive, it would at once bar a right of action existing under the former law at the time of its passage, but, if no right is impaired or destroyed by giving it a retroactive effect, the reason of the rule ceases, and the rule itself should cease. Button v. Atchison, T. & S. F. Ry. Co., 1 Fed. (2d) 709.

(c) Statute should be construed as operating prospectively, unless language clearly expresses or necessarily implies contrary intent. Philadelphia, B. & W. R. Co. v. Quaker City Flour Mills Co., (Pa., 1925), 127 Atl. 845.

(d) The Federal Transportation Act should not be construed to prevent the state from exercising its police power to require adequate local facilities for intrastate passenger traffic, reasonably necessary for the protection of the health, comfort, and convenience of the passengers. State v. Seaboard Air Line Ry. Co. (Fla., 1925), 104 So. 602.

(e) The making of rates and the division of joint rates is legislative and not judicial function. Terminal R. Ass'n of St. Louis v. United States, 45 Sup. Ct. 5.

(f) Provisions of section 5 (8) of the act deemed sufficient to relieve carriers from restraints imposed by state constitutions prohibiting the leasing, operation, or purchase by foreign corporations or associations of railways within the state, or any interest therein. Clinchfield Ry. Lease, 90 I. C. C. 113, 134.

(g) Constitution and statutes of the State of Texas prohibit a railroad company organized under the laws of that state from consolidating with a railroad company organized under the laws of any other state or of the United States, and provide that no railroad corporation shall acquire control of another railroad corporation which owns or controls a par-

allel or competing line. However, with few exceptions, the controlling stock interest of all railroads operating in Texas is owned by railroad corporations foreign to that state, a fact of evidentiary value in illustrating the construction that the state has placed upon such constitutional provisions. If two railroads are, to some extent, parallel and competing, that fact should not control the commission's action in a proceeding involving the acquisition of control of one carrier by another, by purchase of capital stock. Control of I.—G. N. R. R., 90 I. C. C. 262, 267.

(h) Statutes must be construed in light of existing conditions to ascertain intention of Legislature in their enactment. City of Cherokee v. N. Western Bell Telephone Co. (Iowa, 1925), 202 N. W. 886.

(i) The rule obtains in this state that an enrolled bill on file in the office of the secretary of state imparts absolute verity, and the same cannot be impeached by the legislative journals, and when such an act is called into question the courts will look to the enrolled bill only. This is the rule where the bill is attacked for some irregularity. But when the very existence of the bill is questioned, based upon the fact that the enrolled bill cannot be produced, the court will look to the journals for the information. Western Union Telegraph Co. v. Hankins (Okla., 1924), 230 Pac. 857.

STOCK YARD COMPANIES

See Live Stock Shipments; Twenty Eight Hour Law.

STOPPAGE-IN-TRANSIT

See Express Companies §34; Facilities and Privileges §15.

(a) Stoppage in transit, which is enumerated in Interstate Commerce Act, §1, as amended by Act June 29, 1906, and subsequently amendments (U. S. Comp. St. §8563 et seq), as one of the regular services included in term "transportation," HELD not a privilege, to be granted or withheld at will of carrier. Chicago, M. & St. Paul Ry. Co. v. Board of Railroad Com'rs. (S. D. 1924) 199 N. W. 453.

(b) Complainant alleged the stop in transit and reconsignment charges at Cincinnati, O., and Chattanooga, Tenn., on 21 interstate cars of hay, during April, May and June 1923, as illegal, unreasonable, unjustly discriminatory and unduly prejudicial. Shipments originated at points in Indiana and Ohio and were originally billed to Jacksonville, Fla., and Chattanooga, Tenn. As to each of them, while in transit, complainant requested that it be stopped and held for reconsignment at Cincinnati or Chattanooga, as the case might be, and subsequently requested that it be reconsigned to an interstate destination other than that to which it was originally billed. Defendants complied with these requests, 19 of the shipments being handled at Cincinnati and 2 at Chattanooga, and assessed charges on the former of $2.70 and $6.30 per car for stopping and reconsignment, respectively, and on the latter of $2.25 and $5.85 per car for stopping and reconsignment, respectively, in one instance, and of $2.25 and $3.60 per car for stopping and switching, respectively in the other. These rules correspond to rules 5 and 6 approved by the Commission in 47 I. C. C. 590. HELD, charges not unreasonable or otherwise unlawful, complaint dismissed. Toberman Mackey & Co., v. C. N. O. & T. P. Ry., 96 I. C. C. 237.

(c) Charges, rules and practices pertaining to transportation of butter when cars are stopped in transit to finish loading, under which same charge is assessed whether car is spotted in order to receive additional load, or "loaded in passing" without being removed from train, found not unreasonable. If there were no charge for "loading in passing" shippers would always desire to load while car remains in train, and requests would have to be complied with regardless of possible delays to trains and interference with operating schedules. Carriers would thus lose control of operation of their trains to extent required to comply with shipper's instructions, whereas under present plan they decide whether a car is to be "set out" to receive load or is to be "loaded in passing." Minnesota Creameries Asso. v. C. M. & St. P. Ry. Co., 91 I. C. C. 21.

(d) Stop-over practice embodies some elements of reconsignment. In both cases aggregate charges from point of origin to destination are computed on basis of c. l. rate from point of origin to final destination plus whatever charge is made for service. Stopping of Cars in Transit to Complete Loading, 36 I. C. C. 130. Wool Rates Investigation, 91 I. C. C. 235, 281.

STORAGE

I. CONTROL AND REGULATION.
§1. Jurisdiction of Commission.
II. CHARGES AND REGULATIONS.
§2. Reasonableness and discrimination in general.
III. TARIFFS AND CONSTRUCTION.
§3. In general.

CROSS REFERENCES

See Car Ferry; Cars and Car Supply §9½ (a); Customs (b); Export Rates and Facilities §14, §16; Storage in Transit.

II. CHARGES AND REGULATIONS.

§2. Reasonableness and Discrimination in General.

(a) Storage charges on crated motor cycles, l. c. l., found unreasonable as compared with charges applicable for storage of general freight other than automobiles and other self-propelling vehicles, which lower charges were subsequently established on motor cycles or bicycle motor wheels. Reparation awarded. Hendee Mfg. Co. v. Director General, as Agent, 89 I. C. C. 38.

(b) Respondents proposed to reduce from 48 to 24 hours the free time allowed in connection with team track storage charges at Chicago, Ill., on cars held for reconsignment, diversion or reshipment and on cars placed to complete loading or to partly unload. Present rules provide 48 hours free time, and suspended rules would continue the present provision as to cars held for loading or unloading but on cars held for reconsignment, diversion or reshipment, and on cars placed to complete loading or to partly unload, they would reduce from 48 to 24 hours. Truck storage charges are justified on the ground that they are necessary in order to bring about the prompt release of track space in the interest of the general shipping public at certain points where business is very active and the track space correspondingly limited. The proposed change is largely for the purpose of making the free time provision in the track storage rules conform to the demurrage rules, which provide 24 hours free time on cars held for reconsignment, diversion or reshipment, or placed to complete loading or partly unload. HELD, respondents have justified suspended schedules. Team track storage at Chicago, 92 I. C. C. 117.

(c) Pennsylvania, W. J. & S. S. R. R., respondents endeavored to cancel storage charges on fruits and vegetables which have been unloaded from cars into a warehouse in its produce yards at Pittsburgh, Pa., awaiting sale at public auction. Shipments are shipped to the produce yards and unloaded upon the platform of one of the respondents buildings, located in those yards. The platform and two office rooms on the first floor and the auction room and two office rooms on the second floor are used exclusively by the Union Fruit Auction Co., the office rooms by written lease, and the platform and auction room by verbal arrangement, subject to termination by the respondent on 30 days notice. Some of the stockholders of the Union Company are stockholders also in fruit companies which ship to Pittsburgh and sell through the Auction Company. As to shipments which it sells at auction for others, it breaks the seals of the cars, unloads the freight onto the platform, opens a few boxes or crates from each car for the inspection of buyers, prints daily catalogues of the contents of the cars, auctions the shipments daily, and makes delivery to purchasers, charging a percentage commission for selling and a fee per package for platform handling. The fact here is that respondent sets the car at a warehouse used by the Union Company, and at which no freight other than that to be sold at auction by that company is handled and that the respondent after that has no further connection with the shipment. Its transportation service therefore ceases with the unloading of the car at the warehouse, the same as it would cease with the unloading of the car at team tracks in the yards if the warehouse were located blocks away from the yards and had to be reached by truck and whether leased from the respondent or from someone else In this respect the situation here differs from that in the cases cited, HELD, tariffs schedules suspended naming storage charges should be canceled. Storage rules on fruits and vegetables, 95 I. C. C. 87.

(d) Complainant attacked charges for storage in heater cars as published in New Haven I. C. C. F-2451, effective Nov.

8, 1920 as unjust and unreasonable, unduly prejudicial. The storage charge in heater cars of $3 per day between November and April, regardless of whether or not fires are lighted applies only when the cars are not loaded or unloaded within the 48 hours free time period. The Commission has informally interpreted the tariff as providing that between Nov. and April "a charge for storage in heater cars of $3 per car per day, or fraction thereof, should be assessed and that this charge should be assessed whether or not fires are lighted in the cars, and also that this charge should be applied at any other time of the year provided fires are lighted. When this kind of equipment is ordered by the shipper the carrier assumes the risk of protecting the lading from the time the car is set for loading at point of origin until the contents are removed from it at destination, and in addition to permitting the car to remain on the track because of failure of shipper to unload, the carriers, through the Eastman Company, are obliged to be ready at all times to protect the lading. They must have an organization, provide fuel and inspection, and render the service, or at all times be ready to render the service, required in the protection of the shipment, and if the shipments are not unloaded within the 48 hours free time they must of necessity continue to protect the same. For such service following the free time the charge for storage in heater cars has been established. HELD, charges attacked legal, applicable and not unreasonable or otherwise unlawful, complaint dismissed. Hunter v. N. Y. N. H. & H. R. R., 96 I. C. C. 57.

(e) Carriers may impose charges necessary to compel removal of freight from the carriers terminals and the prompt release of equipment. Hunter v. N. Y. N. H. & H. R. R., 96 I. C. C. 57, 60.

(f) Reasonableness of charge for storage by railroad is not question for courts; quantum of charge having been fixed by tariff established by Railroad Commission. Aleman Planting & Mfg. Co. v. Hines, Director General of Railroads, (La., 1925), 102 So. 815.

(g) Proposed reduction of free time from 48 to 24 hours in connection with team-track storage charges at Chicago, on cars held for reconsignment, diversion, or reshipment, or placed to complete loading or to party unload, found justified. Proposed change is largely for purpose of making the free-time provision in track-storage rules conform to the demurrage rules, and 24 hours free time seems ample on cars affected by the proposed change. Team-Track Storage at Chicago, 92 I. C. C. 117.

(h) Carrier, in addition to compensation for carriage of goods, may charge for their storage and keeping, as warehouseman, for whatever time they remain in its custody after owner has had reasonable opportunity to remove them. Allen v. Southern Ry. Co. (Ga., 1924), 126 S. E. 722.

(i) Proposed cancellation of tariff schedules providing for storage charges on shipments of fruits and vegetables which have been unloaded from cars into a warehouse in the Pennsylvania Railroad's Pittsburgh produce yards, for sale at public auction, respondent after unloading having no further connection with the shipments, found justified on grounds that transportation service of carrier ends with unloading of the car. Storage Rules on Fruits and Vegetables, 95 I. C. C. 87.

(j) Storage charges, applicable during winter months, on Eastman heater cars, provided with artificial-heating apparatus, found not unreasonable, discriminatory, or otherwise unlawful. Such charges are contained in published tariffs, and as they are assessed against all alike, there can be no undue prejudice or discrimination. C. R. R. of N. J. v. U. S., 257 U. S. 247. Moreover, no evidence was introduced tending to show that charges are unjust or unreasonable per se and no ambiguity exists in the tariff provision under which charges were assessed. Hunter v. N. Y., N. H. & H. 96 I. C. C. 57.

(k) Storage on shipments of chrome ore, made during November, 1918, from Oakland, Calif., to Coatsville, Pa., assessed on car-demurrage basis under governing tariff, found inapplicable subsequent to February 15, 1919, on which date storage rule in issue was canceled. Reparation awarded in the amount of charges accruing thereafter. Humphreys Co. v. Director General, 96 I. C. C. 317.

(l) The underlying principle for the imposition of storage charges is not primarily to produce revenue but to accomplish the prompt removal of freight from the carriers premises. The assessment of storage charges on gilsonite stored

in private warehouses falls neither within the authority nor contemplation of carriers tariff provisions. Utah Gilsonite Co. v. A., T. & S. F., 96 I. C. C. 653, 673.

(m) Failure of carrier to transmit diversion orders in connection with two carload shipments of leather moving from Whitehall, Mich., via Norfolk, Va., to Haverhill, Mass., in accordance with tariff rule governing, found to have resulted in damage to complainant to extent of charges collected for storage at Boston, Mass. Reparation awarded. Eagle-Ottawa Leather Co. v. B. & O., 98 I. C. C. 400.

ALL OTHER CITATIONS

Dockage, Handling, and Storage Charges, 88 I. C. C. 24; National Lumber Co. v. N. & W. Ry. Co., 88 I. C. C. 357.

III. TARIFFS AND CONSTRUCTION.

See Tariffs.

§3. In General.

(a) By not having facilities for storage for large quantities of grain Helena, Ark., lacks one of the elements necessary to entitle it to a rate-breaking adjustment. Helena Traffic Bureau v. M. P. R. R. Co. 89 I. C. C. 415, 416.

(b) Complainant attacked storage charges on two cars of chrome ore shipped during Nov. 1918 from Oakland, Calif., to Coatesville, Pa. Upon receipt by complainant of information as to the refusal of the ore by the consignee, and upon the statement by defendant that unloading was necessary as the cars were needed for immediate use, complainant notified defendant to unload the cars and place the ore in the cheapest available storage. Defendant unloaded the cars placing the ore along its right of way. For such storage complainant expected no charge would be made other than for unloading and loading. Charged $10 per day for 56 days on one car and 28 days on the other, prior to March 15, 1919 on which date the shipments were released. The rule in question was canceled on Feb. 15, 1919. HELD, on and after Feb. 15, 1919 defendant had in effect no published charges applicable to complainants shipments, and, therefore, no charges were assessable. Reparation awarded on and after that date. Humphreys Co. v. Director General, 96 I. C. C. 317.

(c) Tariff schedule, fixing storage charges for storage of freight, which is liable to be damaged by the elements, and must be stored at carrier's risk, either in carrier's warehouse, or, at carrier's option, in public warehouse. HELD: Inapplicable to lumber piled on railroad's right of way, in view of note to tariff schedule rule providing for storage, free of charge, of freight which is not liable to damage from the elements, and is not to be handled through freighthouses on railroad's vacant land at owner's risk. Payne v. Rodgers, 4 Fed. (2d) 827; Rodgers v. Payne, 4 Fed. (2d) 827.

(d) Under the uniform interstate tariff schedule, entitling a railroad company to storage in outbound freight actually delivered for transportation, and held by it to complete a shipment, or for forwarding directions, storage HELD: Not collectible on beets piled on right of way before shipment. Davis v. Continental Sugar Co., 5 Fed. (2d) 420.

(e) But where, under a contract of purchase and sale, goods are shipped in a single lot to the vendee, who accepts them, pays the freight, and actually removes and retains a portion thereof, but afterwards returns to the carrier a part of the goods so removed, and, with himself designated as consignor, returns all the unused portion of the shipment to the vendor, he is liable to the carrier for storage charges which accrued on the goods after their acceptance by the vendee and pending his negotiations with the vendor for their acceptance and return, irrespective of any equities which might exist as between himself and the vendor. The court in this case therefore did not err in directing a verdict in favor of the carrier against the defendant vendee for the storage charges sued for. Bailey v. Georgia R. R. (Ga., 1925), 126 S. E. 896.

(f) Failure of defendants to permit storage-in transit at Indianapolis, Ind., and Mounds, Ill., on shipments of sisal moving from New Orleans, La., to Welland, Ontario, Canada, and to various destinations in central and trunk-line territory, during Federal control, found not unjust, unreasonable or unduly prejudicial. Contention that delay in establishing storage in transit at Indianapolis and Mounds result in undue preference of the Gulf ports at which import commodity rates were in effect, not sustained. Storage at Gulf ports took place

before the rail transportation and was not a storage in transit under the rail rates and thus not comparable with such storage at inland points. Moreover the commission has repeatedly refused to sanction retroactive application of a transit service in absence of discrimination or prejudice and damages thereunder. See 68 I. C. C. 611. Capital Warehouse Co. v. Director General, 96 I. C. C. 293, 295, 296.

ALL OTHER CITATIONS

Hershman & Co. v. Director General, as Agent, 85 I. C. C. 695.

STORAGE-IN-TRANSIT

See Facilities and Privileges §15; Storage.

(a) Proposal to restrict storage in transit arrangements on green apples at points in Alabama and Tennessee so as not to apply in connection with shipments destined to points on or reached by way of the L. & N. R. R.; and to apply higher combinations to and from the transit point, found not justified. Reasons advanced for proposed restriction was a desire of the L. & N. to receive both inbound and outbound haul on the traffic and that present arrangement permits handling of traffic over circuitous routes. Similar reasons, however, were advanced in 77 I. C. C. 724 and 83 I. C. C. 60, wherein similar proposed restrictions were found not justified. Storage on Apples, 89 I. C. C. 135.

(b) Complainant attacked combination rate charged on sisal carloads from New Orleans, La., to Indianapolis, during May 1919 reshipped to Welland, Ont., during Sept. 1919 and failure of defendants to permit storage in transit at Indianapolis, Ind., under the through rate as unreasonable. Complainant attacked rates to and from Indianapolis on shipments from New Orleans between Sept. 25, 1918 and August 20, 1919 reshipped between March 20, 1919 and Jan. 21, 1921 to central and trunk line territories as unreasonable; that the failure of defendants to permit storage in transit at Indianapolis resulted in unjust unreasonable and unduly prejudicial rates. Complainant attacked combination rates between June 25 and July 23, 1919 from New Orleans to Mounds, Ill., reshipped between Jan. 1 and 24 1920 to Chicago, Ill., Kansas City, Mo., and Xenia, O., as unjustly discriminatory and unduly prejudicial, and rates charged to and from Indianapolis to St. Paul and North Kansas City, Mo., in 1920 as unjust and unreasonable. On March 15 and August 24, 1919 storage in transit rates were established at Mounds and Indianapolis permitting shipments of sisal from New Orleans to be stored at those points for six months and reshipped to designated destinations at the import commodity rates to those destinations plus transit charge of 2c. HELD, failure of defendants to accord storage in transit on sisal at Indianapolis and Mounds not unreasonable, unjust or unduly prejudicial. Present rate Indianapolis to St. Paul not unreasonable; rates from Mounds to Chicago applicable; rates attacked New Orleans to Mounds unreasonable to extent it exceeded 31c; rates from Mounds to Kansas City unreasonable to extent it exceeded 30c; rate from Indianapolis to North Kansas unreasonable to extent it exceeded 40c; reparation awarded. Capital Warehouse Company v. Director General, 96 I. C. C. 293.

STREET RAILWAYS

See Electric Lines.

(a) Easements in streets, whatever their duration or terms may be, are property of value, indispensible to other property rights of street railway company, whether or not such value can be considered in fixing the base on which rates are to be established. Westinghouse Electric & Mfg. Co. v. Denver Tramway Co., 3 Fed. (2d) 285. Stenger v. City and County of Denver, 3 Fed. (2d) 285.

(b) A city possesses at all times police power to regulate fares to be charged and character of services to be rendered by a street railway, so long as such regulations provide a fair return on capital investment and its preservation unimpaired; but to allow a public utility less is confiscation, in violation of constitutional guaranties. Westinghouse Electric & Mfg. Co. v. Denver Tramway Co., 3 Fed. (2d) 285.

(c) Ordinances granting easements and rights of way to street railway company, its successors and assigns, HELD: to have granted such easements in perpetuity. Westinghouse Electric & Mfg. Co. v. Denver Tramway Co., 3 Fed. (2d) 285.

(d) Const. Colo. art. 2, § 11, prohibiting any irrevocable grant of special privileges, franchises, or immunities, HELD: Not applicable to the grant of perpetual easements in streets to street railway company; such easements being in furtherance of public right in the use of public highways. Westinghouse Electric & Mfg. Co. v. Denver Tramway Co., 3 Fed. (2d) 285.

(e) Perpetual easements in streets granted to street railway company were not surrendered or cut down to a lesser term by the passage of subsequent ordinances, limited as to term of grant, and their acceptance by the company, which were applicable only to extensions on specified streets, and which expressly reserved all rights of both city and street railway company under the earlier ordinances. Westinghouse Electric & Mfg. Co. v. Denver Tramway Co., 3 Fed. (2d) 285. Stenger v. City and County of Denver, 3 Fed. (2d) 285.

(f) Value of perpetual easements of street railway company in city streets cannot be included in valuation of company's property for rate-making purposes. Westinghouse Electric & Mfg. Co. v. Denver Tramway Co., 3 Fed. (2d) 285. Stenger v. City and County of Denver, 3 Fed. (2d) 285.

(g) In valuation of street railway for rate-making purposes, accrued depreciation is a fact to be determined by inspection. Westinghouse Electric & Mfg. Co. v. Denver Tramway Co., 3 Fed. (2d) 285. Stenger v. City and County of Denver, 3 Fed. (2d) 285.

(h) In proceedings for valuation of street railway by receiver for rate-making purposes, expert evidence on the question of value as going concern, HELD: To require allowance of lowest amount testified to; the municipality opposing increase in rates having offered no testimony on the question. Westinghouse Electric & Mfg. Co. v. Denver Tramway Co., 3 Fed. (2d) 285. Stenger v. City and County of Denver, 3 Fed. (2d) 285.

(i) In fixing the rates to be charged by a public utility, an amortized allowance for expenses of litigation may be considered as operating expenses in view of Laws Minn., 1921, c. 278. Duluth St. Ry. Co. v. Railroad and Warehouse Commission, 4 Fed. (2d) 543.

(j) Street railway fares fixed by Commission HELD: Inadequate, and street railway company entitled to charge six-cent fare. Duluth St. Ry. Co. v. Railroad & Warehouse Commission, 4 Fed. (2d) 543.

STRIKES

See Demurrage §3½ (b), §9 (c), §23 (e); Embargoes (b).

STRING PIECE DELIVERY

See Facilities and Privileges §10 (k).

SUBSTITUTION OF TONNAGE

See Facilities and Privileges §15, §20.

(a) Respondents proposed to reestablish a charge of 2.5c for transit services in connection with and in addition to the joint through rail and water rates on carloads of grain originating in the western half of Montana, shipped to intermediate milling points, but not including tidewater mills, and the products thereof forwarded through the north Pacific ports to California ports. A like charge is proposed on coarse grains originating in transcontinental groups F, G and J, and the products shipped in like manner. The present joint rail and water rates plus the transit charge would result in through charges somewhat less than the combinations on the ports. There is as much operating service in connection with an inbound and outbound transit shipment as there is on two separate shipments to and from the milling point, and the clerical, inspection, and policing services incident to a transit shipment are more numerous than on two ordinary shipments to and from the milling point. Ordinarily extra switching is required from and to the mill. There is an extra placement of an empty car suitable for grain at the mill for the outbound product and in some instances the extra switching at the milling point necessitates the absorption by one carrier of the switching charge of another. Notice of arrival must be mailed at the milling point as well as at the final destination. Presentation of freight bills and settlements of freight charges on the inbound shipments of grain must be made independently of the assessment and pay-

ment of the through charges based upon the outbound tonnage. Special records and accounting are required in order that the carriers may keep a check upon the arrival date of the inbound grain, and may record the inbound expense bills for the transit account. Credit slips of inbound grain must be checked and canceled in making up the through charges on the outbound product. See 24 I. C. C. 340, 346. The present rates plus the proposed transit charges aggregate less than the combinations, and the present through rates on flour are no higher than on wheat. The charge has remained in effect from intermediate and farther distant origin territory throughout the period when transit was free from western Montana. A reasonable transit charge applicable at mills not on tidewater would be unreasonable at tidewater mills on shipments loaded by the shipper directly into the holds of vessels. HELD, suspended schedules justified. Transit rules on grain, 98 I. C. C. 679.

(b) Tariff provided for waybilling of shipments from New Orleans to Mounds, Ill., at applicable rate and, upon surrender of paid inbound freight bills, rebilling from Mounds to final destination at remainder of rate plus transit charge. Defendant interpreted tariff as requiring shipper to preserve identity of cargoes according to vessel and as prohibiting substitution. Complainant's representative concurred in this construction. FOUND: Complainant can not excuse its failure to surrender inbound billing under tariff by alleging error on part of defendant and intrastate class rate assessed on shipments from Mounds to Chicago found applicable. Capital Warehouse Co. v. Director General, 96 I. C. C. 293, 296, 297.

(c) It would be unlawful for a carrier to allow the substitution of one commodity for another of like quantity from a different rate point without clearly and comprehensively specifying in the published tariffs the right to lose identity or to make substitution. See 29 I. C. C. 70, 88. Armour & Co. v. D., L. & W., 101 I. C. C. 337, 341.

SUSPENDED RATES

See Advanced Rates §1 (4); Interstate Commerce Commission §11; Long and Short Hauls §4 (tt), §15; Tariffs §1½.

SWITCH TRACKS AND SWITCHING

I. CONTROL AND REGULATION.
§1. In general.
§2. Jurisdiction of commission.
II. ABSORPTION OF SWITCHING.
§3. In general.
III. DISCRIMINATION AND REASONABLENESS OF CHARGES.
§4. In general.
§4½. Construction of contracts for sidetracks.
§5. Incidental services.
§6. Reciprocal switching.
§7. Right to connection.
§8. Validity of regulations.
§9. Reparation.
§9a. Section 4.
§9b. Switching reclaims.
§10. Tariffs and publication.
§11. Team tracks and sidetracks.
IV. PROCEDURE AND PLEADING.
§12. In general.
V. SWITCHING DISTRICTS.
§13. In general.

CROSS REFERENCES

See Absorption of Charges; Allowances §8 (5); Cars and Car Supply §30; Common Carrier; Electric Lines VIII; Express Companies §8a; Proportional Rates; Reconsignment; Side Tracks and Spur Tracks; Spotting; State Rates and Regulations (4w) (4x) (4z); Tap Lines; Terminal Facilities; Trap Cars (a).

I. CONTROL AND REGULATION.

See Control and Regulation.

§1. In General.

(a) Civ. Code 1922, §4878, providing for construction of connecting track by railroads passing through city, and empowering railroad commissioners to fix the proportion of the cost to be paid by the different railroads, HELD: Not violative of the Federal Transportation Act (U. S. Comp. St. Ann. Supp. 1923, § 10071¼ et seq.), or amendments thereto. Shealey v. Seaboard Air Line Ry. Co., (S. C., 1924) 126 S. E. 622.

(b) Contention that under section 1, paragraphs (18) to (22) of the act, the commission has no jurisdiction in matter

of proposed abandonment of mine sidings, relying largely on paragraph (22) which provides that authority conferred by paragraphs (18) to (21) shall not extend to side tracks located wholly within one State, or to street, suburban, or interurban electric railways not operated as part of a general steam-railroad system, not sustained. Provisions of foregoing paragraph limit commission's jurisdiction only with respect to specified paragraphs and do not come into conflict with the provisions of paragraph (9) under which commission may authorize the construction, maintenance and operation of switch connections with private side tracks of shippers when such connection is, in opinion of commission, reasonably practicable, can be safely put in, and will furnish sufficient business to justify its construction and maintenance. Hood Coal Co. v. M. V. T. Co., 101 I. C. C. 719, 720, 721.

§2. Jurisdiction of Commission.

See Interstate Commission I; Jurisdiction of Commission.

(a) Before authority of commission under paragraph 9 of section 1 of the act can be invoked by complainant asking commission to require defendants to construct a switch connection with its switch track, the following conditions must be observed: Complainant must be the owner of a lateral branch line of railroad, or a shipper tendering intrastate traffic for transportation; the connection must be reasonably practicable, and one that can be put in with safety, and will furnish sufficient business to justify the construction and maintenance of same. Conditions having been observed, connection ordered. Dering Coal Co. v. C., C., C. & St. L., 96 I. C. C. 143, 149, 150.

ALL OTHER CITATIONS

Simms Oil Co. v. H. & T. C. R. R. Co., 85 I. C. C. 537.

II. ABSORPTION OF SWITCHING.

See Absorption of Charges §3.

§3. In General.

(a) Upon further hearing and reargument, previous report, 69 I. C. C. 282, charges on traffic from points west of Hudson River to J. L. Kelso Co. warehouse on the Union Freight R. R. in Boston, Mass., found unreasonable and unduly prejudicial to extent they exceeded rates on like traffic to deliveries on the Boston & Albany, Boston & Maine, and New York, New Haven & Hartford railroads in the Boston district. Linehaul carriers refused to absorb charges of the Union while making deliveries at all other points in and about Boston at the flat Boston rates. Reparation awarded. Boston Wool Trade Asso. v. Director General as Agent, 89 I. C. C. 589, 593.

(b) Proposal of Manufacturers Ry. at St. Louis, Mo., to increase its minimum switching charges, such charges to be absorbed by various trunk lines reaching St. Louis, found justified. Respondent filed a complaint with the commission seeking reasonable divisions, but after investigation of the matter by trunk lines respondent was offered an increased allowance equal to amount named in the suspended schedules, and the complaint was withdrawn. Proposed minimum will not increase the charge to shippers or consignees, and it compares favorably with those of other lines generally in effect in the St. Louis switching district. Switching Charges of Mfrs. Ry. Co., 89 I. C. C. 664.

(c) Complainant, Laona & Northern Ry., alleged that the amount of its switching charges between Snyders, Wis., and the connection with defendant's tracks at Laona, Wis., absorbed by defendant are grossly inadequate. Complainant's main line extends from a connection with defendant at Laona Junction, Wis., a distance of ten miles. Not more than a mile from Laona is the station on complainant's line known as Snyders where the lumber mill of the proprietary industry, Connor Lumber & Land Company is located. There is no other industry at Snyders. Substantially all the outbound traffic from Snyders is lumber from this mill. Inbound traffic consists principally of intrastate shipments of logs. Defendants provides for absorption of not to exceed $3 per car although complainant's tariff provided for a charge of $5 per car. The absorption of $3 is the maximum for switching a distance of one mile or less from the junction permitted in 68 I. C. C. 676. HELD, the absorption of $3 per car not unreasonable, complaint dismissed. Laona & Northern Ry. v. C. & N. W. Ry., 92 I. C. C. 23.

(d) Complainant attacked commodity rates charged on hard coal, carload, from Shamokin, Pa., to Elmira, N. Y.,

as unreasonable and that the nonabsorption of the Pennsylvanias switching charge by the L. V., at Elmira resulted in charges on hard coal from Hazelton, Pa., to complainants sidings at Elmira as unreasonable and unduly prejudicial. In 35 I. C. C. 220, the Commission prescribed a rate not in excess of $1.30 to Van Etten over the L. V. When the L. V., reduced its rates to Elmira from $1.65 to $1.25 it discontinued its absorption of connecting lines switching charges of 30c at that point. HELD, rates attacked not unreasonable, and nonabsorption of switching charges at Elmira not unreasonable, complaint dismissed. Linn Chapel v. Pennsylvania R. R., 92 I. C. C. 662.

(e) It is the usual practice of rail carriers participating in joint rates to divide the switching expense when the services of an intermediate carrier are utilized in effecting interchange, the switching charge being absorbed by one or the other of the carriers according to the direction in which the traffic moves. Peoria & Pekin Union Ry Co., 93 I. C. C. 3, 21.

(f) In a proceeding to determine the propriety of switching charges which may be or may not be absorbed by other carriers the Commission has said it must consider them as though they were charged for by the railroad rendering the service and paid by the shippers. Switching at Kansas City, Mo., 96 I. C. C. 538, 541.

(g) Contention that switching service performed by Philadelphia & Reading Ry. Co., in delivering freight at complainant's plant at Wilmington, Del., is same as that performed when traffic is switched by that carrier to deliveries within industrial section of city, and that refusal of line-haul carriers to absorb switching charges on former while absorbing such charges on latter constitutes a violation of section 2 of the Act, not sustained. Circumstances of carriage surrounding the two classes of traffic are not same, and rule of law laid down in I. C. C. v. Alabama Midland Ry. Co., 168 U. S. 144, and in Wright Case, 167 U. S. 512, governs. Bancroft & Sons v. P. & R. Ry. Co., 91 I. C. C. 186, 192.

(h) Proposed rule in connection with refining of vegetable oil receiving transit at Portsmouth, Va., under which refiners would be required to pay switching charges on outbound movements, found not justified. For many years switching charges on inbound and outbound movements have been absorbed by road-haul carriers and respondents made no attempt to justify increased charges which would result from the proposed schedules which, if allowed to become effective, would also conflict with provisions of Pennsylvania's absorption tariff under which switching charges are absorbed by that carrier where it receives a road haul. Absorption of Switching Charges at Portsmouth, 91 I. C. C. 296.

(i) Proposed cancellation of absorption of switching charges at North Kansas City, Mo., on c. l. traffic originating at or destined to noncompetitive points on Missouri Pacific R. R., results of which would be increased freight charges by amount of such switching charges and violations of long and short haul provision of section 4 of the Act, found not justified. Switching Charges at North Kansas City, Mo., 91 I. C. C. 369.

(j) Milwaukee, respondent, proposed to cancel its absorption of the switching charges of the North Shore at Racine and Racine Jct., Wisc., on all interstate traffic. Protestant's plant is on the North Shore at Racine Quarry, Wisc., 1.25 miles north of the corporate boundary of Racine, and about 2.5 miles from the North Shore's connection with the Milwaukee just within the southwestern boundary of Racine. It is the only industry on the North Shore at or near Racine and it alone would be affected by the suspended schedules. The record shows that industries in the vicinity of Racine, apparently in substantially the same situation as protestant's plant, have all or a portion of their switching charges absorbed by the line-haul carrier. It would be unreasonable to continue that practice and to deny similar treatment to protestant. Undue prejudice would be created if the Milwaukee were permitted to cancel the absorption of $2.50 on crushed stone from protestant's plant and continue a like absorption from the competing plant at Ives. HELD: Suspended schedules not justified. Absorption of Switching at Racine, 101 I. C. C. 60.

(k) Allowance by C. & N. W. Ry. Co., to Laona & Northern Ry. Co., of a maximum absorption of $3 per car out of switching charges on interstate traffic moving between Laona and Snyders, Wisc., found not inadequate or otherwise unreasonable. In dealing with similar short lines not parties to The Tap Line

case, 31 I. C. C. 490, the commission has found that they should not receive from connecting carriers more than $3 per car, the maximum therein fixed, for distances of 1 mile or less. While the Laona has operated at a deficit, to sanction increased absorption sought would result in according that line a preferred position over other lines operated under similar circumstances and conditions. Laona & Northern Ry. Co. v. C. & N. W., 92 I. C. C. 23.

(l) Proposal of L. & N. to cancel its unlimited absorption of switching charges of the Gulf and Ship Island at Gulfport, Miss., on c. l. traffic destined to New Orleans, La., and to restrict its absorption to amounts not in excess of those applicable on similar traffic to other destinations, found justified. No traffic has moved from industries where the proposed restriction would result in increases, preponderance of all traffic will ordinarily move between Gulfport and New Orleans over competing lines, and no public good would be subserved by maintenance of a preference of traffic destined to New Orleans over traffic destined to other points. Absorption of Switching Charges at Gulfport, 92 I. C. C. 168.

(m) Failure of line-haul carriers to absorb switching charges of Minneapolis Eastern and Minneapolis Western railroads at Minneapolis, on grain moving from South Dakota, found not unreasonable. Complainants urge no circumstances justifying charges on interstate shipments while similar charges on intrastate shipments were absorbed, refering to absorption practices of line-haul carriers at other points. However, circumstances and conditions at other points are not shown similar to those at Minneapolis, nor does record establish that switching charge assailed was unreasonable per se or that collection thereof in addition to line-haul rate resulted in unreasonable charges for entire transportation service furnished. Shanard Elevator Co. v. M. E. Ry., 93 I. C. C. 151.

(n) Nonabsorption of switching charges of Pittsburgh, Allegheny & McKees Rocks R. R., on traffic to and from points of unloading and loading at complainant's plants at McKees Rocks and Allegheny, Pa., during Federal control, found not to have resulted in unreasonable charges because in excess of Pittsburgh district rates. While a number of large industries in that district performed their own spotting service, and some received allowances from trunk lines and others did not, record does not show that industries generally therein, without regard to size or complexity of plant tracks, received benefits of flat Pittsburg rates on all commodities regardless of origin or destination. Pressed Steel Car Co. v. Director General, 93 I. C. C. 224.

(o) Upon contention of N. Y. C. that establishment of switching charges subject to absorption by connecting lines between points on its line in the State Street zone in Rochester and connections with other carriers in the Rochester switching district amounts to establishment of through routes in violation of the short-hauling provision of section 15 (4) of the act, HELD: Provision of the act cited applies, if at all, under such circumstances, only to outbound traffic from the State Street zone. To give practical effect to section 15 for establishment of through routes, limitations on the Commission's power in paragraph (4) must be interpreted as prohibiting it from requiring a carrier to turn traffic over to a connecting line when to do so would require participation in a through route embracing substantially less than the entire length of its line. See 47 I. C. C. 643, 722, and other cited cases. Rochester Switching Case, 95 I. C. C. 30, 47, 48.

(p) Where a carrier publishes switching charges within switching limits of a city subject to absorption by connecting lines, and the commission includes an additional zone within such limits, it is a violation of section 3 (1) if such carrier does not make the switching charges published to and from the included zone subject to absorption by connecting carriers in same manner and to same extent as are existing switching charges. It is also a violation of this provision of section 3 by the connecting carriers if they do not absorb the new switching charges in same manner and to same extent as the old. Rochester Switching Case, 95 I. C. C. 30, 48.

(q) In determining the propriety of switching charges which may be or may not be absorbed by other carriers, the commission has said, 61 I. C. C. 205, that it must consider them as though they were charged for by the railroad rendering the service and paid by the shippers. Switching at Kansas City, Mo., 96 I. C. C. 538, 541.

(r) It is the general practice of carriers to absorb switching charges on competitive traffic and not to absorb such charges on noncompetitive traffic, and the nonabsorption on noncompetitive traffic at Kansas City, Mo., and absorption on competitive traffic at St. Joseph, Mo., is in accordance with this practice. Switching at Kansas City, Mo., 96 I. C. C. 538, 541.

(s) Proposed restriction of absorption of switching charges on coal from L. & N. stations and mines in Tennessee and Kentucky to points within the switching limits, suburbs and industrial limits of Atlanta, Ga., which would result in increased rates to Atlanta, found not justified. While it is desirable in the interest of uniformity, for the L. & N. to revise the absorption by it of connecting lines switching charges at Atlanta so that the amount which it absorbs is the same with respect to all lines serving Atlanta, such revision must not be accomplished in such manner as to materially increase the total charges which receivers of coal in the Atlanta district must pay. Coal and Coke from Kentucky and Tennessee Mines to Atlanta, 98 I. C. C. 11.

(t) Proposed restriction of absorption of switching charges on coal from L. & N. stations and mines in Tennessee and Kentucky to points within the switching limits, suburbs, and industrial limits of Atlanta, Ga., which would result in increased rates to Atlanta, found not justified. The present level of rates from L. & N. mines in Tennessee and Kentucky to Atlanta industrial district is not unreasonably low, particularly as the L. & N. transports the traffic over its own line under operating conditions which are favorable, and as it restricts the rate to the route over its own line, although there are other routes in connection with the Southern Ry. which are feasible and which can be used to advantage without an increase in the rate. Coal and Coke from Kentucky and Tennessee Mines to Atlanta, 98 I. C. C. 11.

(u) Proposed restrictions of absorption of switching charges on coal from L. & N. stations and mines in Kentucky and Tennessee to points within the switching limits, suburbs and industrial limits of Atlanta, Ga., which would result in increased rates to Atlanta, found not justified. Comparisons with rates from mines located on other lines in Tennessee and Kentucky and with rates from mines in Virginia and Alabama to Atlanta show that the ton-mile earnings produced by the proposed rates are considerably higher than the earnings under the rates with which they are compared. Comparison of the present rates and earnings from Windrock district of the L. & N. to Atlanta with rates and earnings from the same district to other points in Georgia shows that the rates to Atlanta generally produce higher ton-mile earnings. Coal and Coke from Kentucky and Tennessee Mines to Atlanta, 98 I. C. C. 11, 28.

(v) Switching charges collected by Hoboken Manufacturers R. R. Co. on trap car loads of l. c. l. freight switched by it from complainant's warehouse at Hoboken, N. J., to C. R. R. of N. J. at Weehawken, N. J., for interstate movement, found inapplicable. The Hoboken Manufacturers may not lawfully make a charge in addition to line-haul rate for switching cars direct from complainant's plant to line-haul carrier, as that would be charging for a service not actually rendered, and the hauling of such cars to its freight station before delivering to line-haul carrier is for its own convenience, is not required under the contract of transportation, and the shipper may not be assessed a charge therefor in addition to line-haul rate. Reparation awarded. Jewel Tea Co. v. C. R. R. Co. of N. J. 98 I. C. C. 424.

(w) Fact that absorption provisions of the carrier at point of origin, during Federal control, were less liberal than at other points found not to have resulted in unreasonable charges on sand from Falls Creek Pa, to Vandergrift, Pa. Complaint dismissed. United Engineering & Foundry Co. v. Director General, 98 I. C. C. 447.

(x) Complainant alleged it owned and operated a plant for milling lumber into match blocks at Spokane, Wash., on the joint tracks of the Oregon Washington and Milwaukee; that on lumber originating on those roads and shipped to its plant at Spokane, there milled in transit and shipped to its match factories in the east, no switching charge to or from the plant at Spokane is applicable; that on lumber originating at competitive points on the N. P., G. N., and S. I. milled in transit at Spokane, and shipped east over the originating carrier, that carrier absorbs the applicable switching

charges of $3.60 per car on each movement, inbound and outbound; that on like shipments originating at local points on any one of those three carriers the same switching charges are not absorbed by the originating carrier; that this failure to absorb switching charges on lumber originating at local points is in violation of sections 2 and 3 of the act; that the switching charges are unjust and unreasonable in violation of section 1. There is no evidence that $3.60 is an unreasonable charge for the switching movement, or that the amount of the through charges on shipments from local points is unreasonable except the fact that the switching charges are assessed in addition to the rate and the transit charge. HELD, rate attacked and defendant refusal to absorb the switching charges not unreasonable, unjustly discriminatory or unduly prejudicial, complaint dismissed. Federal Match Co. v. G. N. Ry 102 I. C. C. 353.

(xa) Switching charges and assessment thereof in addition to the road-haul rate and transit charge on lumber originating at local points and milled in transit at Spokane found not unreasonable, discriminatory, or unduly prejudicial as compared with the practice of carriers in absorbing such charges on traffic originating at competitive points. Federal Match Corp. v. G. N. Ry., 102 I. C. C. 353.

(xb) Defendant's failure to absorb intermediate line switching charges at Fargo, N. Dak., on various carloads of potatoes shipped through that point from stations in Minnesota and North Dakota to points in Kansas, as provided by applicable tariffs, found to have resulted in illegal charges. Reparation awarded. Hechtman v. C., M. & St. P., 102 I. C. C. 705.

(y) Complainant alleged refusal of defendant to refund a charge of $3.60 per car for switching numerous carloads of potatoes at Fargo, N. D., shipped between June 1, 1923 and June 1, 1924 from stations on the G. N., in Minnesota and North Dakota, to points in Kansas, is in violation of section 6 of the act in that the applicable tariff provided for the absorption of intermediate lines switching charges at all stations on defendants line, including Fargo. All moved as routed by shippers, G. N.. care C. M. & St. P. Ry., at Fargo, N. D., M. P., dely. The applicable rates were combination rates basing on Fargo. The G. N., has no direct connection with the defendant at that point and the interchange is effected through switching by the N. P., for which a charge of $3.60 per car was collected. The only issue presented is whether defendant undertook to absorb the switching charge. The provisions of the tariff provide that on shipments moving between stations on defendants line and stations on other lines, the total freight charges, after deducting connecting lines switching charges, must not be less than $30.50 per car, whether moving under through rates or on combination of local rates to and from the junction points. The total freight charges on each shipment after deducting connecting lines switching charges were considerably in excess of $30.50. In so far as defendant is concerned the shipments were received at Fargo, and defendants interpretation of the tariff may not be accepted. HELD, failure to absorb switching charges of $3.60 in violation of section 6, reparation awarded. Hechtman v. C. M. & St. P. Ry., 102 I. C. C. 705.

(z) Complainant alleged that it buys grain, grain products, cottonseed products, alfalfa meal and hay, in carloads in the primary markets along the Missouri, Mississippi and Ohio rivers, and that these products, transported to Meridian, Miss., by the M. & O., after storing and mixing in transit in their warehouses there, are forwarded thence to ultimate destinations upon joint rates from points of origin that their warehouses are on the rails of the M. & O.: that on out bound movements, after transit at Meridian, the M. & O., charged for switching to connections prior to July 1, 1922, $1.50 per car and after that date $1.35 per car; that defendants tariffs provide for the absorption of switching charges of connecting lines at Meridian on competitive traffic; and that, notwithstanding such absorption provision, defendants have not refunded to complainants the switching charges paid by them. There is no allegation or proof of unreasonableness, of undue prejudice, or of any violation of the act except an allegation of straight overcharge under section 6. All of the carriers provide in their tariffs for absorption of switching charges of their connections at Meridian on competitive traffic and the Southern Ry. provides for the absorption of the

M. & O., switching charges there on all carload traffic. The sole point in issue is whether the absorption provisions of the outbound carriers published for application at Meridian should be found applicable on these shipments notwithstanding the fact that the shipments did not originate at and were not ultimately destined to Meridian but merely stopped temporarily at that point on their thru journey. The record discloses no essential difference in the service performed in connection with the movement of an outbound transit shipment from the industry to the interchange tracks as compared with a similar service in respect of a shipment originating at the transit house in the first instance. By their tariffs defendants have held out to the shipping public that when a car is received by them from a connecting line at Meridian they will, under certain conditions absorb the switching charge published by that connection. Those tariff provisions have equal weight with the one which announces that in so far as the M. & O. is concerned the switching charges will be in addition to the through rate. If defendants desired to exclude transit shipments from the general provisions for absorption they had it in their power to do so by plain language rather than by inference. Their failure to do so can not cast the burden of paying the charges upon the shipper. HELD, switching charges illegally assessed, reparation awarded. Sturges Co. v. A. & V. Ry. 107 I. C. C. 136.

(aa) A general provision to the effect that a carrier will absorb the switching charges of "connecting lines" on traffic received by it at a certain point must, in the absence of clear and unequivocal language to the contrary, be taken to cover all traffic, whether originating at the point of absorption or whether handled there in transit as an incident to a through movement from a point beyond. Any other construction would require reading into the provision something which is not there, a method to which the Commission has repeatedly refused to resort in questions of tariff construction. Sturges Co. v. A. &. V. Ry. 107 I. C. C. 136, 138.

(bb) Proposed cancellation of absorption of the North Shore's switching charge at Racine and Racine Junction, Wis., on all interstate traffic found not justified. The record shows that industries in the vicinity of Racine apparently in substantially the same situation as protestant's plant, have all or a portion of their switching absorbed by the line-haul carrier, and it would be unreasonable to continue that practice and to deny similar treatment to protestant. Undue prejudice would be created if the Milwaukee were permitted to cancel the absorption of $2.50 on crushed stone from protestant's plant and continue a like absorption from the competing plant at Ives. Absorption of Switching at Racine and Racine Junction, Wis., 101 I. C. C. 60.

(cc) Upon reconsideration, original report 88 I. C. C. 368, total charges collected on interstate shipments to and from complainant's plant on the Owasco River Railway at Auburn, N. Y., which included switching charges of the Owasco, found not unreasonable as compared with flat Auburn rate. Contention by complainant that shipper in a given community is entitled to line-haul rates applicable to that community and if he pays a rate in excess thereof an abnormal rate structure exists, not sustained. An award of reparation would involve conclusion that line-haul rates to and from Auburn were up to the limit of reasonable maximum rates and that the relatively small switching charge sufficed to carry rates over the line by that amount. Such a conclusion is repugnant to common sense, nor does evidence establish any damage to complainant from undue prejudice found to exist in original report which is hereby reversed. International Harvester Co. v. N. Y. C. 101 I. C. C. 89.

(dd) Northwestern and St. Paul, respondents, proposed to cancel the absorption of switching charges of other lines at Chicago, Ill., on interstate shipments of ice, carloads, from points on their lines in Illinois and Wisconsin, which would have the effect of increasing the through charges on such traffic. The present rates include delivery to points on connecting lines. The bulk of the movement is from five points in a group from which the rate is 5c, a rate of 6.5c applying from a few more distant points. In most instances the switching charges of 2c per 100 pounds, or $12 per car. The suspended proposals would make the through charges to affected shippers exceed by the amount of the present absorption the total charges on shipments delivered to points

on respondents own rails. It is evident from this record that, under present conditions, the net revenue accruing to respondents after the absorption of connecting line charges in the Chicago district is insufficient to cover the line haul movement. When the line haul rates in question were originally established they did not include deliveries on connecting lines. When their application was voluntarily extended to cover such deliveries, the number of cars interchanged was relatively small and the switching charge only $3 per car. If that charge had received only the percentage changes of the general rate increases and reduction it would now be $4.75. It is probable that the difference in cost to respondents between making deliveries to points on their own rails and to points on connecting lines is not accurately measured by the amount of the switching charges which they now absorb on shipments delivered by connecting lines, but it is generally true, and has frequently been so recognized, that joint line service is more costly than single line service. The cost of the joint line service is further increased here in some instances by the expense of trackage rights over the lines of intermediate carriers where the originating carrier has no direct connection with the delivering line. Respondents are entitled to some compensation for this additional cost. HELD, increases in through charges that would result from the suspended proposals have been justified to the extent of $4.75 per car. Ice from Illinois and Wisconsin. 109 I. C. C. 3.

(ee) Refusal of defendants other than the Cuyahoga Valley to absorb its switching charges is alleged to have subjected and to subject complainant to the payment of charges for interstate transportation which were and are unjust and reasonable unjustly discriminatory and unduly and unreasonably prejudicial and disadvantageous. The allowance paid the Cuyahoga Valley by the other defendants is based on the assumption that it is a plant facility. the only question now presented is whether the C. V., is a common carrier or plant facility. The entire capital stock is owned by complainant, and it operates 14.42 miles of tracks in and around the plant of complainant; owns six locomotives and 44 freight cars, the cars not being interchanged with other carriers. It serves three independent industries and performs interplant and intraplant switching for the complainant and, to some extent, for the other industries served. All necessary facilities, including team tracks and track scales for serving the public, are provided. It complies with the law and regulations applicable to common carriers. HELD, Cuyahoga Valley Ry. Co. is a common carrier subject to the act, which may lawfully participate in joint rates with other common carriers, or have its switching charges on interstate shipments absorbed under proper tariff provision by the carriers which perform the line haul. Its compensation must not be more than is reasonable and a complete and specific statement of any basis agreed upon must be filed with the Commission immediately upon adoption. Otis Steel Co. v. C. V. Ry. 109 I. C. C. 238.

(ff) Apart from the defect in pleading, the Commission has repeatedly declined to require absorption of switching charges, except where necessary to remove unjust discrimination or undue prejudice, although in appropriate cases it may prescribe reasonable joint rates between points on switching and trunk lines. Western Indiana Gravel Co. v. N. Y. C. & St. L. Ry. 109 I. C. C. 727, 731.

(gg) Respondent, C. & N. W. Ry., proposed to increase from $3 to $5 per car the maximum amount of its absorption of the Laona & Northern switching charge to and from the plant of the Connor Land & Lumber Co., at Snyders, about 1 mile from Laona, Wis. Laona & Northern is a common carrier, its line running from Laona to Laona Junction, Wis., a distance of about 10 miles, where it connects with the Soo Line, being owned and controlled by the Connor Land & Lumber Co. This shipper is routing much of the competitive lumber traffic from its mill at Snyders through Laona Junction, for the reason that its own railroad for a 10 mile haul thus receives a division of 2.5c per 100 pounds out of the joint rates. The establishment of the proposed $5 absorption would attract some of this traffic to respondents line. HELD, respondent has not justified the proposed schedule. Absorption of switching charges at Laona, Wis., 112 I. C. C. 115.

ALL OTHER CITATIONS

Simms Oil Co. v. H. & T. C. R. R. Co., 85 I. C. C. 537; Crown-Cork Seal Co. v.

Director General, as Agent, 88 I. C. C. 305; Barber Asphalt Co. v. L. & N. R. R. Co., 88 I. C. C. 307; Crown Cork Seal Co. v. Director General, as Agent, 88 I. C. C. 309; International Harvester Co. v. N. Y. C. R. R. Co., 88 I. C. C. 368; Detroit Board of Trade v. W. Ry. Co. 88 I. C. C. 413; Barrett Co. v. Director General, as Agent, 88 I. C. C. 535.

III. DISCRIMINATION AND REASONABLENESS OF CHARGES.

See Advanced Rates §17 (bb); Discrimination; Reasonableness of Rates.

§4. In General.

(a) Based upon cost figures, minimum charge of $5 per car for movement of livestock, at Indianapolis, Ind., from stockyards to complainant's plant, during Federal control, found not reasonable. The transportation involves a road haul and two terminal handlings as well as preferred service in trainload lots and the return of approximately 100 per cent empties. If very small allowances for terminal and line-haul expenses were applied to a movement of this character, it would result in much higher coal per car than charge here assessed. Kingan & Co. v. Director General, as Agent, 89 I. C. C. 550.

(b) Complainant attacked charge of $5 per car paid by it for the switching or transportation of livestock from the stockyards in Indianapolis, Ind., over the Indianapolis Union Ry. to complainants plant in that city from February 1919 to August 1920, as unjust and unreasonable. The movements were intrastate, and wholly independent of prior rail transportation. This proceeding is properly brought in so far as the period Feb. 18, 1919 to Feb. 29, 1920 is concerned. Livestock, transported from the stockyards to complainants plant, is received at such stockyards by rail, including interurban trolley, by truck and on the hoof. Complainant buys such livestock free of freight charges, truckage, or drivers fees, and all movements here involved began at the stockyards and ended at complainants plant. It is in reality short haul transportation; it requires the placement of cars for loading and unloading, their hauling in trainload lots, and is made upon billing that is independent of prior billing transportation, or freight rates. Prior to June 25, 1918 the rate was 1c per head for hogs and $1 per car for livestock other than hogs, advanced on that date to 1.5c per hog and $1.50 per car for live stock other than hogs, and in February 1919, the director general established a minimum of $5 per car, advanced to $6.50 per car in October 1920 and $7 per car in March 1921. No substantial differences have been shown between movements to complainant and to other packing plants at Indianapolis. HELD, charge attacked not unreasonable or otherwise unlawful, complaint dismissed. Kingan Company v. Director General, 89 I. C. C. 550.

(c) Manufacturers Ry. respondent, proposed to increase its minimum switching charge except on coal, and the other respondents, the various trunk lines reaching St. Louis, Mo., proposed to absorb such increased switching charge. Prior to July 1, 1922 the switching charge on interstate traffic, excepting coal and on freight and privately owned refrigerator cars, not entitled to free movement, was $6.50 per car, reduced on that date to $5.85 the present charge. It is proposed to increase this to $6.50. HELD, proposed schedules justified. Switching charges of Manufacturers Ry., 89 I. C. C. 664.

(d) Charges of the C., R. I. & P. Ry. for interchange switching of interstate, c. l. shipments between certain industries on its line at El Dorado, Ark., and its connection with the Missouri Pacific at that point found not unduly prejudicial or preferential as compared with charges from competing industries on the El Dorado & Wesson R. R. at Pearson and Oak Hill, Ark., shipping to the same points. Such charges, however, found unreasonable for future, and reasonable charge prescribed. El Dorado Chamber of Commerce v. C., R. I. & P. Ry. Co., 89 I. C. C. 743.

(e) Complainant attacked charge of 2c per 100 pounds, minimum 60,000 pounds, maintained by defendant for the interchange switching of interstate carload freight between certain industries on its line at El Dorado, Ark., and its connection with the M. P., at that point as unreasonable, unduly prejudicial to local points on the M. P., and unduly preferential of industries on the El Dorado & Wesson at Pearson and Oak Hill, Ark. El Dorado is served by the El Dorado and Wesson, M. P. and defendant,

Rock Island. The two latter extend thru El Dorado from north to south, generally speaking, and are physically connected near the center of the town. The other line enters from the southwest and terminates at El Dorado. It connects only with defendant, about 400 feet south of defendant's connection with the M. P., but interchanges traffic with the M. P. by means of an intermediate switch movement performed by defendant. The switching charges at El Dorado are generally absorbed by the connecting line on competitive traffic. Only a small percentage of the cars switched originate at or are destined to local points. On these the shipper pays the switching charge. Interchange movements must be made through the busiest part of the yard, with many switches, across congested streets, and over a short piece of main line track. Physical conditions are such that these difficulties can not be readily overcome. The situation is peculiar at El Dorado and does not exist at any other point on defendants lines. HELD, rates attacked not unduly prejudicial or preferential but is unreasonable for future to extent it exceeds $6.50 per car. Chamber of Commerce of El Dorado, Ark., v. C. R. I. & P. Ry., 89 I. C. C. 743.

(f) Respondents, M. C., and N. Y. C., proposed to make certain changes, mostly increases, in their switching charges at Detroit, Mich. The terminal operations of the M. C. are by far the most extensive of any line serving Detroit. The switching hauls rang from 0.5 to 20 miles with average about 8 miles. About one-third of its total traffic originates or terminates within Detroit. The terminal of the N. Y. C. extends from Ecorse River to Milwaukee Junction, 11.5 miles. With the exception of the G. T., the terminal facilities of the other line haul carriers serving Detroit are comparatively limited. The most important purely terminal carriers are the Detroit Manufacturers and the Detroit Terminal. (1) Intraterminal, between industries, team tracks, and other facilities on the same line. (2) Interterminal, between such facilities on one line and its interchange with another where the connecting line also performs a switching service. (3) Reciprocal, between such facilities on one and its interchange with another where the connecting line performs a road haul and (4), intermediate, between one interchange and another. Respondents proposed to establish charges of 2c on reciprocal and interterminal switching from and to industries, 2.5c on team track, reciprocal and intraterminal switching, with the exception of coal, coke, sand, gravel, crushed stone and slag on which charges of 0.5c lower are proposed, and of livestock from the stockyards on which a charge of 3.5c interterminal and reciprocal, and intraterminal to certain destinations are proposed. On sand and gravel between the M. C. and Delray Connecting and Detroit Terminal the proposed schedules would result in reductions as the present joint rates would be superseded by lower combinations. The proposed charges for intermediate switching and on special movements of livestock represent both increases and reductions. Lower charges are proposed on coal, sand, gravel, crushed stone and slag than on other commodities on account of the volume in which these commodities move, comparatively higher average loading and the low risk attending their transportation. Respondents reciprocal switching charges are absorbed by its connecting lines down to a net road haul revenue of $19 per car. While the cost studies submitted in this proceeding do not justify unqualified approval of the proposed charges, they do warrant the conclusion that the present compensation received by respondents for performing the switching services affected is materially less than the cost properly chargeable against such services, including a reasonable return upon the portion of the investment of facilities used therein. The difference between the service performed for one industry and another is frequently greater than the difference between the service performed in connection with an industry and a team track, and there are many instances shown where the former requires greater service. Inasmuch as the charges are based on the average service rendered there is no warrant for distinguishing between industry and other switching. the Commission thinks that a uniform charge per car for each of the three types of movement is preferable to the bases proposed by respondents. Respondents are not justified in embracing within its reciprocal charges costs which

are assessed against the connecting lines in the form of reclaims. HELD, proposed charges not justified. That proposed intraterminal and interterminal charges on sand, gravel, crushed stone and slag have not been justified; and that proposed charges for intermediate, passenger and express, and special livestock movements have been justified; that the proposed charges on other traffic have not been justified, but that charges have been justified on such traffic of $16 per car for intraterminal switching, $12 per car for interterminal switching and $7 per car for reciprocal switching. Increased Switching Charges at Detroit, Mich., 91 I. C. C. 82.

(g) Complainant sought reparation under sections 2 and 3 and the long and short haul clause of section 4 on numerous cars of grain and grain products switched between its elevator and connections of defendant in the Kansas City, Mo., Kans., switching district between Feb. 3, 1921 and Sept. 27, 1923, to the extent that the switching charges paid exceeded those applicable on similar traffic of the Kimball Milling Company. The Rosedale elevator and the Kimball mill are on the Frisco in Rosedale within 200 feet of each other, the former being intermediate to the latter on both inbound and outbound movements. Rosedale is within the Kansas City switching district. The charges attacked are those maintained by defendant for switching between its connections and the industries referred to carloads of grain and grain products which originated at, or moved to, noncompetitive points on other lines outside of that district. Charges paid were $7 and $6.30, prior to and on and after August 30, 1922. The corresponding charges applicable on similar traffic of the Kimball Milling Co. were $5.50 and $4.95. Effective Sept. 28, 1923, defendant reduced the charge on complainants traffic to $4.95 the same as on the traffic of the Kimball mill which is satisfactory to complainant for the future. Complainant introduced no evidence of specific damage. HELD, complaint dismissed. Fowler Commission Co. v. St. L. S. F. Co., 92 I. C. C. 641.

(h) Complainant attacked commodity rate of 22c charged on one car of fuel oil shipped during July, 1917, from Cushing, Okla., to Lawn Switch, Omaha, Nebr., as unjust, unreasonable, and in violation of sections 4 and 6 of the act to extent it exceeded 18c. Shipment moved from Cushing via the Santa Fe to Kansas City and Burlington to Omaha. Originally consigned to Nicholas Oil Co., Omaha, Nebr., but was reconsigned to the Douglas County Commissioners for delivery at Seymour Park, Nebr., a point on the M. P., beyond the switching limits of Omaha. Subsequently the car was placed for unloading at Lawn Switch, a point on the M. P. within the switching limits of Omaha. Charged to Omaha 18c, beyond 4c. Lawn Switch is a team track, but at the time the shipment moved a spur track connecting with Lawn Switch served Pickards Anchor Concrete Company and the M. P. published a switching charge from Omaha to this plant of $6 per car. The tariff carried the clause reading that rates from and to intermediate industries and switches not indexed in this tariff will be the rate named from or to the first more distant industry or switch indexed in this tariff on the same line. Lawn Switch is not indexed in the tariff. The tariff of the Burlington provided for the absorption by that line of connecting lines switching charges at Omaha. HELD, rate of $6 per car applicable and Burlington tariff provided for its absorption, reparation awarded. Douglas County v. A. T. & S. F. Ry., 92 I. C. C. 717.

(i) Complainant attacked charge of $5 per car exacted for switching from the E. & I., between the mill it then operated at Terre Haute, Ind., and connecting lines of that carrier as unlawful in violation of section 6 to extent it exceeded $2 per car. On interstate traffic the director general admitted the correctness of the claim and expressed willingness to refund the overcharged, thus leaving intrastate shipments only for consideration. Prior to March 1, 1916 the rate for switching carload freight of the kind here involved between industries on the E. & I., and connecting carriers was $2 per car on both interstate and intrastate traffic. In Oct. 1917 the receiver of the E. & I., petitioned the court and alleged that this charge, among others was so low as to be confiscatory, whereupon the court issued its order of Oct. 23, 1917 to the effect that all unremunerative freight and switching charges prescribed by the Indiana Commission, in so far as they related to the E. & I., or its receiver, were unconstitutional and invalid. As a result of this

the $2 charge was canceled intrastate. HELD, charges attacked not illegal or otherwise unlawful, except in instances, if any, where a part of the charge should have been absorbed by connecting lines in road haul rates, reparation awarded. American Hominy Co. v. Director General, 93 I. C. C. 256.

(j) Respondents, Detroit, Western Ry., Detroit & Toledo Short Line R. R., Grand Trunk, Pere Marquette, Pennsylvania and Wabash proposed to increase their switching charges at Detroit, Mich. In 91 I. C. C. 82, M. C., and N. Y. C., justified charges of $16 for intraterminal switching, $12 for interterminal switching, and $7 for reciprocal switching. Present respondents established the reciprocal charge of $7 without protest, and they here ask approval of $16 and $12 for intraterminal and interterminal movements. The Detroit, & Toledo Short line offered no evidence as to the costs or operating conditions. It is stated that that carrier considers itself entitled to the same charges as other lines serving Detroit, but that it will not be greatly harmed if its charges are not increased. HELD, proposed charges justified, except D. & T. S. L. R. R. and D. & W. Switching at Detroit. 95 I. C. C. 21.

(k) Switching charges differ from line haul rates in that they are ordinarily not graded in accordance with either the value of the commodity moved or the distance of movement. As a rule, they take the form of a flat charge per car or per ton or per 100 pounds; and as a rule, also, they apply to any haul within the switching district no matter how long or how short it may be, subject to the qualification that a haul to and from a connecting line may take a lower charge than a haul complete in itself. The fact that the movement may be made by a switching engine not under train orders or that it may be incidental or ancillary to another transportation service in no way explains these characteristics of switching charges. Yet the circumstances that they have become so general throughout the country by voluntary action of the carriers in the process of railroad development, strongly suggests that there is sound reason for the differentiation. Rochester Switching Case, 95 I. C. C. 30, 44.

(l) It is evident that a policy with respect to switching charges which adds to flexibility and convenience in the use of the transportation facilities serving an industrial center will also create conditions favorable to its growth and prosperity. Rochester Switching case, 95 I. C. C. 30, 45.

(m) Line haul rates and switching charges are two methods of securing compensation for freight service which differ radically in principle. Both have developed naturally as the outgrowth of particular conditions. In the case of line haul rates, cost and value of service are factors which are, in theory at least, taken into consideration in fixing the rates for each and every commodity and for each and every haul. Switching charges, on the other hand, are largely based on average conditions. In every switching district there will almost invariably be found some hauls so long and so difficult that the costs is in excess of the switching charge collected; but that fact does not show the charge to be less than reasonable, for the question is whether the carrier is receiving adequate compensation for the total switching service rendered within the district. Rochester Switching case, 95 I. C. C. 30, 45.

(n) The bulk of the expense in making of a switch movement consists in the handling of the car at the two ends of the movement. Comparatively little is added in moving the cars a few miles even, when once upon the main track. Rochester Switching case, 95 I. C. C. 30, 47.

(o) In 95 I. C. C. 21, the Commission found the respondents herein, other than the Detroit, Western and the Detroit and Toledo Shore Line, has justified charges of $16 per car for intraterminal switching at Detroit, Mich., but that charges of the same amounts, proposed by the two respondents named, had not been justified. HELD, upon rehearing, these charges authorized as reasonable on the two carriers named. Switching at Detroit, Mich. 96 I. C. C. 415.

(p) Respondent, I. H. B. R. R., proposed to cancel the rate of $12 per car on ashes, cinders, clean, having value for construction purposes, and to cancel the application of a rate of $8.10 on other ashes and cinders, between stations on its line or between such a station and a junction with a connecting line, thus making applicable thereon the "all commodities" rates of 2.5c per 100 pounds between a station and a junction.

The joint rate on ashes and cinders between points on respondents road and points within the Chicago switching district on other lines is 2.5c per 100 pounds, one half of which is respondents division. HELD, schedules not justified. Ashes and cinders, 98 I. C. C. 163.

(q) Complainant caused to be shipped two cars of sugar from the warehouse of the McDonald Transfer & Storage Co. on the G. N., at Sioux City, Iowa, to the warehouse of the Warfield Pratt Howell Co. in the same city on the Omaha R. R., charged 6c per 100 pounds which it claimed is unreasonable to extent it exceeded 1.6c. The 6c rate collected by the G. N., out of which it paid $2 per car to the Omaha for the latters part of the haul, was the fifth class Iowa distance rate for 5 miles or less. The mileage tariff did not name any distance between the warehouses above mentioned, but effective Nov. 15, 1919, the G. N., established a switching charge of 1.5c but this charge was restricted to movements between industries on that road. Effective Dec. 31, 1922 the same carrier established a rate of 2c for switching between industries on its rails and connections with other lines at Sioux City, and this rate is still in effect. HELD, reasonable charge for movement in question was 2c per 100 pounds, reparation awarded. Seavey & Flarsheim Co. v. Director General, 98 I. C. C. 295.

(r) Complainant attacked charges collected between Oct. 1, 1921 and Feb. 15, 1922 on 32 trap cars of less carload shipments of tea, coffee, spices, china, glassware, earthenware and other merchandise from its warehouse at Hoboken on the Hoboken Mfrs. R. R., to the Central R. R. of N. J., for interstate shipments to destinations in other states as unreasonable and in violation of section six. Hoboken collected switching charges based on rate of 5.5c. The line haul rates applicable on those less carload shipments were the class rates. The class rate tariffs apply the New York rate from Hoboken, and were concurred in by the Hoboken; therefore the line haul rates were applicable from points on that line. No trap car tariff was in effect at that time. It is the view of the Commission that the Hoboken may not lawfully make a charge in addition to the line haul rate for switching the 16 cars which were transported direct from complainants plant to the Central, as that would be charging for a service not actually rendered. It is also of the opinion, that the hauling of the remaining 16 cars to the freight station was for the carriers convenience, was not required under the contract of transportation, and the shipper may not be assessed a charge therefor in addition to the line haul rate. HELD, shipments overcharged to extent of charges of the Hoboken, reparation awarded. Jewell Tea Co. v. C. R. R. of N. J., 98 I. C. C. 424.

(s) Charges on shipments of coal and coke to complainant's plant at Rockford, Del., located on Philadelphia & Reading Ry., within City limits of Wilmington, Del., composed of rates to Wilmington plus minimum scale of class rates beyond, found illegal to extent they exceeded line-haul charges from points of origin to Wilmington. There was nothing in switching tariff of Philadelphia & Reading, describing Wilmington switching limits, which would have effect of excluding complainant's plant from application of switching rate and its absorption on shipments here involved. Refund of overcharges directed. Bancroft & Sons v. P. & R. Ry. Co., 91 I. C. C. 186.

(t) Complainant attacked switching charges of 30 and 40c minimum $6.50 per car from Oct. 1, 1918, to Feb. 28, 1920, for the movement of materials, carloads, between various divisions of complainant's plant at Newark, N. J., as unreasonable. The movements here considered were performed by switch engines and crews from the Jersey Central break up yards at Brills, N. J., usually at the time when the engine and crew went to the plant for the daily drill of cars on which a line haul movement had been or was to be performed. The hauls ranged from 1,900 to 10,000 feet or more. The charges attacked were published in a local switching tariff of the Jersey Central applying at Newark and Brills. The charges attacked were applicable for intraplant and interplant switching at and between industries served. Considering the density of traffic in this district, the time and labor consumed in the movements, the dangerous character of the commodity of which most of the shipments consisted and the number of movements involving a main line haul, the Commission is not convinced that an average return of $14.40 per car was excessive for such service. HELD: proper applicable charge 30c, overcharge ordered refunded where 40c charged, reparation

awarded. Butterworth Judson Corp. v. Director General, 100 I. C. C. 337.

(u) Birmingham Belt R. R., respondent, sought to increase its charges for switching carload freight at Birmingham, Ala. Birmingham is also served by the A. G. S., A. B. & A., B. S., C. of Ga., L. & N., M. & O., S. A. L., and Southern. Respondents published switching charges on competitive traffic are absorbed by all connecting lines. On noncompetitive traffic the charges are paid by the shippers. All connecting lines other than the Frisco and I. C., have filed tariffs limiting their absorptions to the present charges. Respondents serves 124 industries and team tracks within the switching limits of Birmingham and many of them can be reached only over its rails. The cost study presented by respondent falls short of justifying the increases proposed. HELD: Proposed schedules not justified. Switching in Birmingham District, 100 I. C. C. 763.

(v) Rate on sand from Thornburgh, Ohio, located immediately outside the Cleveland switching limits, to Cleveland, during Federal control, found not unreasonable, but unduly prejudicial in favor of competing points located a few miles north and west of Thornburgh, within the Cleveland limits. Distances from Thornburgh are practically the same as from points within and immediately outside the district were not substantially dissimilar. Switching limits were subsequently extended to include Thornburgh. Reparation denied for lack of proof of damage. Cleveland Sand & Gravel Co. v. Director General, 92 I. C. C. 45.

(w) Switching charges of the K. C. S. on petroleum and products from Cedar Grove, La., to an industry on the Houston & Shreveport within switching limits of Shreveport, during Federal control, and those on similar shipments from Cedar Grove and Gas Center, La., moving to interstate points subsequent to Federal control, found inapplicable. While it was defendant's intention to restrict application of lower charges named in applicable tariff it did not do so and such tariff must be construed strictly in accordance with its printed language. Moreover, tariff provisions were ambiguous and contradictory, under which circumstances they must be construed in favor of shipper and force and effect be given to those provisions which result in lowest charge. Caddo Central Oil & Rfg. Corp. v. Director General, 92 I. C. C. 627.

(x) Following Clay Grain Co., 78 I. C. C. 539, aggregate of line-haul rates and charges for switching from connection with road-haul carriers to export elevators at Galveston, on export grain from points in Missouri, Iowa, Minnesota, Nebraska, Kansas, Colorado and Oklahoma found unreasonable to extent they exceeded such line-haul rates exclusive of switching charges. Reparation awarded. Armour Grain Co. v. A., T. & S. F., 93 I. C. C. 124.

(y) Prayer for an order requiring construction and operation of an interchange track between intersecting lines of A., T. & S. F. and C., R. I. & P. railways at Courtland, Kans., in order to reduce the mileage and therefore the rate, from Superior to Rock Island points, but more particularly to expedite delivery, complainant alleging loss of business to rival plants which can make more expeditious delivery, denied. No definite evidence was introduced as to probable difference in time over route sought and over present route; nor with respect to time consumed in shipments from competing points. Moreover, record fails to establish that there would be sufficient traffic over the connection to justify its construction and maintenance. Nebraska Cement Co. v. A., T. & S. F., 93 I. C. C. 163.

(z) As an outgrowth of receivership proceedings the United States District Court ordered increase in intrastate switching charges of the Evansville & Indianapolis R. R. Tariffs were forwarded to State commission which "neither accepted nor rejected them" on ground that they failed to comply with State statutes as to notice, but such tariffs were retained in the State commission's files "for information only". HELD: such increased charges assessed on intrastate shipments during Federal control found not illegal, and it is not within this commission's province to pass upon question of whether the district court erred. American Hominy Co. v. Director General, 93 I. C. C. 256.

(aa) Based upon studies submitted tending to show cost of performing the service, proposal of certain carriers to increase their charges for intraterminal and interterminal switching at Detroit, found justified as to the Pere Marquette, Wabash, Pennsylvania, and Grand Trunk railways, but not justified as to the De-

troit & Toledo Shore Line. Switching at Detroit, 95 I. C. C. 21.

(bb) Charges of the N. Y. C. for switching interstate traffic between points on the State Street branch in Rochester and various groups and intermediate points within the Rochester switching limits, found unreasonable in some instances and unreasonable and unduly prejudicial in others. Reasonable and nonprejudicial switching charges prescribed for the future. Rochester Switching Case, 95 I. C. C. 30.

(cc) State Street branch of N. Y. C. in Rochester, N. Y. Interstate class and commodity rates between points on defendants' lines, on the one hand, and industries in the State branch of the N. Y. C. in Rochester, on the other, found unreasonable and unduly prejudicial to extent they exceed the lowest rates contemporaneously in effect between same points and other industries on lines of the N. Y. C. in that city. The State Street zone is industrially, economically, and physically a part of the industrial district of Rochester, although it happens by accident of railroad construction to be 20 miles distant by rail. However, it is in the broad public interest that such zone be included within the Rochester switching limits, and the commission does not believe that such inclusion is inconsistent with carriers' interests. Rochester Switching Case, 95 I. C. C. 30.

(ddee) There is no exact or comprehensive definition of switching service. See Boston Wool Trade Asso., 69 I. C. C. 282, 294, 295. Rochester Switching Case, 95 I. C. C. 30, 44.

(ff) It is proper that industrial-switching charges be relatively higher than reciprocal-switching charges within a switching district, since in the former two terminal services are involved. Rochester Switching Case, 95 I. C. C. 30, 48.

(gg) Contention of defendant that, under the laws of Illinois, complainant is neither owner of a lateral branch-line railroad nor of a private sidetrack and therefore not entitled to a switch connection, not sustained. Dering Coal Co. v. C., C. C. & St. L., 96 I. C. C. 143, 152.

(hh) Rate on coal from Ohio mines to Huntington, Ind., moving over the Erie, found not to have been unreasonable, unjustly discriminatory, or unduly prejudicial as compared with lower rate contemporaneously in effect over the Wabash. Complainant receives coal from Ohio over either road, but when it arrives over the Wabash and is delivered to team track of Erie, a switching charge is assessed, therefore complainant could not profitably take advantage of the lower rate. Bash & Co. v. B. & O., 96 I. C. C. 178, 182.

(ii) Rates on coal from mines in Inner and Outer Crescent districts and Cincinnati, Ohio, to Ben Davis, Ind., found not unreasonable, unjustly discriminatory, or unduly prejudicial as compared with lower rate to Indianapolis, Ind., from the same points and from points in Indiana. Complaint seeking extension of Indianapolis rate plus switching charge to Ben Davis, dismissed. Bash & Co. v. B. & O., 96 I. C. C. 178, 183.

(jj) Proposed increases and reduction in rates on sand and gravel from points in inner and outer zones in Illinois and Wisconsin to Chicago switching district found not justified Although the proposed rates appear reasonable per se they would result in a division of the destination territory into two distinct districts and such a division was not contemplated by the Chicago Producers case, 64 I. C. C. 37, and was condemned by the commission in 89 I. C. C. 484. Suspended schedules ordered canceled without prejudice to the filing of new schedules in which respondents should publish rates from the outer zone, including Waukesha, which are the same to all destinations in the Chicago switching district as defined in the tariff, at the same time preserving the differential of 0.25 cent as between the inner and outer zones. Sand and Gravel Between Points in Illinois and Wisconsin, 96 I. C. C. 325.

(kk) Upon complaint seeking the application of the Atlanta, Ga., rate to complainants' sidings on ground that Sawtell, Ga., was accorded this rate and that complainants' sidings are intermediate to Sawtell from Atlanta, HELD: Rates to complainants' sidings were unreasonable to the extent they exceeded rates to Sawtell so long as fourth section violation existed, and thereafter rates to complainants' sidings were unreasonable to extent they exceeded rates to Constitution, Ga. Randall Bros. v. L. & N., 96 I. C. C. 342.

(ll) Texas Gulf Sulphur Co., found not entitled to allowances from the Santa Fe for switching service performed

by it between Gulf Hill, Tex., and its plant. A carrier has the right to itself perform any transportation service which it may lawfully be required to perform. Atchison Railway Co. v. United States, 232 U. S. 199. When, as here, it is prevented from performing the service by the election of the industry to itself perform it, and when the service of the carrier would not meet the needs and convenience of or be satisfactory to the industry, as is also here the case, the carrier's duty to perform the service is discharged, and consequently there is no obligation resting upon the Santa Fe to make an allowance to the sulphur company for performing the service. Allowances or Divisions Received by Texas Gulf Sulphur Co., 96 I. C. C. 371, 376.

(mm) Proposed joint switching charges of the Detroit & Western and Wabash at Detroit, Mich., found justified. Findings in original report, 95 I. C. C. 21, modified accordingly. Switching at Detroit, 96 I. C. C. 415.

(nn) Rates on coal screenings, shipped from Contrall, Springfield, and Pana, Ill., to Lyons, Iowa, during Federal control found not unreasonable, although lower rates on same commodity were contemporaneously applicable from same points to Clinton, Iowa, within the switching limits of which Lyons is located. Lower rates to Clinton were established through error. Complaint dismissed. Ford Roofing Products Co. v. Director General, 96 I. C. C. 471.

(oo) Increase charges for switching at Kansas City, Mo.-Kans., proposed by Kansas City Southern Ry. Co., found justified in part as indicated. Cost study submitted for a test period warrants the conclusion that the present compensation received for such service is less than the cost properly chargeable against it, including a fair return upon the investment in the facilities used therein. Switching at Kansas City, Mo., 96 I. C. C. 538.

(pp) Rate on fire brick from Vandalia, Mo., to Pearson, Ark., between February 3 and July 24, 1923, found unreasonable to extent it exceeded lower rate established on latter date from and to same points and from Vandalia to El Dorado, Ark., within the switching limits of which Pearson is located. Reparation awarded. Walsh Fire Clay Products Co. v. C. & A. R. R. Co., 98 I. C. C. 458.

(ppa) Rate on common brick from Blue Island, Ill., in Chicago switching district, to Illinois and Indiana points within that district, during Federal control, to which a flat increase of 2 cents per 100 pounds was added under General Order No. 28 of director general, found not unreasonable as compared with rate subsequently established when the rate basis was changed by addition of 25 per cent in lieu of the flat increase. In 64 I. C. C. 273 a rate similar to that here charged was found not unreasonable, and if that decision is correct the rate in effect within the switching district prior to the increase must have been less than a reasonable maximum rate. Moreover, in a similar case, 73 I. C. C. 215, it was found that considering the congested conditions in and around Chicago a rate equal to that charged can scarcely be denominated high even on a low-grade commodity and for comparatively short distances. Illinois Brick Co. v. Director General, 102 I. C. C. 64.

(ppb) Switching charges and assessment thereof in addition to the road-haul rate and transit charge on lumber originating at local points and milled in transit at Spokane found not unreasonable, discriminatory, or unduly prejudicial as compared with the practice of carriers in absorbing such charges on like traffic originating at competitive points. Federal Match Corp. v. G. N. Ry., 102 I. C. C. 353.

(ppc) Rate assessed on sand from LaFayette, Ind., to Kankakee, Ill., found applicable. To effect delivery at complainants' unloading lot a switching service was necessary, charges for which would have been absorbed by delivering line had point of delivery come within meaning of tariff rule which provided that switching charges from or to industries located on line of switching carrier would apply from or to additional industries which might so locate. This unloading lot can not be considered as coming within meaning of this rule, and since complainants were not included in list of industries to which rule applied, lower rate to Kankakee proper was not applicable. Shanks & Gannon Co. v. C., C., C. & St. L., 102 I. C. C. 462.

(ppd) Findings in original report, 80 I. C. C. 229, that intraplant switching charges from complainant's coal-mine tipple to its slack-coal storage bins at Sunnyside, Utah, during Federal control were unreasonable, modified. Additional

evidence adduced showing unfavorable operating conditions under which switching was made indicate that charges prescribed as maxima reasonably might have been somewhat higher. Reparation awarded. Utah Fuel Co. v. D. G., 102 I. C. C. 493.

(qq) In 80 I. C. C. 229 the Commission found the intraplant switching charges averaging $6.69 collected from complainant for the movement of 7,123 cars of slack coal between June 25 and Nov. 19, 1918 from complainants coal mine tipple to its slack coal storage bins at Sunnyside, Utah, as unreasonable to extent they exceeded $2.50 and awarded reparation. The present contention of defendant that the switching at Sunnyside was an intraterminal rather than an intraplant movement and accordingly subject to a higher basis can not be sustained. The movement was between two parts of the same plant and constituted an integral part of the single operation of coke manufacture. As the movement, however, was for a considerable portion of the distance over the tracks of the carrier, it does not fall within the category of a plant operation, as distinguished from the service of a common carrier, over which the jurisdiction of the commission does not extend. HELD, switching charges attacked unreasonable to extent it exceeded $3 per car, reparation awarded. Utah Fuel Co. v. Director General 102 I. C. C. 493.

(qqa) Complainant relied upon comparative switching movements to show unreasonableness in charges for similar movements at its own plant. Carriers, following investigations at comparative points, testified that in no instance was physical situation comparable with that at complainant's plant. FOUND: A mere variation in some aspects of a comparative movement does not necessarily destroy its value as a measure of reasonableness if operations are essentially similar, since comparisons of precisely similar situations would be difficult, if not impossible, to find. Utah Fuel Co. v. D. G., 102 I. C. C. 493, 495.

(qqb) Contention that switching service was an intraterminal rather than an intraplant movement, not sustained where such movement was between two parts of same plant and constituted an integral part of single operation of coke manufacture. In addition, such movement being for a considerable portion of the distance over tracks of a main line carrier, it does not fall within category of a plant operation, as distinguished from service of a common carrier, over which jurisdiction of the commission does not extend. Utah Fuel Co. v. D. G., 102 I. C. C. 493, 496.

(qqc) Charges assessed by St. L.-S. F. Ry. for switching interstate shipments at Arkansas City, Kansas., between its connections and complainants' industries found not unreasonable, considering character of such service and manner in which it is performed, elements of cost involved in the different services, together with other facts of record. Arkansas City Sand Co. v. St. L.-S. F., 102 I. C. C. 559.

(qqd) Maintenance by St. L.-S. F. Ry., of a higher charge for switching interstate traffic at Arkansas City, Kans., than for performing a like and contemporaneous service in switching intrastate shipments, found unduly prejudicial to interstate shippers, unduly preferential of intrastate shippers, and unjustly discriminatory against interstate commerce, on ground that such service is identical whether the traffic is interstate or intrastate in character. Arkansas City Sand Co. v. St. L.-S. F., 102 I. C. C. 559.

(rr) Complainant attacked switching charges since June 30, 1920 for switching interstate carload shipments between their plants at Arkansas City, Kas., and defendants connections as unreasonable, unduly prejudicial and unjustly discriminatory. Arkansas City, about 5 miles from the Oklahoma line, is served by the Frisco, defendant, Santa Fe M. P., and Midland Valley. The Frisco switching charges at Arkansas City between industries on its tracks and its connections have been and are the same for all industries. Prior to June 30, 1920 the tariffs named a charge of $2 on both interstate and intrastate shipments, changed on that date to $5 interstate, increased to $7 August 26, 1920, and $6.30 since July 1, 1922. The charge intrastate were increased to $2.50 on Oct. 23, 1920, reduced to $2.25 on July 1, 1922. The Frisco makes no switching charge on carload shipments moving to or from industries located on its tracks upon which it performs the line haul. The distance from the sand companys plant to the M. P., and Santa Fe connections is about 12,000 feet and to the Midland Valley connection 9,000 feet. The distance from the mill to M. P. and San-

ta Fe connections is 3,600 feet and to the Midland Valley connection 1,400 feet. The case was developed on the theory that it was impracticable to establish a different switching charge for each of the several industries located on the Friscos tracks and that a charge reflecting average costs should be prescribed. Other carriers switching charge at Arkansas City are $2.25 state and intrastate. HELD, switching charges attacked not unreasonable, but unduly prejudicial to extent interstate charges exceed those applicable intrastate, which undue prejudice should be removed. Arkansas City Sand Co., v. St. L. S. F. Ry 102 I. C. C. 559.

(ss) Complainant attacked rates on switching traffic at and between Menominee, Mich., and Marinette, Wis., as unreasonable, unjustly discriminatory and unduly prejudicial. Defendants are the Northwestern and Milwaukee. The Ann Arbor reaches Menominee by ferry but otherwise those cities are served directly only by defendants and the Wis. and Mich. East of Bagley Junction, Wis., the W. & M., operates over the rails of the Milwaukee which extends through Marinette to Menominee. The Victory mill is located on joint tracks of defendants. Mill No. 2 is served only by the Northwestern and mill No. 1 only by the Milwaukee. There are plant yards at the mills last noted but not at the Victory mill. No. 15087 attacks a rate of 7.5c minimum 40,000 pounds for switching wood pulp, in carloads, between mills No. 2 and 1, while sub. No. 1 attacks a rate of 7c minimum 40,000 pounds for switching carloads of wrapping paper and paper bags between the paper mills and between mill No. 2 and the Victory mill. Defendants have a joint track into the Victory mill. The movement between that mill and mill No. 2, a distance of 5.9 miles, is a service wholly by the North western. Between mills No. 2 and No. 1 the haul is a joint service by both defendants. The length of the haul is 7.1 miles from mill No. 2 to mill No. 1 and 9.1 miles in the reverse direction. In these movements three switching crews are required, there is some trucking of the traffic between the mills but there has been little or no rail movement. The rates for trucking appear to be materially lower than the rates attacked. The rate attacked and applicable on wood pulp is the minimum rate on class C traffic, the normal class C rate being 5c. The normal and minimum fifth class basis, applicable to such movement of wrapping paper and paper bags is 6.5c and 11c and the rate attacked and applicable is a commodity rate. HELD, reasonable maximum rates in lieu of those attacked would not have exceeded and would not exceed 3.5c and 4c in 15087 and sub. 1, respectively. Sub. No. 2 attacked a rate of 43c per ton applying on soft coal, carloads, from the coal docks at Menominee to mill No. 1. The rate attacked is a commodity rate, materially lower than the class D rate, which would otherwise apply. Thus the normal class D rate is 5c and the minimum rate applicable on class D rate is 6.5c. The tracks to the dock are jointly used by defendants, but the traffic is handled exclusively by the Milwaukee. This traffic is the only coal movement over the Milwaukee and apparently the only coal movement over the Northwestern between these cities, and defendants consider that the class basis should properly apply. Defendants show that this rate compares favorably with intrastate rates for corresponding distance, applicable on coal in various states. HELD, rate attacked on coal not unreasonable. Sub. 3 attacks a charge of $9 per car maintained by the Northwestern for switching between point of connection with the Milwaukee at Menominee and the Northwestern industries at Menominee for account of W. & M. Ry. The W. & M., absorbs the Northwestern switching charges at Menominee on outbound shipments from complainants mill. On inbound traffic the record is not sufficiently developed to disclose the facts except as to the switching charge of the Northwestern on pulpwood to mill No. 2 when from Oba, Ontario, Can., originating at Elsas, Ont. Can., and moving the W. C. & H. B., C. P., Soo Line, and W. & M. The distance from the Northwestern-Milwaukee interchange tracks to mill No. 2 is about 2 miles. The charge has not been shown to be unreasonable per se. When this charge was increased to $9 per car no increase was made in the corresponding charge of the Northwestern on traffic received from the Milwaukee, and that charge is now $2.25 per car. HELD, this switching charge unduly prejudicial to extent it exceeds the charge maintained on traffic received from the Milwaukee, at Menominee, reparation denied. Marinette & Menominee Paper Co. v. C. & N. W. Ry., 107 I. C. C. 21.

(tt) The fact that the interchange facilities are inadequate for convenient operation is not of itself a defense if through routes are shown to be necessary or desirable in the public interest. Facilities for interchange exist; if inadequate they may be made adequate to perform the service which the law requires. York Mfrs. Asso. v. P. R. R. Co., 107 I. C. C. 219, 239.

(uu) Respondent, Indiana Harbor Belt, proposed to increase the rate between stations on its line from $8.10 per car to $12 per car on manufacturing plant refuse, including ashes and cinders, not having value for construction purposes, and on quarry strippings, carloads, regardless of weight. At present manufacturing plant refuse is divided into two classes, the first, "ashes and cinders, clean, having value for construction purposes" and the second "manufacturing plant refuse, except clean ashes and cinders having value for construction purposes. A rate of $12 per car applies on the first class and the rate of $8.10 per car on the second. Respondent proposes to eliminate the distinction and apply the higher rate on both classes of refuse, and also on quarry strippings. Bearing in mind the worthless character of the commodity and the unexacting conditions incident to its transportation a charge of $8.10 seems sufficient for a movement of less than 3 miles. The time charged for its performance is computed on the assumption of the most unfavorable conditions of car supply, and even so appears excessive for economical operation. There may be instances not explained in this record where the present rate is inadequate for the service performed or where respondent could justify maintenance of higher specific rates, in line with those published by other carriers for similar services, in order to prevent this undesirable traffic from being diverted from competing lines to points on its own road. Such situations do not warrant a general increase in the rate for all movements to the basis of the rate applying on cinders having value for construction purposes. HELD, suspended schedules not justified. Ashes and cinders, 107 I. C. C. 408.

(vv) Having elected to perform a switching service, it must provide a reasonable charge therefor. Hammond Iron Works v. P. R. R. 107 I. C. C. 473, 481.

(ww) Present adjustment of rates on cotton from Oklahoma, Arkansas, Texas, and Louisiana to Texas Gulf ports found unduly prejudicial to the uptown and interior warehouses and compresses and unduly preferential of the waterfront warehouses and compresses; the rates should be so adjusted that one rate will apply for all deliveries within the usual switching limits of the ports, except that the export should be made higher than the domestic rates by amount equal practice of the carriers of absorbing to the wharfage charge. This finding is not to be construed as condemning the drayage charges in lieu of switching. Reasonableness of the rates was not in issue and the findings herein are not to be construed as authorizing the carriers to increase their present revenues, rather, the rates should be so readjusted as to preserve existing revenues. Application of Rates on Cotton to Gulf Ports. 100 I. C. C. 159.

(xx) Switching charges assessed during Federal control on carload movements of sulphuric acid, sulphur, salt, and fuel oil betwen various divisions of complainant's plant at Newark, N. J., found applicable and not unreasonable, considering the density of traffic in this district, the time and labor consumed in the movements, the dangerous character of the commodity of which most of the shipments consisted, and the number of movements involving a main-haul. Reparation awarded for certain overcharges. Butterworth-Judson Corp. v. Director General, 100 I. C. C. 337.

(yy) Proposed increased charges for switching carload traffic moving in interstate commerce in the switching district of Birmingham, Ala., found not justified, in view of fact that the cost-study on which respondent relies falls short of justifying the increases proposed. Switching in Birmingham District, 100 I. C. C. 763.

(zz) Following 83 I. C. C. 51, rates on naphtha, in tank-car loads, from Constantine refinery, near Devol, Okla., to Burkburnett, Tex., both origin and destination being within the Burkburnett yard limits, found unreasonable to extent they exceeded lower joint-line intracity switching rates applicable within the switching limits of Burkburnett. Reparation awarded. Skelly Oil Co. v. M., K. & T., 101 I. C. C. 47.

(3a) Upon reconsideration, original report 88 I. C. C. 368, total charges

collected on interstate shipments to and from complainant's plant on the Owasco River Railway at Auburn, N. Y., which included switching charges of the Owasco, found, not unreasonable as compared with flat Auburn rate. Contention by complainant that shipper in a given community is entitled to line-haul rates applicable to that community and if he pays a rate in excess thereof an abnormal rate structure exists, not sustained. An award of reparation would involve conclusion that line-haul rates to and from Auburn were up to the limit of reasonable maximum rates and that the relatively small switching charge sufficed to carry rates over the line by that amount. Such a conclusion is repugnant to common sense, nor does evidence establish any damage to complainant from undue prejudice found to exist in original report, which is hereby reversed. International Harvester Co. v. N. Y. C. 101 I. C. C. 89.

(3b) Rate charged on shipments of sand and gravel from Scottsville, N. Y. to Kodak Park Siding, which is within the general switching limits of Rochester, N. Y., found applicable. A lower rate was published to Rochester, and certain specific stations in Rochester, all named in tariff index, but this enumeration of stations obviously excluded the application of the lower rate to Kodak Park Siding, which was not named therein. Eastman Kodak Co. v. Director General., 101 I. C. C. 103.

(3c) In 93 I. C. C. 224, division 1 found that the rates charged complainant for the transportation of inbound shipments of iron, steel, coal, lumber, machinery and other commodities, and outbound shipments of new and repair cars, car trucks, car parts, and miscellaneous commodities, carloads, and in cars containing a number of less carloads shipments, not unreasonable during the period of federal control, reparation denied, complaint dismissed. No attempt has been made to test the reasonableness of the line haul rates as applied to the line hauls to and from the district, or of the combinations applied to complainants shipments on which reparation is sought otherwise than by the assured test of the indicated practice. It is proper to find a violation of the second or third section of the act where the trunk lines unlawfully discriminate in their practices toward different industries, but an adverse finding under the first section should not rest upon the artificial ground set up. The second contains no proof of pecuniary damage to complainant by reason of such unjust discrimination or undue prejudice as may have existed, and, as the so-called district rates now apply to and from complainants industry the alleged violations of sections 2 and 3 need not be considered. HELD, rates attacked not unreasonable, no damage shown, complaint dismissed. Pressed Steel Car Co. v. Director General. 109 I. C. C. 75.

(3d) Complainant attacked commodity rate of 6.5c charged on 15 cars of logs originating in Virginia in Sept. 1923 from Coopers Point, Camden. N. J., to Victor Talking Machine Co., Siding Camden, N. J., as unreasonable. The movement was within the switching district of Camden and required a rail haul to Pavonia, N. J., and subsequent switch by a second engine to a siding, a total distance of 2.47 miles. Contemporaneously defendants maintained between these points switching rates of $11 per car, on all carload freight, except coal and coke, paying a road haul charge when for movement in the same car, and $13 per car on all other carload traffic except coal and coke. The $13 charge was further restricted to be inapplicable on shipments arriving at or moved from Camden by water. It appears that the $13 charge would have applied if the logs had reached Bairds wharf by motor truck instead of by water. HELD, rate attacked unreasonable to extent it exceeded $13 per car, reparation awarded. E. Rickards v. P. R. R. 109 I. C. C. 297

ALL OTHER CITATIONS

Simms Oil Co. v. H. & T. C. R. R. Co., 85 I. C. C. 537; Judson Mfg. Co. v. Director General, as Agent, 85 I. C. C. 637; St. L. S. F. Ry. Co. v. N. A. Ry. Co., 88 I. C. C. 107; Beaver Sand Co. v. Director General, as Agent, 88 I. C. C. 115; International Harvester Co. v. N. Y. C. R. R. Co., 88 I. C. C. 372; Trackage Charges at St. Louis, 88 I. C. C. 693.

§4½. Construction of Contracts for Sidetracks.

See Side Tracks and Spur Tracks; Special Contracts; Trackage Contracts.

(a) Complainant sought an order for the construction of an interchange track between the Santa Fe and Rock Island at Courtland, Kas., in order to reduce the

mileage and therefore the rate, from Superior, Neb., to Rock Island points, but more particularly in order to expedite delivery. Defendants have not urged that the connection sought is not reasonably practicable nor that it could not be put in with safety. Their objection is that the volume of traffic through Courtland is not sufficient to justify the order prayed. Without here determining whether this is a lateral, branch line of railway contemplated by the provisions of the act, HELD, the record fails to show that there would be sufficient traffic over the connection sought to show that the construction would be justified, complaint dismissed. Nebraska Cement Co. v. A. T. & S. F. Ry., 93 I. C. C. 163.

(b) Interstate Commerce Commission on finding that continuance of switching service for certain shipper on certain side track results in undue discrimination between shippers, need not order railroad to discontinue service on particular siding, but may merely order railroad to remove the undue discrimination between interstate shippers, and give railroad discretion to adopt a satisfactory method of meeting the requirement. Western & A. R. R. v. Georgia Public Service Commission, 45 Sup. Ct. 409.

§6. Reciprocal Switching.

See Reciprocal Switching.

(a) Defendants' refusal to interchange traffic from or to upper town, Lockport, N. Y., at a point in lower town, Lockport, and to provide for reciprocal absorption of switching charges from and to such point found not unreasonable or otherwise unlawful. While defendants interchange traffic upon a reciprocal switching basis at Buffalo, N. Y., and other points on the Niagara frontier, traffic and operating difficulties encountered in effecting interchange at lower town have no parallel with those encountered at such other Niagara frontier points. Moreover, a requirement for interchange at lower town would not be in the public interest. Lockport Board of Commerce v. N. Y. C. R. R. Co., 89 I. C. C. 144.

(b) Complainant attacked switching charges applicable at Rochester, N. Y., as unreasonable. By reciprocal switching is meant switching to and from a connection with another carrier where that other carrier has a line haul. Subject to a minimum of 12,000 pounds and various limitations as to minimum revenue and maximum absorption, the reciprocal switching charges in the main switching district are absorbed by the various carriers, so that industries located in that district enjoy the flat Rochester rate on carload traffic, except coal and coke, no matter by what line it enters or leaves the city. The effect of these reciprocal switching charges and absorptions is that in the districts where they apply the line haul rates of the various carriers reach every private siding. Similar opportunities are not available on the State Street branch. There are switching charges between industries in Groups F, G and H but there are no such charges between those groups and the Charlotte switching district or the main switching district. Instead of switching charges, line haul rates apply to such movements; and except as to a few commodities, these line haul rates are the minimum scale of class rates, beginning with 31.5c first class and ending with 9c sixth class. While State St. industries do not have the benefit of the reciprocal switching arrangement accorded industries in the main switching district, they do, with certain exceptions, enjoy the same class and commodity rates as are in effect to and from the main switching district. No joint class rates are published between State St. and stations on the Erie in New York, Pennsylvania, or New Jersey, except Patterson, N. J. The Central states that arrangements for such rates, except to and from New York City have almost been completed. With one or two exceptions, the commodity rates between State St. and Erie stations are on the same basis as the class rates. Complainant alleged that the failure of the Central to maintain switching rates between industries in State St. on the one hand, and its connections with other carriers within the corporate limits of Rochester, on the other hand, and the assessment of rates and charges between industries in State St. and interstate points on defendants lines in excess of the rates and charges between stations within the Rochester switching limits and such points result in unreasonable, unjustly discriminatory and unduly prejudicial rates and charges. It seems clear from the record that industries in the State St. zone are entitled in all cases to the same interstate class and commodity rates as are enjoyed by industries on the Central in the main switching dis-

trict. The shortest rail distance from Rochester to the New York-Pennsylvania state line is in excess of 100 miles, and the Central concedes that on long haul traffic the grouping of stations less than 20 miles apart is proper. When, in addition to that fact, it is borne in mind that the State St. zone was in fact the nucleus of the city and has from the beginning been, and is now, in the very heart of the business district, the case in favor of a parity of rates becomes complete. The real issue here, therefore, is whether the State St. zone may fairly and properly be included within the area in Rochester in which freight is moved under the average switching charge method rather than under the line haul rate plan. The State St. district is industrially, economically, and physically a part of the industrial district of the city, although it happens by the accident of railroad construction to be 20 miles distant by rail. Under such circumstances, it is certainly in the broad public interest that the State St. zone should be included within the Rochester switching limits, and the Commission does not believe that it is inconsistent with the carriers interests. It remains to determine what switching charges should apply to the State St. zone. Plainly they must be consistent with and be governed by the switching charges now maintained within the Rochester industrial district. A charge of $20 per car for carload movements between the State St. zone and connections of the Central in group A would be just and reasonable. In this connection it may be said that the ultimate solution of the State St. zone problem appears to be the construction of a direct connection between that zone and the main line of the central. The Commission thinks that a charge of $15 per car for carload movements between the Charlotte district and the Centrals connection in Group A and between the Central and B. R. & P., connection at Charlotte and the State St. Zone would be just and reasonable. The Central now publishes switching charges in Rochester which are subject to absorption by connecting carriers. If the State St. zone is included within the Rochester switching limits it will be a violation of section three by the Central if it does not make the switching charges that are published to and from this zone subject to absorption by connecting carriers in the same manner and to the same extent as are the existing switching charges. It will also be a violation of section three by the connecting carriers if they do not absorb the new switching charges in the same manner and to the same extent as the old. Rochester Switching Case, 95 I. C. C. 30.

(c) K. C. S., proposed to increase its switching charges on carload freight between points in Kansas City, Mo-Kas. The history of respondents switching charges at Kansas City is in 68 I. C. C. 591. The reciprocal charges range, generally, from $4.95 to $6.30, with slightly lower or higher charges for particular movements, and apply to or from respondents team tracks as well as industries on its terminals and interchange points with other railroads. The switching charge to or from points on the May Street switch is 2c per 100 pounds in addition to the charge per car. No increases are proposed in this or any other charge per 100 pounds, but the minimum charge in connection with certain charges in c per 100 pounds is proposed to be increased from $6.30 to $12 per car. It is proposed to increase the reciprocal charges by amounts ranging generally from $1.95 to $2.05 per car, with resulting charges in most instances of $7 where the charge is now $4.95 and $8.25 where the charge is now $6.30. The various lines serving Kansas City generally provide by tariff authority for the absorption of respondents switching charges on all competitive traffic, with the usual reservation that their revenue must not be reduced below a certain amount, generally $18 per car. Respondents present charges at Kansas City are generally higher than the switching charges of other carriers serving that point, except the Kansas City Terminal. The switching charges under suspension are generally higher than the switching charges of other carriers at other Missouri river points, Minneapolis, St. Paul and Duluth, Minn., and Memphis, Tenn. HELD, proposed increases in the reciprocal switching charges on grain products and on livestock in trains of 10 cars or more have been justified; proposed increases in reciprocal charges on other traffic not justified; reciprocal charges on such other traffic have been justified to extent of $6.40 where it is proposed to increase the charges to $7, to the extent of $7.50 where it is proposed to increase to $8.25, to the extent of $9 to and from Mount Washington,

Fairmont Park, and Sugar Creek, and to the extent of $9 per car as a minimum charge to Leeds under the rates per 100 pounds, to the extent of $8 and $9 to team tracks where charges of $9 and $10.25 are proposed, and, for intrayard or interyard charges to extent of $1 per car higher than the reciprocal charges herein approved. Switching at Kansas city, Mo., 96 I. C. C. 538.

(d) There is no general reciprocal absorption of switching charges in the Pittsburgh district such as prevails in other metropolitan districts. Pressed Steel Car Co. v. Director General, 93 I. C. C. 224, 232.

(e) By reciprocal switching is meant switching to or from a connection with another carrier where that other carrier has a line haul. Rochester Switching Case, 95 I. C. C. 30, 33.

(f) By reason of extent of respondent's terminals, the large number of industries thereon and the number and availability of its team tracks, it handles a great many more cars for other carriers than other lines handle for it. Respondent contends that reciprocity ceases when the ratio of service becomes so disproportionate. Switching at Kansas City, Mo., 96 I. C. C. 538, 542.

(g) The fact, however, that interchange switching rates are or are not reciprocal, is unimportant, as the so-called reciprocity theory of establishing switching charges has been condemned by the Commission in many cases. Marinette & Menominee Paper Co. v. C. & N. W. Ry., 107 I. C. C. 21, 28.

(h) Complainant alleged four issues with respect to (a) the lawfulness of the practice of the Pennsylvania and Western Maryland of interchanging carload traffic with each other at cities near York, Pa., by reciprocal switching or other methods while failing and refusing to interchange such traffic at York; (b) whether it would be in the public interest and practicable to require the use of the terminal facilities of the Pennsylvania at New York by the Western Maryland; (c) the lawfulness of the practice of the Pennsylvania and the Western Maryland of extending the use of their track to each other for the purpose of the terminal receipt and delivery of traffic at industries within a limited zone at York while refusing a similar service and facilities to industries and shippers outside the zone (d) the lawfulness of the practice of the Pennsylvania in interchanging traffic with the Maryland & Pennsylvania at York while failing and refusing to interchange traffic with the Western Maryland. York, Pa., is served by the Pennsylvania, Western Maryland and the Maryland & Pennsylvania. About 139 industries have direct connection with the rails of those railroads by spurs or industry sidings—most of the plants with only one of the three railroads. Although there is physical connection between their lines at York, the Pennsylvania and Western Maryland do not interchange at York carload traffic destined to or originating within that city. Such traffic is interchanged at Hanover, Pa., about 19.5 miles from York, and at other points where their lines connect. Within a limited zone at York, about a mile in length, the tracks of the Pennsylvania and Western Maryland are adjacent and parallel, with cross over connections. Each carrier uses the tracks of the other to receive or deliver carload freight at 17 industries located within the zone. Eight of these industries connect with the Western Maryland, seven with the Pennsylvania and two with both lines. These 17 industries are in the same situation as if each was physically located on the two lines in question. The Pennsylvania and Maryland & Pennsylvania interchange interstate traffic at New York on the basis of the York rates. The Pennsylvania and the Western Maryland also interchange traffic with each other and with other carriers at cities near York under reciprocal switching or similar arrangements. For the present it is sufficient to say that shippers within this trackage zone have all the advantage which would accrue to them if there were interchange at York with mutual absorbtion of switching charges, and also can take advantage of transit arrangements of bothlines at no disdvantage in rates. Within the zone the Pennsylvania and Western Maryland maintain joint class rates on the flat York basis between York and points on each others respective lines. This arrangement will ordinarily involve a haul through York by the Pennsylvania and a back haul by the Western Maryland on traffic originating north, south and east York. A number of joint commodity rates are in effect over like routes. The joint rate arrangement does not extend to points on the connections of either carrier. If a

shipment originates on a connection of the Pennsylvania, and comes to York via the Pennsylvania for delivery to an industry that is local to the Western Maryland, the local rates involved in the haul to Hanover and back would be added to the line haul rate. Moreover, terminal routing must be specified to secure application of the joint rates provided. If through ignorance of the circumstances attending delivery at York a shipper at a distant point fails to designate terminal routing, the car may arrive on the wrong road with attending inconvenience and expense. The shippers within the zone are not required to have terminal routing specified in order to enjoy the York rates. The Pennsylvania and the Maryland & Pennsylvania interchange traffic at York under a joint rate arrangement instead of by mutual absorption of switching charges. Joint rates on the flat York basis apply between industries on the Pennsylvania at York and points on the Maryland & Pennsylvania, and between industries on the Maryland & Pennsylvania and points on the Pennsylvania and its connections, except the Western Maryland. The Pennsylvania also switches traffic not covered by the joint rate arrangement from or to its junction with the Maryland & Pennsylvania at a charge of 42c per ton. This charge is not absorbed by the Maryland & Pennsylvania. The vital importance of the trackage arrangement to industries located in the trackage zone has been shown. This arrangement has been in effect for many years. Business has been planned and adjusted upon the assumption of a continuance of the practice. The carriers by contracts have provided for its continuance, and while such contracts may not stand in the way if they conflict with the enforcement of the interstate commerce act, the Commission should not strike them down without considering whether other means of removing violations of the act may not be adopted which will preserve such contract rights. In practical effect to shippers the interested carriers have established within industrial York a limited zone wherein they accord to shippers the equivalent of reciprocal switching, with the attendant advantage heretofore set forth, but the Pennsylvania steadfastly refused to do the same for other shippers outside the zone. The record shows that, outside of points in trunk line territory where the Pennsylvania dominates, reciprocal switching is quite generally in effect in this country. It was in effect in York for 16 months during federal control, to the entire satisfaction of York shippers. The Commission has commended reciprocal switching arrangements as being advantageous to the shipping public and carriers alike. HELD, the practice of the Pennsylvania and Western Maryland of interchanging traffic at Hagerstown, Md., but refusing to do so at York, Pa., under substantially similar transportation conditions is ununduly prejudicial to York and shippers there located, and unduly prefers Hagerstown and its shippers. That the practice of the Pennsylvania and the Western Maryland of extending the use of their tracks to each other for the purpose of terminal receipt and delivery of freight at industries in York within the trackage zone described, thus giving such industries the benefits and advantages in service, rates, and routes of location upon both lines, while contemporaneously refusing to accord to shippers or industries on their lines without the zone similar benefits and advantages, is unduly preferential of industries within the zone and subjects industries and shippers on their lines without the zone to undue prejudice and disadvantage. Shippers located in the present trackage zone have had the benefit of the flat York rates as well as the advantages of the service and routes of both the Western Maryland and the Pennsylvania, for a period of over 30 years. The withdrawal of these facilities now would result, in many instances, in increased rates to shippers located on either line desiring to use the service and routes of the other, for which increase no justification has been offered. No increases would result where there are now joint rates, but as a matter of simple justice shippers in the present trackage zone are entitled to a continuance of the service, rates, and routes of both lines substantially to the same extent as at present enjoyed. To withdraw this service now would be to deny shippers there located reasonable transportation facilities. HELD, further for the future it will be the just, fair and reasonable practice to be followed by the Pennsylvania and Western Maryland to continue to accord to industries within the trackage zone on interstate traffic the flat York basis of rates, with the ability to use the service and routes of both carriers, including the transit arrangements of each on the same terms as

at present used by shippers within the zone. That the practice of the Pennsylvania and Western Maryland of according to industries within the trackage zone on interstate traffic the flat York basis of rates and the advantages in service and routes of both carriers is tantamount in practical effect to the maintenance of a limited reciprocal free switching district. That there is no warrant from a transportation standpoint for according to industries on their lines outside the present trackage zone any higher basis of rates or any substantial difference treatment from that contemporaneously according to industries within the zone, and that for the future it will be unreasonable and unduly prejudicial for the Pennsylvania and Western Maryland to maintain any higher basis of rates or accord substantially different treatment or service on interstate traffic to or from such industries than is contemporaneously in effect or is accorded to industries within the present trackage zone. That for the future it will be in the public interest, and will be the just, fair and reasonable practice to be followed by the Western Maryland and Pennsylvania, to establish a switching district at York, with interchange at that point, and with reasonable switching charges, such switching district to include all industries in industrial York now having siding or spur connections with either carrier whether within or outside the trackage zone. There remains the question whether the Pennsylvania should be required to perform a "bridge" service between the Western Maryland and the Maryland & Pennsylvania. If the Maryland & Pennsylvania forwards a car from York to a point on the Western Maryland at York or elsewhere on its line, or to a point reached by Western Maryland routes and not reached by the Pennsylvania, it is clearly the duty of the Pennsylvania to switch that car at York and to establish a reasonable switching charge for the service. If the Pennsylvania will not voluntarily adjust this situation, the matter may be again brought to the attention of the Commission in this or in a subsequent proceeding. York Mfrs. Asso. v. P. R. R. Co., 107 I. C. C. 219.

(i) The opposition to reciprocal interchange with another carrier is based primarily on the natural desire of the first railroad to retain to itself the long haul on all traffic tributary to its lines. While this is a right ordinarily safeguarded to a carrier by the provisions of section 15 (4) of the act, the Commission has repeatedly found that the technical construction of one portion of the act may not be relied upon by carriers to justify a violation of other provisions. York Mfrs. Asso. v. P. R. R. Co. 107 I. C. C. 219, 236.

(j) Reciprocal switching arrangements place all the railroads entering the city in competition for the business of every shipper, and thus afford the best possible service to the public. York Mfrs. Asso. v. P. R. R. Co., 107 I. C. C. 219, 240.

(k) Respondent G. C. & S. F., proposed to cancel its reciprocal switching charge of $3.15 per car applicable on traffic to and from Fair Grounds, Beaumont, Tex. The effect of the proposal would be to eliminate Fair Grounds as a point to and from which respondent will switch connecting line traffic. Though included in the tariff as one of the industries entitled to the reciprocal switching arrangement, Fair Grounds is not even a siding, but merely a location on respondents spur track which passes the Fair Grounds of the protestants, where cars are placed and where freight may be loaded or unloaded by shippers generally. It is near the terminus of the spur. There are no industrial or side tracks, private or public, on this spur. Respondents policy is to reserve its team tracks exclusively for traffic on which it obtains a line haul. The fair grounds in other large cities are generally served by railroads and can be reached without trucking. HELD, proposed schedule not justified. Switching at Beaumont, 112 I. C. C. 125.

ALL OTHER CITATIONS

C. L. S. & S. B. Ry. Co. v. L. E. & W. R. R. Co., 88 I. C. C. 525.

§7. Right to connection.

See Electric Lines VIII.

(a) Complainant alleged that the failure and refusal of defendant to construct, maintain, operate, and install a switch connection between its line of railroad and a track constructed by complainant and extending from its coal mine to defendants right of way; and that the failure and refusal of defendant to receive or accept carload shipments of coal for interstate transportation, and to furnish cars for such traffic, is in vio-

lation of section 1 of the act. The Commission is asked to require the defendant to construct and maintain a switch connection, to accept interstate shipments of coal tendered it, and to award reparation all damages sustained by complainant from Dec. 1, 1923 to the effective date of the order. All points are in Illinois. The principal reasons advanced for the failure of the mine to develop properly is that the I. C., is unable to furnish sufficient car service, and that by having but one outlet it is deprived of additional markets. The mine is located on a branch line about 50 miles from the assembling yard, and the Central by reason of curves, grades, and other conditions is unable to handle in excess of 25 loads per train from the mine to the assembly yard. Complainant asserted that the mine would soon reach its capacity if it were granted the additional service of the defendant. At the hearing counsel for complainant admitted that this was their sole object in building a switch track and asking for a connection thereto. HELD, complainants siding has been constructed, that application in writing has been made by complainant for a switch connection therewith, and that interstate traffic has been tendered by complainant within the meaning of section 1; that there will be sufficient business to justify the construction and maintenance of the proposed connection; that the proposed connection is reasonably practicable and can be put in with safety; and that it should be constructed and maintained by defendant. Reparation denied. Dering Coal Co. v. C. C. C. & St. L. Ry., 96 I. C. C. 143.

(b) If the prerequisite statutory conditions exist the track connection must be made whether desired by the carrier or not. The shipper must construct his sidetrack before the carrier is obligated to grant him the switch connection. Dering Coal Co. v. C. C. C. & St. L. Ry., 96 I. C. C. 143, 153.

(c) Proposed track from coal mine having existing shipping facilities, to connect with a second railroad not adjacent to it, HELD: Not a spur track construction of which the Illinois Commerce Commission has jurisdiction to authorize under Public Utilities Act, §§ 45, 58 (Smith-Hurd Rev. St. 1923, c. 111⅔, §§ 45, 62), or under Mines Act, § 1 (Smith-Hurd Rev. St. 1923, c. 94, §1), or under Const. art. 13, §5, where by agreement two other railroads were granted operating rights over it, and it constituted a physical connection of three railroads completely adapted to extension of their lines. Cleveland C. C. & St. L. Ry. Co., v. Commerce Commission ex rel, J. K. Dering Coal Co., (Ill., 1925), 146 N. E. 606.

(d) Proposed track from coal company already having shipping facilities, to connect with second railroad not adjacent to it, HELD: To constitute an "extenstion" of such road within meaning of Interstate Commerce Act, § 1, pars. 18, 22, as amended, Feb. 28, 1920 (Comp. St. Ann. Supp. Ct. U. S. 1923, § 8563), and hence to be a matter in which sole jurisdiction was vested in Interstate Commerce Commission. Cleveland C. C. & St. L. Ry. Co. v. Commerce Commission ex rel. J. K. Dering Coal Co., (Ill., 1925), 146 N. E. 606.

(e) Const. art. 13, §5, requiring railroads to provide certain connections, HELD: Not to entitle coal company already having shipping facilities to compel a connection with an interstate railroad not adjacent to it, where to do so would connect two or more railroads, and amount to an extension of them. Cleveland C. C. & St. L. Ry. Co. v. Commerce Commission ex rel. J. K. Dering Coal Co., (Ill., 1925), 146 N. E. 606.

(f) Public Utilities Act, §45 (Smith-Hurd Rev. St. 1923, c. 111⅔, §45), requiring railroads to provide certain connections with shippers, does not apply to situations coming under Federal Transportation Act. And as to such the latter act is supreme. Cleveland, C. C. & St. L. Ry. Co. v. Commerce Commission ex rel. J. K. Dering Coal Co. (Ill., 1925) 146 N. E. 606.

(g) That proposed track from coal company, already having shipping facilities, to connect with a second railroad now adjacent to it, was to be built by railroad, would not authorize connection, where coal company was to pay for and own it, and railroad was but agent of coal company in building track. Cleveland C. C. & St. L. Ry. Co., v. Commerce Commission ex rel. J. K. Dering Coal Co. (Ill., 1925) 146 N. E. 606.

(h) The "provision" to paragraph 17, §402, of the Act of Congress, known as the Transportation Act of 1920 (41 Stat. 476 (U. S. Comp. St. Ann. Supp 1923, § 8563), and paragraph 22 of said section, reserves to the state the right to exercise its police power to require phys-

ical connection between railroads in order to interchange intrastate commerce, and the order of the state corporation commission, as agent of the state, requiring the same, is binding upon the railroads, except when it is inconsistent with some lawful order of the Interstate Commerce Commission, or when it amounts to an unjust discrimination against, or an unreasonable burden upon, interstate commerce. Midland Valley R. Co. v. State (Okla., 1924), 232 Pac. 113.

(i) Prayer for an order requiring construction and operation of an interchange track between intersecting lines of A., T. & S. F. and C., R. I. & P. railways at Courtland, Kans., in order to reduce the mileage and therefore the rate, from Superior to Rock Island points, but more particularly to expedite delivery, complainant alleging loss of business to rival plants which can make more expeditious delivery than it can, denied. No definite evidence was introduced as to probable difference in time over route sought and over present route; nor with respect to time consumed in shipments from competing points. Moreover, record fails to establish that there would be sufficient traffic over the connection to justify its construction and maintenance. Nebraska Cement Co. v. A., T. & S. F., 93 I. C. C. 163.

(j) Switch connection asked for by complainant between the track constructed by it from its coal mine near Eldorado, Ill., and the line of defendant found to be reasonably practicable, that it can be put in with safety, and that there will be sufficient business to justify the construction and maintenance. Connection ordered under provision of section 1 of the act. Dering Coal Co. v. C., C., C. & St. L., 96 I. C. C. 143.

(k) Contention that installation of switch connection sought would complete a new connecting railway between the Illinois Central and defendant without a certificate of public convenience and necessity having been first obtained, as required by law, for extension of line, not sustained. Dering Coal Co. v. C. C. C. & St. L., 96 I. C. C. 143, 151.

(l) Damages sought for failure to install a switch connection, accept freight, and furnish cars HELD: No finding or order with reference to alleged damages sustained will be made; this is without prejudice to complainant to pursue such remedy as it may have in a court of competent jurisdiction. Dering Coal Co. v. C. C. C. & St. L., 96 I. C. C., 143, 153.

(m) Proposal of Monongahela West Penn. Public Service Co. to cancel intrastate rates on coal from mines on its line and to eliminate mine sidings from its list of stations, found justified. Sidetracks concerned have not been used for approximately two years, with little likelihood of future operation except under abnormal market conditions, and in justice to carrier it should not be compelled to maintain switch connection and continue present rates because of a remote possibility of a return of favorable market conditions under which mines previously operated. Moreover, contracts between shippers and the Monongahela provided among other things, that carrier should have the right, at any time after 30 days' written notice, to discontinue use of siding, terminate the contract, and remove tracks, and such written notice had been duly served. Hood Coal Co. v. M. V. T. Co., 101 I. C. C. 719, 723.

(n) Upon petition of defendant Commission reopened 96 I. C. C. 143, directing defendant to construct and maintain a switch connection with complainants track. The Supreme Court of Illinois is charged with the duty of construing the laws of Illinois. Under the laws of that state a private track becomes a public track if and when it crosses a public highway. However, the laws of Illinois and the decision of the supreme court of that state in no way affect the character and use of the track so far as interstate commerce is concerned. The commission has issued no certificate. It follows that as to interstate commerce no carrier has a right of operation over this track which would change its character from a private track to a public track. The Commission is not concerned with the character of the track with respect to intrastate commerce. HELD, original finding affirmed. Dering Coal Co. v. C. C. C. & St. L. Ry. 109 I. C. C. 55.

(o) Complainant sought the establishment of a switch connection between the tracks of the defendants, Wichita Falls, Ranger and Fort Worth R. R. and Cisco and Northeastern in the city of Breckenridge, Tex., alleging that the absence of such a connection results in inconvenience and expense to shippers causes excessive drayage charges and misrouting of freight. From the record

it appears the movement of distillates and the shifting of empty tank cars from one plant to another seem to be their particular cause of complaint. The exercise of care in fully describing to shippers the route to be followed would eliminate considerable of the difficulty. That the connection would be reasonably practicable and could be put in with safety is not questioned. It goes without saying that where traffic can only move via one route and another route is subsequently made available for such traffic that some of said traffic will be diverted to the new route. The complaining parties are at present adequately served by existing routes with respect to interstate commerce, and it is shown, that the benefit accruing to complainants would not offset the detriment sustained by others. HELD, complaint dismissed. Breckenridge Chamber of Commerce, v. W. F. R. & F. W. R. R. 109 I. C. C. 81.

§9. Reparation.

See Reparation.

(a) In 69 I. C. C. 282 the Commission prescribed switching limits at Boston, Mass., and fixed reasonable maximum switching charges for the future. **Claims of J. L. Kelso Company.** Complainant attacked charges on traffic from points west of the Hudson river to its warehouse as unreasonable unjustly discriminatory, and unduly prejudicial by reason of the fact that the New Haven, the Maine and Albany refused to absorb the charges of the Union, while making deliveries to the competitors and at all other points in and about Boston on the flat Boston rates. At the time of the hearing the switching charge paid by the complainant to the Union, in addition to the Boston rate, was 1c per 100 pounds, minimum $3 per car. HELD, charges attacked unreasonable to extent they exceeded the rate to Boston, reparation awarded. **Mystic Wharf to East Cambridge.** Complainant attacked rate of $1.60 per long ton charged on 87 cars of bituminous coal during September and October, 1918, from Mystic Wharf to its plant at East Cambridge, a distance of 3.5 miles as unreasonable. Reparation is sought on basis of subsequently established charge of $20 per car, prescribed in the original report. Director admitted that the rate attacked was unreasonable to extent it exceeded $1.20 voluntarily established subsequently. HELD, rate attacked unreasonable to extent it exceeded $20 per car, reparation awarded. **Shipments between East Cambridge and West Cambridge.** Complainant attacked rates charged on 152 cars of various commodities which moved over the Maine between a storage plant established by them at West Cambridge and their plants at East Cambridge, a distance of 4 miles, as unreasonable. Subsequently established basis $15 per car. On 67 cars sixth class rate of 7c was charged and on others 5c. HELD, rate attackeed unreasonable to extent it exceeded 4.5c per 100 pounds, minimum $15 per car, reparation awarded. Boston Wool Trade Asso. v. Director General, 89 I. C. C. 589.

(b) Damages sought for failure to install a switch connection, accept freight and furnish cars. HELD: No finding or order, with reference to alleged damages sustained will be made, this is without prejudice to complainant to pursue such remedy as it may have in a court of competent jurisdiction. Dering Coal Co. v. C., C., C. & St. L., 96 I. C. C. 143, 153.

(c) Complaint alleging that switching charges collected in addition to line-haul rates, assessed under tariff items properly filed with commission, found not to present an overchage claim within meaning of section 6 of the act. See Flushing Farmers' Elevator Co., 87 I. C. C. 9, 10. Shanard Elevator Co. v. M. E. Ry. 93 I. C. C. 151, 153.

ALL OTHER CITATIONS

Japan Cotton Trading Co. v. Director General, as Agent, 88 I. C. C. 407.

§9a. Section 4.

ALL CITATIONS

Detroit Board of Trade v. W. Ry. Co., 38 I. C. C. 413.

§9b. Switching Reclaims.

See Per Diem Charges.

(a) The per diem plan with reclaims applies to carriers which performs a switching service as distinguished from a line haul. No reclaim is allowed where a short line, whether industrially owned or otherwise, performs a line-haul service as distinguished from a switching service. Application of the modified de-

murrage plan prescribed in 61 I. C. C. 551, was restricted to industrial common carriers, and its purpose was to prevent undue favoritism to the proprietary industries through the payment of switching reclaims. Virginia Blue Ridge Ry. v. S. Ry. Co., 96 I. C. C. 591, 593.

§10. Tariffs and Publication.

See Tariffs.

(a) Complainant attacked switching charges on 113 cars of petroleum switched by defendant from Cedar Grove, La., to an industry on the Houston & Shreveport within the switching limits of Shreveport, La., between February, 1918, and February, 1920, were inapplicable. All of the shipments destined to points within the Shreveport switching district were subjected to two charges for switching, one for the movement over the rails of defendant to the interchange track and another for the movement beyond over the connecting line. For the switching service performed by defendant on the shipments which moved to interstate destinations in 1921 and 1922 a charge of $4.50 was assessed. Whatever may have been defendant's intention with respect to restricting the application of the lower charge the tariff must be construed strictly in accordance with its printed language. HELD, rates assessed inapplicable to extent they were greater or less than $2.50 per car from February, 1918, to June 25, 1918, $3 per car from June 25, 1918, to February 1, 1919, and $5 per car from that date to March 1, 1920, for that portion of the movement over the lines of defendant, rates charged between January, 1921, and April, 1922, inapplicable to extent they exceeded $3.50 per car. Complaint dismissed. Caddo Central Oil & Refining Corp. v. Director General, 92 I. C. C. 627.

(b) Charges on shipments of coal and coke to complainant's plant at Rockford, Del., on Philadelphia & Reading Ry., within city limits of Wilmington, Del., composed of rates to Wilmington plus minimum scale of class rates beyond, found illegal to extent they exceeded line-haul charges from points of origin to Wilmington. There was nothing in switching tariff of Philadelphia & Reading, describing Wilmington switching limits, which would have effect of excluding complainant's plant from application of switching rate and its absorption on shipments here involved. Refund of overcharges directed. Bancroft & Sons v. P. & R. Ry. Co., 91 I. C. C. 186.

(c) Switching charges of the K. C. S. on petroleum and products from Cedar Grove, La., to an industry on the Houston & Shreveport within switching limits of Shreveport, La., during Federal control, and those on similar shipments from Cedar Grove and Gas Center, La., moving to interstate points subsequent to Federal control, found inapplicable. While it was defendant's intention to restrict application of lower charges named in applicable tariff it did not do so and such tariff must be construed strictly in accordance with its printed language. Moreover, tariff provisions were ambiguous and contradictory, under which circumstances they must be construed in favor of shipper and force and effect be given to those provisions which result in lowest charges. Caddo Central Oil & Rfg. Corp. v. Director General, 92 I. C. C. 627.

(d) As an outgrowth of receivership proceedings the United States District Court ordered increase in intrastate switching charges of the Evansville & Indianapolis R. R. Tariffs were forwarded to State commission which "neither accepted nor rejected them" on ground that they failed to comply with State statutes as to notice, but such tariffs were retained in the State commission's files "for information only." HELD: Such increased charges assessed on intrastate shipment during Federal control found not illegal, and it is not within this commission's province to pass upon question of whether the district court erred. American Hominy Co. v. Director General, 93 I. C. C. 256.

(e) Line-haul rates were limited to delivery on "interchange tracks" in Iron Ore Rates Cases, 41 I. C. C. 181, 44 I. C. C. 368, this delivery being regarded as equivalent to usual team-track or private-siding delivery. It was contemplated that the interchange tracks would be so located the service under the line-haul rates would end at or near the plant gate. Carnegie Steel Co. v. Director General, 96 I. C. C. 527, 532.

(f) Switching charges collected by Hoboken Manufacturers R. R. Co., on trap-car loads of l. c. l. freight switched by it from complainant's warehouse at Hoboken, N. J., to C. R. R. of N. J. at Weehawken, N. J., for interstate movement, found inapplicable. The Hoboken Manufacturers may not lawfully make a

charge in addition to line-haul rate for switching cars direct from complainant's plant to line-haul carrier, as that would be charging for a service not actually rendered, and the hauling of such cars to its freight station before delivering to line-haul carrier is for its own convenience, is not required under the contract of transportation, and the shipper may not be assessed a charge, therefore, in addition to line-haul rate. Reparation awarded. Jewel Tea Co. v. C. R. R. Co. of N. J., 98 I. C. C. 424.

(g) Complainant attacked charges collected on less carload shipments of fresh meats and packing house products from complainants plant at South Omaha, Neb, to destinations in Nebraska, Iowa, South Dakota, Minnesota and Wisconsin, during the period from June 25, 1918 to March 1, 1920, as in excess of rates applicable in violation of section 6 of the act. The shipments were loaded into cars at complainants plant at South Omaha and switched over the line of the U. S. Yards of Omaha and the U. P., to the Northwestern local freight station at Omaha, except one car which went to the Burlington in the same manner. The agent of the Northwestern waybilled the shipments from Omaha to numerous destinations in the states previously mentioned at the applicable less carload rates. No facilities were maintained by the carriers at South Omaha for the acceptance of less carload shipments of perishable freight as here under consideration and consequently complainant, in order to make such shipments, was compelled to deliver them to the Northwestern to Omaha, from which they moved in refrigerator cars. On each of these cars, which contained numerous less carload shipments for various stations beyond Omaha, a single bill of lading was executed over the U. P., from South Omaha to Omaha "consigned to agent C. & N. W." "Local car." The Northwestern issued bills of lading on each of the individual less carload shipments covering the movement from Omaha, although it appears that the bills of lading show the origin as South Omaha. The $5 charge was not a specific charge on trap or ferry cars with provisions for the acceptance and distribution of such shipments but merely covered the movement of a carload from South Omaha to Omaha. One of the most effectual ways to destroy the continuity of a carload movement is to break it up into less carload shipments which was done in the instant case. The shipments from Omaha were of such a nature that they would not have been accepted by the carriers for transportation from South Omaha, being less carload lots, and it is therefore obvious that there was an essential difference between the character of the shipments from Omaha and from South Omaha. HELD, shipments charged at tariff rate, complaint dismissed. Armour & Company v. Director General, 104 I. C. C. 603.

(h) In 62 I. C. C. 618 the Commission found the rates on ice in carloads, between points in western trunk line territory and between St. Louis, Mo., or East St. Louis, Ill., and Chicago, Ill., between Feb. 1 and August 8, 1919 as unreasonable to extent they exceeded rates established March 22, 1919 for like distances. In 87 I. C. C. 81 Commission found rate of 16.5c on ice in carloads from Shell Lake, Wis., to Blue Island, Ill., between March 17, and March 20, 1919 unreasonable to extent it exceeded 12.5c plus the applicable switching charges. The case was reopened solely with respect to the question of switching charges. The Chicago Junction was a party to Agent Lowreys tariff I. C. C. 37, which governs switching and absorption charges and rules in the Chicago district, but it was not a party to the Boyd tariff and the Lowrey tariff. The Boyd tariff made no reference to the Lowrey tariff, in respect of the absorption of switching charges, or otherwise. Neither did the Lowrey tariff make any direct reference to the Boyd tariff. The Lowrey tariff provided for the application of the Chicago basis of rates on shipments of all commodities, except livestock, originating on the line haul carriers parties thereto, at points outside of the Chicago switching district, except to certain minimum rate and car revenue requirements met by these shipments of ice. The Boyd tariff and the Lowery tariff were contemporaneously in effect, and of equal weight in their respective spheres. In the absence of a cross reference betwen th two tariffs in accordance with rules 10a and 10d of tariff circular 18A, the two tariffs were usable in combination to make a through rate, just as two local tariffs of the line haul carriers would be. One of the provisions of the Lowrey tariff, binding upon the line haul carriers parties to it, was that they would absorb the switch-

ing charge of the Chicago Junction beyond their points of interchange with that carrier, which was also a party to the Lowrey tariff. The combination of these two tariffs made applicable the Chicago rate, with absorption of the Chicago Junction switching charges by the line haul carrier, to the shipments of Swift & Company. Certain shipments were made to South Omaha, Neb., in connection with the Union Stock Yards Co., of Omaha, a switching line at South Omaha. The local tariff of the Northwestern, applicable on commodities generally, provided for the absorption of switching charges of the U. S. Yards Co. to the extent of $3 per car, subject to minimum revenue requirements met by these shipments. The U. S. Yards Co. was not a party to the Northwestern tariff and the Northwestern did not refer to the switching tariff of the U. S. Yards Co. nor did the switching tariff of the U. S. Yards Co. directly refer to the Northwestern tariff. The conclusion reached concerning shipments under the Boyd and Lowrey tariffs governs here. The failure of cross reference between the two tariffs did not prevent the application of the absorption provision of the Northwestern tariff, when used in connection or combination, with the U. S. Yards Co. tariff. HELD, reparation awarded. Wilson & Company v. Director General, 107 I. C. C. 580.

ALL OTHER CITATIONS

North American Oil & Refining Co. v. Director General, as Agent, 85 I. C. C. 697.

IV. PROCEDURE AND PLEADING.

See Evidence; Procedure Before Commission.

§12. In General.

(a) Complainant relied upon comparative switching movements to show unreasonableness in charges for similar movements at its own plant. Carriers, following investigations at comparative points, testified that in no instance was physical situation comparable with that at complainant's plant. FOUND: A mere variation in some aspects of a comparative movement does not necessarily destroy its value as a measure of reasonableness if operations are essentially similar, since comparisons of precisely similar situations would be difficult, if not impossible, to find. Utah Fuel Co. v. D. G., 102 I. C. C. 493, 495.

V. SWITCHING DISTRICTS.

§13. In General.

See Advanced Rates §17 (bb).

(a) Upon reargument, prior report, 73 I. C. C. 161, rates on coal from various producing regions to Chicago switching district, higher to some deliveries than to Chicago itself, found unduly prejudicial and preferential in favor of points to which lower rates apply. This differentiation is not supported by sound transportation considerations, since it is clear that no greater service is necessary in making deliveries within excepted areas than is rendered in reaching many points to which Chicago rates apply. Chicago Coal Merchants Asso. v. Director General, as Agent, 89 I. C. C. 137.

(b) C. & N. W. Ry., respondent, proposed to increase rates on sand and gravel, carloads, from Barton, North Lake, Waukesha, Racine Junction, Racine,, Kenosha, Fox River, Berryville and Bassetts, Wisc., to Evanston, Ill., and stations south thereof in the outer zone of the Chicago switching district on its Lake Shore division and Mayfair-Evanston line, not including Mayfair; to cancel rates on this traffic from Ives, Wisc., to the same destinations, thereby making higher distance rates effective; and to apply from the originating points named and other sand and gravel producing points in the outer producing zone to industries and team tracks between Peterson Avenue and Montrose Boulevard, not including Mayfair, on its Mayfair-Evanston line, the rates maintained to Peterson Avenue. In 64 I. C. C. 37 the Commission found rates from the outer zone should not exceed 3.75c and from the inner zone 0.25c under the rate from the outer zone to points in the Chicago switching district, for distances of 91 and 48 miles respectively. On June 25, 1918, the Director General made the rates from inner and outer producing zones on the Madison and Galena divisions to the intermediate points applicable over either division. Respondent urged that through failure to publish certain routing restrictions the rate from Waukesa to Chicago was erroneously made applicable to Rogers Park. The record in 64 I. C. C. 37 did not afford a basis for a finding that rates to Rogers Park, Peterson Avenue and related points on Lake Shore and Mayfair-

Evanston divisions in the outer switching zones should be maintained on a higher basis than to other points in the Chicago switching district. Nor does the present record show a difference in transportation conditions which would justify such a finding. HELD schedules not justified. Sand and Gravel from Wisconsin, 89 I. C. C. 484.

(c) Upon further hearing and reargument, taking into consideration unusual character of the movement, complicated nature of the two-line short haul within the Boston terminal district,, and as compared with other rates for local hauls within the Boston district and between other points in Massachusetts for considerably greater distances, charges on coal from Mystic Wharf, Boston, Mass., to East Cambridge, Mass., during Federal control, found unreasonable. Previous report, 69 I. C. C. 282. Boston Wool Trade Asso. v. Director General, 89 I. C. C. 589, 596.

(d) Complainant attacked failure of P. & R. to include complainants sidings within the Wilmington, Del., switching limits has subjected it to payment of charges which are unreasonable, unjustly discriminatory and unduly prejudicial. Wilmington is served by three trunklines, the Pennsylvania, B. & O., and P. & R. Under a reciprocal switching arrangement, each of these carriers performs switching services for the others within defined switching limits, the charge of 27c per ton on general merchandise, with a minimum of $6.75 per car, and a flat charge per car on coal of $2.70 or $3.60 as the case may be, dependant upon the character of the movement, being absorbed by the line haul carrier. Complainant's plant is at Rockford, Del., on the Wilmington & Northern R. R., operated under lease by the P. & R., and situated on the south side of Brandywine creek in the extreme northwest section of Wilmington. Rockford is within the city limits, but outside of the territory in which the reciprocal switching arrangement has been applied. traffic for complainant's plant entering Wilmington on the Pennsylvania for P. & R. delivery is interchanged with the P. & R. at West Yard, and thence moves northwestwardly over the Readings main line to Kentmere Jct., and thence east over the Kentmere branch, a distance from West Yard of about 6.2 miles. The B. & O. can reach complainant's plant only over the lines of the Reading, and this traffic is interchanged at Elsmere Junction about 2 miles west of West Yard, and moves a distance of about 4.2 miles to complainant's plant. Both of these movements, that from Elsmere Junction being included within that from West Yard, are outside the city limits until a point about one mile from complainant's plant is reached. Shipments for complainant coming in over the Reading's rails do not move into Wilmington but are set off at Kentmere Junction. On traffic which the Pennsylvania and the B. & O. hauled to West Yard and Elsmere Junction, except on B. & O. traffic upon which joint through rates applied, charges were collected at the rates to Wilmington plus a minimum scale of 31.5c first class. On shipments upon which the Reading received the line haul and upon which through rates did not apply, charges were collected at the Wilmington rate plus 3.5c for the movement from Kentmere Junction to Rockford. The great bulk of Complainant's shipments move on joint through rates which are on the flat Wilmington basis, except that on lime from points in Virginia the applicable joint through rates are slightly higher than the Wilmington rates. The Reading has expressed a willingness to join with its connections in the establishment of other joint through rates. Notwithstanding the existence these joint thru rates on the greater portion of its shipments, complainant seeks the benefit of the reciprocal switching arrangement principally because it feels that its market should no longer be restricted and that it should be enabled to purchase its raw materials with greater freedom. The mere fact that its plant in located within the city limits is not controlling. Complainant's plant is admittedly an important one, but it is not shown that the service rendered it places it on the same footing from a transportation standpoint with industries within the district. The record indicates that the contrary is true. The service rendered by the Reading between complainant's plant and the line haul connections is in fact a line haul service. Considering the length of the hauls and the charges made for similar services on other traffic, the Commission is of the opinion that the class rates in effect since June 25, 1918, are

too high for use in constructing through rates to and from complainant's plant. HELD, the circumstances of carriage surrounding the traffic here considered are not the same as those surrounding traffic delivered in the industrial section. This contention is not sustained. HELD, charges attacked on coal and coke are illegal to extent they exceeded line haul charges at rates from points of origin to Wilmington; that the failure of defendant P. & R. to include complainant's plant within the switching limits of Wilmington except as to coal and coke, and failure of defendants B. & O., and Pennsylvania to absorb the charges of the P. & R. for transportation between complainant's plant and connection with line haul carriers, except coal and coke, not unreasonable, unjustly discriminatory or unduly prejudicial; that class rates between complainant's plant and P. & R. connections with line haul carriers unreasonable to extent they exceed 13c first class, reparation awarded. Bancroft & Sons Co. v. P. & R. Ry., 91 I. C. C. 186.

(e) Proposed increased rates on sand and gravel from points in Wisconsin to Evanston, Ill., and various destinations south thereof in the Chicago switching district, and cancellation of rates from Ives, Wisc., to same destinations, designed to correct an error in tariff publication and to place inner and outer producing zone points on a parity with respect to the rates to Rogers Park, Ill., found not justified. To permit suspended schedules to become effective would contravene findings and order of the Commission in Chicago Sand & Gravel Producers case, 64 I. C. C. 37. Sand and Gravel from Wisconsin, 89 I. C. C. 484.

(f) Failure of Philadelphia & Reading Ry. to include complainant's plant at Rockford, Del., within switching limits of Wilmington, Del., and failure of Baltimore & Ohio and Pennsylvania to absorb charges of Reading for transportation between complainant's plant and connections with line-haul carriers, found not unreasonable, unjustly discriminatory, or unduly prejudicial. Rockford is a separate station, and has never been under jurisdiction of Wilmington agent. Haul to and from complainant's plant is performed by a road engine and crew who are paid road wages, the highest paid, and trip actually consumes greater portion of a work day. Bancroft & Sons Co. v. P. & R. Ry. Co., 91 I. C. C. 186.

(g) Carrier urges that extension of its switching limits to include a certain point would result in demands for its extension to include still other points. While this fact does not, of course, constitute a defense, it is apparent that there is a limit beyond which Commission should not require switching rates to be extended; and in determining that limit actual extent of industrial section must be given weight. Bancroft & Sons Co. v. P. & R. Ry. Co., 91 I. C. C. 186, 191.

(h) Original complaint requested establishment of corporate limits as the switching limits of Rochester, and reasonable and nondiscriminatory switching charges between industries located in State Street and connections of the N. Y. C. with other railroads within corporate limits of Rochester. Amendment filed seeking inclusion of that portion of the State Street branch parallel with and close by but outside the Rochester city line, and establishment of switching charges requested between the main Rochester switching district and intermediate points, allowed. Amendment does not unduly broaden the issues since territory referred to therein is within corporate limits, and if charges originally sought were established, inclusion of territory requested in amendment and alignment of existing charges between various intermediate industrial sections would be necessary to obviate fourth-section departures. Rochester Switching Case, 95 I. C. C. 30, 36, 37.

(i) In every switching district there will almost invariably be found some hauls so long and so difficult that cost is in excess of switching charge collected, but the fact does not show the charge to be less than reasonable for the switching service rendered within the district. Rochester Switching Case, 95 I. C. C. 30, 45.

(j) Where a carrier publishes switching charges within switching limits of a city subject to absorption by connecting lines, and the commission includes an additional zone within such limits, it is a violation of section 3 (1) if such carrier does not make the switching charges published to and from the included zone subject to absorption by connection carriers in same manner and to same extent as are the existing switching charges. It is also a violation of this provision of section 3 by the connecting

carriers if they do not absorb the new switching charges in same manner and to same extent as the old. Rochester Switching Case, 95 I. C. C. 30, 48.

(k) Western Maryland, respondent, proposed to restrict its proportional switching limits at Hagerstown, Md., so as to exclude that portion of its line east of the city limits. The switching limits now extend to and embrace the Security Cement & Lime Co., plant at Security, Md., a point 0.625 miles east of the Hagerstown city limits. Hagerstown is served by the Western Maryland, B. & O., N. & W., and Pennsylvania. Prior to Nov. 1, 1922 the switching limits of all of these roads were confined to the corporate city limits, but on that date the W. M., extended its proportional switching limits to include protestants plant at Security. Respondent now proposes to restore its proportional switching limits to the original limitations,. Under the present arrangement, on traffic that has had or will receive a road haul beyond Hagerstown, respondent makes a charge of $6.30 per car for the service between its interchange with connecting lines in Hagerstown and protestants plant, and this charge is absorbed by its connections out of the line haul rate. Under the proposed change protestant will be denied the benefit of the Hagerstown rates under switching absorption and compelled to pay higher joint or combination rates. Security is a separate agency station on the W. M., but the agents sole duty is to handle protestants traffic. Protestants plant is considered to be within the industrial community of Hagerstown, however, and the Pennsylvania and the N. & W., show it in their tariffs as an industry at Hagerstown. Joint coal and coke rates were published to Security and were the same as to Hagerstown so that there was no necessity for proportional switching on these commodities. Clearly the primary motive in taking action at this time is to forestall anticipated difficulty in obtaining a satisfactory proportion of the rates which may be established from Security in Southern Cement cases, Dockets 15380 and 15900 now pending. If respondents present switching charge is inadequate for the service performed, it should be increased to a proper level. If it purposes to obtain a greater proportion of the through revenue charge, that should be sought by negotiations with its connections or by proper proceeding before the Commission. HELD, proposed schedules not justified. Switching at Hagerstown, Md., 102 I. C. C. 14.

(ka) Proposal of the Western Maryland Ry. Co., to restrict switching limits of Hagerstown, Md., so as to exclude Security, Md., found not justified. Primary motive lies in a dissatisfaction of the above carrier with divisional arrangements, which affords no justification for increased rates. Under the proposed arrangement protestant at Security would be denied the benefit of switching absorptions on traffic moving beyond Hagerstown, and would be compelled to pay higher rates to the decided advantage of competitors at Hagerstown and Fordwick, Va. Moreover, Security is listed as a point taking Hagerstown rates in tariffs of other carriers. Switching at Hagerstown, 102 I. C. C. 14.

(l) Frisco, respondent, proposed to eliminate the plant of the Wertzberger Derrick Company from the list of industries at Tulsa, Okla., from and to which switching would be performed. As a result of negotiations in January 1924, protestant leased from respondent a track of land upon which to erect a plant for the manufacture of oil well derricks. This land paralleled a stockyard siding maintained by respondent about 1 mile southwest of Red Fork, which is on its main line between Tulsa and Sapulpa, Okla. Protestants plant is about 5 miles from the passenger station at Tulsa, West Tulsa, within the city limits of Tulsa, is the first station southwest thereof and is considered the boundary of the Tulsa switching limits. Red Fork, an agency station, is 2.4 miles southwest from West Tulsa. It is clear that prior to June 16, 1925 the date on which protestants plant was listed as an industry at Tulsa, West Tulsa was considered to be the western boundary of the Tulsa switching district. The suspended schedules would restore conditions as they existed prior to that date. The switching charge is now absorbed by respondents connections out of the through rate. Under the proposed change protestant would be denied the benefit of the Tulsa rates and compelled to pay the rates applicable to and from Red Fork. This would result in increased rates to many points, particularly to destinations in Kansas. No attempt was made by respondent on this record to show that the Tulsa rates are too low for application from Red Fork. HELD, proposed sched-

ules not justified. Switching at Tulsa, Okla., 104 I. C. C. 42.

(m) Except at some of the larger terminals, such as Chicago, the limits of a switching district are not defined in tariffs. Switching charges are usually established from and to industries, in connection with line-haul movements within the judgment and discretion of the carrier's traffic officers. Absorption of Switching at Racine and Racine Junction, Wis., 101 I. C. C. 60, 62.

ALL OTHER CITATIONS

Simms Oil Co. v. H. & T. C. R. R. Co., 85 I. C. C. 537; Crown Cork & Seal Co. v. Director General, as agent, 88 I. C. C. 305.

TANK CAR SHIPMENTS

See Across Lake Rates (a); Advanced Rates §17 (yy); Blanket Rates §6 (c); Branch Lines §1 (y) (aa); Cars and Car Supply §10, §17; Class Rates §1 (a), §2 (a) (c) (h); Classification §16 (m), §17 (uu), §22 (e); Commodity Rates §5 (4y); Demurrage §10; Equalization of Rates §3 (i), §4 (5) (n); Long and Short Hauls §2 (5x), §4 (yy), §6¾ (hh); Minimums §10; Overcharges (m); Reasonableness of Rates §32½ (kk); Reconsignment §3 (o); State Rates and Regulations (n) (ss); Weights and Weighing §5 (ma).

(a) Charges on fuller's earth, in box cars, from Georgia and Florida points to Richmond, Cal. based on combinations to and from Memphis, Tenn., or New Orleans, La., found not unreasonable, but on shipments moving in tank cars furnished by shipper because of inability of carriers to furnish adequate boxcar equipment, found unreasonable to extent class rates for haul east of New Orleans, La., exceeded the contemporaneous commodity rates applicable on shipments moving in box cars. Reparation awarded. Standard Oil Co. v. A. T. & S. F. Ry. Co., 89 I. C. C. 27.

(b) Complainant attacked charges on three empty private tank cars returned from Norwood and Providence, R. I., to Los Angeles, Calif., during March, 1920, as unreasonable, unjustly discriminatory, unduly prejudicial and illegal. This proceeding grows out of the application of the rule for equalization of empty and loaded tank car mileage at the beginning and ending of federal control. All shippers of commodities in tank cars pay the regular established freight rates, regardless of ownership of equipment. In the oil industry most of the tank cars are owned by shippers or lessors, and not by the carriers. In such instances, under appropriate tariff provisions, a certain amount per loaded and empty car mile is allowed the shipper or owner by the carrier for its use of the privately owned equipment. With authorized changes in the allowance, these provisions were continuously in effect prior to, during, and subsequent to federal control. Defendants admit that, if the equalization rule had been in effect during the entire period, the charges in question would not have been rendered. Shippers are governed by the applicable tariffs and have no direct concern with the fact of a change in ownership or control of the particular carriers. The applicable tariffs continuously carried prior to, during, and subsequent to federal control a rule which provided that the tank car owners should be paid an allowance by carriers for their use of privately owned cars loaded or empty, and that private tank cars would be moved empty without charge, at the time movement is made between stations or junction points on the lines of the carriers whose tariffs were governed by the applicable classification. The equalization rule was also in effect during the time it was suspended. Neither the latter, nor any other tariff item, at any time annulled the provision for payment of the allowance and for the return of empty cars. In other words, there was a continuous holding out to the shipper that his empty cars would be returned without additional charge at time of movement. It was the completion of a transaction that began when the outbound loaded cars originally came into the carriers possession. This was a liability assumed by the director general at the beginning of federal control and by the corporate carriers at the termination of federal control under the tariffs in the case of shipments that moved prior thereto, respectively. Compensation therefor was included in the freight charges on the outgoing shipments. The accounting is a matter with which the shipper should have no concern, this be-

ing solely a detail between the director general and the corporate carriers. The shipments made prior to the termination of federal control moved under the tariff provision that empty cars should be returned without additional charge and the fact of transition from federal to corporate control did not annul its effect. The equalization rule subsequently published was not applicable to such movements. It applied only on shipments initiated from the effective date of its restoration. HELD, equalization rule was not applicable to the shipments in question made during federal control of which the empty cars were returned subsequent thereto, and that charges attacked are illegal, bills canceled accordingly. General Petroleum Corporation v. C. B. & Q. R. R., 91 I. C. C. 388.

(c) Complainant attacked commodity rates on crude, fuel and gas oil, in tank cars, which moved prior and subsequent to federal control from Kansas, Oklahoma, Texas and Louisiana to Minneapolis, Minn., as unjust, unreasonable, unjustly discriminatory and unduly prejudicial in that they exceed rates 5c less than the rates on refined oils. In 87 I. C. C. 149 the Commission found rates attacked during federal control unreasonable to extent they exceeded rates 5c less than on refined oils. HELD, rates attacked unreasonable to extent they exceeded rates 5c less than on refined oils, reparation awarded. Barber Company v. A. & V. Ry., 91 I. C. C. 621.

(d) Complainant attacked commodity rates charged on 11 tank cars of crude oil shipped during January and February, 1920, from Lawton and Walters, Okla., to Omaha, Nebr., as unreasonable. Charged 32.5c applicable on refined oil. Rate sought was applicable on fuel oil and was established on crude oil effective Feb. 29, 1920. HELD, rate attacked unreasonable to extent it exceeded 27.5c, reparation awarded. Omaha Refining Co. v. Director General, 91 I. C. C. 575.

(e) Complainant attacked commodity rates charged on 47 cars of liquid asphalt, in tank cars, moving between February, 1922, and March, 1923, from Port Arthur and Port Neches, Tex., to West Monroe, La., as unreasonable and in violation of the fourth section. All shipments originated at Port Neches, on the K. C. S., 4 miles north of Port Arthur. Shipments moved K. C. S., to Shreveport, La., and V. S. & P. to West Monroe, 318 miles, charged 29c prior to July 1, 1922 and 26c thereafter. Effective May 18, 1923 they were reduced to 19c. West Monroe is intermediate to Vicksburg over route of movement. There was practically no movement from Port Arthur or Port Neches to West Monroe prior to the shipments in question. Liquid asphalt is rated class D in southwestern territory. Rates attacked were 43 per cent of class D prior to July 1, 1922, and 42.6c thereafter. HELD, rates attacked not unreasonable and complainant not damaged by fourth section violation, complaint dismissed. Dead Company v. K. C. S., 92 I. C. C. 256.

(f) Respondents proposed increases in the rates on liquid chloride of zinc, in tank cars, from Chicago, Ill., and St. Louis, Mo., to Little Rock and North Little Rock, Ark., Texarkana, Ark., and other Arkansas destinations, and reductions in the rates on dry or fused chloride of zinc, carloads, from and to the same points. Grasselli takes the same rates as Chicago and the same rates apply from East St. Louis as from St. Louis. Chloride of zinc in either the fused or liquid form is rated fifth class in official and western, and sixth class in southern classification. Prior to 1921 the commodities moved on class rates. But since that time respondents have distinguished between liquid and fused chloride of zinc in the publication of rates from St. Louis to Arkansas. Effective June 15, 1922, respondents reduced the rates on zinc chloride in tank cars from St. Louis to Arkansas. Respondents proposed to establish from the Chicago and St. Louis groups to the destination territory the same basis of rates on zinc chloride, regardless of whether it is shipped as a liquid or in the fused form. The rates on the liquid from the St. Louis group to Little Rock would be increased from 19c to 25c, and rate on fused reduced from 45.5c to 25c. The proposed reduced rate of 36c from the Chicago group to Little Rock is made by the addition of the proposed rate from the St. Louis group of the fifth class differential of 11c, Chicago over St. Louis. The commodity in both forms is used as a wood preserver, although dry chloride of zinc is used for other purposes The chief difference be-

tween the commodity in the two forms is that the dry is concentrated, is higher in zinc chloride content, and is more valuable than the liquid. The two commodities are rated the same in the three classification territories, and throughout the country generally there is no difference in rates except from the St. Louis group. HELD, proposed rates justified. Chloride of Zinc to Texarkana, 92 I. C. C. 569.

(g) Complainant attacked commodity rate of 29c charged on crude petroleum, in tank cars, from Irvine and Beattyville, Ky., to Blue Island, Ill., a point within the switching district of Chicago, as unreasonable, unjustly discriminatory and unduly prejudicial as compared with a rate of 24.5c from the midcontinent field in Kansas and Oklahoma to Chicago. In 59 I. C. C. 689 the Commission found the rate attacked not unreasonable or unduly prejudicial and dismissed the complaint. The rate on crude oil from the midcontinent field to Chicago is 83% of the rate on refined oil, whereas the factor charged north of the Ohio river on eastern Kentucky oil is the same on both crude and refined. Commission has held that reasonable rates on crude oil should be relatively lower than reasonable rates on refined oil, and there is here no showing that the rate on refined oil north of the Ohio river to Chicago is less than reasonable. HELD, rates attacked unreasonable to extent they exceeded 20c prior to June 25, 1918, 25c from that date to July 24, 1918 and 24.5c thereafter until August 26, 1920 since that date 29.5c, reparation awarded. Barnett Oil & Gas Co. v. Director General, 93 I. C. C. 85.

(h) Complainant attacked class rates charged on 31 tank cars of imported linseed oil shipped from San Francisco to Los Angeles, Calif., between May 1922 and December 1922 as unjust, unreasonable, unduly prejudicial and inapplicable. Fifth class rates of 43c prior to July 1, 1922 and 38.5c thereafter were charged and contemporaneously there were published rates of 35c prior to July 1, 1922 and 31.5c subsequent thereto on linseed oil in packages from San Francisco to Los Angeles. HELD, rates attacked on linseed oil in tank cars, unreasonable to extent they exceeded 35c and 31.5c reparation awarded. Fuller & Company v. S. P. Co., 93 I. C. C. 154.

(i) Complainant attacked class and commodity rates charged on raw cucumbers, in brine, in bulk in barrels, and in tank cars, shipped between August 16, 1921 and Jan. 24, 1923 from Blytheville, Ark., to Omaha, Neb., as unreasonable. Blytheville is on the Frisco, the St. Louis Southwestern and J. L. C. & E. With exception of two cars, shipments moved over Frisco to St. Louis and Burlington beyond, 696 miles, one moved over Cotton Belt to St. Louis and Burlington beyond, 739 miles and one over J. L. C. & E., to Nettleton, Ark., M. P., beyond, 774 miles. Charged prior to Dec. 22, 1921 fifth class rate of 92c, from that date to Jan. 24, 1923 commodity rates of 59.5c and 53.5c prior and subsequent to July 1, 1922 applicable on pickles in brine in wood. Effective June 30, 1923 defendants established a commodity rate of 42.5c on pickles, cucumbers, in brine, in tank cars, which rate is still in effect. The 53.5c rate applicable on pickles, in brine, in wood, was canceled Nov. 27, 1923, on which date a rate of 58.5c was established on canned goods, including pickles. The carriers established a rate of 59.5c between the points, which was the same as the rate then applicable from Colorado common points to Missouri river points. The short line distance from Blytheville to Omaha is over the Frisco to St. Louis and Wabash beyond, 654 miles. HELD, rates attacked unreasonable to extent they exceeded 59.5c from Aug. 16, 1921 to June 30, 1922 and 53.5c thereafter, reparation awarded. Haarman Vinegar & Pickle Co. v. C. B. & Q. Ry., 93 I. C. C. 251.

(j) Complainant attacked commodity rate of 37c charged on a tank car of fuel oil shipped March 20, 1919 from Loftus, Calif., to Bisbee, Ariz., as unreasonable and unduly prejudicial to extent it exceeded 34.5c. Loftus is on the Pacific Electric, 27 miles east of Los Angeles, moved via Los Angeles, thence S. P., and E. P. & S. W., to destination, charged group rate of 34.5c. Subsequently it developed that the group rate did not apply from Loftus, and combination rate of 37c based on Stewart was applied, made up of 22.5c to Stewart and 30c beyond. HELD, rate assessed inapplicable, and applicable rate unreasonable to extent it exceeded 34.5c, reparation awarded. Gilmore Co. v. P. E. Ry., 93 I. C. C. 357.

(k) Complainant attacked commodity rate charged on oil, in tank cars, from

Bayonne, N. J., to Brooklyn as unreasonable, unjustly discriminatory and unduly prejudicial. Shipments moved over Jersey Central to Jersey City, floated to Bush Terminal docks and handled thence to rails of Southern Brooklyn Ry. in Brooklyn by the Bush Terminal Co. Complainant was notified by the South Brooklyn Ry. that it would not transport oil in tank cars to complainants plant after June 1, 1924. This was done because the New York Rapid Transit Corporation refused longer to permit shipments of oil in tank cars to be transported through the subway on account of the risk to passenger traffic. Distance is 13 miles, which does not include constructive mileage for the floating service in New York harbor. A commodity rate of 16c is applicable. HELD, rate attacked not unreasonable or otherwise unlawful, complaint dismissed. Huber v. C. R. R. of N. J., 93 I. C. C. 539.

(l) Complainant attacked commodity rates charged on tank car of naptha and gasoline shipped from Hodge, Tex., to Blue Creek, W. Va., since Feb. 3, 1921 as unreasonable to extent they exceeded rates on these commodities from the same point to Charleston, W. Va. Hodge is about 4.5 miles north and within the switching limits of Fort Worth, Tex. Blue Creek is 13 miles northeast of Charleston on the B. & O. Charged 73c prior to Feb. 25, 1921, 75.5c from that date to July 1, 1922 and 68c thereafter. These rates are made by combination of proportional commodity rates to and from the Mississippi and Ohio river crossings, the lowest total rate via any of the crossings constituting the through rate applicable usually via all crossings. Rates charged were based on Vicksburg combinations. The rates from Hodge to Charleston ranged from 6 to 9.5c lower than to Blue Creek, present rate being 58.5c. Blue Creek is intermediate to Charleston over the B. & O., through Clarksburg and the resulting violation of the long and short haul rule of the fourth section apparently was unprotected. Effective June 9, 1923, the B. & O., eliminated the route to Charleston in connection with its line through Clarksburg and the present rate does not contravene the provisions of the fourth section. The rates charged are the same as to New York and Albany to which the haul exceeds that to Blue Creek by 490 and 573 miles. HELD, rates attacked unreasonable to extent they exceed 67.5c prior to Feb. 25, 1921, 70c from that date to June 30, 1922 and 63c from that date to Dec. 6, 1922, and 60c thereafter, reparation awarded. Transcontinental Oil Co. v. A. & V. Ry., 96 I. C. C. 136.

(m) Complainant attacked commodity rate charged on two tank cars of kerosene which moved June 7, 1920 from Fort Worth, Tex., to Waterbury, Conn., as unjust and unreasonable. Charged 76c. There were rates of 69.5c in effect to the greater part of New England which were applicable over the route these shipments moved, through Waterbury to more distant points. HELD, rate attacked unreasonable to extent it exceeded 69.5c reparation awarded. Transcontinental Oil Co. v. D. L. & W. R. R., 96 I. C. C. 173.

(n) Complainant attacked commodity rate of 10c charged on tank cars of fuel oil shipped from Texas to Sulphur Mine, La., between April 9, 1921 and July 26, 1922 as unreasonable to extent it exceeded 6.5c. Sulphur Mine is served by the Brimstone R. R. Points of origin are Chaison and Sabine, Tex., on the T. & N. O., and Sun, Magpetco, and Port Neches, Tex., on the T. & Ft. S. From Chaison and Sabine, the movement was over the T. & N. O., to Sabine River, La. W., to Brimstone Jct., and Brimstone beyond. From the other points the shipments moved over T. & Ft. S. to Ruliff, Tex., K. C. S., to Mossville and Brimstone beyond. Mileages are from Chaison 58.3, from Sabine 79.7, from Sun 79.6, 81.2 from Magpetco, and 87.7 from Port Neches. From July 1 to July 26, 1922 the proper rate was 9c and the overcharges should be refunded. July 27, 1922 a rate of 6.5c was established and the rate was allowed to become effective following 69 I. C. C. 345. Although it was shown that the 6.5c was not unremunerative and did not result in undue prejudice or otherwise violate the act, there would be nothing inconsistent in finding that the 10c rate was not unreasonably high for the same service. The Commission recognized the controlling force of the competitive situation in permitting the carriers to reduce their rates below what would be a maximum reasonable basis, but these competitive features are entitled to little, if any, weight in determining the maximum reasonable rate. The record demonstrates that the 6.5c rate, although it

may be remunerative, is less than a maximum reasonable rate, all the circumstances considered, and was established by defendants because of competitive influences and for the purpose of avoiding loss of traffic. HELD, rates attacked not unreasonable, complaint dismissed. Union Sulphur Co. v. T. & N. O. Ry., 98 I. C. C. 76.

(o) Complainant attacked commodity rate of 8c charged on 11 cars of liquid bleach, shipped in tank cars between June 19 and August 23, 1923 from Menominee, Mich., to Peshtigo, Wis., as unreasonable to extent it exceeded 3c minimum 80,000 pounds, established on August 25, 1923. Distance 8.3 miles. Defendant does not oppose the claim for reparation. HELD, rate attacked unreasonable to extent it exceeded 3c, reparation awarded. Michigan Electrochemical Co. v. C. & N. W. Ry., 98 I. C. C. 435.

(p) Complainant attacked commodity rates charged on tank cars of gas and fuel oils shipped since April 30, 1922, from Kansas and Oklahoma to Maryville, Mo., as unjust and unreasonable to extent they exceeded 5.5c prior to July 1, 1922, and 5c thereafter less than the rates on refined oils, and unjustly discriminatory. Maryville is on the Burlington and Wabash, 108 miles over the former and 223 miles over the latter from Kansas City, average distances 418 and 270 miles from Oklahoma and Kansas fields. On April 30, 1922, the rate on refined and low grade oils from the Kansas fields to Maryville was 33c. On the same date the rates to Maryville from the Oklahoma fields were 36.5c on refined oils and 36c on gas and fuel oils. On July 1, 1922, the Kansas rate was reduced to 29.5c and the Oklahoma rates to 33 and 32.5c. Effective Oct. 20, 1922, over the Burlington and Nov. 1, 1923, over the Wabash, the rates on gas and fuel oils were reduced to 26.5c from the Kansas field and 28c from Oklahoma. The effect of this was to make the fuel oil and gas oil rates lower than the refined oil rates by 3c from Kansas and 5c from Oklahoma. HELD: Rates attacked from Oklahoma unreasonable and unduly prejudicial prior to July 1, 1922, to extent they exceeded rates 5.5c lower than rates on refined oil and rates attacked from Oklahoma and Kansas unreasonable and unduly prejudicial from and after July 1, 1922, to extent they exceeded 5 and 3c respectively lower than the rates on refined oil, reparation awarded. Maryville Electric Light & Power Co. v. A. T. & S. F. Ry., 101 I. C. C. 229.

(q) Rates on fuel oil, in tank cars, from certain Texas subports to Sulphur Mine, La., found not unreasonable as compared with a lower rate subsequently established. The record demonstrates that the lower rate, although it may be remunerative, is less than a maximum reasonable rate and was established by defendants because of competitive influences and for the purpose of avoiding loss of traffic, and the rates assailed were less than the normal basis of rates in the territory in question, and were from 58 to 65 per cent of the contemporaneous rates for similar distances between Texas and Louisiana. Union Sulphur Co. v. T. & N. O. R. R. Co., 98 I. C. C. 76.

(r) Upon contention that in determining reasonable rates on cottonseed oil consideration should be given to the high percentage of empty to loaded mileage of tank cars used in the transportation of that commodity. HELD, while the total mileage may be about twice that of the loaded mileage, this fact is to a large extent offset by the further fact that the maintenance expense to the owners of these tank cars is considerably more than twice the mileage allowance by the carriers. It is a convenience to interveners to have their own equipment, but the fact remains that if this equipment, or other equipment of like serviceability, were not purchased and maintained by shippers, carriers would be put to a great deal of additional expense which is now borne by shippers. Oklahoma Corp. Commission v. A. & S. Ry. Co., 98 I. C. C. 183, 225.

(s) Rate on liquid bleach in shipper's tank cars from Menominee, Mich., to Peshtigo, Wis., found unreasonable to extent it exceeded lower rate subsequently established. Reparation awarded. Michigan Electrochemical Co. v. C. & N. W. Ry. Co., 98 I. C. C. 435.

(t) Rate applicable to petroleum products, in tank-car loads, from Greybull, Wyo., to Belgrade, Mont., during Federal control, found unreasonable to extent it exceeded lower rate contemporaneously applicable to contiguous points and which through oversight was not established to Belgrade until subse-

quent to movements here involved. Reparation awarded. Continental Oil Co. v. Director General 98 I. C. C. 544.

(ta) Private tank cars of complainant were forwarded to a lessee who, after three years use, turned them back to complainant. Due to lessee's insolvency, carrier demanded from complainant payment of excess empty mileage accruing against it. Upon complaint seeking to offset against excess empty movement of lessee, an excess of loaded over empty movement accruing to complainant after cars were returned, FOUND: Tariff rules allow six months after close of accounting year within which excess empty mileage may be offset by subsequent loaded mileage, and it is here sought to effect an offset accruing three years later. Carriers can not reasonably be expected to hold their books open indefinitely to permit offsets of this character. Moreover, the rules are part of uniform regulations, and there is nothing shown of record which would justify conclusion that they should be changed. Kansas City Structural Steel Co. v. A., T. & S. F., 102 I. C. C. 113.

(tb) Upon further hearing, findings in original report, 73 I. C. C. 251, modified and rates on fuel and gas oils, in tank-car loads, found unreasonable and unduly prejudicial for future to extent they exceed rates 6 cents lower than rates contemporaneously maintained on refined oil. Davenport Commercial Club v. Director General, 102 I. C. C. 523.

(u) Complainant attacked commodity rates on fuel and gas oils in tank cars from Midcontinent fields to Rock Island, Moline, Ill., Davenport, Bettendorf, Muscatine, Iowa City, Cedar Rapids, Ottumwa, Mason City, Fort Dodge and Burlington, Iowa, as unreasonable and unduly prejudicial prior to August 26, 1920 to extent they exceeded rates 5c lower than on refined oil. In 73 I. C. C. 251 the Commission found rates attacked unreasonable to extent they exceeded rates 5c lower than on refined oil. In 78 I. C. C. 667 the Commission found rates to Fairfield and Ottumwa, Ia., unreasonable as follows: From Group 1 of Midcontinent fields to extent they exceeded rates to St. Louis, and from Groups 2 and 3 to extent they exceeded the St. Louis rates by more than 1c. Request was made for modification of outstanding orders to permit the establishment of rates on low grade oils uniformly 6c less than the rates on refined oil. The effect of the general increase of August 26, 1920 was to destroy the uniformity of differentials between the rates prescribed on refined and low grade oils. That increase and the general reduction of 1922 have resulted in differentials of 5.5, 6 and 6.5c, the amount of the differential being controlled by the rules for disposition of fractions prescribed in connection with the general increase and the general reduction. HELD, original reports modified so that the rates on low grade oils will not be more than 6c less than rates on refined oil. Davenport Commercial Club v. Director General 102 I. C. C. 523.

(v) Complainant attacked commodity rates of 77c prior to July 1, 1922 and 69c on and after that date on gasoline and kerosene in tank cars from Fort Worth and Hodge, Tex., to Gastonia, N. C., as unjust, unreasonable and unduly prejudicial. Gastonia is in the south western part of North Carolina 7 miles from the South Carolina state line on the Southern between Atlanta, Ga., and Washington, D. C. It is also served by the Piedmont & Northern and the Carolina & Northwestern. Hodge is 5 miles north of Forth Worth on the MKT, the T. & P., and St. L. S. W. Rates from both points are the same. The rate on petroleum and its products from Fort Worth to Gastonia is based on the Mississippi river combination which is the usual basis for making rates from the southwest to the southeast and to destinations in Carolina territory. The evidence was confined to the factors east of the Mississippi river and to the resulting measure of the through rates from Forth Worth. The manner in which rates from the river were constructed to Carolina territory gave rise to numerous fourth section departures. Gastonia is intermediate to Charlotte, Mooresville, Winston Salem, Greensboro, Durham, and Raleigh, N. C., and Lynchburg and Petersburg, Va., on the Southern. At the date of hearing the rate to Gastonia was 69c, the rate to Charlotte 66c to Salisbury 62.5c, to Winston Salem, 105 miles north of Gastonia 61.5c. The latter was the lowest rate to any destination in North Carolina on the Southern. The carriers have eliminated fourth section departures. HELD, rates attacked not unreasonable or otherwise unlawful, complaint dismissed. Piedmont Oil Co., v. A. & V. Ry. 102 I. C. C. 583.

(va) Rates on sulphuric and muriatic acids in tank cars and carboys, from Grasselli, Ind., to Sioux City, Iowa, found not unreasonable and present group adjustment in territory involved not unduly prejudicial, since record here does not warrant a condemnation of adjustment on ground that group boundaries are too extensive. Kennedy & Parsons Co. v. C. & N. W., 102 I. C. C. 591.

(vb) Rates on fuel and gas oils, in tank-car loads, from Okmulgee and Tulsa, Okla., to Davenport, Iowa, found unreasonable to extent they exceeded rates 5 cents less than those contemporaneously maintained on refined oil from same points. Reparation awarded. Davenport Locomotive Works v. C., M. & St. P., 102 I. C. C. 639.

(w) In 93 I. C. C. 221, the Commission found that the rate of 59.5c on tank cars of crude and fuel oils, shipped from Gainesville, Tex., to Miami, Ariz., between August 10 and Sept. 22, 1921 was not unreasonable and dismissed complaint. Upon reconsideration, HELD, previous finding affirmed. Miami Copper Co. v. A. & E. Ry. 104 I. C. C. 467.

(x) Rates applicable on shipments of blackstrap molasses, in tank-car loads, from certain points in Louisiana to Fort Calhoun, Nebr., found not unreasonable or unduly prejudicial as compared with rates on like traffic from same points of origin to other destinations for similar distances and rates between other points for comparable distances. Crown Overall Mfg. Co. v. Director General, 100 I. C. C. 471.

(y) Rates on liquid asphalt, in tank-car loads, from Port Neches, Tex., to Morrilton, Conway, and Galla, Ark., found to have been unreasonable to extent they exceeded the rate contemporaneously applicable on solid asphalt to the destinations concerned from points near Port Neches. The present rates from Nort Neches to these destinations are the same on both solid and liquid asphalt. Reparation awarded. Texas Co. v. K. C. S. 101 I. C. C. 177.

(z) Exaction of local rates and charges for transportation of lard shipped from points of origin west of Buffalo and Black Rock, N. Y., in tank-car loads, to Jersey City, there unloaded at complainant's plant and put into barrels, tierces, and other containers and forwarded to ship-side points within free lighterage limits of New York Harbor, for export, found not unreasonable but in certain instances illegal. Inbound and outbound movements to and from transit point were separate shipments to which separately established rates were applicable except and to extent that there were explicit tariff provisions connecting the inbound and outbound movements in such manner as to establish the fiction of a continuous through movement. Reparation awarded. Armour & Co. v. D., L. & W., 101 I. C. C. 337.

(aa) Complainant attacked commodity rate of 22.5c charged on 222 tank cars of crude petroleum shipped between May 5 and Dec. 30, 1921 from Sallyards, Kas., to St. Joseph, Mo., as unreasonable, unduly prejudicial as compared with rates to Kansas City, Mo. Sallyards is a local point on the Mo. Pac., shipments moving via that line 245 miles. In 36 I. C. C. 109 the Commission found rates on crude oil unreasonable to extent they exceeded 5c lower than the rates on refined oil. HELD, rates charged unreasonable to extent they exceeded 19.5c, reparation awarded. St. Joseph Viscosity Oil Co. v. M. P. R. R., 109 I. C. C. 286.

(bb) Complainant attacked commodity rates of 59.5c charged on 15 cars of fuel oil shipped from Burkburnett and Wichita Falls, Tex., and Becket, Okla., to Globe, Ariz., between August 11 and Nov. 14, 1921 as unreasonable, unjustly discriminatory, unduly prejudicial and in violation of the fourth section. Points of origin lie north of Fort Worth, Tex. in transcontinental group H. Globe is on the A. E., 124 miles north of its junction with the S. P., at Bowie, Ariz. Shipments moved as routed, over various routes, an average of 1,161 miles, average short line distance from the three points being 932 miles. On Aug. 10, 1921 defendants reduced to 50c the rates from three points in Group H and from 20 points in group F in south Texas, but the rates from the points under consideration were left unchanged. On Nov. 15, 1921 the 50c rate was extended so as to include all points in Groups G, H and F. On April 15, 1922 these rates were reduced to 47c and on June 1, 1922 to 45c. As the routing was unrestricted in the tariffs, the 50c rates could be made applicable over defendants lines through Wichita Falls, and, by

circuitous routes even through Becket. HELD, rates attacked not unreasonable, unjustly discriminatory or unduly prejudicial, complaint dismissed. Globe Light & Power Co. v. A. E. R. R., 109 I. C. C. 405.

(cc) Complainant attacked fifth class rate of 52c on red oil, carloads, from Ivorydale, O, to East Hartford, Conn., as unreasonable and unduly prejudicial; that fifth class rate charged on one tank car of red oil shipped on April 1, 1924 was illegal, sixth class rate being sought for the future. By exceptions to the classification in effect at time of movement, soap stock and a number of other commodities were rated sixth class under the caption "grease, animal and garbage, nonedible." Included with soap stock in this list were cocoanut and other kinds of oil foods, oil settlings and oil tank bottoms, peanut oil (inedible), etc. While the record is persuasive that red oil compares favorably from a transportation standpoint with certain other articles used in the manufacture of soap, the Commission is not prepared to say that the failure of defendants to accord red oil by exception the same rating as these other articles results in unreasonable rates on red oil. HELD, rate attacked not unreasonable or unduly prejudicial, complaint dismissed. Williams Co. v. C. N. E. Ry., 112 I. C. C. 158.

(dd) Complainant attacked commodity rate of 17.5c charged on crude oil, in tank cars, from Ponca City, Okla., to Joplin, Mo., as unjust and unreasonable and as compared with rate of 16c from the same point to southeastern Kansas, unduly prejudicial. Ponca City is in a group with 25 other points of origin on the Santa Fe. From the origin group to all the Kansas points a mileage rate applies as an alternative where it makes less than the group rate, but this is not extended to include Joplin. The rate attacked does not appear excessive for haul of 220 miles and the empty return movement. HELD, rate attacked not unreasonable but unduly prejudicial to extent it exceeded rate under the alternative scale to Kansas points for the distance to Joplin, reparation awarded. Wilhoit Refining Co. v. A. T. & S. F. Ry., 112 I. C. C. 225.

(ee) Complainant attacked commodity rate of 39.5c charged on gas oil, in tank cars, shipped since Oct. 13, 1923 from Casper, Wyo., to Sioux City, Ia., as unreasonable and inapplicable. Some of the shipments moved Burlington others Northwestern and Omaha. Rate charged applicable on petroleum and petroleum products rated fifth class or lower in western classification, except crude, fuel, smudge, gas and road oils, rate on latter commodities being 33.5c. Oil was described as refined oil distillate with specific gravity of 36 degrees to 38 degrees and in the bills of lading and freight bills as petroleum refined oil distillate. The tariffs do not define the various kinds of oil. Rate charged applicable. Subsequent to filing of complaint carriers established rates 6c under rates on refined oil. HELD, rate charged applicable and not unreasonable, complaint dismissed. Sioux City Gas & Electric Co. v. C. B. & Q. R. R., 112 I. C. C. 344.

TAP LINES

I. CONTROL AND REGULATION.
- §1. Definition of tap line.
- §1½. Suspension.
- §2. Jurisdiction of Commission.
- §3. Test of Status.
  - (1) In general.
  - (2) Effect of incorporation.
- §4. When plant facility.
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- §5. Scope of tap lines investigation.

II. POWERS AND DUTIES.
- §6. As common carriers.
- §6½. Amount of allowances.
- §7. Legality of divisions, allowances or practices.
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III. THROUGH ROUTES AND JOINT RATES.
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IV. TARIFFS AND PUBLICATION.
- §11. In general.
- §12. Reparation.
- §12½. Per diem reclaims.

V. PROCEDURE AND PLEADING.
- §13. In general.

CROSS REFERENCES

See Allowances; Common Carrier; Divisions; Industrial Railroads; Spotting; Switch Tracks and Switching II.

I. CONTROL AND REGULATION.

See Control and Regulation.

§1. Definition of Tap Line.

(a) Findings in original reports, 52 I. C. C. 656, and 58 I. C. C. 450, that divisions of joint rates on lumber and forest products accruing to tap lines under orders in the Tap Line case, 31 I. C. C. 490, must be measured by distance to the junction with trunk line over direct route of movement toward final destination, rather than by out of line movements involving wasteful transportation, affirmed. Wasteful Service by Tap Lines, 89 I. C. C. 327.

§4½. When Common Carrier.

See Infra §6; Common Carrier.

(a) The holding that a particular industrial railroad is a common carrier means simply that it serves the public as well as the proprietary industry. It does not change the character of the service performed for the proprietary industry. Pressed Steel Car Co. v. Director General, 93 I. C. C. 224, 232.

II. POWERS AND DUTIES.

§6. As Common Carriers.

See Supra §4½; Common Carrier §7½.

(a) Hannibal Connecting Ry., respondent, inquired as to its operations with a view of determining its status as a common carrier and whether the provisions of section 15a of the act are applicable to it. Respondent operates a steam road from Hannibal, Mo., to plant of Atlas Portland Cement Co. at Ilasco, Mo. The majority of its capital stock is owned by the cement company. Respondents traffic consists chiefly of commodities transported to and from the plant of the cement company, but it serves and has served shippers located along its line and holds itself out to the public generally as ready to transport freight in interstate commerce. Respondent publishes a switching charge of 7c per ton which is absorbed by the Burlington. Respondent concedes it is a common carrier within the meaning of section 1 of the act. HELD, respondent was and is a common carrier engaged in interstate commerce and was and is subject to the provisions of section 15a of the act. Status of Hannibal Connecting R. R. Co., 91 I. C. C. 744.

(b) In 13665 complainant alleged that the Lorain & Southern, which operates a railroad from South Amherst, O., to its connection with the N. Y. C., a distance of one mile, is a common carrier; that all of their competitors on the N. Y. C., in the vicinity of Amherst, O., the N. Y. C. station nearest South Amherst, ship their products under rates which are the same from all the points of origin; that the rates charged complainants are higher than those rates by the amount of the difference between the rate of $7.50 per car, reduced to $6.75 July 1, 1922, established by the L. &. S., and the allowance of $3.29 per car to the L. & S. established by the tariff of the N. Y. C.; and that the through rates charged on interstate shipments are unreasonable to the extent of that difference, and unduly prejudicial. In 13665 Sub. 1, the L. & S. alleged it is a common carrier, that the allowance by the N. Y. C. was based on plant facility service and it not a sufficient allowance. The L. & S. holds itself out as a common carrier of property for hire and has served all who have applied; it issues bills of lading; and it files tariffs and makes the usual report to the Commission. It has no passenger or express service. HELD, the Lorain & Southern is a common carrier subject to the act, which may lawfully participate in joint rates with other carriers or have its switching charges on interstate shipments absorbed under appropriate tariff provisions by the roads having the line haul. HELD, through rates attacked on stone and stone products from points in the L. & S., not unreasonable of otherwise unlawful and that the amount now paid by the N. Y. C. to the L. & S. for movement of all commodities between points on the L. & S. and its interchange point with the N. Y. C., has not been shown to have been or to be unreasonable or otherwise unlawful, complaint dismissed. Ohio Quarries Co. v. N. Y. C. R. R. 92 I. C. C. 703.

§6½. Amount of Allowances.

See Allowances; Common Carrier §7½; Divisions.

(a) Complainant attacked combination rates on classes and commodities, except coal, between all points on the Federal Valley R. R. and points on other lines as unreasonable, unlawful, and dis-

criminatory to the extent that they exceed the rates to and from competing points on other lines in Athens County, O. Complainant, Federal Valley R. R., alleged divisions accorded it out of the joint rates on bituminous coal from mines on its lines to points on the lines of its connections, and its local rates on other traffic are insufficient to pay the cost of operation and are confiscatory. The Federal Valley extends 16 miles from Palos, O., to Lathrop, O. Joint rates are maintained by the carriers on coal, in carloads from mines on the Federal Valley, which are equal to the district rates in effect from mines on other roads. Rates on all other traffic are made by combination on Palos. HELD, interstate class rates are unjust and unreasonable to extent that, to or from points north of Palos, O., they exceed rates between those points, on the one hand and Albany, O., on the other; and to the extent that, to or from points south of Palos they exceed rates from or to Palos by more than the respective amounts by which the rates to or from Albany may exceed those to or from Palos on like traffic from or to points north of Palos for substantially similar distances. In February, 1918, the Railroad Administration allowed the Federal Valley an arbitrary of 20c on coal, increased to 30c in June, 1918, and to 42c in August, 1920, reduced in July, 1922 to 38c. The prayers for increased divisions is based pricipally upon the inability of the Federal Valley, under the present allowance, to earn sufficient revenue to pay the costs of operation, taxes and a return of 6 per cent upon the value of the property. There can be but little question that the movement over the Federal Valley 16 miles of track is proportionally much more expensive on coal shipments than the remainder of the hauls to interstate destinations. The 100% haul of empty coal cars coupled with the severe grades encountered on the return movement under load, and the inevitably greater expense of an independently operated short line, combine to make the service a relatively costly one. The Commission is persuaded that complainant should receive a somewhat larger share of the present joint rates on coal. HELD, divisions accorded Federal Valley should be 50c per ton on coal and on class rates should be figured upon the basis of a mileage pro rate of 32 miles, being 200 per cent of the actual mileage of complainant. Ohio Farm Bureau Federation v. A. &. W. Ry., 89 I. C. C. 489.

(b) Divisions and allowances accorded Christie & Eastern Ry., a common carrier tap line, by trunk-line conections, out of joint rates on lumber and forest products, found not unjust, unreasonable, inequitable or, otherwise unlawful. The Christie originally connected with but a single trunk line at Sandel but by extending its service under trackage rights additional outlets were established at Lecompte and Long Leaf. HELD: Hauling traffic through Long Leaf or Lecompte, instead of to less distant connection at Sandel, is an unnecessary and uneconomic service and not in the public interest. Service, as extended, falls under the ban of inefficiency since it entails a burden of expense voluntarily assumed which can not be overcome by increased volume of traffic. Moreover, such unnecessary expense should not be offset by depleting revenues of trunk-line connections. Christie & Eastern Ry. v. K. C. S., 93 I. C. C. 675.

(c) Divisions between carriers not operated under similar circumstances and conditions are not a proper measure of divisions to tap lines. Christie & Eastern Ry. v. K. C. S., 93 I. C. C. 675, 677.

(d) Upon further hearing, former report 68 I. C. C. 487, FOUND: That principles announced in The Tap Line Cases, 23 I. C. C. 549; 31 I. C. C. 490, have no further application to the Prescott & Northwestern R. R., and such carrier dismissed as a party thereto. All timber owned by the proprietary company in vicinity of the line has been removed and operation of the mill at Prescott discontinued. Such mill has been leased by the proprietary company to a lumber company in which none of the stockholders of either petitioner or the proprietary company has any interest. Since execution of such lease petitioner has not been, and in the future will not be, operated by or in the interest of the proprietary company. Accumulated stock of lumber at the mill at Prescott has all been shipped out, and the proprietary company has no additional timber adjacent to the line or in any territory to which it can be extended. The Tap Line Case, 95 I. C. C. 235.

(e) In 70 I. C. C. 690, the Commission granted to the Chaffee Railroad Company, complainant, a certificate of public convenience and necessity to operate its line of railroad. In 81 I. C. C. 72 the Commission found the Chaffee to be a common carrier subject to the act. Further, found that rates on coal from mines on its line to interstate destinations as unduly prejudicial to extent they exceeded rates contemporaneously maintained on like traffic from the Cumberland-Piedmont district of defendant to same destinations. Complaint, the Chaffee, alleged it has been unable to agree with defendant as to the divisions to be accorded to it on coal traffic originating on its line and that defendant will furnish cars for such traffic but will demand payment of per diem or other charges which will be unjust, unreasonable and inequitable. The Chaffee, 3.25 miles in length, extends from its junction with defendant at Chaffee, across the Potomac river to mine 1 of Manor Coal Co., beyond Vindex, Md. The line is the only means of ingress to or egress from the territory which it serves. It is chiefly an originating line. HELD, 22c per long ton will be just, reasonable and equitable divisions to be received by complainant. Chaffee R. R. v. W. M. Ry. 102 I. C. C. 53.

§7. Legality of divisions, allowances or practices.

See Allowances §10; Common Carrier; Divisions IV; Legality of Rates.

(a) Complainant, Puget Sound & Cascade Ry., is a short line railroad in Washington and complainant Clear Lake Lumber Company is a corporation manufacturing lumber at Clear Lake, Wash. Complainants attacked interstate carload commodity rates on lumber and forest products from points on the Cascade to eastern destinations as unduly prejudicial in relation to other points of origin in the coast group. The Cascade extends from Skagit Landing, near Mount Vernon, Wash., to Potts, Wash., 16.4 miles, connectings at Mount Vernon with the G. N., and Pacific Northwest Traction Company, the latter connecting at Bellingham, Wash., with the C. M. & St. P. The lumber company's plant is 6 miles east of Mount Vernon at Clear Lake, at which point the Cascade connects with the N. P. On Feb. 14, 1922, shortly prior to the submission of the case, the coast group basis was made applicable from points on the Cascade, as desired, leaving for determination only the divisional question and the demand for reparation. It appears that during the period covered by the shipments the coast group rates were available to the lumber company on traffic to all points on the Northern Pacific and via that line and its connections to all points east of Minnesota Transfer. Inasmuch as the lumber company's recourse to the G. N., was for the purpose of obtaining a better car supply, such damage as was sustained is not attributable primarily to the rate adjustment, and reparation may not be awarded. HELD, Cascade is a common carrier, rates attacked not unreasonable but unduly prejudicial to extent that rates to points on the G. N., west of Minnesota Transfer exceeded the coast group rates, reparation awarded. Question of divisions to be left for interested parties to adjust. Puget Sound & Cascade Ry. v. Director General, 91 I. C. C. 467.

(b) In 80 I. C. C. 268, the Pittsburgh & Ohio Valley was found to have been and to be a common carrier subject to the Act. The assessment of demurrage by its trunk line connections on cars delivered or placed for loading by the Valley at complainant's plant was found to be unlawful, and rates from and to complainant's plant found unreasonable and unduly prejudicial and reparation awarded. The extent of the interstate traffic handled for shippers other than complainant is not controlling. It sufficiently appears that interstate shipments have been and are transported by the Valley and its facilities are open to the public. In 41 I. C. C. 181, 44 I. C. C. 368, the Commission found that, owing to the special conditions surrounding the transportation of iron ore from the Lake Erie ports, the terminal or spotting service should be subject of a special charge as distinguished from the line haul service and other services involved in the transportation of iron ore. HELD: Original finding affirmed except as to exlake iron ores, reparation awarded. Carnegie Steel Co. v. Director General, 101 I. C. C. 638.

(c) Divisions and allowances accorded Christie & Eastern Ry., a common-carrier tap line, by trunk-line connections, out of joint rates on lumber and forest products, found not unjust, unreasonable, inequitable, or otherwise unlawful. The Christie originally connect-

ed with but a single trunk line at Sandel but by extending its service under trackage rights additional outlets were established at Lecompte and Long Leaf, HELD: Hauling traffic through Long Leaf or Lecompte, instead of to less distant connection at Sandel, is an unnecessary and uneconomic service and not in the public interest. Service, as extended, falls under the ban of inefficiency, since it entails burden of expense, voluntarily assumed which can not be overcome by increase volume of traffic. Moreover, such unnecessary expense should not be offset by depleting revenues of trunk-line connections. Christie & Eastern Ry. v. K. C. S., 93 I. C. C. 675.

§9. Right to allowances.

See Allowances; Common Carrier; Divisions §6.

(a) Findings in original reports, 53 I. C. C. 656 and 58 I. C. C. 450, that divisions of joint rates on lumber and forest products accruing to tap lines under orders in the Tap Line Case, 31 I. C. C. 490, must be measured by distance to the junction with the trunk line over direct route of movement toward final destination, rather than by out-of-line movements involving wasteful transportation, affirmed. Wasteful Service by Tap Lines, 89 I. C. C. 327.

III. THROUGH ROUTES AND JOINT RATES.

§10. Right in general.

See Common Carrier §7½; Through Routes and Joint Rates II.

(a) Complainant, Salina Northern Ry., alleged that its divisions of the interstate joint rates on traffic delivered to and received from defendants were unjust, unreasonable, inequitable and unduly prejudicial. Complainant extends from Salina, Kas., to Osborne, Kas., about 81 miles. It is operated independently and transports both freight and passengers. None of its equipment goes off its line. All cars for the transportation of freight to points off complainants line are furnished by the connecting carriers and payment therefor is made on the regular per diem basis. Salina Northern connects with Santa Fe and Rock Island at Salina, M. P., at Osborne, Kas., and U. P., at Lincoln Center, Kas. It is essentially an originating carrier. Joint rates are maintained with its connections. HELD, divisions of interstate joint rates not unjust, unreasonable, inequitable or otherwise unlawful, complaint dismissed. Salina Northern R. R. v. A. T. & S. F. Ry., 92 I. C. C. 475.

(b) Overruling Conf. Ruling 341, FOUND: That where a common carrier subject to the act performs an intermediate service in connection with traffic moving at joint rates, it should concur in such joint rates and receive divisions thereof, divisional arrangements to be so adjusted as to, in effect, result in absorption thereof by line that delivers traffic to carrier performing the intermediate service. Peoria & Pekin Union, 93 I. C. C. 3, 22.

IV. TARIFFS AND PUBLICATION.

See Tariffs II.

§12. Reparation.

See Reparation.

(a) In 88 I. C. C. 368 the Commission found rates charged on interstate shipments to and from complainant's plant on the Owasco Ry. at Auburn, N. Y., between April 12, 1915, and Jan. 8, 1921, as unreasonable to extent they exceeded the flat Auburn rates, and awarded reparation. Complainant introduced no rate comparisons. An award of reparation to complainant upon the ground of unreasonableness such as it sought would necessarily involve the conclusion that the line haul rates to and from Auburn were in each and every instance up to the limit of reasonable maximum rates and that the addition of the relatively small switching charges of the Owasco was sufficient, in every case to carry the rates over the line of maximum reasonableness by the exact amount of the switching charge. Such a conclusion is repugnant to common sense. HELD: Total charges not unreasonable, complaint dismissed. International Harvester Co. v. N. Y. C. R. R., 101 I. C. C. 89.

TARIFFS

I. CONTROL AND REGULATION.
§1. Jurisdiction of Commission.
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CROSS REFERENCES

See Branch Lines IV; Claims I; Class Rates I; Classification; Commodity Rates §2; Demurrage III; Divisions II; Export Rates and Facilities IV; Express Companies VI; Facilities and Privileges III; Import Traffic I; Pipe Lines III; Proportional Rates §6; Reconsignment IV; Reduced Rates III; Refrigeration IV; Reparation; Storage III; Switch Tracks and Switching §10; Tap Lines IV; Terminal Facilities §4; Through Routes and Joint Rates V; Transportation; Water Carriers III; Weights and Weighing VI.

I. CONTROL AND REGULATION.

See Control and Regulation.

§1. **Jurisdiction of Commission.**

See Advanced Rates §1 (4); Common Carrier; Interstate Commerce Commission I; Jurisdiction of Commission.

(a) Under the powers conferred by section 6 of the act the Commission has promulgated certain rules and regulations governing the form and construction of tariffs. Those rules require that rates be explicitly stated and arranged in a systematic manner. They do not require the publication of joint rates from and to all points. Wool rates investigation, 1923, 91 I. C. C. 235, 259.

(b) The haulage of a railroad company operating in this state of such slag, cinders, ashes, wastage, and the like is the service of a common carrier and the tariffs and charges therefor fall within the provisions of the Act of Congress to Regulate Commerce (U. S. Comp, St. §8563 et seq.), if the service be interstate or within the provisions of the Public Service Commission Act of this state, if the service be intrastate; and no compensation can be received by the carrier for such service other than that stated in its tariffs filed and published. Whitaker Glessner Co. v. Wheeling Terminal Ry. Co. (W. Va., 1925), 127 S. E. 639.

(c) Commission has frequently found that a shipper is chargeable with knowledge of the tariff rates. Western Sugar Refinery v. S. P. Co., 101 I. C. C. 113, 114.

(d) Rate on "Machinery, n. o. i. b. n.," assessed on portions of dismantled marine engines, billed as scrap iron, found applicable and not unreasonable. It was and is the practice of complainant to break similar parts into smaller pieces, but this was not done when these shipments moved. While there is no evidence to indicate whether or not commodities were sold for remelting purposes or were remelted, complainant's witness conceded that parts could be used in assembling other engines. The articles shipped were therefore not scraps or pieces of iron or steel having value for remelting purposes only. To come within that tariff description articles must not be shipped in their original form, but must be so reduced into fragments, scraps, or pieces as to be useless for any purpose other than remelting. It is nature of article shipped, not price at which it is sold or use to which it is put, which determines whether the rate on scrap iron applies. Simon v. S. Ry., 102 I. C. C. 325.

II. PUBLICATION.

See Advanced Rates VIII; Allowances II, §5; Cars and Car Supply §37; Class Rates I; Classification VI; Crimes §22; Demurrage III; Distance Rates §2; Divisions II; Export Rates and Facilities IV; Facilities and Privileges III; Long and Short Hauls §16; Loss and Damage §18; Motor Truck Service (i) (k); Passenger Fares and Facilities §18; Proportional Rates VI; Reconsignment IV; Reduced Rates III; Refrigeration IV; Switch Tracks and Switching §10; Tap Lines IV; Telephone and Telegraph Companies §5, V; Terminal Facilities §4; Track Storage.

§3. Effect in general.

(1) Adherence to Published Rate.

(a) The duly filed and published tariff rate, while it is in force, is the only lawful rate. Chicago, B. & O. R. Co. v. Merriman & Millard Co., 297 Fed. 1.

(b) A rate which is the clearly established rate must govern, though unjust. Davis, Director General of Railroads, v. Prairie Pipe Line Co., 298 Fed. 393.

(c) A carrier of freight can contract for no service not provided for in its tariff, and if it undertakes to do so the contract is unenforceable. Pennsylvania R. Co. v. S. M. Hamilton Coal Co. (Md. 1923) 125 Atl. 405.

(d) "Upon an interstate shipment the freight charges for the transportation of the goods are fixed by the schedule of rates and joint tariffs filed and posted in accordance with the act of Congress of June 29, 1906, known as the Hepburn act; and though a common carrier, by mistake or otherwise, delivers goods upon the payment of a lower rate than that stated in the schedules, the carrier may thereafter demand of the shipper the difference between the rate collected, and upon his refusal to pay may maintain an action therefor." Seaboard Air-Line Ry. v. Luke, 19 Ga. App. 100, 102, 90 S. E. 1041, 1042; Ga. R. v. Creety, 5 Ga. App. 424, 63 S. E. 528; Central of Ga. Ry. Co. v. O'Neill Mfg. Co., 19 Ga. App. 490, 91 S. E. 877. (a) "The fact that the rate was agreed on through mistake of one or both parties does not affect the operation of the rule requiring the established rate to be charged and paid, since both are bound to take notice of the filed tariff rates. Nor is it material whether the mistaken rate is fixed in the bill of lading or whether it was by parol agreement on a mistaken quotation of the rates made by the agent at the point of shipment." 10 C. J. 511, 512. (b) The carrier may collect freight charges from either the consignor or the consignee, in the absence of a special contract binding itself to collect such charges from one of them only. Southern Cotton Oil Co. v. So. Railway Co., 147 Ga. 646, 647, 95 S. E. 251; Id., 19 Ga. App. 453, 91 S. E. 876; Seabard Air-Line Ry. Co. v. Montgomery, 28 Ga. App. 639 (1), 112 S. E. 652. Western & A. R. R. v. Legg (Ga. 1924), 123 S. E. 31.

(efg) The published tariff rates must be charged and paid regardless of whether they are otherwise lawful or not; and an unlawful rate may subject the carrier to the payment of penalties to the Government, but its charging by the carrier does not give the shipper any right save to recover the full amount of damage sustained in consequence of any such violation of the provisions of the act. Pacific Adjustment Co. v. Director General, 93 I. C. C. 50, 51.

(h) Under the act the rate of the carrier duly filed is the only lawful charge. Deviation from it is not permitted upon any pretext. Shippers and travelers are charged with notice of it, and they as well as the carrier must abide by it, unless it is found by the Commission to be unreasonable. Ignorance and misquotation of rates is not an excuse for paying or charging either less or more than the rate filed. This rule is undeniably strict and it obviously may work hardship in some cases, but it embodies the policy which has been adopted by Congress in the regulation of interstate commerce in order to prevent unjust discrimination. American Licorice Co. v. C. M. & St. P. Ry., 95 I. C. C. 525, 527.

(i) Under Interstate Commerce Act and its amendments (Comp. St. § 8563 et seq.), train transportation embraces all services in connection with the shipment, including storage of goods after arrival at destination, and every common carrier subject to the act is required in its tariffs to state separately demurrage and other terminal charges and to adhere thereto, as to other parts of its tariff

schedule. Turner, Dennis & Lowry Lumber Co. v. Chicago, M. & St. P. Ry. Co., 2 Fed. 291.

(j) The published tariff schedule of an interstate carrier is due notice of its terms to all shippers. Turner, Dennis & Lowry Lumber Co. v. Chicago, M. & St. P. Ry. Co., 2 Fed. 291.

(k) Lawful rate on an interstate shipment, as established by rates and schedules filed by carrier, must be collected. American Ry. Express Co. v. Mohawk Dairy Co. (Mass. 1924) 144 N. E. 721.

(l) A carrier cannot depart to any extent from its published schedule of rates for interstate transportation on file, without incurring penalties of act of Congress. Missouri Pac. R. Co. v. Pfieffer Stone Co. (Ark. 1924) 266 S. W. 82.

(m) Shippers are governed by applicable tariffs and have no direct concern with fact of a change in ownership or control of particular carriers. General Petroleum Corp. v. C. B. & Q., 91 I. C. C. 388.

(n) With respect to interstate shipments, rates established according to law may not, by importunity, mistake, or otherwise, be changed for advantage of individual shippers, nor may any special advantage or discrimination be secured by contract or otherwise. Louisville & N. R. Co. v. A. H. Cleaver & Co., (Ala., 1924) 101 So. 597. (State shipment.)

(o) Misquotation of rates by a carrier does not in any way change the application of rates or relieve carrier of responsibility for collection of rates legally applicable. Randolph Furniture Works v. E. R. R., 92 I. C. C. 245.

(p) Carriers are obliged to collect and shippers to pay the legally published charges, and it is not within the commission's purview to pass upon the question of liability of consignors or consignees therefor. See Conf. Ruling 314; Wilson case 50 I. C. C. 571, and American Smelting & Refining Co., 62 I. C. C. 583, 589. Wuille & Co. v. M. H. R. R., 92 I. C. C. 299.

(q) Parties to interstate shipment cannot by agreement alter schedule of tariffs filed with and approved by Interstate Commerce Commission under Hepburn Act June 29, 1906, §2(pars. 1, 7 (U. S. Comp. St. § 8569, pars. 1, 7), amending Interstate Commerce Act, §6, pars. 1, 7, and Federal Control Act March 21, 1918, §10 (U. S. Comp. St. Ann. Supp. 1919, § 3115¾j), though agreement is in writing and is performed, and collection of less than schedule rate will not prevent recovery of shortage. Davis v. Keystone Steel & Wire Co. (Ill., 1925), 148 N. E. 47.

(r) No contract of carrier can reduce amount of freight on an interstate shipment legally payable, or release from liability a shipper who had assumed an obligation to pay such charges, and no act or omission of carrier, except allowing statute of limitations to run, will estop or preclude it from enforcing payment of full amount. Louisville & N. R. Co. v. Central Iron & Coal Co., 44 Sup. Ct. 441.

(s) A carrier cannot depart to any extent from its published schedule of rates for interstate transportation on file, without incurring penalties of act of Congress. Missouri Pac. R. Co. v. Pfeiffer Stone Co. (Ark., 1924), 266 S. W. 82.

(t) The commission is inclined to view with favor any steps which may be taken by carriers to simplify the present system of publishing rates from Southwestern territory to the east, with the important qualification, however, that the resulting rates must be reasonable. Butter, Eggs, Dairy Products, and Poultry, 96 I. C. C. 19, 29.

(u) Defendants' agents were by law charged with knowledge of the rates sought on the dates of shipment as well as subsequent to commission's decisions, for the combination rule was lawfully published and, until canceled, was binding. Crowell Lumber & Grain Co. v. Director General, 96 I. C. C. 259, 261.

(v) No charges were legally assessable on and after February 15, 1919, the defendant having no published charges applicable to complainant's shipments. Humphrey's Co. v. Director General, 96 I. C. C. 317, 318.

(w) A rule relating to the performance of a transportation service under published tariffs was part of the tariff and could not be waived. Dill Crossett, Inc. v. Director General, 104 I. C. C. 48, 49.

ALL OTHER CITATIONS

Republic Coal Co. v. C. St. P. M. & O. Ry. Co., 85 I. C. C. 331; Royall & Borden Mfg. Co. v. A. C. L. R. R. Co., 85 I. C. C. 715; Slogo Coal Corp. v. M. P. R. R. Co., 88 I. C. C. 111.

§3. (2) Erroneous quotation or publication.

See Erroneous Rates; Passenger Fares and Facilities §15.

(a) The publication of a tariff provision through error does not justify a carrier's failure to comply with its requirements. Miles Lumber Co. v. C. B. & Q. R. R., 89 I. C. C. 761, 763.

(b) Notwithstanding the fact that the defendant misquoted the rate to complainant, it was not obligated to turn the shipment over to another line at point of origin and forego the haul thereon. Mrs. Pattie Newsom v. M. & O. R. R., 91 I. C. C. 68, 70.

(c) Complainant contended the rates attacked were in violation of section 6 and were not lawfully published. This contention is based upon the fact that defendants failed to indicate a change in the arbitrary when it was increased. This omission did not render the rate unlawful. Package Sales Corporation v. U. P. R. R., 91 I. C. C. 697, 698.

(d) Erroneous publication of rates does not justify a departure therefrom and the intention of the framers is not controlling. Murray-Egan-McLeod Co. v. Pennsylvania R. R., 93 I. C. C. 79, 80.

(e) Under federal statute prohibiting discrimination in freight rates, no agreement between shippers and carriers or mistake or negligence by carriers in representing or collecting their freight charges can defeat their right and duty to collect published rates. New York Cent. R. Co. v. Sharp, 206 N. Y. S. 755.

(f) Misquotation of rates by carriers does not in any way change the application of rates or relieve carriers of responsibility for the collection of rates legally applicable. Randolph Furniture Works v. E. R. R., 92 I. C. C. 245.

§3. (3) Notice to Shipper.

See Notice; Released Rates §3½; Reparation §8.

(a) A law requires carriers to publish and post tariffs on the theory that they will be informative. A shipper is chargeable with knowledge of the tariff rates. Western Sugar Refinery v. S. P. Co., 101 I. C. C. 113, 114.

(b) The consignee of merchandise in interstate shipments is chargeable with knowledge of the amount chargeable in accordance with the tariff schedules on file from point of shipment to point of delivery, but is not chargeable as a matter of law with knowledge that the same merchandise has been prior to the purchase shipped from place to place by different carriers for different shippers, and is not chargeable as a matter of law with knowledge that the car containing the same has been kept out of service at intermediate points, resulting in demurrage charges. Cleveland C. C. & St. L. Ry. Co. v. McKenzie Lumber Co. (Ohio, 1925), 147 N. E. 8.

ALL OTHER CITATIONS

St. Louis Fruit & Vegetable Dealers v. W. Ry. Co., 85 I. C. C. 496.

§4. Necessity of publication.

See Allowances §4, II; Common Carrier §4; Demurrage §11; Divisions §2; Facilities and Privileges §17; Reconsignment §4; Refrigeration §5; Water Carriers III.

(a) In rule 4 h of tariff circular 18 A containing rules governing the construction and filing of tariffs, it is provided that all rules and regulations which in any way affect the rates shall be stated in the same tariff with the rates, or if contained in another tariff shall be made a part of the rate tariff by specific reference. The reason for such requirement is obvious. Any practice which would permit of rates being changed by the use of rules not referred to in connection with the rates themselves must of necessity tend to create the very discrimination, prejudice, and preference which the Act was designed to prohibit and make unlawful. Mason By Products Co. v. Director General, 92 I. C. 646, 648.

(b) Combination of local rates found applicable on shipment stopped in transit to finish loading, no tariff authority existing for such a stop. Mississippi Pearl Button Co. v. A., T. & S. F. Ry. Co., 98 I. C. C. 560, 563.

(c) The only requirement placed on carriers by the law respecting tariffs or changes therein is the filing and posting of same in the way specified, without requiring them to notify or advise shippers of such changes. However, there were no changes which would affect the situation here involved, as contended by complainant. Haas & Co. v. Director General 98 I. C. C. 619, 622, 623.

III. POSTING.

See Cars and Car Supply §40; Crimes §10, §22; Reparation §9.

§6. In General.

(ab) Section 6 of the Act requires that charges for services subject to the Act be filed with Commission, which requirement Commission has always construed as making necessary the statement in tariffs of such charges separately from other charges not subject to the Act. Motor-Truck or Wagon Transfer Service, 91 I. C. C. 539, 549.

(c) Contention that increased rates were in violation of section 6 of the Act and not lawfully published because tariff reissue publishing such increases failed to indicate that a change had been made in rate. HELD: Such omission did not render published rate unlawful. National Preservers & Fruit Products Asso., 74 I. C. C. 179, 182. Package Sales Corp. v. U .P. R. Co., 91 I. C. C. 697, 698.

(d) Where special permission is granted carriers to establish rates upon less than statutory notice, such permission has no effect upon rates until they have been published and filed in accordance with requirements of the act. Oklahoma Portland Cement Co. v. A., T. & S. F., 93 I. C. C. 203, 204.

(e) The only requirement placed on carriers by the law respecting tariffs or changes therein is the filing and posting of same in the way specified, without requiring them to notify or advise shippers of such changes. However, there were no changes which would affect the situation here involved, as contended by complainant. Haas & Co. v. Director General 98 I. C. C. 619, 622, 623.

(f) The sixth section of the act now requires, among other things, that common carriers subject to the act shall file with this commission and print and keep open to public inspection schedules which shall state separately all terminal charges, storage charges, icing charges, etc. National Livestock Exchange v. A. T. & S. F. Ry. 107 I. C. C. 512, 521.

IV. CONSTRUCTION.

§7. In general.

See Supra II; Advanced Rates §8½a, §9½, §24; Allowances §8 (5) (o); Bills of Lading §2½ (b); Classification §17, §20. §22, §24; Commodity Rates I, II, §3; Courts V; Differentials III; Express Companies X, §13; Facilities and Privileges §17½, §18, §19; Long and Short Hauls §16; Pipe Lines III; Proportional Rates I (i); Reconsignment §5; Refrigeration §6; Reparation §8; Storage III; Tap Lines IV; Through Routes and Joint Rates §18, §21, V; Track Storage III; Water Carriers III; Weights and Weighing VI.

(a) Words of a tariff must be construed in their ordinary sense, and where the meaning, so construed, is clear it must govern. Flanley Grain Co. v. Director General, 89 I. C. C. 33, 36.

(b) Rates on "Feed, prepared stock, poultry or pigeon, not medicated or condimental," found applicable on condensed buttermilk. Article shipped was intended for and used as animal food which appears to be its only use. Process of production does not involve medication or addition of condiments and thus comes clearly within description of prepared stock feed, "not medicated or condimental." Moreover, if carrier desired to except it from other prepared stock foods it could have done so by enumerating commodities intended to be covered by the item, or by specific exclusion. Specific class B rating on condensed buttermilk found inapplicable and refund of overcharges directed. Consolidated Products Co. v. C., B. & Q. R. R. Co., 89 I. C. C. 103.

(c) Commodity tariffs must be read in the light of the governing classification. Grosjean Rice Milling Co. v. Director General, 89 I. C. C. 395, 396.

(d) The reduction of the property to complainants possession was a condition precedent to the lawful application of the combination to the shipments. Complainants contention is that it intended to take possession of the shipments, and sent an agent with a check for that purpose. Mere intention can not be allowed to control in cases of this character. What was actually done must govern. Stetson Cutler & Company v. N. Y. N. H. & H. R. R., 91 I. C. C. 3, 5.

(e) Complainant presented a question of tariff interpretation in connection with less carload shipments of canned goods from Kansas City, Mo., to destinations in Kansas during 1920 and 1921 over the M. P. Some were charged second class and some third class, a commodity basis being subsequently established. Defendants tariff provided less carload commodity rates on canned goods, includ-

ing those of the character here considered, and referred in connection therewith to item 155 which provided: Where this item is referred to: Canned goods rates apply on the following articles carload, also less than carload when packed as required in Western Classification as taking fourth class rates. The western classification did not provide for fourth class rates on any of the articles shipped and complainant conceded that the commodity rates are not made applicable by item 155. HELD, proper basis applicable second and third class, complaint dismissed. Ridenour Baker Grocery Co. v. M. P. R. R., 91 I. C. C. 739.

(f) Shippers are justified in relying upon the published rates, and if the intention of defendants may not fairly be gathered from the tariffs themselves, the familiar rule that the intention of the tariff framers is not controlling must be applied. Nashville Traffic Bureau v. Director General, 92 I. C. C. 211, 214.

(g) When question is raised concerning the proper construction of carriers tariffs, the rule of fair and reasonable construction applied. Nashville Traffic Bureau v. Director General, 92 I. C. C. 211, 214.

(h) Oral representations of a carrier do not in any way change the application of rates or relieve the carrier of responsibility for the collection of such rates. Randolph Furniture Works v. E. R. R. 92 I. C. C. 245, 246.

(i) Rates on the same commodity between the same points via the same route should not be included in different tariffs at the same time. Walsh Tie & Lumber Co. v. Director General, 92 I. C. C. 311, 314.

(j) The construction of a freight tariff is a question of law, but the relation of tariffs to one another in a common territory is not entirely a question of law, but more in the nature of a mixed question of law and fact. Davis, Director General of Railroads v. Prairie Pipe Line Co., 298 Fed. 393.

(k) While freight tariffs should be construed according to plain import or language employed, particular phrases or sentences in tariff sheet must be considered in connection with subject-matter and circumstances to which language refers, such as footnotes or other extraneous matters, technical terms must be given their full meaning and effect. Jeremy Fuel & Grain Co. v. Public Utilities Commission (Utah 1924) 226 P. 456.

(lmn) The law imposes upon shippers the duty of ascertaining the rates and conditions under which they ship, and noncompliance by a shipper with tariff rules affords no basis for a finding that the rate legally applicable is unreasonable or unjustly discriminatory. American Licorice Co. v. C. M. & St. P. Ry., 95 I. C. C. 525, 527.

(o) In the determination of a tariff question the intentions of the carrier publishing the tariffs can not control. The Commission can look only to the wording of the specific tariffs under which the shipments moved. Des Moines Saw Mill Co. v. Director General, 96 I. C. C. 557, 560.

(pqr) In interest of simplicity of tariffs, it has been Commission's practice to discourage publication in tariffs of matter other than necessary to comply with the Act and Commission's regulations. However, in view of circumstances of instant case surrounding motor-truck service in connection with water and rail transportation, permission granted carriers to include in their tariff charges of motor trucks for service from inland points of origin, such charges to be published separately from charges subject to the Act; also to include combined charges for the two services from such inland points to ultimate destinations, motor-truck charges and combined charges to be clearly shown as being published for information only. Motor-Truck or Wagon Transfer Service, 91 I. C. C. 539, 540, 549.

(st) Tariff provisions which are ambiguous and contradictory will be construed in favor of shipper. Caddo Central Oil & Rfg. Corp. v. Director General, General, 92 I. C. C. 627, 631.

(u) Tariff provision that a certain charge applies "from" or "to" a given point is more specific than a provision applying "between" two points. Caddo Central Oil & Rfg. Corp. v. Director General, 92 I. C. C. 627.

(v) Tariffs must be construed strictly in accordance with their printed langauge, and intention of framers is not controlling. Caddo Central Oil & Rfg. Corp. v. Director General, 92 I. C. C. 627, 631.

(w) Shippers are justified in relying upon published rates, and if intention of carriers may not fairly be gathered from tariffs themselves, the familiar rule that intention of tariff framers is not

controlling must be applied. However, when question is raised concerning proper construction of tariffs, the rule of fair and reasonable construction applies. Raymond Hadley Corp., 174 N. Y. Supp. 342. Nashville Traffic Bureau v. Director General, 92 I. C. C. 211, 214.

(xy) Requirement of rule 4 (h) of Tariff Circular 18-A, which provides that all rules and regulations which in any way effect rates shall be stated in same tariff with the rates, or if contained in another tariff shall be made a part of the rate tariff by specific reference "Governed by rules and regulations shown in — I. C. C. No. —," was designed to obviate rate changes by use of rules not referred to in connection with rates themselves, a practice which must of necessity tend to create the very discrimination, prejudice, and preference which the act was designed to prohibit and make unlawful. Mason By-Products Co. v. Director General, 92 I. C. C. 646, 648.

(z) Tariffs are to be construed according to their language and intention of framers is entitled to little, if any, consideration. Smokeless Fuel Co. v. Chesapeake & O. Ry. Co. (Va., 1925), 128 S. E. 624.

(aa) In case of doubt, language of tariff is to be construed most strongly against carrier. Smokeless Fuel Co. v. Chesapeake & O. Ry. Co., (Va., 1925), 128 S. E. 624.

(bb) Nontechnical words of a written tariff are to be given their ordinary significations, and instrument is to be read as a whole, and apparent inconsistences should, if possible, be reconciled. Smokeless Fuel Co. v. Chesapeake & O. Ry. Co., (Va., 1925), 128 S. E. 624.

(cc) In ascertaining meaning of language of tariff, object sought to be accomplished is to be considered, and, if language is fairly susceptible of reasonably plain meaning, that construction should be put thereon. Smokeless Fuel Co. v. Chesapeake & O. Ry. Co., (Va., 1925), 128 S. E. 624.

(dd) Interstate Commerce Commission Tariff 8645, rule 3 (b), cl. 4, read as a whole, HELD: Not to provide that the dumping of a substituted car of coal into a ship operates to release, not only that car, but also the one for which it was substituted. Smokeless Fuel Co. v. Chesapeake & O. Ry. Co., (Va., 1925), 128 S. E. 624.

(ee) Erroneous publication of rates does not justify a departure therefrom and intention of framers is not controlling. Murray-Egan-McLeod Co. v. P. R. R., 93 I. C. C. 79, 80.

(ff) Where special permission is granted carriers to establish rates upon less than statutory notice, such permission has no effect upon rates until they have been published and filed in accordance with requirements of the act. Oklahoma Portland Cement Co. v. A., T. & S. F., 93 I. C. C. 203, 204.

(gg) Under the law as it now stands carriers are under no obligation to make their terminal charges with a view to insuring a profit upon operations of other public terminals. Nor does it seem to the commission to have been contemplated that the expressed policy of Congress of developing public terminals at port cities is to be carried out by imposing unnecessary expenses upon shippers and traffic, which would defeat a policy of real terminal improvement. Handling Charges on Cement, Fertilizer, and Salt, 93 I. C. C. 640, 644.

(hh) Tariffs are construed according to their language, and intention of framers is not controlling. Boldt Co., 42 I. C. C. 308, 310; Southern Veneer Asso., 62 I. C. C. 669, 674. United Cycle & Supply Co. v. B. & O., 93 I. C. C. 689, 690.

(ii) A tariff is construed according to its terms, whatever may have been intention of compilers, and conflict or ambiguity is resolved against compilers. Cosden Oil & Gas Co. v. A., T. & S. F., 95 I. C. C. 116, 118.

(jj) Irrespective of intentions of framers, tariffs will be construed according to their language. If it is carriers' intention to limit rates so as to exclude specific commodities they should do so in clear and unequivocal language. Louisiana Red Cypress Co. v. M. L. & T. R. R. & S. S. Co., 95 I. C. C. 159, 160.

(kk) The subsequent establishment of a commodity rate has effect of removing the article covered thereby from the classification and class-rate tariffs which theretofore applied. Rule 7 (a) of Tariff Circular 18-A. Furthermore, under rule 8 (a) of that tariff circular, it is not a condition precedent to application of such a commodity rate that tariff containing it make cross reference to tariff in which class rates are named. Singer v. L. S. F., 95 I. C. C. 667, 668.

(ll) Under complainant's construction of tariffs, "handling incidental to storage" and "handling to and from ship side" would be synonymous, making the tariff contradictory in its terms. Such construction should not be placed upon it, unless clearly required by the tariff itself. New Orleans Export Co. v. I. C. R. R. Co., 96 I. C. C. 509.

(mm) In the determination of a tariff question the intentions of carrier publishing the tariffs can not control; neither can the action taken by the director general on other shipments which moved during Federal control under rates contained in other tariffs. We can look only to the wording of the specific tariffs under which the shipments moved. Des Moines Saw Mill Co. v. Director General, 96 I. C. C. 557.

(nn) In the determination of a tariff question the intentions of the carrier publishing the tariffs can not control; neither can the action taken by the director general on other shipments which moved during Federal control under rates contained in other tariffs. Des Moines Saw Mill Co. v. Director General, 96 I. C. C. 557, 560.

(oo) While doubts as to the meaning of tariff must be resolved in favor of the shipper and against the carrier which compiled it, the doubt must be a reasonable one. In interpreting a tariff the terms used must be taken in the sense in which they are generally understood and accepted commercially, and neither carrier nor shippers can be permitted to urge for their own purposes a strained and unnatural construction. Armstrong Mfg. Co. v. A. & R. Ry Co., 96 I. C. C. 595, 599.

(pp) Commission has uniformly found that tariffs must be constructed strictly according to their language, and the intention of the framers is not controlling. Chapin-Sacks Corp. v. P. R. R. Co., 96 I. C. C. 706, 707.

(qq) Shipment of steel rivets from Vancouver, Wash., to Portland, Oreg., found not scrap steel within meaning of the tariffs, and not entitled to prevailing lower rates on that commodity. Complaint dismissed. Alaska Junk Co. v. S. P. & S. Ry. Co., 98 I. C. C. 551.

(rr) Commodity tariffs must be strictly construed. Milne Chair Co. v. A. C. L. R. R. 102 I. C. C. 165, 166.

(rra) Rule 6 of Tariff Circular 18-A provides that commodity rates must be specific, and that they must not be applied to analogous commodities. If a tariff should be filed naming commodity rates on "grain products," for example, the commission could require carriers to correct it by specifying a full list of articles to be included within that designation. A commodity rate on a specific article of transportation, stated definitely as so many cents per 100 pounds, is a specific commodity rate, notwithstanding the fact that the same rate is not repeated in the tariff in connection with each point of origin and each point of destination from and to which the rate is made to apply. Miller & Lux v. S. P., 102 I. C. C. 137, 139.

(rrb) Refusal of rail carriers to handle, at their own expense, import shipments of cork waste, in bales, from side of ships docked at Baltimore, Port Covington piers to cars on such piers, for transportation to Beaver Falls, Pa., found unlawful. Tariff specifically provided that rates will apply from ship's side when property is received from vessels docked at piers or from ship's side in stream, within lighterage limits, when ship is awaiting docking at piers. Fact that such provision was carried under heading "Handling of freight by lighter or float within lighterage limits" did not operate to restrict it to traffic involving floatage or lighterage, but was also applicable to traffic handled from ship to car in transfer of which no lighterage or floatage is involved. Reparation awarded. Armstrong Cork Co. v. W. M. Ry., 102 I. C. C. 713.

(ss) Tariffs must be read in strict accordance with their terms. Lewiston Elevator Co. v. C. G. W. R. R. 104 I. C. C. 473, 474.

(tt) The failure of defendants to publish their rates and charges in clear and unmistakable terms, as required by the tariff rules, may not be used as a cloak to defeat the claims of shippers. In construing doubtful and ambiguous tariffs, the Commission has always resolved the doubt against the party responsible for having such tariffs in effect. North Packing & Provision Co. v. Director General, 104 I. C. C. 607, 614.

(uu) The Commission has often held that in interpreting the tariff the terms must be taken in the sense in which they are generally understood and accepted commercially. Iron and steel articles, 104 I. C. C. 616, 621.

(vv) While doubts as to the meaning of a tariff must be resolved in favor of the shipper and against the carrier which compiled it, the doubt must be a reasonable one. In interpreting a tariff the terms used must be taken in the sense in which they are generally understood and neither carriers nor shippers can be permitted to urge for their own purposes a strained and unnatural construction. Roswell Auto Co. v. A. T. & S. F. Ry. 107 I. C. C. 555, 557.

(ww) When question is raised concerning the proper construction of carriers tariffs, the rule of fair and reasonable construction applies. Roswell Auto Co. v. A. T. & S. F. Ry. 107 I. C. C. 555, 558.

(xx) Upon contention of complainants that during Federal control the rule under section 2 (e) of General Order No. 28 of director general must govern all tariffs, and that as it limits the power to increase rates, the legality of the rates depends upon the observance of this condition, HELD: Legal rates must be determined by the words of the published tariffs themselves, rules or provisions of that order to the contrary notwithstanding. Nash Spokane Co. v. Director General, 100 I. C. C. 223, 226.

(yy) The commission has uniformly found that carriers' tariffs must be construed strictly according to their language, and that the intention of the framers is not controlling. Further, that although doubts as to the meaning of a tariff must be resolved in favor of the shipper and against the carrier which compiled it, the doubt must be a reasonable one; and that in interpreting a tariff the terms used must be taken in the sense in which they are generally understood and accepted commercially, and neither carriers nor shippers can be permitted to urge for their own purposes a strained and unnatural construction. Forbes & Sons Piano Co. v. A. G. S. R. R., 101 I. C. C. 74, 76.

(zz) Tariffs are construed according to their language, and intention of framers is not controlling. See 42 I. C. C. 308; 62 I. C. C. 669. United Cycle Supply Co. v. B. & O., 101 I. C. C. 334, 335.

(3a) Tariffs must be strictly construed, and the commission may not read into a tariff rule something that would be favorable to a shipper's contention. Armour & Co. v. D., L. & W., 101 I. C. C. 337, 339.

(3b) Tariffs are to be construed strictly, and the intention of the framers is not controlling Doubt as to the meaning of a provision must be resolved in favor of the shipper. American Sand & Gravel Co. v. Director General, 109 I. C. C. 557, 559.

(3c) In case of ambiguity, the familiar rule of construction is that a tariff must be construed against the framer. Central Commercial Co. v. A. T. & S. F. Ry., 109 I. C. C. 639, 640.

(3d) Where there is doubt as to the meaning of a tariff provision the doubt should be resolved against the maker and in favor of the shipper. Wagner Electric Corp. v. Director General, 112 I. C. C. 57, 58.

ALL OTHER CITATIONS

Republic Coal Co. v. C. M. St. P. M. & O. Ry. Co., 85 I. C. C. 331; Mason City Brick & Tile Co. v. Director General, as Agent, 88 I. C. C. 37; Chicago Live Stock Exchange v. Director General, as Agent, 88 I. C. C. 202; Furnishing Ice and Salt, 88 I. C. C. 361; Barrett Co. v. Director General, as Agent, 88 I. C. C. 535.

§8. **Ambiguity.**

(a) The Commission has consistently held that, irrespective of the intentions of their framers, tariffs will be construed according to their language. Any ambiguity or uncertainty in a tariff will be resolved against its makers. Louisiana Red Cypress Co. v. M. L. & T. R. R., 95 I. C. C. 159, 160.

(b) It is well settled that ambiguity in tariffs must be resolved in favor of the shipper. Transit on Hogs, 98 I. C. C. 153, 154.

(c) Tariff provisions which are ambiguous and contradictory will be construed in favor of shipper. Caddo Central Oil & Rfg. Corp. v. Director General, 92 I. C. C. 627, 631.

(d) As between inconsistent or conflicting tariff provisions force and effect must be given to those provisions which result in lowest charge to shipper. Cadda Central Oil & Rfg. Corp. v. Director General, 92 I. C. C. 627, 631.

(e) A tariff is construed according to its terms, whatever may have been intention of compilers, and conflict or ambiguity is resolved against compilers. Cosden Oil & Gas Co. v. A., T. & S. F., 95 I. C. C. 116, 118.

(f) It is a familiar rule of construction that ambiguities in a tariff must be resolved against the maker. Williams Co. v. C. N. E. Ry., 112 I. C. C. 158, 159.

ALL OTHER CITATIONS

North American Oil & Refining Co. v. Director General, as Agent, 85 I. C. C. 697.

§8½. Amendments and Supplements.

ALL CITATIONS

North American Oil & Refining Co. v. Director General, as Agent, 85 I. C. C. 697.

§9. Cancellation.

(a) Upon contention of complainants that commodity rates in effect when shipments moved were not legally published, in that the tariff did not show proper cancellation of the previous issues, and therefore no through commodity rates were established, leaving the class rates to apply, FOUND: Tariff carrying the rates charged states on its title-page "cancels I. C. C. No. 166," and this is sufficient to constitute cancellation of that tariff in full, notwithstanding an item on another page under the heading "Cancellation" which explains the reason of the noninclusion of rates from or to certain stations which theretofore had been named. Failure to comply with the requirements of the railroad administration that freight-rate authority shall be obtained for all changes in rates of carriers under Federal control does not invalidate the tariff. Nash Spokane Co. v. Director General, 100 I. C. C. 223, 226.

§9a. Combination rule.

See Infra §13a.

(a) Where carriers under Federal control publish the so-called combination rule, which provides a method for constructing through rates made by use of combinations, and tariffs do not restrict its application to Federally controlled lines, there is a holding out to shippers of rate so constructed which publishing carriers must protect, and principle laid down in the Sligo case, 62 I. C. C., 643, 73 I. C. C. 555, applies. This situation is applicable to shipments moving to points on nonfederally controlled lines, even though such carriers do not concur in the rule or carry a similar rule in their tariffs, and is equally applicable to intrastate shipments moving during Federal control. McCloud River Lumber Co. v. Director General, as Agent, 89 I. C. C. 645, 647.

(b) Where one of the tariffs used in making combination rates on through shipments contained a rule known as a combination rule there was a holding out to the shipper of the rate so constructed which the carrier should protect. Romann & Bush Pig Iron & Coke Co. v. Director General, 92 I. C. C. 605, 606.

(c) Complainant attacked commodity combination rates charged on 10 cars of ground limestone, shipped during the period Sept. 13, 1921, to Oct. 24, 1921, from Barber, Va., to Greensboro, N. C., as in excess of the rate authorized by defendants tariffs. Shipments moved over C. & O. to Lynchburg, Va., and thence Southern to Greensboro. Factor of C. & O. to that point was $1.40 and a like factor applied over the Southern from Lynchburg to destination. As the tariff of the C. & O. in reality contains a rule which was not so specifically restricted as to render it inoperative in connection with this tariff, that carrier must protect the aggregate rate constructed on the basis of the rule. HELD: The Southern under its tariff, was entitled to retain charges based on its local rate of $1.40 per ton, but aggregate rate was $2.50 per ton and shipments overcharged, reparation awarded, complaint dismissed. Armour Fertilizer Works v. Southern Ry., 93 I. C. C. 186.

(d) Where the delivering carrier is the only line which publishes the equalizing clause and the tariffs of the other carrier participating in the movement do not publish the clause or refer to any other tariff which publishes such a rule, the Commission has ruled that, where one of the tariffs used in making combination rates on through shipments contains a rule that such rates will be subject to the increase but once, there is a holding out to the shipper of the rate so constructed, which the carrier should protect. California Cotton & Factorage Co. v. Director General, 93 I. C. C. 260, 261.

(e) If, in connection with one of the factors of a combination rate and not with the others, a carrier makes reference to the combination tariff there is a holding out to the shippers that the through rate constructed in accordance

with the combination tariff will be protected by that carrier. Combination Rule on Lumber, 93 I. C. C. 278, 280.

(f) Direct reference in the rate tariffs to a rule in the combination tariff in effect makes such a rule a part of the former just as definitely as though it was published therein. Combination Rule on Lumber, 93 I. C. C. 279, 280.

(fg) The publication in one of the tariffs used in making combination rates on through shipments, of a rule that such rates would be subject to a single increase was a holding out to the shipper of the rate so constructed which the publishing carrier must protect. Southern Products Co. v. Director General, 98 I. C. C. 462, 464.

(h) Complainant attacked combination rates charged on gasoline and other petroleum products, carloads, during federal control from Sugar Creek, Mo., and El Segundo, Calif., to Blythe, Calif., as in excess of applicable rates. Shipments moved over Santa Fe to Blythe Junction, Calif., and California Southern to Blythe, the latter carrier not being under federal control. The rates on petroleum throughout the country were increased 25% on June 25, 1918, and on July 11, 1918, a flat increase of 4.5c per 100 pounds was established over lines under federal control in lieu of the 25% increase. This 4.5c increase was established by the Santa Fe but not by the California Southern. Rates charged combination of local rates to and from Blythe Junction. The tariff of the Santa Fe carried a rule to the effect that the increase was to be paid but once. HELD: Rates applicable the combination basis plus 4.5c, reparation awarded. Standard Oil Co. v. Director General, 98 I. C. C. 587.

(i) Complainant attacked combination rate of 51.5c charged on five cars of gasoline shipped during March, April and May, 1923, from Tulsa, Okla., to Rochester, Ind., as in violation of section 6 to extent it exceeded 49c. Shipments were routed by shipper MV, MKT, C&A, and LEW, and Frisco, St. L. C. & A, L. E. W. In each case a rate of 49c was inserted by the shipper. The shipments moved as routed through Peoria, Ill. No joint through rates were in effect. The applicable rate in effect at the time the shipments moved was 50.5c, made up of a commodity rate from Tulsa to Chicago of 33.5c plus 17c beyond. This combination applied to the shipments in question under rule 5b of tariff circular 18A. HELD: Shipments overcharged to extent of 1c per 100 pounds, reparation awarded, complaint dismissed. Cosden Co. v. L. E. & W. Ry., 98 I. C. C. 597.

(j) No joint rates were in effect and shipments moved under a two-factor combination. Tariff of one participating carrier carried the combination rule which provided a method for constructing through rates made on combination, but did not specifically provide for its use in connection with first component of the through rate. Carrier publishing other factor made no reference to the rule nor carried a similar one in its tariff. Contention that above circumstances precluded application of the rule, and to find otherwise would contravene certain provisions of Tariff Circular 18-A, not sustained, following the Sligo case, 62 I. C. C. 643, and 73 I. C. C. 551. Minneapolis Steel & Machinery Co. v. Director General, 92 I. C. C. 603, 604. National Supply Co. v. Director General, 92 I. C. C. 610, 611.

(k) Shipments moved under combination rates. Tariff governing second component carried the combination rule which provided a method for constructing through rates made on combination. Tariff of originating carrier carried no similar rule, nor made reference to any tariff in which such rule was carried. HELD: There was a holding out to shipper of rates constructed in accordance with the rule which publishing carrier must protect. See Sligo case, 62 I. C. C. 643. Reparation awarded. California Cotton & Factorage Co. v. Director General, 93 I. C. C. 260.

(l) Direct reference in rate tariffs to the combination rule in a combination tariff in effect makes such a rule a part of the former just as definitely as though it were published therein, and principle announced in the Sligo case, 62 I. C. C. 643; 73 I. C. C. 551, is controlling. Combination rule on lumber, 93 I. C. C. 279, 280.

(m) Carriers stress fact that in several reports the commission has commented upon undesirability of the combination rule from a tariff standpoint, and refer to cooperation and suggestions of the Bureau of Traffic looking to the ultimate elimination of the combination

tariff. FOUND: Suggestions did not contemplate increase in rates, for which no sound justification is offered, by cancellation of the rule. Combination rule on lumber, 93 I. C. C. 279, 281.

(n) The commission has no desire to continue indefinitely operation of the so-called combination rule, but on contrary feels that carriers should use all due diligence in eliminating that rule from their tariffs as it is not a desirable method of publication or one which fully meets requirements of section 6 of the act. Cancellation rule for Combination rates, 93 I. C. C. 614, 615.

(o) The Commission has repeatedly held that the notation on a tariff in accordance with rule 77 is a substantial compliance with the fourth section requirements, and that a request for the publication of a rate under that rule prior to the movement of shipments is not essential in order that the shipper may take advantage of such provision. Liberty Cooperage & Lumber Co. v. Erie R. R. 107 I. C. C. 165, 166.

(p) Tariffs of originating line neither carried nor made reference to the so-called combination rule which provided a method for constructing through rates made on combination, while tariff of other participating carrier made reference thereto. There is no merit in contention that in order to apply this rule each tariff naming the factors of such combination rates should refer to tariff containing the rule. HELD: Principle laid down in Sligo case, 62 I. C. C. 551, is controlling, and rates charged were in excess of those applicable. Reparation awarded. Hardwick Stove Co. v. Sou. Ry. Co., 100 I. C. C. 409.

(q) Combination rate assessed on cork sheets or slabs without binder, from Camden, N. J., to El Centro and Brawley, Calif., found inapplicable. Joint rate alleged applicable was restricted by exception to exclude shipments passing enroute through points taking Group K, L, or M rates and complainant's shipments were therefore not entitled to the joint rate. They were, however, entitled to a lower combination based on St. Louis, applicable under rule 5 (b) of Tariff Circular 18-A. Refund of overcharges directed. Armstrong Cork & Insulation Co. v. Reading Co., 100 I. C. C. 468.

(qa) Shipments of printing paper from Lawrence, Mass., to Long Island City, N. Y., found overcharged. There were no joint through rates in effect and charges were collected on basis of combinations. However, lower combinations contemporaneously in effect could have applied and were legally applicable. Reparation awarded. Merrimac Paper Co. v. B. & M., 102 I. C. C. 133.

(qb) Upon contention of complainant that under Conference Ruling 239 had there been no joint through rate published a lower combination rate would have applied. FOUND: A rate can not be said to be unlawful because under a different state of facts a lower rate would have applied. Refiners Oil Co. v. P. R. R., 102 I. C. C. 249, 250.

(qc) Combination rates assessed on shipments moving from Edmonton and Patricia, Canada, to Chicago, Ill., found inapplicable. Tariff naming rates covering one factor of combination made reference to combination rule which provided a method for constructing through rates made on combination and, by express terms, limited application to continuous rail shipments. There being an original and continuing intention on part of shippers that cattle should move through to Chicago the doctrine of the Settle case, 260 U. S. 166 is controlling, and following principle laid down in the Sligo case, 62 I. C. C. 643; 73 I. C. C. 551, shipments were subject to rates made by application of combination rule. Reparation awarded. Chicago Live Stock Exchange v. Director General, 102 I. C. C. 452.

(r) Complainant attacked combination rates charged on four cars of lumber shipped during June and July 1924 from Pachuta, Miss., to Homestead, Meadville, Titusville and Mercer, Pa., as illegal. Shipments moved NO&NE, Meridian, Miss., AGS to Birmingham, Ala., L. & N., to Cincinnati, O., and either Pennsylvania or Erie beyond, combination being 29.5c to Cincinnati and 18.5c beyond, both rates being subject to the combination rule, or 44.5c, defendants collecting on full combination, 48c. HELD, applicable rate 44.5c, reparation awarded. Moore Marshall Lumber Co. v. N. O. & N. E. R. R., 112 I. C. C. 33.

(s) Complainant attacked combination rate applicable on three cars of ground limestone in June and Sept. 1924 from Sparta, Tenn., to Fairfield, Conn.,

as unreasonable and in violation of section four. Shipments moved over N. C. & St. L., to Nashville, Tenn., L. & N., to Cincinnati, O., Pennsylvania to New York and New Haven to destination, applicable rate $7.73 composed of $2.43 to Cincinnati and $5.30 beyond, one of the factors being subject to the combination rule. HELD, overcharges found, complaint dismissed. Thompson Weinman & Co. v. N. Y. N. H. & H. R. R., 112 I. C. C. 65.

(t) Complainant attacked combination rate charged on 29 cars of crushed limestone shipped from Rocky Point, Va., to Charleston, S. C., between Feb. 20 and Dec. 7, 1923 as unjust and unreasonable in violation of section 6. Shipments moved C. & O., to Lynchburg, Va. and Southern beyond, charged $2.90, composed of local rates of 92c to Lynchburg and $1.98 beyond. Complainant contends that by reason of deductions authorized under a combination rule the aggregate rate applicable was $2.60. HELD, rate of $2.60 was applicable, reparation awarded. Phosphate Products Corp. v. C. & O. R. R., 112 I. C. C. 161.

(u) The combination rule applies to combination rates over routes where no joint rates are applicable regardless of whether joint rates are maintained from and to the same points over other routes. Montgomery Cotton Exchange v. L. & N. R. R., 112 I. C. C. 325, 328.

§11. Conflict.

See Bills of Lading §9, §9 (2); Through Routes and Joint Rates §21, §22.

(a) Where a tariff names conflicting rates the lower or lowest of rates so published is the legal rate. Conference Ruling 239. Walsh Tie & Lumber Co. v. Director General, 92 I. C. C. 311, 312.

(b) Rule 13 (f) of Tariff Circular 18-A provides that "A carrier that grants authority to an agent or to another carrier to publish and file certain of its rates must not in its own publications publish rates that duplicate or conflict with those which are published by such authorized agent or other carriers." Walsh Tie & Lumber Co. v. Director General, 92 I. C. C. 311, 312.

(c) A rate once lawfully established continues to be the legal rate until legally canceled. A subsequent tariff naming new rates without canceling previous rates can not carry new rates into lawful effect. Dewey Portland Cement Co., 56 I. C. C. 444. Walsh Tie & Lumber Co. v. Director General, 92 I. C. C. 311, 313.

(d) As between inconsistency of conflicting tariff provisions force and effect must be given to those provisions which result in lowest charges to shipper. Caddo Central Oil & Rfg. Co. v. Director General, 92 I. C. C. 627, 631.

(e) Requirement of rule 4 (s) of Tariff Circular 18-A, which provides that all rules and regulations which in any way affect rates shall be stated in same tariff with the rates, or if contained in another tariff shall be made a part of the rate tariff by specific reference 'Governed by rules and regulations shown in — I. C. C. No. —," was designed to obviate rate changes by use of rules not referred to in connection with rates themselves, a practice which must of necessity tend to create the very discrimination, prejudice, and preference which the act was designed to prohibit and make unlawful. Mason By-Product Co. v. Director General, 92 I. C. C. 646, 648.

(f) Where two designations and tariffs are equally appropriate, shippers are entitled to have applied the one specifying the lower rates. U. S. v. Gulf Refining Co., 45 Sup. Ct. 597.

(g) Where a commodity shipped is included in more than one tariff resignation, that which is more specific will be held applicable. U. S. v. Gulf Refining Co., 45 Sup. Ct. 597.

(h) In Conf. Rulings 50, 70, and 239, the commission has distinguished between conflicting provisions in the same and different tariffs. Walsh Fire Clay Products Co. v. Director General, 95 I. C. C. 439, 442.

(i) Rates collected on logs, moving during Federal control between points in the State of Iowa, which were based on the soft lump coal rates, found applicable. The tariffs named two rates on logs—namely, the soft lump coal rates and the lumber rates—and provided that the lower of the alternative rates be effective, which in this case were the rates on soft lump coal. Complaints dismissed. Des Moines Saw Mill Co. v. Director General, 96 I. C. C. 557.

(j) Where rates on an article are published in two separate tariffs and respondents propose to increase the rates in one to conform with those in the other, the commission finds that their tariffs should be made to conform to the provisions of Tariff Circular 18-A rela-

tive to duplication and conflict in the publication of rates. Brick from Nashville to Paducah, Ky., 101 I. C. C. 11.

(k) Where two tariffs in effect at same time conflict the one carrying the lowest charges applies. Armour & Co. v. D., L. & W., 101 I. C. C. 337, 340.

(ka) Applicable rate on a carload shipment of dried beans from Mills, N. Mex., to Rockdale, Tex., found to have been unreasonable to extent it exceeded lower contemporaneous rate on like traffic from and to same points over other available routes and to contiguous points, which lower rate was not made applicable to Rockdale over route of movement until subsequent to movement here involved through error on part of carriers. Reparation awarded. Waco Chamber of Commerce v. E. P. & S. W., 102 I. C. C. 105.

(kb) Second-class rates assessed on l. c. l. shipments of automobile crank-shaft counterbalance weights under classification description "iron or steel automobile parts, n. o. i. b. n.," found to have been illegal, in view of fact that at time of movement same classification provided l. c. l. rating of fourth class on "Weights: Counterbalance, iron or steel, n. o. i. b. n." Reparation awarded. Western Auto Supply Co. v. C., B. & Q., 102 I. C. C. 117.

(l) Complainant attacked commodity rates charged interstate from Grasselli, Ind., to Vincennes, Ind., between March 30 and Dec. 22, 1922, as unreasonable. Grasselli is on the I. H. B., in the Chicago switching district. Vincennes is on the C. & E. I., 52 miles north of Evansville, also on the B. & O., 10 miles east of Lawrenceville, Ill., routed by shipper I. H. B., to Dolton, Ill., and C. & E. I., beyond 235 miles, charged 21c prior to August 5, 1922 18.5c on Sept. 2, 1922 and 19c thereafter. During all of the period here considered another tariff of the C. & E. I., named rates on this traffic to Lawrenceville which, under the terms of an intermediate rule therein, applied to Vincennes. An examination of the tariff discloses that the Lawrenceville rate was first established on Nov. 1, 1912, whereas the Evansville rate was not established until May 23, 1918. HELD, applicable rates were 14.5c prior to July 1, 1922 and 13c from that date to August 15, 1922 and 13.5c thereafter, reparation awarded. Vincennes Refining Co. v. C. & E. I. R. R., 109 I. C. C. 25.

(m) The Commission has uniformly found that where conflicting rates between two points are named in different tariffs, the rate first established remains in effect and is the lawful rate until formally cancelled. Vincennes Refining Co. v. C. & E. I. R. R., 109 I. C. C. 25, 26.

(n) It is well settled that the intention of the tariff compilers is not controlling; and it is equally well settled that where a tariff contains conflicting provisions the one according the lowest rates or charges governs, and particularly when the rule producing the lower rates or charges was first in effect and has not legally been canceled. Schweitzer & Co. v. Director General, 109 I. C. C. 663, 666.

ALL OTHER CITATIONS

Parkersburg Rig & Reel Co. v. Director General, as Agent, 85 I. C. C. 665.

§11½. Description.

(a) Absorption-process gasoline of a vapor pressure at 100 degree F. not exceeding 10 pounds per square inch must be described in tariffs as gasoline or casing-head gasoline. Standard Oil Co. v. Director General, as Agent, 89 I. C. C. 7, 9.

(b) Iron or steel articles which have a recognized commercial value other than that of the elementary article from which they are manufactured are not properly described as scrap iron. Continental File Co. v. P. C. C. & St. L. Ry., 93 I. C. C. 373, 375.

(c) Rates on scrap steel generally are understood to a apply on scraps or pieces of steel useful only for remelting. The words "value for remelting purposes only" defines the nature of the article, and they do not make the rate applied dependent on its use. Steel articles which have a recognized commercial value other than that of the elementary metal from which they are manufactured do not properly come within the description scrap steel. Alaska Junk Co. v. S. P. & S. Ry., 98 I. C. C. 551, 552.

(d) It is an elementary rule of tariff interpretation that in the absence of ambiguity, a general tariff description of a commodity does not take precedence over a specific commodity description. Abilene Flour Mills Co. v. A. & S. Ry., 101 I. C. C. 14, 16.

(e) Rates on bar iron or steel charged on shipments of rectangular wire rods, in coils, found inapplicable. Such commodity found to fall within tariff description carrying lower rates on "Rods, wire, rivet and bolt, iron or steel, in coils (not in straight lengths) * * *." Reparation awarded. Clark Bros. Bolt Co. v. N. Y. C., 102 I. C. C. 355.

§12. Cross references.

(a) Direct reference in rate tariffs to the combination rule in a combination tariff in effect makes such rule a part of the former just as definitely as though it were published therein, and principle announced in the Sligo case, 62 I. C. C. 643; 73 I. C. C. 551, is controlling. Combination Rule on Lumber, 93 I. C. C. 279, 280.

(b) Commodity rates higher than class rates charged on strawberries from Sarcoxie, Mo., to Kansas City, Mo., via an interstate route, found applicable. While carrier's individual tariff provided class rates on strawberries by not including them in its list of articles taking commodity rates, the subsequent establishment of a commodity rate had effect of removing that article from the classification and class-rate tariffs which theretofore applied. Furthermore, it is not a condition precedent to application of such a commodity rate that tariff containing it make cross-reference to tariff in which class rates are named. The general index to carrier's tariffs contained a reference that commodity rates on fruits and vegetables, including strawberries, were to be found in the tariff under which rates were assessed, and this was a sufficient compliance with rule 4 (c) of Tariff Circular 18-A. Singer v. St. L.-S. F., 95 I. C. C. 667.

(c) Purpose of rule 4 (c) of Tariff Circular 18-A is to require a carrier, in publishing a tariff which on its face purports to cover all commodities, to make cross-reference to other tariffs which contain exceptions to general application of the tariff when published. Singer v. St. L.-S. F., 95 I. C. C. 667, 668.

(d) Tariffs of originating lines neither carried nor made reference to the so-called combination rule, which provided a method for constructing through rates made on combination. Tariffs of other participating carriers either carried the rule or made specific reference thereto. The rule, however, restricted its use to lines under Federal control, and since originating carriers were nonfederally controlled, the rule laid down in the Sligo case, 62 I. C. C. 643; 73 I. C. C. 551, that there is a holding out to shipper of the rate constructed in conformity with the rule which publishing carrier must protect, is not controlling. Combinations, both factors of which were increased under General Order No. 28 of the director general, found to have been legally assessed. Pendleton & Gilkey v. Director General, 95 I. C. C. 699.

(e) Tariffs of originating lines neither carried nor made reference to the so-called combination rule, which provided a method for constructing through rates made on combination. Tariffs of other participating carriers either carried the rule or made specific reference thereto. Contention that specific reference to the rule must be made in each tariff naming a factor of a combination found untenable following Armour Fertilizer Works, 93 I. C. C. 186. The rule laid down in the Sligo case, 62 I. C. C. 643; 73 I. C. C. 551, that there is a holding out to shipper of the rate constructed in conformity with the rule which publishing carrier must protect, is controlling. Pendleton & Gilkey v. Director General, 95 I. C. C. 699.

(f) Contention of complainant that rate assessed was unlawful because tariff did not refer to the application covering the fourth-section departure involved not sustained. A reference to fourth-section applications is not necessary, although the regulations of the commission require that where a tariff carries rates which depart from the provisions of the fourth section under authority of commission's order a reference shall be made to the order on the title-page of the tariff. West End Scrap Iron & Metal Co. v. C., St. P., M. & O., 101 I. C. C. 108, 109.

(g) If a tariff contains a reference to another tariff providing rules for constructing through rates made on combination, and the application of such rules will produce lower rates, the lower rates are legally applicable. Macgillis & Gibbs Co. v. L. E. & W., 102 I. C. C. 333.

(h) Combination rate charged on cedar posts from Starks, Minn., to Deer Creek, Ill., found inapplicable. Tariff naming rate assessed contained reference to another tariff which provided rules for constructing combination rates and application of those rules produced

a lower rate. Refund directed. Macgillis & Gibbs Co. v. L. E. & W., 102 I. C. C. 333.

§13. Index.

See Commodity Rates §3 (1) (a); Tariffs, §18 (3k).

(a) Statements on title-pages of tariffs which are general in nature should not be given narrow construction as to defeat specific provision contained in bodies of the issues. Armour Fertilizer Works v. S. Ry., 93 I. C. C. 186, 187.

(b) Rate charged on shipments of sand and gravel from Scottsville, N. Y., to Kodak Park Siding, which is within the general switching limits of Rochester, N. Y., found applicable. A lower rate was published to Rochester and certain specific stations in Rochester, all named in tariff index, but this enumeration of stations obviously excluded the application of the lower rate to Kodak Park Siding, which was not named therein. Eastman Kodak Co. v. Director General, 101 I. C. C. 103.

§13a. Intermediate Rule.

See Supra §9a; Claims §3 (1) (a).

(a) Shipments of lumber from Falco, Ala., to Manitou Beach and Northville, Mich., found overcharged. While shipments moved via direct routes a lower rate, applicable under Rule 5 (b) of Tariff Circular 18-A and unrestricted in its application, was contemporaneously in effect via a circuitous route. If carriers participating in tariff carrying the lower rate desired to restrict its use over certain routes they should have done so by the use of proper tariff notations. A failure to do so left all routes open, should shippers desire to use them. Reparation awarded. M'Gowin-Foshee Lbr. Co. v. A., F. & G., 95 I. C. C. 451.

(b) Class rates on spelter from Trenton, N. J., to Baltimore, and Sparrow's Point, Md., Weir Branch, Cambridge, Boston, and Worcester, Mass., Providence, R. I., and Stamford, Springdale, Cheshire, Bridgeport, and Waterville, Conn., found not to have been unjustly discriminatory or unduly prejudicial and not unreasonable, except for a certain period when they exceeded lower commodity rates which were published subject to Rule 77 of Tariff Circular 18 A and would have been applicable upon request. Reparation awarded. Trenton Smelting & Refining Co. v. P. R. R., 96 I. C. C. 264.

(c) Intermediate provision of the tariff did not contain any restriction making its application dependent upon reference being made thereto by other tariffs, and thus, in the absence of reference, was nevertheless applicable. Bogue Supply Co. v. N. C. B. R. R. Co., 96 I. C. C. 434.

(d) Contention that the publication of rates to intermediate points in tariffs different from those naming rates to farther distant points, in connection with which rule 77 of Tariff Circular 18-a is published, precludes the application of rule 77, not sustained. Carey Co. v. C., N. O. & T. P. Ry. Co., 96 I. C. C. 455, 456, 457.

(e) Combination rates on fuel oil from El Dorado, Kans., to Detroit, Mich., found inapplicable. The sum of the proportional factors in effect on June 24, 1918, plus an increase of 4.5 cents found applicable. Reparation awarded against defendant which carried the unrestricted combination rule in its tariffs, following 81 I. C. C. 193. Timken-Detroit Axle Co. v. M. P. R. R. Co., 96 I. C. C. 680.

(f) Request was made for establishment of rates to points intermediate between Eau Claire, Wis., and Detroit, Mich., in conformity with provisions of rule 77 of Tariff Circular 18-A, and publishing agent notified to comply therewith. Upon request from participating carriers in central territory, publication of these rates withheld and respondents defaulted in their obligations under rule 77, notwithstanding requests from shipper. Proposal to increase rate to Detroit instead of fulfilling existing tariff obligations found not justified and suspended schedules ordered canceled. Sand from Eau Claire to Michigan, 100 I. C. C. 213.

(g) If rule 77 is to continue available to carriers it must be scrupulously observed. Sand from Eau Claire to Michigan, 100 I. C. C. 213, 214.

(h) Rate on zinc ore from Murray and Midvale, Utah, to Canon City, Colo.; during Federal control, found unreasonable to extent it exceeded a rate contemporaneously in effect from these points to Denver and Pueblo, Colo., more distant points. The tariffs publishing the lower rate, which was not limited as to value, contained a notation that in accordance with rule 77 of Tariff Circular 18-A, rates to intermediate points not in excess of those to the more distant points

would be established on one day's notice, upon reasonable request, but, because of the specific rate in effect at Canon City, rule 77 was not applicable. Standard Asphalt & Refining Co., 66 I. C. C. 611. Reparation awarded. Western Metals Co. v. Director General, 100 I. C. C. 314.

(i) Intermediate rule of Countiss's tariff provided for intermediate application of rates "except as may be otherwise specified." Complainant contended that under this rule rates from Cheyenne, Wyo., were applicable on shipments from Tacoma, Wash., an intermediate point, to San Francisco and South San Francisco, Calif. The application of the tariff was, however, restricted to States named and Washington was not named. Rate sought found not applicable from points in States not specifically named. Pacific Coast Steel Co. v. Director General, 100 I. C. C. 415.

ALL OTHER CITATIONS

Lafayette Lumber Co. v. Director General, as Agent, 85 I. C. C. 647; Mid-Continent Equipment & Machinery Co. v. M. & O. R. R. Co., 85 I. C. C. 683; Pacific Grain Co. v. Director General, as Agent, 85 I. C. C. 710.

§15. Reasonableness.

(a) If tariffs are not clear, and it is doubtful from the tariffs filed and their interrelationship one to another what rate applies in a given case, the court is warranted in considering how the rates claimed as applicable would operate as a matter of justice in getting at the railroad's intention with relation to the tariffs. Davis, Director General of Railroads v. Prairie Pipe Line Co., 298 Fed. 393.

§18. What is legal rate.

See Advanced Rates §8½a (c); Classification §17, §24; Commodity Rates §2, §2½ (n), II, §3, §5 (4q) (6r); Crimes; Demurrage §12; Evidence §47; Legal Rates; Overcharges; Reconsignment §5, §6½a; Tariffs IV; Through Routes and Joint Rates §15, §15½, §18, §20, §20½, §21, §22.

(a) Where an article is clearly embraced within a generic commodity designation, and neither the tariff nor governing classification discloses a contrary intention, the Commission has found the commodity rate applicable, even though the classification description was more specific, and have done so even though the particular article was not in contemplation when the commodity item was framed. Grosjean Rice Milling Co. v. Director General, 89 I. C. C. 395, 396.

(b) Upon rehearings, prior report, 58 I. C. C. 442, modified, and shipments of lumber from Hopkins, Fla., to Baltimore, Md., and other points during Federal control, found overcharged. None of the applicable tariffs specifically referred to tariff which provided a rule for the construction of through rates made on combination under which but a single increase was to be added to sum of the separate factors, nor did latter make specific reference to applicable tariffs. Following Acme Cement Plaster Co., 81 I. C. C. 298, combinations to and from Jacksonville, Fla., each increased 5 cents under General Order No. 28 of the director general, were applicable. Reparation awarded. Union Cypress Co. v. F. E. C. Ry. Co., 89 I. C. C. 679.

(c) Complainant attacked commodity rates charged on 10 cars of potatoes from Montana to destinations in Kansas during October 1921, as illegal in violation of section 6. Four originated at Kalispell on the G. N., four at Pablo, Mont., and one at Waterloo and one at Polson, Mont. On all but two of the shipments joint commodity rate of 95c was charged, on shipment to Trousdale a rate of 94c charged and to Greensburg $1.085. Contemporaneous joint commodity rates of 70.5c, minimum 30,000 pounds and 62.5c minimum 40,000 pounds were in effect from Pablo, Waterloo and Polson to Denver, Colo. The rates contended for did not apply from Kalispell, no specific rate from that point to Denver being published until after the shipments had moved. The rate was applicable only via Billings and Burlington. HELD, rate of 95c applicable, overcharges to be refunded, complaint dismissed. Hutchinson Produce Company v. A. T. & S. F. Ry., 92 I. C. C. 115.

(de) Complainant attacked commodity rates charged on beet sugar, carloads, from Delta, Cornish and other points in Utah to Boston during November and December, 1919 and January 1920 as unreasonable and inapplicable. Charged $1.10. The through combination of rates in effect on June 24, 1918 from Colorado factories to Boston for cars of 60,000 pound minimum was 64c composed of a

commodity rate of 25c to Chicago and fifth class rate of 39c beyond. On a minimum of 33,000 pounds the combination rate was 74c. Adding the 37c arbitrary to these rates made through rates of $1.01 and $1.11. HELD, rate assessed inapplicable; that applicable rates were $1.01 minimum 60,000 pounds, and $1.11 minimum 33,000 pounds, shipments overcharged, reparation awarded. Bird v. Director General, 92 I. C. C. 494.

(f) Complainant attacked class rates since Jan. 1, 1918, charged on wire rods in carloads, from Pittsburgh and Johnstown, Pa., from Buffalo, N. Y., and points taking same rates, to Mansfield, O., as unreasonable. Fifth class rates charged although there were and are commodity rates in effect. The question here presented is whether the shipments received by complainant consist of bars in coils or rods in coils. Clearly the material was steel in coils. Steel bars in carloads are rated substantially as fifth class. Following 73 I. C. C. 567, rates attacked inapplicable to extent they exceed commodity rates on rods (iron or steel) in coils, reparation awarded. New England Drawn Steel Co. v. Director General, 93 I. C. C. 171.

(g) Complainant attacked class rate charged on one car of granite monuments shipped Dec. 31, 1920, from Northfield, Vt., to Anderson, Ind., as unreasonable, unjustly discriminatory and illegal. Shipments billed as boxed granite monuments, charged fifth class rate of 52.5c. There were contemporaneously in force on granite blocks, slabs or pieces, commodity rates of 31c when "rough quarried, chiseled, dressed, hammered, sawed or otherwise finished" and 35.5c when "carved, lettered, polished or traced" subject to a declaration by the shipper that the actual value of the shipment was not in excess of $2.25 per 100 pounds. The shipment consisted of rough granite and fell within the description of the material on which the commodity rate of 31c applied. HELD: Rate applicable was 31c, reparation awarded. Carpenter v. Central Vermont Ry., 93 I. C. C. 309.

(h) Complainant attacked commodity rates charged on three cars of poultry crates consisting of wooden crate material, wired, in bundles, from Dyer, Tenn., to Cincinnati, O., on August 17, Sept. 9, and Oct. 14, 1920, as unjust, unreasonable, unjustly discriminatory, unduly prejudicial and in excess of those applicable at the legal tariff rate. A rate of 19.5c was charged on the shipment that moved August 17, and 24.5c on those that moved Sept. 9 and Oct. 14. These rates were applicable on lumber and articles taking lumber rates, including box or crate material, wood, wired, loose or in bundles. HELD: Lumber rates applicable, complaint dismissed. Dyer Fruit Box Mfg. Co. v. B. & O. R. R., 93 I. C. C. 386.

(i) Complainant attacked commodity rates charged on walnut logs, carloads, 16 feet and under in length, from Illinois and Iowa to Des Moines, Iowa, between June 27, 1918, and Oct. 22, 1919, as unjust, unreasonable, unjustly discriminatory and unduly prejudicial. Charged on basis of soft lump coal commodity rates. Complainant contended the applicable rates were the soft lump coal rates in effect June 24, 1918, increased 25%. On June 24 the tariffs named two rates on logs, namely, the soft coal lump coal rates and the lumber rates and on June 25 the same situation existed. The classification had not been changed and it provided that the lower of the alternative rates be effective. On each date the soft lump coal rates were lower than the lumber rates, and therefore, regardless of their method of construction, they were the applicable rates on logs. HELD: Rates charged applicable, complaint dismissed. Des Moines Saw Mill Co. v. Director General, 96 I. C. C. 557.

(j) Complainant attacked commodity rates charged and minimum weights applied on 32 cars of mixed livestock shipped between May 4, 1918, and Feb. 25, 1919, from Texas to North Fort Worth, Tex., as inapplicable. Shipments consisted of mixed carloads of cattle, calves, hogs and sheep and the tariffs provided that on cattle, calves, horses and mules in mixed carloads or mixed with hogs, sheep, or goats, the rate and minimum weight on straight carloads of the highest rated livestock in the car would apply. Charges in excess of that basis were paid by complainants and deducted from the account sales when settlement was made with the shippers. HELD: Rates attacked inapplicable, reparation awarded. Barse Livestock Commission Co. v. Director General, 98 I. C. C. 539.

(k) Complainant attacked class rates

charged on scrap steel for remelting purposes, carloads, shipped during August, 1922, from Vancouver, Wash., to Portland, Ore., as in excess of the applicable rates and of the aggregate of intermediates. Shipments consisted of steel ship rivets which remained on hand at shipyards after the building of steel ships at Vancouver was discontinued. Complainants witnesses estimated that about 98% of the articles shipped were unused rivets and the remainder nuts and washers. Fifth class rates of 11c applied on rivets. There was in effect a commodity rate of 6c on iron and steel scrap having value for remelting purposes only. For the rivets complainants received scrap iron prices; and testimony of record indicates that the rivets were or will be melted and used for scrap. One of the complainants conceded that if there had been a market for such rivets, complainants would have sold them as rivets instead of as scrap. HELD: Rivets in question were not scrap steel within the meaning of the tariffs and were not entitled to the rates on that commodity; and that the 11c rate did not constitute a violation of section four or six of the act, complaint dismissed. Alaska Junk Co. v. S. P. & S. Ry., 98 I. C. C. 551.

(l) Tariffs carried description on "fabrics, made wholly of cotton, in original piece—but not finished articles ready for use—in rolls covered with burlap or in bales or boxes, any quantity," and on cotton piece goods, any quantity, viz. cotton fabrics (made wholly of cotton), in original piece (but not finished articles ready for immediate use), packed in rolls covered with burlap, or in boxes or bales." Contention that terms "wholly manufactured articles" and "finished articles" in above description had effect of limiting application thereof to unfinished cotton fabrics, or cotton fabrics requiring some further process of manufacture to render them suitable for commercial use as fabrics, not sustained. More apt terms would have been employed to give expression to such meaning if intended. Rosenblatt & Sons v. Director General, 91 I. C. C. 18, 19.

(m) When complainant discovered that wheat grits had been included in tariff item taking flour rates it thereafter ceased to bill its product, Cream of Wheat, as a cereal food preparation and availed itself of flour rate by billing as wheat grits. HELD: Such billing was improper, and fact that commodity is prepared and represented to the trade solely as a cereal food and not as grits is sufficient to make rates on cereal foods applicable. Andrews Soap Co., 4 I. C. C. 41. Cream of Wheat Co. v. A., T. & S. F. Ry. Co., 91 I. C. C. 45, 47.

(n) The legal rates must be determined by the words of the published tariffs themselves, rules or provisions of G. O. 28 to the contrary notwithstanding. Nash Spokane Co. v. Director General, 100 I. C. C. 223, 226.

(o) In 93 I. C. C. 79 the Commission found a 33c commodity rate applicable on a less carload of iron pipe fittings from Barberton, O., to Duluth, Minn., destined to Virginia, Minn., and awarded reparation to the amount of the difference between the fourth class rate of 59c and 33c. Complainant's evidence of unreasonableness of the rate charged was confined to a comparison of the rates from Barberton to Virginia and Duluth with the rates from Birmingham and Bessemer, Ala., to Boston, New York, Philadelphia and Baltimore. HELD: Rate charged not unreasonable. The 33c rate was subject to the general reduction of July 1, 1922, and applied on iron and steel articles carloads as described in note 8. Note 8 contained a list of iron and steel articles preceded by a clause reading: "where reference is made to this note, rates apply on the following commodities, in either carloads or less carloads, unless otherwise provided." Some of the articles listed in the note are indicated a c. l. and others as l. c. l. Neither the note nor the tariff contains any explanation of these symbols. The list contains the item "fittings, pipe." No symbols appear opposite the item. Defendant contended that word "carload" appearing in connection with the rate item on page 53 is a part of the commodity description and that it answers the requirements of the words "unless otherwise specified" in note 8, thereby excepting less carload shipments from the application of the commodity rates. HELD: 33c rate not applicable to less carload shipments, complaint dismissed. Murray Egan McLeod v. P. R. R., 101 I. C. C. 233.

(p) Contention that proportional rate was not available as a factor in a combination rate because tariff restricted its use to points "where no through rates

are published," not sustained, as no thru rates were published in such tariff, and item attempted restriction of the proportional rate made no reference to any tariff in which through rates could be located. Joseph Iron Co., 37 I. C. C. 591; 40 I. C. C. 525; Ash Grove Lime & Portland Cement Co. v. M. P. R. R. 92 I. C. C. 51, 52.

(q) Specific rates were published on traffic from Cincinnati to Nashville. Complainant alleged that under terms of tariff rules in effect, lower rates from Jeffersonville were applicable on traffic originating at Cincinnati. FOUND: A fair and reasonable conclusion, when all pertinent tariff provisions are considered, is that such lower rates did not apply as alleged. For approximately five years, during which time thousands of shipments moved, neither shippers nor carriers considered tariffs as authorizing application of Jeffersonville rates from Cincinnati, and no shipper, therefor, was misled, or relied upon lower rates to his damage. Nashville Traffic Bureau v. Director General, 92 I. C. C. 211.

(r) A rate once lawfully established continues to be the legal rate until legally canceled. A subsequent tariff naming new rates without cancelling previous rates can not carry the new rates into lawful effect. Dewey Portland Cement Co., 56 I. C. C. 444. Walsh Tie & Lumber Co. v. Director General, 92 I. C. C. 311, 313.

(s) Shipments of wooden ties from various points in Missouri to St. Louis, during Federal control, found overcharged. Carriers publishing tariffs under which rates were assessed failed to cancel an agency tariff, to which they were parties, in which a distance scale of commodity rates prescribed by the State commission for intrastate movement was published, and which provided that rates named therein "will take precedence over rates in other publications which are higher." Rates on same commodity between same points via same route should not be included in different tariffs at same time. Walsh Tie & Lumber Co. v. Director General, 92 I. C. C. 311.

(t) Rate on "Fibre, chemically hardened, flexible or hard, such as fibreoid, leatheroid or vulcanized fibre, forms or shapes, n. o. i. b. n." found not applicable on shipments of Textan soles. Soles such as Textan are composed of rubber, fiber, and filler, and are known commercially as rubber soles. Chemically hardened fiber is manufactured by subjecting an all-cotton cellulose paper to the action of zinc chloride, contains no rubber, and its use in the manufacture of soles is impracticable, as it is inflexible when the thickness of the Textan soles. Rate on rubber soles assessed found applicable and not unreasonable. Tomahawk Shoe Co. v. C., M. & St. P., 92 I. C. C. 351.

(u) No joint rates were in effect and shipments moved under a two-factor combination. Tariff of one participating carrier carried the combination rule which provided a method for constructing thru rates made on combination, but did not specifically provide for its use in connection with first component of the through rate. Carrier publishing other factor made no reference to the rule nor carried a similar one in its tariff. Contention that above circumstances precluded application of the rule, and to find otherwise would contravene certain provisions of section 6 of the act and of Tariff Circular 18-A, not sustained following the Sligo case, 62 I. C. C. 643 and 73 I. C. C. 551. Minneapolis Steel & Machinery Co. v. Director General, 92 I. C. C. 603, 604.

(v) Shipments of riveted-steel pipe found not entitled to rates published under tariff item on "Articles of iron and steel,—Conduits (not insulating nor flexible), iron, coated or enameled." Rates under tariff item on "Articles of iron and steel,—Pipe, riveted, ...," found applicable and to have been legally assessed. Duluth Boiler Works v. A. T. & S. F., 92 I. C. C. 692.

(w) Rates on steel plates from Claymont, Del., to certain points in Pennsylvania found unreasonable to extent they exceeded lower rates contemporaneously in effect from Chester, Pa., a farther distant point. Such lower rate was published subject to rule 77 of Tariff Circular 18-A, and was established from Claymont subsequent to movement of shipments. Reparation awarded and original report, 87 I. C. C. 29, reversed. Worth Steel Co. v. Director General, 93 I. C. C. 37.

(x) Class rate on l. c. l. shipment of iron pipe fittings from Barberton, Ohio, to Duluth, destined to Virginia, Minn., found inapplicable to extent it exceeded lower commodity rate published in same tariff on "iron and steel articles, c. l.,"

which lower rate by tariff note applied on a list of commodities in which pipe fittings were included without limitation as to whether c. l. or l. c. l. While carriers intended to omit all reference to l. c. l. rates in connection with lower commodity rate, through oversight this was not done. Moreover, erroneous publication of rates does not justify a departure therefrom and intention of framers is not controlling. Reparation awarded. Murray-Egan-McLeod Co. v. P. R. R., 93 I. C. C. 79.

(y) Following Lancaster case, 73 I. C. C. 567, class rates on "Iron or steel bars," assessed on steel rods, in coils, found inapplicable to extent they exceeded commodity rates on "Iron or steel rods, in coils." Class rates did not specifically provide for shipments in coils, whereas commodity item contained such provision, and shipments here involved otherwise complied with requirements of the commodity description. Reparation awarded. New England Drawn Steel Co. v. Director General, 93 I. C. C. 171.

(z) Contention that cucumbers in brine were not pickles but were only packed in salt solution to facilitate transportation to a point where they could be manufactured into pickles not sustained, since some shipments moved, several months after the gathering season and must have been in brine sufficiently long to remove them from category of fresh cucumbers. Haarmann Vinegar & Pickle Co. v. C., B. & Q., 93 I. C. C. 251, 252.

(aa) Tariff provided commodity rate on granite blocks, slabs, or pieces, when "rough quarried, * * *" subject to declaration by shipper that actual value was not in excess of a certain amount, and for application of class rate when of greater value. Actual value exceeded limited value specified under commodity rate and class rate was assessed. Limitations as to value in connection with the commodity rate were unlawful and void since they were published without commission's authorization as provided in section 20 (11) of the act. Shipment here involved consisted of rough granite and fell within description of material on which commodity rate applied. Reparation awarded. Carpenter v. C. V. Ry., 93 I. C. C. 309.

(bb) At time of movement there was no specific rate or rating on "earthenware jugs, insulated and metal jacketed," and under analogous article rule rate applicable on "jugs, class, insulated and metal jacketed," was assessed. Contemporaneously lower rates applied on "pottery, earthenware, stoneware, common brown or gray jugware." FOUND: An earthenware jug, when insulated and metal jacketed, completely loses its identity as an ordinary earthenware jug or jar and value of insulated metal-jacketed articles greatly exceeds that of ordinary earthenware jugs. Article under consideration does not fall within generic term "pottery earthenware, stoneware, common brown or gray jugware," and rate charged was applicable. Cullum & Boren Co. v. C., B. & Q., 93 I. C. C. 354.

(cc) Bicycles were classified under the heading of "hand vehicles" upon which first-class rates applied. Contemporaneously a lower commodity rate was maintained on "light and heavy non-self-propelling freight and passenger vehicles." HELD: Since a bicycle is neither a freight nor a passenger vehicle, first-class rates assessed were applicable. United Cycle & Supply Co. v. B. & O., 93 I. C. C. 689; Jones v. P. R. R., 93 I. C. C. 697.

(dd) Use of other than actual distance in applying distance rates on shipments of wrought iron pipes and other iron and steel articles and oil-well supplies between points in Oklahoma and points in Kansas, as specifically provided in applicable tariffs, found to have resulted in overcharges. While it was intention of carriers to make rates from farther distant points applicable from unnamed intermediate stations, the tariff as published did not carry out that intent and must be construed against framers. Cosden Oil & Gas Co. v. A., T. & S. F., 95 I. C. C. 116.

(ee) Shipments of lumber from Falco, Ala., to Manitou Beach and Northville, Mich., found overcharged. While shipments moved via direct routes a lower rate applicable under Rule 5(b) of Tariff Circular 18-A and unrestricted in its application, was contemporaneously in effect via a circuitous route. If carriers participating in tariff carrying the lower rate desired to restrict its use over certain routes they should have done so by use of proper tariff notations. A failure to do so left all routes open should shippers desire to use them. Reparation awarded. M'Gowin-Foshee Lbr. Co. v. A., F. & G., 95 I. C. C. 451.

(ff) Failure of tariffs to impose upon initial carrier the duty of directing shipper's attention to a tariff requirement that a certificate be made on bills of lading that packages used conform to packing requirements and specifications, found not unreasonable. Complainant here was fully advised of the tariff provision, and while containers used fully complied with tariff requirements, through oversight its shipping clerk neglected to stamp the necessary certificate so stating on the bill of lading, resulting in the collection of penalty charges. American Licorice Co. v. C., M. & St. P., 95 I. C. C. 525.

(gg) Rates assessed on grain and products moving from points west of Buffalo to destinations on Maine Central in Washington and Somerset Counties, Me., via Washington Junction and Oakland, during Federal control, found inapplicable in so far as proportionals for movements beyond Washington Junction and Oakland were applied. These proportionals were applicable only when there were no joint rates in effect from points of origin. Applicable rates were those under tariffs naming rates from points of origin and billing books to which reference was made in those tariffs. Shipments found overcharged and reparation awarded. Thaxter & Co. v. Director General, 95 I. C. C. 693.

(hh) Governing tariff provided no routing restrictions and allowed fabricating in transit at points in direct line to final destination. Shipments here involved moved via circuitous routes over one of which a back haul to and from transit point was required. FOUND: There being no routing restrictions in connections with the transit arrangements joint rates applicable in conection therewith applied over all routes of carriers parties to tariff naming the rates where no back haul was involved, and combinations were applicable in connection with such routes where back hauls necessitated. Refund of overcharges directed. Maloney Tank Mfg. Co. v. B. & O., 95 I. C. C. 725.

(ii) Combination rates on mixed carloads of fruit and vegetables from Los Angeles, Calif., to Globe, Ariz., found inapplicable inasmuch as lower combinations contemporaneously applied over route of movement. Tariff publishing one factor of the lower combination did not publish rates on vegetables but provided for application of highest rate and minimum to mixed carloads of fruits and vegetables. Fact that rates on vegetables were named in another tariff did not operate to make the mixture rule inapplicable. Refund of overcharges required. Mauk Produce Co. v. Director General, 95 I. C. C. 728.

(jj) Lump coal rates charged on shipments of so-called domestic lump, found inapplicable. Coal here shipped, after coming from the mine, was passed over either a 1¼-inch wire mesh screen or 1⅝-inch round perforated plate. In other words, it consisted of run of mine except that all slack and screenings that would pass through the above-described screens were removed. The tariff described mine-run coal as "lump mixed with smaller sizes" and it did not follow of necessity that it must include screenings or slack. While it was intention of carriers that lump coal rates should apply on such coal as was here shipped, the tariff was not so restricted. Run-of-mine rates were legally applicable, and shipments were overcharged. Reparation awarded. Detweiler Coal Co. v. D. & R. G. W., 96 I. C. C. 88.

(kk) Shipment from Pittsburgh, Duquesne Station, Pa., to Tulsa, Okla., was diverted, through carrier's error to Waynoka, instead of Wynona, Okla., necessitating a back haul to Wynona. Tariffs of participating carriers named, without applicable restrictions, same rate from origin to both Waynoka and Wynona, and this rate, plus diversion charge, found applicable. Reparation awarded. Tidal Osage Oil Co. v. Director General, 96 I. C. C. 112.

(ll) Shipments from Chester, Pa., to Tulsa, Okla., originally routed via rail to Philadelphia, and water and rail beyond was diverted at Philadelphia, upon shipper's request, to all-rail route, and upon arrival at Tulsa, was diverted to Wynona, Okla. Charges collected found inapplicable to extent they exceeded a lower combination, plus diversion charges, from Chester, Pa., via St. Louis to Wynona, although factor of rate found applicable was restricted to shipments "consigned through" from Chester to Wynona "via all-rail routes." Reparation awarded. Tidal Osage Oil Co. v. Director General, 96 I. C. C. 112.

(mm) Tariff provided for waybilling of shipments from New Orleans to Mounds, Ill., at applicable rate and, upon surrender of paid inbound freight bills,

rebilling from Mounds to final destination at remainder of rate plus transit charge. Defendant interpreted tariff as requiring shipper to preserve identity of cargoes according to vessel and as prohibiting substitution. Complainant's representative concurred in this construction. FOUND: Complainant can not excuse its failure to surrender inbound billing under tariff by alleging error on part of defendant and intrastate class rate assessed on shipments from Mounds to Chicago found applicable. Capital Warehouse Co. v. Director General, 96 I. C. C. 293, 296, 297.

(nn) Rates on coal from mines in Tennessee and Kentucky to sidings on the Fort Valley branch of the Southern Ry., intermediate to Sawtell, Ga., found to have been unjust and unreasonable to the extent they exceeded rates from the same mines to Sawtell prior to a certain date and to extent they exceeded rates from same points to Constitution, Ga., since that date. The tariffs under which these shipments moved and which named the rates to Sawtell and Constitution contained a notation to the effect that in accordance with Rule 77 of Tariff Circular 18 A, rates to intermediate points not in excess of those to the more distant points would be established on one day's notice. The legal effect of the publication of the lower rates to Sawtell and Constitution under authority of Rule 77 is equivalent to an admission by defendants that the higher rates to intermediate points here involved were unreasonable. Producers Refining Co., 69 I. C. C. 403; Pittsburgh Crucible Steel Co., 81 I. C. C. 659; and the Pacific Grain Co., 85 I. C. C. 710. Reparation awarded. Randall Bros. v. L. & N., 96 I. C. C. 342.

(oo) Third-class rates on lime-cola sirup shipped during Federal control from Montgomery to Mobile, Ala., found inapplicable. Lower commodity rates in effect on "sirup in wood or in tin cans, boxed" should have been assessed. Reparation awarded. Allen v. Director General, 96 I. C. C. 561.

(pp) Combination rates on fuel oil, from El Dorado, Kans., to Detroit, Mich., found inapplicable. The sum of the proportional factors in effect on June 24, 1918, plus an increase of 4.5 cents, found applicable. Reparation awarded against defendant which carried the unrestricted combination rule in its tariff, following 81 I. C. C. 193. Timken-Detroit Axle Co. v. M. P. R. R. Co., 96 I. C. C. 680.

(qq) First-class rates assessed on uncompressed cotton, in bales, from Greenville, Miss., to Dyersburg, Tenn., found unreasonable to extent it exceeded lower commodity rate contemporaneously in effect on cotton, in bales, compressed or uncompressed, from Greenville to Cairo, Ill., over route of movement and the Illinois Central, subject to Rule 77 of Tariff Circular 18-A. Reparation awarded. Churchill Compresses v. C. & G. R. R. Co., 98 I. C. C. 5.

(rr) It is well settled that ambiguity in tariffs must be resolved in favor of the shipper, and it is the opinion of the commission that under the present rules here involved the through double-deck rate on hogs applies on shipments moving inbound to the transit point in single-deck cars and outbound in double-deck cars. Transit on Hogs, 98 I. C. C. 153, 154.

(ss) Rate assessed on two carloads of sugar at Sioux City, Iowa, during Federal control, found inapplicable because governing tariff did not name either the point from which shipments moved or point of interchange with delivering carrier as a "station" and failed to show distance between those points. Reasonable rates prescribed and reparation awarded. Seavey & Flarsheim Co. v. Director General 98 I. C. C. 295.

(tt) Commission finds defendants are in error in construing the classification item covering pea threshers as applicable on complainant's type C pea hullers. The applicable rates are determinable under the classification item covering agricultural implements, other than hand, n. o. i. b. n. Star Pea Huller Co. v. C., N. O. & T. P. Ry Co., 98 I. C. C. 357, 359.

(uu) Two carload shipments of dressed turkeys moved from Lander and Wheatland, Wyo., to Omaha, Nebr., loaded in bulk in straw, and were charged a rate higher than if the shipments had been packed in barrels or boxes or in barrels with cloth tops, in accordance with the provisions of the classification. FOUND, rates charged were not unreasonable, as shipments were not entitled to same rating and rates as would have applied if the packing specifications had been complied with. Omaha Cold Storage Co. v. C. & N. W. Ry. Co. 98 I. C. C. 437.

(vv) Shipments of steel plates, gauge No. 11 or heavier, from Johnstown, Pa.,

to Portland, Oreg., were assessed rates applicable on iron and steel articles under item "Plate (No. 11 and heavier * * *)," while a lower rate contemporaneously applied on "Plates, ship," HELD, shipments consisted of ship plates within meaning of governing tariff, since all of such plates were adapted for use in ship construction, and the lower "ship plate" rate found applicable. Finding in original report, 85 I. C. C. 629, affirmed, and reparation awarded. Sabin v. S., P. & S. Ry. Co., 98 I. C. C. 471.

(ww) Shippers have the right to rely upon the obvious meaning of the terms of a tariff; but even if there is anything obscure or uncertain about a term, the lower rate would still be applicable, since an obscure or uncertain tariff provision must be construed against its framers. Sabin v. S. P. & S. Ry. Co, 98 I. C. C. 471, 474.

(xx) Rates on moss in machine-pressed bales from Rosedale La., and Louisiana points west of Mississippi River intermediate from Rosedale and Baton Rouge, La., to destinations in the defined territories named intermediate to Albany, Rochester, Syracuse, and Utica, N. Y., found to have been unreasonable prior to August 1, 1924, to extent they exceeded lower contemporaneous rates applicable from farther distant points, subject to Rule 77 of Tariff Circular 18-A for intermediate application. Reparation awarded. National Asso. of Furniture Mfrs. v. A. A. R. R. Co., 98 I. C. C. 501.

(yy) The commission has taken steps looking to the simplification of tariffs. It can not consistently refrain from again emphasizing the need therefor or from urging upon defendants that they undertake promptly the clarification and simplification of these tariffs. National Asso. of Furniture Mfrs. v. A. A. R. R. Co., 98 I. C. C. 501, 510.

(zz) Rate on wooden wagon bows from Columbus, Ohio, to Sherman and Stamford, Tex., specifically named in the tariff on this commodity, found unreasonable to extent it exceeded and exceeds lower contemporaneous rate on "wagon wood, not otherwise specified," which latter rate is prescribed as reasonable for future. Reparation awarded. Fort Smith Rim & Bow Co. v. B. & O. R. R. Co., 98 I. C. C. 536.

(3a) Charges assessed on mixed carload shipments of livestock from various points in Texas to North Fort Worth found inapplicable in that they exceeded those accruing at the "rate and minimum weight on straight carloads of the highest-rated livestock in the car" provided for in tariffs. Reparation awarded. Barse Live Stock Commission Co. v. Director General, 98 I. C. C. 539.

(3b) Shipments of returned empty fruit boxes from Los Angeles, Calif., to various intrastate destinations, during Federal control, found overcharged to extent that charges assessed exceeded the lowest charges under tariff rules providing that the charge for a car fully loaded must not exceed the charge for same lot of freight if taken as a l. c. l. shipment, subject to a minimum charge on each car. Reparation awarded. Klein-Simpson Fruit Co. v. Director General, 98 I. C. C. 547.

(3c) Shipments of steel rivets from Vancouver, Wash., to Portland, Oreg., found not scrap steel within meaning of the tariffs, and not entitled to prevailing lower rates on that commodity. Complaint dismissed. Alaska Junk Co. v. Spokane, Portland & Seattle Ry. Co., 98 I. C. C. 551.

(3d) Steel articles having a recognized commercial value other than that of the elementary metal from which they are manufactured do not properly come within the description scrap steel. Alaska Junk Co. v. Spokane, Portland & Seattle Ry. Co., 98 I. C. C. 551, 552.

(3e) Class rates charged on tomatoes shipped from St. Louis, Mo., to New Orleans, La., during 1920 and 1921, found applicable under governing tariffs. Contention that lower commodity rates applied under the tariffs can not be sustained. St. Louis Fruit & Vegetable Asso. v. L. & N. R. R. Co., 98 I. C. C. 553, 555, 556.

(3f) The commission has consistently found that commodity rates must be applied strictly, from which it follows that only the article or articles clearly comprehended within the descriptive terms of the commodity rate can be considered as having been removed from the classification. Contention that commodity item on "Vegetables and fruits, viz: Pears, peaches and plums" was applicable on tomatoes on ground that classification description of "vegetables" included tomatoes, not sustained. St.

Louis Fruit & Vegetable Asso. v. L. & N. R. R. Co., 98 I. C. C. 553. 556.

(3g) Shipments of gasoline moving from Tulsa, Okla., to Rochester, Ind., found to have been overcharged to extent that rate charged was in excess of the combination rate applicable under rule 5 (b) of Tariff Circular 18-A. Cosden & Co. v. L. E. & W. R. R. Co., 98 I. C. C. 597.

(3h) Tariff contained a note providing that when reference is made thereto rates will apply on traffic originating in Northwest territory. Contention that because the note did not contain some word of limitation such as "only" rate involved was open to use from any territory, not sustained. Cosden & Co. v. L. E. & W. R. R. Co., 98 I. C. C. 597, 598.

(3i) Contention that during period of Federal control the lines, both inbound and outbound, were being operated as a unified system by reason of which the forwarding of commodities over any line was same as forwarding them over the particular line having the inbound movement into transit point, not sustained from standpoint of tariff interpretation, since the lines were still distinguished in the tariffs by their corporate names. Haas & Co. v. Director General, 98 I. C. C. 619, 621.

(3j) Class rate charged on automobile heaters in l. c. l. from Chicago, Ill., to San Francisco, Calif., found applicable and not shown to be unreasonable. Under the tariff governing, provision is made for a lower commodity rate on automobile parts, but heaters can not be classed as a part of an automobile, being more in the nature of an accessory or added feature. Neither are heaters included in the list of automobile parts specifically named in the classifications, they being separately provided for under the heading "Heaters." Complaint dismissed. Western Auto Supply Agency of Los Angeles, Calif. v. C., B. & Q., 98 I. C. C. 647.

(3ja) Rate on coal from complainant's mine at Mabie, W. Va., on the Coalton branch of the B. & O., to Port Covington (Baltimore) found unreasonable and unduly prejudicial to extent it exceeded the rate contemporaneously in effect from Mabie mine No. 6, a farther distant competing mine, to which complainant's mine was intermediate. Applicable tariff carried reference to rule 77 of Tariff Circular 18-A that upon reasonable request rates which would not exceed those in effect from or to more distant points would be established from or to intermediate points on one day's notice. Complainant made request for establishment of such rates but was refused. Reparation awarded. Brady v. B. & O., 102 I. C. C. 19, 25, 26.

(3jb) Rate on printing paper from Lawrence, Mass., to Long Island City, N. Y., found unreasonable and inapplicable to extent it exceeded sixth-class rate contemporaneously in effect. Printing paper with few exceptions moves at sixth-class throughout official classification territory, and that basis of rates was approved in 38 I. C. C. 120. Reparation awarded and maximum reasonable rate prescribed. Merrimac Paper Co. v. B. & M., 102 I. C. C. 133.

(3jc) Specific commodity rates from farther distant points, applied at intermediate point of origin, found to have been legally assessed. Lower class rates were carried in another tariff, but neither it nor the commodity tariff specifically named the intermediate point as a point of origin, such point being specifically included in both tariffs in index of stations. Both also provided that rates from next farther distant origin points would apply from intermediate points not specifically named. The class rate tariff, however, was limited to apply where commodity rates are not otherwise specifically provided. Fact that commodity tariff did not name the intermediate point "specifically" as an origin point does not mean that there was no "specific" commodity rate in effect. The intermediate provision established the specific commodity rates just as positively, plainly, and legally from the unnamed intermediate point as from the farther distant point. Miller & Lux v. S. P., 102 I. C. C. 137.

(3k) Complainant attacked as illegal charges collected in 20 double deck cars of sheep from Galt, 15 to Los Banos, and 5 to Oxalis, all in California, over an interstate route, during the period Nov. 1, 1919 to Feb. 1, 1920, during federal control. Galt is a short distance south of Sacramento, Calif., and Los Banos and Oxalis are south of Stockton, Calif., and northwest of Fresno, Calif. The rates charged were specific commodity rates from Sacramento, applied from Galt, an intermediate point of origin not named in the commodity item.

The class B rates from Sacramento and Galt were lower than the specific commodity rates from Sacramento and Galt, and neither the commodity item nor the class item specifically named Galt as a point of origin, but Galt was specifically included in the index of stations in both the commodity tariff and the class tariff. Both tariffs contained a provision that rates from the next farther distant named points of origin would apply from points not specifically named in the respective tariffs. The fact that the commodity item did not name Galt specifically as a point of origin does not mean that there was no specific commodity rate in effect. The provision for application from intermediate points of origin established the rates of $62.50 per car to Los Banos and $75.50 per car to Oxalis just as positively, plainly, and legally from Galt, the unnamed point, as from Sacramento, the named farther distant point, and these rates were established as specific commodity rates. The limitation of the class B rates, to apply in the absence of specific commodity rates, did not mean from and to specifically named points. The word "specific" was used as descriptive of the character of the published rate and not descriptive of the manner in which stations were named. On the other hand, the provision for alternate use of class and commodity rates was limited for use only when the commodity and class rates are named between specific points. When the shipments moved, therefore, there were in effects specify commodity rates on livestock and sheep from Gault to these destinations, and there were no applicable class rates then in effect from this specified point. There being no concurrently applicable class rates from this specific point of origin the provision for alternative use of class rates when lower than commodity rates had no effect upon the specific commodity rate. HELD, rates attacked not illegal, complaint dismissed. Miller & Lux v. S. P. Co. 102 I. C. C. 137.

(3ka) Class rate assessed on thin lumber or veneer, found applicable. While a commodity tariff carried a lower rate on lumber and articles taking same rates, the list of articles published therein did not include thin lumber or veneer, such tariff being specific as to what manufactured commodities are entitled to rate on lumber. On the other hand, the classification specifically described veneer of the kind here shipped. Commodity tariffs must be strictly construed, therefore, until the specific commodity description is physically incorporated into the commodity tariff the class rate must be applied. Milne Chair Co. v. A. C. L., 102 I. C. C. 165.

(3kb) Original report, 83 I. C. C. 361, affirmed and third-class rating on gas stoves and ranges, iron or steel, n. o. i. b. n., found applicable to l. c. l. shipments of Radiantfire heaters. General Gas Light Co. v. A. G. S., 102 I. C. C. 181.

(3kc) Rate on fuel wood from Baca, Perea, and Thoreau, N. Mex., to El Paso, Tex., found applicable but unreasonable to extent it exceeded lower rate published in tariff supplement by special permission, but which was rejected and returned as being in transgression of General Order No. 28 of director general. The rejection may have been in error, but the fact remains that the schedules were returned, and it must be concluded they never took effect. Kaseman v. A., T. & S. F., 102 I. C. C. 315.

(3kd) Rate on "Machinery, n. o. i. b. n.," assessed on portions of dismantled marine engines, billed as scrap iron, found applicable and not unreasonable. It was and is the practice of complainant to break similar parts into smaller pieces, but this was not done when these shipments moved. While there is no evidence to indicate whether or not commodities were sold for remelting purposes or were remelted, complainants witness conceded that parts could be used in assembling other engines. The articles shipped were therefore not scraps or pieces of iron or steel, having value for remelting purposes only. To come within that tariff description articles must not be shipped in their original form, but must be so reduced into fragments, scraps, or pieces as to be useless for any purpose other than remelting. It is nature of article shipped, not price at which it is sold or use to which it is put, which determines whether the rate on scrap iron applied. Simon v. S. Ry., 102 I. C. C. 325.

(3ke) Rate assessed on sand from LaFayette, Ind., to Kankakee, Ill., found applicable. To effect delivery at complainants' unloading lot a switching service was necessary, charges for which would have been absorbed by delivering line had point of delivery come within

meaning of tariff rule which provided that switching charges from or to industries located on line of switching carrier would apply from or to additional industries which might so locate. This unloading lot can not be considered as coming within meaning of this rule, and since complainants were not included in list of industries to which rule applied, lower rate to Kankakee proper was not applicable. Shanks & Gannon Co. v. C., C., C. & St. L., 102 I. C. C. 462.

(3kf) Upon reconsideration, finding in original report, 91 I. C. C. 3, that application of penalty charges for detention at originally billed destination of shipments of lumber which were subsequently reforwarded to new destination, were not illegal, affirmed. Cars were placed for delivery on defendants' team tracks, but they had not been unloaded or accepted by consignee or owner, and, under the terms of the governing tariff rule, must be considered reconsignments and not reshipments as contended by complainants. Stetson, Cutler & Co., N. Y., N. H. & H., 102 I. C. C. 471.

(3kg) Shipment of lumber moved from Jasper, Tex., to St. Louis, and was ordered reconsigned to Harlem Transfer, N. Y., or if that point was embargoed, Long Island City, N. Y. Complainant was notified reconsignment could not be made due to an eastern embargo. Shipment was placed in storage and subsequently moved under permit to New York. While applicable tariff prohibited reconsignment to embargoed points not only was there no embargo on eastern lines against Long Island City, but one of such lines reaching St. Louis was willing to accept shipment for transportation. Carrier's disability preventing immediate movement was theoretical disability based upon supposed embargo and it follows that charges assessed as result of refusal to reconsign were illegal. Reparation awarded. Milne Lbr. Co. v. Director General, 102 I. C. C. 520.

(3kh) Shipments of anthracite coal moving from Providence, Pa., to Matawan, N. J., thence reconsigned to Asbury Park, N. J., were assessed joint rates and reconsigned charges, plus additional charges because of movement through Matawan. Contention that additional charges were properly assessed under reconsignment tariffs, which provide for their application where return or additional hauls are involved and where rate from original point of shipment to final destination is not applicable through reconsignment point, it being shown that customary route between origin and final destination is via South Amboy and Sea Girt, not sustained. Tariff naming through rate having contained no routing restriction, such rate was applicable via route of movement, and charges assessed were illegal to extent of additional charges collected. See 47 I. C. C. 59, and other cases cited. Reparation awarded. Hartwell & Lester v. D. & H. Co., 102 I. C. C. 703.

(3l) Complainant attacked combination rates charged in 10 cars of fuel oil shipped Oct. 3, 1918 from Tulsa, Okla., to St. Catherines, Que., but before delivery reconsigned to Pittsburgh, Pa., and again reconsigned to Woodlawn, Pa., as unjust and unreasonable, and in violation of section 6. Charged 22.5c to Chicago 27c Chicago to St. Catherines and 24.5c from that point to Woodlawn. Complainant contended rates were to East St. Louis, Ill., 17.5c, to Pittsburgh 27.5c and beyond 12c. The tariff naming the rate of 26.5c from East St. Louis to Pittsburgh contained no restriction as to routing, and all lines over which shipments moved were parties to the tariff. The actual route of movement was Frisco to East St. Louis, C. & E. I., to Chicago, G. T., to St. Catherines and Buffalo Pennsylvania to Pittsburgh, and P. & L. E., to Woodlawn. The route of movement was very circuitous, but no question of reasonableness is involved. HELD, rate attacked inapplicable, and applicable rates were those contended by complainant, reparation awarded. Kyoleum Co. v. Director General 104 I. C. C. 1.

(3m) Complainant attacked as illegal in violation of section 6 and unreasonable in violation of section 1 freight charges collected on five cars of what it describes as cottonseed hull fibre or shavings, from Sylacauga, Ala., to Meridian, Miss., in December 1921 and April 1922. Shipments moved C. of Ga., to Birmingham and Southern and AGS beyond. The shipments were originally billed as cottonseed hullfiber or shavings, but the description was changed by the Southern Inspection Bureau to cotton linters. During the entire period of movement a class A rating was applicable on fibre or shavings in carloads. In Dec. 1921 when two of the shipments moved, cotton rates were applicable on cotton linters. In April 1922 when the remaining three cars were shipped, cot-

ton linters took sixth class rate. Charged on two shipments 91.5c and on three 63c. The rates applicable on cotton linters were 86.5 and 68.5c, respectively. The applicable rate on cottonseed hull fibre or shavings was a combination of 20.5c to Birmingham and 27.5c beyond. The commodity contained in the five cars, as shown by samples submitted, is more nearly analogous in appearance to the sample of second cut linters than to the sample of fibre or shavings. In the absence of a tariff provision defining linters and fibre or shavings, the question of whether or not the material shipped was fibre or shavings or linters is one of fact which must be determined upon the evidence submitted. HELD, applicable rate was combination of 48c, reparation awarded. Speir Co. v. A. G. S. Ry. 107 I. C. C. 161.

(3n) Following Joseph Iron Co., 37 I. C. C. 591; 40 I. C. C. 525 proportional rate found not so properly restricted as to make its application definite, clear. or ascertainable, and that the restriction thus failing, the rate found an intermediate within the meaning of section 4. Defendant attempted to distinguish the cited cases from the present one on the ground that here the through rate is published in a commodity tariff, which is a natural place to look for it. But the test is whether the restriction itself gives a definite reference by which the presence or absence of the through rate may be ascertained, thus the rates here are in violation of the aggregate-of-intermediates-clause of section 4 and are prima facie unreasonable. Borden Co. v. A. A. R. R. Co., 100 I. C. C. 153.

(3o) Upon contention of complainants that during Federal control the rule under section 2 (e) of General Order No. 28 of director general must govern all tariffs, and that as it limits the power to increase rates, the legality of the rates depends upon the observance of this condition. HELD: Legal rates must be determined by the words of the published tariffs themselves, rules or provisions of that order to the contrary notwithstanding. Nash Spokane Co. v. Director General, 100 I. C. C. 223, 226.

(3p) Commodity rates on watermelons and vegetables from points in California to Spokane, Wash., found applicable. Complainant contended that a lower proportional Class C rate was applicable but tariff carrying that rate provided that the rates therein could not be used where through rates were established. There was no tariff authority for departing from the use of the published through commodity rate. Nash Spokane Co. v. Director General, 100 I. C. C. 223, 225, 226.

(3q) Upon further hearing, finding in original report, 83 I. C. C. 267, that fourth class rating and rates on galvanized corrugated riveted sheet-iron and sheet-steel culverts or culvert pipe, from Pueblo, Colo., to points in certain other States were applicable and not unreasonable, but unduly prejudicial, affirmed. Rate alleged applicable was restricted in its application to pipe, n. o. i. b. n., and since culverts were specifically indexed by name, was obviously inapplicable. Colorado Culvert & Flume Co. v. A., T. & S. F., 100 I. C. C. 311.

(3r) Class A rates on shipments of household and office electric fans and motors from Springfield, Ohio, to San Francisco, Calif., found not inapplicable or unreasonable. Lower combination sought, composed of a factor applicable on "sugar-making machinery" includnig "fans" and "motors" found not applicable to complainant's shipments which could not be put to any normal use in connection with machinery in a sugar mill. Therefore, no violation of the aggregate-of-intermediates provision of the fourth section existed. Robbins & Meyers Co. v. C., C., C. & St. L. Ry. Co., 100 I. C. C. 418.

(3s) Rates on clothing, n. o. s., applied on l. c. l. shipments of overalls from Cincinnati, Ohio, to Pacific coast terminals and certain other western territory, found applicable since overalls were not of a value entitling them to the application of the commodity rates on overalls, but unreasonable to extent they exceeded lower contemporaneous rates on clothing restricted as to value. Reparation awarded. Crown Overall Mfg. Co. v. Director General, 100 I. C. C. 471.

(3t) Rates on wheat bran since January 7, 1922, found to have been and are those specifically named in the tariffs on bran, and that rates on mill feed, mill stuff, or animal and poultry feed have not been and are not applicable on wheat bran. Abilene Flour Mills Co. v. A. S. Ry., 101 I. C. C. 14, 17.

(3u) It is an elementary rule of tariff interpretation that in the absence of am-

biguity, a general tariff description of a commodity does not take precedence over a specific commodity description. Abilene Flour Mills Co. v. A. & S. Ry., 101 I. C. C. 14, 17.

(3v) Fifth-class rates on sugar from Philadelphia, Pa., and New York, N. Y., to St. Louis, Mo., found inapplicable in that a lower commodity rate was contemporaneously in effect. The item in tariff publishing commodity rate contained a note restricting rates to proportional application only in so far as east Mississippi River crossings are concerned. It may have been the intention of carriers to so restrict application of the rate to all points listed in the item but the tariff does not effectuate that intention in so far as St. Louis is concerned. The language of the tariff rather than intention of the framers is controlling. Defendants state that use of rates on local shipments to St. Louis will result in fourth section violations, but this does not constitute a ground for holding that they apply other than in accordance with the terms of the tariff. Refund of overcharges directed. National Candy Co. v. P. R. R., 101 I. C. C. 43.

(3w) Rates on pianos, c. l. and l. c. l., from Hammond. Ind., and Steger and Oregon, Ill., to Birmingham, Ala., found not unreasonable or unlawful. Complainant contends that some of the shipments were misrouted depending upon his interpretation of the tariffs contemporaneously in effect naming lower rates from the same points to Mobile, Ala., claiming that such rates were applicable to Birmingham under the so-called intermediate rule contained in those tariffs. It is found that complainant paid the higher rates charged without protest for a long period, did not present his complaint until more than six months after the charges on the last shipment were paid and one day after the intermediate rule was changed so as to preclude his contention, and presented no request to the commission for suspension of the new rule which, under the construction contended for, effected increased rates on his traffic. This tends to show that complainant was not misled to his damage by the intermediate rule under consideration and no evidence as to unreasonableness was presented. Forbes & Sons Piano Co. v. A. G. S. R. R., 101 I. C. C. 74.

(3x) Rates charged on shipments of sand and gravel from Scottsville, N. Y., to Kodak Park Siding, which is within the general switching limits of Rochester, N. Y., found applicable. A lower rate was published to Rochester and certain specific stations in Rochester, all named in tariff index, but this enumeration of stations obviously excluded the application of the lower rate to Kodak Park Siding, which was not named therein. Eastman Kodak Co. v. Director General, 101 I. C. C. 103.

(3y) Upon reconsideration, class rate charged on l. c. l. shipment of iron pipe fittings in lieu of lower commodity rate, found applicable and not unreasonable. The word "carloads" appearing in tariff in connection with lower commodity rate on iron and steel articles was part of the commodity description, and answered requirement of the words "unless otherwise specified" in tariff note, which contained a list of iron and steel articles, including pipe fittings, in either c. l. or l. c.l. thereby excepting l. c. l. shipments from application of commodity rates. While it was the intention of carriers to omit all reference to l. c. l. shipments in connection with commodity rates, through oversight this was not done; however, intention of framers of tariffs is not controlling. Original report, 93 I. C. C. 79, reversed. Murray-Egan-McLeod Co. v. P. R. R., 101 I. C. C. 233.

(3z) Upon reconsideration, original report 93 I. C. C. 689, reversed and class rate applicable on "hand vehicles" charged on bicycles, in crates, found inapplicable to extent it exceeded a commodity rate contemporaneously maintained on "Light and heavy non-self-propelling freight or passenger vehicles." Terms "passenger" and "freight" as used in this description are merely designations of the means of conveyance for persons and things, respectively. A bicycle is a means of conveyance or travel for persons, is non-self-propelling, and therefore comes within definition of a light "non-self-propelling passenger vehicle." Reparation awarded. United Cycle Supply Co. v. B. & O., 101 I. C. C. 334.

(4a) Exaction of local rates and charges for transportation of lard shipped from points of origin west of Buffalo and Black Rock, N. Y., in tank-car loads, to Jersey City, there unloaded at complainant's plant and put into barrels, tierces, and other containers and forwarded to ship-side points within free lighterage limits of New York Harbor, for export, found not unreasonable but in certain instances illegal. Inbound and outbound movements to and from transit points were separate shipments to which

separately established rates were applicable except and to extent that there were explicit tariff provisions connecting the inbound and outbound movements in such manner as to establish the fiction of a continuous through movement. Reparation awarded. Armour & Co. v. D., L. & W., 101 I. C. C. 337.

(4b) Inbound and outbound rates charged on sand moving from Montezuma, Ind., to Illiopolis, Ill., there placed for unloading and subsequently reconsigned to Buffalo, Ill., found legally assessed, notwithstanding fact that shipments could have moved via a less circuitous route taking a lower rate. Applicable reconsignment tariff provided that if shipment has been placed for unloading at original billed destination and reforwarded therefrom without being unloaded, to a point outside the switching limits, it will be subject to published rates to and from reconsignment point. Here the cars were so placed and reforwarded and combination assessed was therefore applicable. Reconsignment charges, however, assessed in addition to rates to and from reforwarding point found unreasonable, following 89 I. C. C. 236 and 91 I. C. C. 615, and reparation awarded. Meneely Co. v. C., I. & W., 101 I. C. C. 389.

(4c) Applicable rate on oil-well outfits and supplies, which was the same as the rate contemporaneously in effect on machines and machinery, assessed on rig irons, found not unreasonable, discriminatory, or unduly prejudicial. In 80 I. C. C. 335, the commission found that rates on rig irons were unreasonable and should be lower than on oil-well outfits. But commodities here shipped consisted principally of castings and record does not conclusively show whether contents of cars consisted chiefly of castings or of partly finished and partly assembled machines or machinery. It is clear, however, that they were oil-well outfits to be used as rig iron drilling outfits for drilling oil or gas wells. Marion Machine Co. v. L. A. & S. L., 101 I. C. C. 599.

(4d) Rating on "bags, bedding, blanket or clothing," assessed on shipments of bed sacks found inapplicable. Shipments were not entitled to commodity rate on cotton bags but rating on "dry goods, n. o. i. b. n." was applicable since sacks were neither bedding nor bags but simply cloth articles for which no specific provision had been made in the classification or commodity tariffs. Refund of overcharges directed. Triad Corp. v. C. of G. Ry., 101 I. C. C. 687.

(4e) Rates on scrap steel generally are understood to apply on scraps or pieces of steel useful only for remelting. The words "value for remelting purposes only" defines the nature of the article, and they do not make the rate to be applied dependent upon its use. Steel articles which have a recognized commercial value other than that of the elementary metal from which they are manufactured do not properly come within the description scrap steel. Southern Steel Rolling Mill v. L. & N. R. R., 109 I. C. C. 539, 541.

ALL OTHER CITATIONS

Friedlander v. Director General, as Agent, 85 I. C. C. 465; Willamette Iron & Steel Works v. Director General, as Agent, 85 I. C. C. 629; Guggenheim Bros. v. Director General, as Agent, 85 I. C. C. 725; Newport Milling Co. v. Director General, as Agent, 88 I. C. C. 17; Parkersburg Rig & Reel Co. v. B. & O. R. R. Co., 88 I. C. C. 49; Barrett Co. v. Director General, as Agent, 88 I. C. C. 535; Armour & Co. v. Director General, as Agent, 88 I. C. C. 569; Alexander Milling Co. v. Director General, 88 I. C. C. 677; Van Dyke Smelting & Refining Works v. P. R. R. Co., 88 I. C. C. 743.

TAXES

See Act to Regulate Commerce I (h); Evidence §57½a.

(a) Under a state statute providing for the levy of an excise tax on foreign corporations doing business in the state, assessed on such proportion of their authorized capital stock as represents the property owned and used and the business done in the state, where a manufacturing corporation has all of its property in the state, where it sells its product, some to residents of the state, but the greater part to purchasers residing in other states, including the latter sales in computting the tax imposes a direct and substantial burden on interstate commerce, and is unauthorized and unlawful. Air-way Electric Appliance Corporation v. Archer, 3 Fed. (2d) 669.

(b) Cars let to railroad corporations and used exclusively in interstate commerce are taxable in state, and tax is ap-

portionable among counties of state according to mileage. Union Tank Car Co. v. Day (La., 1924), 101 So. 581.

(c) A tax on net income is not a burden on interstate commerce, although included therein is income derived in whole or in part from interstate commerce. State v. Gulf, M. & N. R. Co. (Miss., 1925), 104 So. 689.

(d) Where gasoline has been delivered to consignee within state, placed in its tank, and is being sold therefrom, Interstate Commerce Law (U. S. Comp. St. § 8563 et seq.), has no application to state's right to taxes on gasoline so sold. Charleston Oil Co. v. Carter (S. C., 1925), 128 S. E. 8.

(e) The Massachusetts Corporation Tax Act imposing an excise tax on foreign corporations, measured by proportion of capital attributed to transactions within state and income derived therefrom, violates the commerce clause (Const. U. S. art. 1, § 8, cl. 3), by taxing interstate business, when applied to a foreign corporation maintaining in the state only a local sales office from which its salesmen solicit orders subject to approval at principal office, and contravenes Const. U. S. Amend. 14, by attempted taxation of property without state. Alpha Portland Cement Co. v. Commonwealth of Mass., 45 Sup. Ct. 477.

(f) Const. Amend. 14, does not permit state taxation of property beyond the state borders. Alpha Portland Cement Co. v. Commonwealth of Mass., 45 Sup. Ct. 477.

(g) In view of the commerce clause of the Federal Constitution, a state may not burden interstate commerce under the guise of regulating or taxing intrastate business. Alpha Portland Cement Co. v. Commonwealth of Mass., 45 Sup. Ct. 477.

(h) Pulpwood cut during the winter in the adjacent forests of Cook county, Minn., afloat in the Pigeon river on May 1st and on its way to the booms in Pigeon Bay on Lake Superior, there to await the opening of navigation and the arrival of boats to transport it to its final destination in another state, had not begun its final journey to the latter point so as to become an article of interstate commerce to the extent that it was not taxable as of May 1st in Minnesota. State v. Hughes Bros. Timber Co. (Minn., 1925), 203 N. W. 436.

(i) The Commission's without power to order refund of war taxes. Gulliksson v. Director General 102 I. C. C. 327, 330.

TEAM TRACKS

See Switch Tracks and Switching §11.

TELEPHONE AND TELEGRAPH COMPANIES

I. DISCRIMINATION IN SERVICE.
§1. In general.
§1a. Rules and regulations.
II. CHARGES.
§2. In general.
§2½. Private wire service.
III. CONTROL AND REGULATION.
§3. In general.
§3½. Jurisdiction of Commission.
IV. LIABILITY FOR DAMAGES.
§4. In general.
V. PUBLICATION AND TARIFFS.
§5. In general.
§6. Exchanges.

CROSS REFERENCES

See Cable Rates; Courts §15 (a) (b).

I. DISCRIMINATION IN SERVICE.

See Discrimination; Facilities and Privileges §21.

§1. In general.

(a) A telephone company is a public servant, and as such is required to furnish reasonable telephone facilities to those who desire them and comply with its lawful requirements. Masterson v. Chesapeake & Potomac Telephone Co., 299 Fed. 890.

ALL OTHER CITATIONS

Davis v. W. U. T. Co., 88 I. C. C. 489.

§1a. Rules and Regulations.

(a) Defendant owns and operates a telephone system within West Virginia, and, in connection with other telephone corporations forming the Bell system, between Huntington and points in other states. Complainant is engaged in the construction of buildings and public highways in and adjacent to Huntington, and in the conduct of its business uses defendants telephone service as a means of transmitting intelligence between its place of business and points within the state and points in other states. The same instruments are used for the

transmission of both state and interstate messages. In order to obtain the use of this service complainant is required to make a cash deposit of $40 with defendant as security for the payment of bills that become due. Complainant alleged that the requirement of said cash deposit by defendant as a condition precedent to the right and privilege of using its telephone service subjects complainant to a charge therefor that is unjust, unreasonable and unduly prejudicial. Defendant is within its rights in requiring a cash deposit of subscribers who arbitrarily or otherwise fail to pay their bills promptly, but the rule making provision for the deposit specifies no definite amount that may be required, nor does it provide any definite means for determining what it shall be. The amount of the deposit required of complainant does not appear to be unreasonable, and no undue preferences of other subscribers to the undue prejudice of complainant is shown. Defendant might reasonably require a deposit equal to, but not in excess of, the sum of accrued charges for any two successive months during the 12 months period next preceding the date the services were withdrawn on account of nonpayment or failure to pay promptly. HELD, cash deposit of $40 not unreasonable or unduly prejudicial, complaint dismissed. Huntington Engineering Co. v. C. & P. T. Co., 112 I. C. C. 377.

II. CHARGES.

§2. In general.

(a) Five-year period from 1916 to 1920 held fair period in which to take average costs of labor and material in determining value of telephone company's property for rate-making purposes. Indiana Bell Telephone Co. v. Public Service Commission of Indiana, 300 Fed. 190.

(b) A subscriber to and for defendant's telephone service is entitled to have his name in and be furnished with directories containing his name and the number of his telephone properly arranged. Masterson v. Chesapeake & Potomac Telephone Co., 299 Fed. 890.

ALL OTHER CITATIONS

Consolidated Press Asso. v. W. U. T. Co., 85 I. C. C. 15.

III. CONTROL AND REGULATION.

See Control and Regulation.

§3. In general.

(a) Permits granted by Secretary of the Interior to construct and maintain an electric power transmission line and a telephone line, used only in connection with maintenance of power line across Indian reservation, under Act Feb. 15, 1901 (Comp. St. § 4946), were not terminated by issuance of patents, not containing a reservation of prior permits, to persons who had made homestead filings on the land, though Act March 3, 1901, §3 (Comp. St. § 4191), relating to rights of way for construction of telephone lines, does not apply. Swendig v. Washington Water Power Co. 44 Sup. Ct. 496.

(b) Interstate transmission of telegram is "Interstate Commerce," and governed by federal law (Act Congress, June 18, 1910). Thos. G. Hardie & Co. v. Western Union Telegraph Co., (N. C. 1925), 128 S. E. 500.

(c) It is common knowledge that in 1851 the telephone had not been invented, and Code 1851, §780, authorizing construction of telegraph lines along highways, had reference only to long-distance telegraphic communication between cities. City of Cherokee v. Northwestern Bell Telephone Co. (Iowa, 1925), 202 N. W. 886.

(d) Telephone company authorized under Code 1873, § 1324, as amended by Acts 19th Gen. Assem. c. 104, Code 1897, § 2158, to maintain a long distance line through municipalities without obtaining a franchise, HELD: Not denied due process of law by sections 775, 776, requiring franchise to maintain a local exchange. City of Cherokee v. N. Western Bell Telephone Co., (Iowa, 1925) 202 N. W. 886.

(e) Telephone company which acquired right under Code 1873, § 1324, as amended by Acts 19th Gen. Assem. c. 104, Code 1897, § 2158, to carry a long distance or toll line through any city or town and to occupy necessary streets for such purpose without obtaining franchise from municipalities, HELD: Not authorized, in view of Code 1897, §§ 775, 776, to maintain a local exchange and use streets and alleys of such places without first obtaining franchise. City of Cherokee v. N. Western Bell Telephone Co. (Iowa, 1925), 202 N. W. 886..

§3½. Jurisdiction of Commission.

See Interstate Commerce Commission I; Jurisdiction of Commission.

(a) Under Transportation Act, § 435 (Comp. St. Ann. Supp. 1923, § 8592), the Interstate Commerce Commission may not prescribe depreciation rate for public utilities for other than bookkeeping and reporting purposes, except after investigation, and where it has made no investigation, and has fixed no rate proper for rate-making purposes, a state Public Service Commission has right to fix depreciation rate. Indiana Bell Telephone Co. v. Public Service Commission of Indiana, 300 Fed. 190.

(b) By the amendatory act of June 18, 1910 telephone and telegraph companies were declared to be common carriers and the Commission was given jurisdiction and control over their interstate rates and practices, as well as the rules, regulations, conditions, and restrictions affecting their interstate rates. That telephone companies whose lines extend from one state to another, either of themselves or in connection with the lines of other companies, are engaged in interstate Commerce and that messages passing over their lines from one state to another constitutes such commerce, is indisputable. Any rule or regulation affecting or obstructing such commerce is within the jurisdiction of the Commission. Huntington Engineering Co. v. C. & P. Tel. Co., 112 I. C. C. 377, 379.

ALL OTHER CITATIONS

Davis v. W. U. T. Co., 88 I. C. C. 489.

IV. LIABILITY FOR DAMAGES.

§4. In general.

(a) Power of Public Service Commission under Public Service Commission Law to determine whether rates of telegraph corporations are just and reasonable, and therefore lawful, necessarily includes the power to determine the reasonableness and lawfulness of limitations of liability which are integral parts of the rates. State v. Public Service Commission (Mo. 1924) 264 S. W. 669.

(b) Where undisputed evidence showed that property of a telephone company was taken over by the federal government, on July 31, 1918, and that the government was operating the property at the time of the accident, the court should have determined as a matter of law that the government was in possession and control at the time of the accident, and it was error to submit the question to the jury, and a somewhat ambiguous admission in telephone company's answer could not prevail over a patent fact, of which the court might have taken notice without proof. Wilks v. New York Telephone Co., 203 N. Y. S. 665.

V. PUBLICATION AND TARIFFS.

See Tariffs II.

§5. In General.

(a) Telephone companies are not required to file their tariffs with the commission. Huntington Engineering Co. v. C. & P. Tel. Co., 112 I. C. C. 377, 378.

TERMINAL FACILITIES

I. CONTROL AND REGULATION.
§1. Jurisdiction of Commission.
§1½. Jurisdiction of courts.
II. DUTY TO PERFORM TERMINAL SERVICE.
§2. In general.
§3. Duty to allow use.
§3½. Employment of agents.
§4. Publication of terminal charges.
§5. Reasonableness of charges.
§6. What are public terminals and facilities.
III. STATUS OF TERMINAL ROADS.
§7. In general.
§8. Definition of "Terminal charges."
§9. Allowances.
§10. Discrimination.
§11. Through routes and joint rates.

CROSS REFERENCES

See Allowances §8 (4); Divisions; Evidence §57¾, §59 (1); Facilities and Privileges §16, §16½; Reasonableness of Rates §34; Switch Tracks and Switching §6; Transportation §10.

I. CONTROL AND REGULATION.

See Control and Regulation.

§1. Jurisdiction of Commission.

See Interstate Commerce Commission I; Jurisdiction of Commission.

(a) The Commission is empowered in a proper case to require the use of terminal facilities by a carrier other than the owning carrier. Peoria & Pekin Union Ry. Co., 93 I. C. C. 3, 22.

(b) In view of Transportation Act, § 400, par. 3 (U. S. Comp. St. Ann. Supp. 1923, § 8563), amending Interstate Commerce Act §1, where service rendered by terminal railway was that of common carrier, it was subject to rules and regulations to which common carriers are subject, including Interstate Commerce Act, §6, par. 1, as amended by Act June 29, 1906, § 2 (U. S. Comp. St.§ 8569), of which provides for filing schedule of rates, fares and transportation charges. Chicago & E. I. Ry. Co. v. Chicago Heights Terminal T. R. Co. (Ill., 1925), 147 N. E. 667.

(c) The order of the Interstate Commerce Commission in the case of Manufacturers Association of York v. Pa. R. R., 73 I. C. C. 40, where seventeen manufacturing plants in the so-called inter-zone received reciprocal switching and a large number of plants in the so-called outer-zone do not receive it and which practice was found to be unduly discriminatory by the Interstate Commerce Commission, is upheld. United States v. Pennsylvania R. Co., 45 Sup. Ct. 43.

(d) Extension of trackage rights by one carrier to another, enlarged common use of terminals, or establishment of through routes and joint rates, or withdrawal of any of them, could not be ordered by Interstate Commerce Commission except on findings and conditions prescribed in Interstate Commerce Act (Comp. St. § 8563 et seq.), U. S. v. Pennsylvania R. Co., 45 Sup Ct. 43.

(e) Where Interstate Commerce Commission found that use by two railroads of each other's tracks and terminal facilities within certain zone of city as common property which resulted in favoring 17 out of 100 manufacturing plants in city, was unduly prejudicial. Commission could require railroads to desist from practice, leaving them free to remove discrimination by any appropriate action. U. S. v. Pennsylvania R. Co., 45 Sup. Ct. 43.

(f) While Congress has expressed a policy looking to development of public terminals at port cities, it has not delegated authority to the commission to enforce that policy. Scope of the commission's activities is limited by terms of the interstate commerce act, and unless proposed terminal charges are found to be in contravention of some provision of that act it is beyond the commission's power to condemn them. Handling Charges on Cement, Fertilizer, and Salt, 93 I. C. C. 640, 643, 644.

(g) Congress can determine what private property is needed for public purposes but it does not have the right to determine what shall be the measure of the compensation, as that is a judicial question. Consequently when it provided that in the public interest the Commission could require a carrier to give up the use of its terminal facilities to another carrier, Congress was faced with the necessity of not only satisfying the constitutional prohibition that private property shall not be taken for public use without just compensation, but in addition had to provide for a judicial review of the question of compensation at the option of the owning carrier. However, Congress did impose upon the Commission the duty in the first instance, to fix the just and reasonable terms and compensation, for any use that it may require "on the principle controlling compensation in condemnation proceedings." In giving the Commission this direction, it is clear that Congress did nothing more than recognize the constitutional right of a carrier to just compensation in the event that its property or any portion of it, was taken for public use. Hastings Commercial Club v. C. M. & St. P. Ry. 107 I. C. C. 208, 212.

(h) The courts have held in cases involving terminal facilities as have come before them that Congress has fully occupied the field of regulation by placing the control of terminal facilities of interstate railroads in the Commission. Hastings Commercial Club v. C. M. & St. P. Ry. 107 I. C. C. 208, 215.

II. DUTY TO PERFORM TERMINAL SERVICE.

§2. In general.

(a) Proposed new rules, regulations, and practices restricting application of certain transit, terminal, and other privileges and allowances on transcontinental traffic, found not justified. Proposed schedules attempt to restrict rights of individual carriers to extend to shippers such privileges at points on their own lines, as they may see fit, and is in effect tantamount to an attempt to say that carriers may not grant privileges to shippers without consent of the transcontinental bureau, unless such carriers are willing to subject shippers to the application of combination rates. Terminal

Charges on Transcontinental Traffic, 89 I. C. C. 332.

(b) Tracks laid within confines of an industrial plant, placed for furtherance of industrial operations, used principally for intraplant switching, and usually within exclusive control of industry, are not ordinarily to be considered as parts of line-haul carriers' terminal facilities. Jackson Iron & Steel Co. v. Director General, 91 I. C. C. 201, 205.

(c) The terminal service, as used in section 1 of the Act, may include accessorial services in the nature of collection and delivery of freight commonly referred to as store-door delivery. There is nothing in the Act to prevent establishment of such service or publication of charges in connection therewith by carriers subject to the Act. See 27 I. C. C. 347 and 30 I. C. C. 388. Motor-Truck or Wagon Transfer Service, 91 I. C. C. 539, 547.

(d) The requirements of the general public must be met by such an arrangement of terminal facilities as will suit the convenience of the greatest number and enable the carrier best to discharge its public obligations. However, a legal duty is imposed upon all common carriers of frieght to receive for carriage all proper articles tendered at suitable places of receipt. But a carrier is not under legal compulsion to furnish the same terminal facilities for all descriptions of traffic. It may prescribe regulations concerning the receipt and delivery of freight, and what constitutes reasonable terminal facilities depends in part upon the particular locality. National Asso. Waste Material Dealers v. D., L. & W. R. R. Co., 98 I. C. C. 606, 611, 612.

(e) A legal duty is imposed upon all common carriers of freight to receive for carriage all proper articles tendered at suitable places of receipt. A carrier may not select preferred freights and refuse to handle other articles because they are less remunerative or more inconvenient to handle. But it is not under legal compulsion to furnish the same terminal facilities for all descriptions of traffic. National Asso. Waste Material Dealers v. D., L. & W. R. R. Co., 98 I. C. C. 606, 611, 612.

(f) The "just compensation" guaranteed requires that the recompense to the owner for the loss caused to him by the taking of a part of a parcel or single tract of land shall be measured by the loss resulting to him from the appropriation. If the taking of a part has depreciated the usefulness and value of the remainder the owner is not justly compensated by paying only for that actually appropriated and leaving him uncompensated for the depreciation over benefits to that which remains. In recognition of this principle of justice it is required that regard be had to the effect if the appropriation of a part upon the remaining interest of the owner, by taking into account both the benefits which accrue and the depreciation which results to the remainder in its use and value. Hastings Commercial Club v. C. M. & St. P. Ry. 107 I. C. C. 208, 213.

(g) The requirement that "just compensation" shall be paid is comprehensive and includes all elements. Hastings Commercial Club v. C. M. & St. P. Ry. 107 I. C. C. 208, 213.

(h) Public convenience and necessity found to permit abandonment by defendants of such portions of their lines of steam railroad, or all or any portion of the interstate service thereon, as may be incidental to the rearrangement of routes, tracks, and terminal facilities necessitated by the establishment of a union passenger station and terminal in city of Los Angeles, Calif. Los Angeles Passenger Terminal Cases, 100 I. C. C. 421, 460.

§3. Duty to Allow Use.

(a) Complainant alleged defendants refused, under tariff provisions, to accept shipments of rags (except in compressed covered bales) and waste paper at certain freight stations in Manhattan Borough, New York, N. Y., while contemporaneously accepting certain other commodities for shipment at those stations, including new paper and wall paper, and while accepting rags and waste paper without restriction at other stations in New York City and elsewhere, is unreasonable and unduly prejudicial to shippers of waste paper and rags located in Manhattan Borough. There are 109 paper packers and shippers in Manhattan and Bronx Boroughs, New York City, 99 of these shippers being loaded in the vicinity of the downtown pier stations at which defendant refuses to handle the commodities in question. The desirability of segregating commodities which involve an exception-

al fire hazard is apparent, especially at congested points. Defendant has a right and duty in such cases to prescribe such reasonable regulations as will protect it and the general public.

At the time of the first hearing defendant was the only carrier at New York that refused to receive these commodities at its New York piers. Subsequently, the N. Y. C. established an embargo against the handling of waste paper and rags at its St. John Park station. This action is said to have been taken on account of the fire hazard attached to the handling of these commodities at pier stations, but that carrier receives at its pier stations, and defendants accepts without restrictions at the piers under particular consideration, rags (covered), cotton waste, wool waste, and other like articles. Waste paper must be disposed of, and proper facilities should be provided for this purpose. The Commission can not agree that conditions previously existing should by its order be allowed to endanger others and more valuable commodities, and even life itself. In highly congested districts such as Manhattan Island, the matter of providing adequate facilities for the receipt and delivery of freight is a serious problem. The requirements of the general public must be met by such an arrangement of terminal facilities as will suit the convenience of the greatest number and enable the carrier best to discharge its public obligations. HELD: Refusal of defendant to receive shipments of rags (except in compressed covered bales) and waste paper at Piers 41 and 68, North River, Manhattan Borough, New York, not unreasonable. The protection of the public against fire requires that the receipt as freight of rags and waste paper at Pier 13, North River, and Pier 26, East River, Manhattan Borough, should be limited to dry materials, so baled as to prevent loss of pieces from the bales, and reasonably free from loose edges, strips, pieces, fibers or other parts protruding from the bales or surrounding them. HELD: Further, the refusal of defendant to receive shipments of rags (except in compressed covered bales) and waste paper at Pier 13, North River, and Pier 26, East River, Manhattan Borough, New York, is unreasonable to extent that the restrictions preclude the receipt at and shipment from such piers of carload shipments of bales of rags and waste paper, other than dump stock, when packed and offered for transportation in the condition described above. National Asso. Waste Material Dealers v. D. L. & W. Ry., 98 I. C. C. 606.

(b) The carrier's duty to provide reasonable terminal facilities and to receive freight for transportation is equally compelling in case of the instant commodities as of more desirable traffic. But defendant is not under legal compulsion to furnish the same terminal facilities for all descriptions of traffic. Defendant may prescribe regulations concerning the receipt and delivery of freight and what constitutes reasonable terminal facilities depends in part upon the particular locality. National Asso. Waste Material Dealers v. D. L. & W. Ry., 98 I. C. C. 606, 611.

(c) Complainant sought under section 3 paragraph 4 of the act to have the service of the Burlington extended to the city of Hastings, Minn., by the use of the "terminal facilities" of the Milwaukee. Original report 69 I. C. C. 489. The Milwaukee serves Hastings and the Burlington, although now located within the corporate limits of that city, is on the opposite side of the Mississippi river. There are no houses or industries in the part of Hastings served by the Burlington. It is nothing but barren country. The Burlington never voluntarily assumed any service obligation to Hastings, and maintained no station and did not stop its trains there until ordered to do so by the Minnesota Commission after the incorporation into Hastings city limits, by a special act of the Minnesota Legislature, of the area on the north bank where the Burlington tracks are located. The Burlington has physical connection with the Milwaukee, which has a bridge across the river, but no interchange arrangements are in effect at that point. The connection is at St. Croix Junction, where an electrically operated interlocking plant is located. Freight between Hastings proper and the Burlington station must be trucked a distance of several miles. The conditions which the Cimmission must determine antecedent to the exercise of the power conferred in the section of the law which was invoked are the (1) public interest, and (2) practicability, without substantially impairing the ability of the owning carrier to handle its business. In the instant case any traffic

gained by the Burlington would be at the expense of a corresponding loss to the Milwaukee and although this is not controlling, the Commission should consider it in arriving at its conclusion as to the public interest. The cost to be met by the user carrier, as compared with the traffic served, is an important element. The Commission must consider the financial consequences to the carriers involved and the inconveniences that may result to the shipping and traveling public in general. The record upon which the former report was based contained no evidence as to the compensation on the principles controlling in condemnation proceedings. Fairness demands that the whole question of "public interest" be now reconsidered on the more complete record before the Commission, especially as no order was entered and the record was expressly held open. The complaint in this case was filed shortly after there had been a severe car shortage on the Milwaukee, which had temporarily compelled the mill in question to reduce its output, and the record makes it clear that primarily this mill wants to have the advantage of the Burlington car supply in the event of future car shortages. Essentially the question here is whether the desires and needs of this one industry and the natural desire of Hastings for service by an additional trunk line, constitute the public interest contemplated by the statute. That it would be to the interest of Hastings and its shippers is apparent, but the Commission must consider both the convenience of shippers at Hastings and of shippers elsewhere who depended upon these carriers for service. In addition the rights of the individual carriers must be considered. HELD, previous holding reversed, and joint use of the terminal facilities of the Milwaukee at Hastings, Minn., by that carrier and the Burlington has not been shown to be in the public interest within the meaning of the statute, complaint dismissed. The Commission comments to the Milwaukees consideration the matter of the publication of a reasonable switching charge between industries at Hastings, on the one hand, and the Burlington connection on the north side of the river on the other, such switching charge to be appropriately restricted so as not to apply on traffic destined to or received from points served by both Milwaukee and Burlington routes, or, if the carriers prefer, that they publish joint rates from and to such points. Hastings Commercial Club v. C. M. & St. P. Ry., 107 I. C. C. 208.

(d) Just compensation rests on equitable principles and it means substantially that the owner should be put in as good position pecuniarily as he would have had if his property had not been taken. Hastings Commercial Club v. C. M. & St. P. Ry. 107 I. C. C. 208, 213.

(e) The provision in section 3, paragraph (4), for joint use of terminal facilities expressly covers only facilities existing when the requirement is made. Los Angeles Passenger Terminal Cases, 100 I. C. C. 421, 426.

(f) Joint use by defendent steam railroads of such main-line tracks of each other as may be incidental, and necessary or convenient, to the proper operation of a union passenger depot and terminal established as indicated herein, found to be in public interest and to be practicable, without substantially impairing the ability of the carrier or carriers owning or entitled to the enjoyment of such track or tracks to handle its or their own business. Los Angeles Passenger Terminal Cases, 100 I. C. C. 421, 460.

(g) Extension by defendants of their main lines of steam railroad so as to reach and serve such union passenger station and terminal as they may construct and establish in a described portion of city of Los Angeles, Calif., and extension of such main lines to provide for rearrangement of their passenger and freight routes incidental to the convenient and proper operation of such union station and terminal, found reasonably required in the interest of public convenience and necessity, and expense involved therein found not to impair the ability of defendants to perform their respective duties to the public. Los Angeles Passenger Terminal Cases, 100 I. C. C. 421, 460.

(h) A carrier has no absolute right to deny connecting lines the use of its terminal facilities. Where public convenience makes it desirable, such facilities must be kept open. The proprietary carrier is entitled to proper compensation, and is not without means of protecting itself against competition. Switching at Beaumont, 112 I. C. C. 125, 127.

§5. Reasonableness of Charges.

See Bridges and Tolls; Evidence §57½; Reasonableness of Rates.

(a) Practice of Peoria & Pekin Union Ry., in assessing charges at and in the vicinity of Peoria, Ill., for interchange service between connections with its tenants and rails of the Minneapolis & St. Louis, and St. Louis, Springfield & Peoria, an electric line, while contemporaneously performing a like service between connections with its tenants and rails of C., B. & Q., and Rock Island without charge, found unjustly discriminatory and unduly prejudicial. Peoria & Pekin Union, 93 I. C. C. 3, 23.

(b) Whether line-haul rates include terminal services to points of loading and unloading in large industrial plants is a question which must be determined upon facts and circumstances of each particular case. The question is so closely related to the industrial railway problem that it has seldom been considered apart from question of whether an industrial railway serving a particular industry was or was not a common carrier. Pressed Steel Car Co. v. Director General, 93 I. C. C. 224, 229.

(c) Under the law as it now stands carriers are under no obligation to make their terminal charges with a view to insuring a profit upon operations of other public terminals. Nor does it seem to the commission to have been contemplated that expressed policy of Congress of developing public terminals at port cities is to be carried out by imposing unnecessary expense upon shippers and traffic, which would defeat a policy of real terminal improvement. Handling Charges on Cement, Fertilizer, and Salt, 93 I. C. C. 640, 644.

(d) Fact that terminal costs at Chicago should be somewhat higher than the average in c. f. a. territory, does not justify imposition of a disproportionate share of those costs upon short-haul traffic. Indiana Chamber of Commerce v. A. T. & S. F., 95 I. C. C. 177, 179.

(e) Carriers may impose charges necessary to compel removal of freight from their terminals and the prompt release of equipment. Providence Fruit & Produce Exchange, 36 I. C. C. 307. Hunter v. N. Y., N. H. & H., 96 I. C. C. 57, 60.

(f) The cost at large terminals in southern territory incident to the receipt or delivery of l. c. l. traffic is probably in the neighborhood of 10 cents per 100 pounds, including a reasonable allowance for return on investment. This compares with 12 cents per 100 pounds estimated by carriers for Atlanta, Ga., and Chattanooga, Tenn. Data here submitted are inadequate to support any conclusion with respect to similar cost at small local stations. Southern Class Rate Investigation, 100 I. C. C. 513, 638.

III. STATUS OF TERMINAL ROADS.

§7. In General.

(a) Terminal Railroad Association and subsidiary companies HELD: "Common carriers" subject to regulation by Interstate Commerce Commission. Terminal R. Ass'n of St. Louis v. United States, 45 Sup. Ct. 5.

(b) Terminal railways are "common carriers." Chicago & E. I. Ry. Co. v. Chicago Heights Terminal T. R. Co. (Ill., 1925), 147 N. E. 666.

(c) Interstate Commerce Act, § 3, as originally enacted (Compt. St. § 8565), providing that prohibition of discrimination between connecting carriers in respect to facilities for interchange of traffic, rates, and charges should not be construed as requiring carrier to give use of its tracks or terminal facilities to another carrier, was intended to make clear that mere grant to one carrier of use of such facilities and their refusal to another does not make preference illegal. U. S. v. Pennsylvania R. Co., 45 Sup. Ct. 43.

§10 Discrimination.

See Discrimination; Facilities and Privileges §21.

(a) This report has to do with charges of the Peoria & Pekin Union for intermediate switching at and in the vicinity of Peoria, Ill., considered in former reports 68 I. C. C. 412 and 77 I. C. C. 43. Peoria is in Peoria county, on the west bank of the Illinois river. Directly across the river to the east is East Peoria. Pekin is about 9 miles south of Peoria on the east bank of the river. The Peoria-Pekin switching district includes Peoria, East Peoria and Pekin. East Peoria is within the Peoria switching district, but not within the municipal limits of Peoria. The Rock Island enters Peoria from the northeast and the Burlington, North-

western and M. & St L. enter from the northwest by lines practically parallel. The rails of the Rock Island, the Burlington and M. & St. L. terminate at Peoria. The Northwestern has a line extending to the south on the west side of the river. The Big Four, C. P. & St. L., and I. C. terminate in Pekin. The C. & A. extends through Pekin to a junction with the Union in the vicinity of Grove. The L. E. & W., T. P. & W. and Pennsylvania approach the Peoria district from the east, the latter two over the rails of the T. P. & W. None of these so-called east side lines has rails into Peoria proper, although they hold themselves out to the public as serving Peoria. Entry into that city is effected by means of the Union, which has a double track line on the east side of the river between Pekin and East Peoria, with a bridge crossing at the latter point, and a single track line on the west side of the river from Peoria to a point across the river from Pekin. The P. R. T., referred to as the Terminal, the stock of which is owned jointly by the Rock Island and Alton, has a line extending southward from Peoria on the west side of the river to Pekin, in addition to certain terminal and industrial facilities. The Union is conceded to be a common carrier and the Commission has recognized it as such in 26 I. C. C. 226. In February, 1881, the Union entered into contracts with the predecessors in interest of the Big Four, T. P. & W., C. P. & St. L., and I. C., which obligated the Union to perform certain terminal services for those lines and granted them certain rights in the properties and facilities of the Union. Contracts of similar tenor were afterwards executed with other steam railroads in the Peoria district, including the M. & St. L., but not with the Burlington or the Rock Island. The Pennsylvania and Alton have contractual rights with the Union but own no part of the latter's capital stock. The carriers serving Peoria under these contracts are commonly known as tenant lines. Some of the contracts have expired and have not been formally renewed, the tenants holding over under the provisions thereof. The contract with the M. & St. L. expired on March 31, 1921, and that company, instead of continuing its relationship with the Union, made arrangements with the Rock Island for such additional facilities as it deemed necessary. The contracts provide that the tenant lines of the Union shall pay reasonable charges for transferring freight cars to and from connecting railroads at a uniform rate per car previously fixed by the Union, to be charged to all companies for such service without discrimination, to approximate the actual cost of service as nearly as practicable, and to include charges for making up trains. The withdrawal of the M. & St. L. from its arrangement with the Union precipitated the present controversy. The contracts, clearly contemplate that the Union shall be compensated for its services and the right of the Union to make transfers for all companies and persons desiring such services is expressly reserved. While the proprietary lines are in a position to influence the policies of the Union, the record does not disclose that the Union has been reduced to the status of the Minneapolis Eastern, 247 U. S. 490, nor can the Union be looked upon as a legal fiction devised to cover up discriminatory charges. The Union is a property of some size and does a very considerable business on its own account and in its own right. The Commission has found that the Union is an independent common carrier. As such it is entitled to assess reasonable and otherwise lawful charges for transportation services which it renders. Such charges should be filed and published in accordance with the provisions of section 6 of the act. Ordinarily the service of making up and breaking up trains is an operating incident compensation for which is included in the transportation rate. In view of the situation here existing, however, where the make up and break up service is rendered in some instances and not in others, and in still others is the only service performed by the Union, it is the opinion of the Commission that the charge for that service should be separately stated. Where the Union performs an intermediate service in connection with traffic moving thru Peoria at joint rates, it should concur in such joint rates and receive divisions thereof, the divisional arrangements to be so adjusted as to, in effect, result in the absorption of the Union's division by the line that delivers the traffic to it. This overrules Conf. Ruling 341. HELD: The charges proposed from the rails of the Terminal and the practice of the Union in assessing charges for

the interchange service between connections with its tenants and the M. & St. L., and Traction, while contemporaneously performing a like service between connections with its tenants and the Burlington and Rock Island without charge, are unjustly discriminatory and unduly prejudicial against the M. & St. L., Terminal and the Traction, and that increased charges to shippers under joint rates through Peoria or under combination rates breaking on Peoria have not been justified. The principal parties to the record have been so concerned with what were conceived to be their rights in the premises that slight interest apparently has been shown in the amount of the charges for the services of the Union. While not unmindful of the controversial character of these proceedings, the Commission believes that the existing unsatisfactory terminal situation at and near Peoria can be corrected by the carriers by the exercise of a spirit of mutual accommodation such as has been displayed at other important terminals. Peoria & Pekin Union Ry. Co., 93 I. C. C. 3.

THROUGH ROUTES AND JOINT RATES

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- §25. In general.
- §26. Restriction of routes and rates.

CROSS REFERENCES

See Adjacent Foreign Country; Advanced Rates §7 (6); Basing Points and Lines; Blanket Rates; Branch Lines VI; Canada; Differentials §4; Electric Lines II; Equalization of Rates; Express Companies XI; Facilities and Privileges §18; Foreign Commerce; Import Traffic; Lighterage IX; Local Rates and Combinations; Long and Short Hauls; Mexico; Minimums; Overcharges; Panama Canal Act; Passenger Fares and Facilities §14; Porto Rico; Proportional Rates; Rail and Water Rates; Reconsignment; Reduced Rates; Restricted Rates; Routing and Misrouting §4, §5½; Tap Lines III; Terminal Facilities §11; Water Carriers IV.

I. CONTROL AND REGULATION.

See Control and Regulation.

§1. Jurisdiction of Commission.

See Adjacent Foreign Country; Interstate Commerce Commission I; Jurisdiction of Commission; Rail and Water Rates (ff) (rr) (ss).

(a) The Commission has no power under section 15 to prevent the cancellation of through routes and joint rates voluntarily established by the carriers, when the circumstances and conditions are such as would not warrant an order to compel arrangements if not already in effect. Jackson Traffic Bureau v. A. & V. Ry., 92 I. C. C. 89, 92.

(b) Paragraph 3 of section 3 of the act provides that all carriers shall afford all reasonable, proper and equal facilities for the interchange of traffic between their respective lines and that they shall not be discriminatory in their rates, fares and charges between such connecting lines. It follows, therefore, that where the rail lines to and from the ports of interchange with the barge line participate with rail lines, operating between such ports, in through all rail routes and joint rates from and to the points covered by the barge lines petition, the Commission has power, not only to require the establishment of through routes in connection with the barge line, but also to prescribe joint rail barge rail rates which will be nondiscriminatory, under the above provision of the act, as compared with the corresponding joint all rail rates. U. S. War Department v. A. & S. Ry., 92 I. C. C. 528, 546.

(c) Under paragraph 3 of section 15 of the act the Commission is empowered, upon proper showing, to prescribe through routes such as are desired and the maximum rates to be applied thereover. U. S. War Department v. A. & S. Ry., 92 I. C. C. 528, 546.

(d) In view of Interstate Commerce Act, as amended in 1906 and in 1910 (Comp. St. §8563 et seq.), an order establishing additional through routes on express matter to secure competition HELD not shown to be unreasonable, notwithstanding time required for delivery over existing routes was as short as it would be over competitive routes. United States v. American Ry. Express Co., 44 Sup. Ct. 560. Southeastern Express Co. v. Same, 44 Sup. Ct. 560. Southern Traffic League v. Same, 44 Sup. Ct. 560.

(e) Where connecting rail lines participate in all-rail through routes and joint rates in which intermediate rail carriers operating between a barge line's ports also participate, the commission has power to require establishment of a through route in connection with the barge line and to prescribe a joint rail-barge-rail rate which is differentially lower than the corresponding all-rail rate, provided the differential fairly reflects the lower cost and value of the barge line's service. U. S. War Dept. v. A.. & S. Ry., 92 I. C. C. 528. 547.

(f) A federal court holds that where the Interstate Commerce Commission finds the through rate in excess of the combination of intermediates to be unreasonable and awards reparation, recovery can not be had in the federal court on petition to enforce such order although the Commission finds the complainant has been damaged unless in the federal court such complainant specifically alleges special damages. Patterson v. Louisville & N. R. Co., 2 Fed. (2) 592, 593.

(g) To give practical effect to section 15 for establishment of through routes, limitations on the commission's power in paragraph (4) must be interpreted as prohibiting the commission from requiring a carrier to turn traffic over to a connecting line when to do so would require participation in a through route embracing substantially less than the entire length of its line. See 47 I. C. C. 643, 722, and other cited cases. Rochester Switching Case, 95 I. C. C. 30, 47, 48.

(h) The commission is without authority to require establishment of joint through rates to points in Canada. New Orleans Joint Traffic Bureau v. A. & A. R. R. Corp., 95 I. C. C. 77, 82.

(i) Contention that commission is without jurisdiction to prevent cancellation of joint rates from points in Alabama to Canadian destinations not sustained. It is the commission's duty to see that no inequalities in rate levels and no violation of act result from tariff changes. Lumber from Alabama to Canadian Points, 96 I. C. C. 709, 710.

(j) The power of the Commission to establish through routes and joint rates which is invoked is derived from section 15 (3) of the act, and the exercise of that power is limited to instances where

the through routes and joint rates sought are "necessary or desirable in the public interest." Fort Smith S. & R. I. R. R., v. A. & V. Ry. 102 I. C. C. 708, 711.

ALL OTHER CITATIONS

Northwestern Clay Mfg. Co. v. R. I. S. Ry. Co., 88 I. C. C. 132.

§2. What is through route or "Common arrangement."

See Crimes; Tariffs §10.

(a) It should be understood that where the term "carriers under the same management and control" is used, it refers to carriers generally controlled through ownership, lease, or otherwise, to the extent of controlling traffic policy, even though separate corporate entity may be maintained. Livestock to, from, and between points in the southeast, 91 I. C. C. 292, 295.

(b) Lines which are under common control and management, though owned by separate corporations, shall be deemed single units for rate making purposes. Livestock to, from, and between points in the southeast, 91 I. C. C. 292, 295.

(c) "Carriers under same management and control:" Term understood to refer to carriers generally controlled through ownership, lease, or otherwise, to extent of controlling traffic policy, even though separate corporate entity may be maintained. Blackshear Mfg., 87 I. C. C. 654, 664. Livestock to, from and between Points in the Southeast, 91 I. C. C. 292.

(d) It should be understood that where the term "carriers under the same management and control" is used it refers to carriers generally controlled through ownership, lease or otherwise, to the extent of controlling traffic policy, even though separate corporate entity may be maintained. Livestock to, from and between points in Southeast, 101 I. C. C. 103, 106.

(e) Phrase can not have any meaning broader than that of "through shipments," that is, a shipment subject to application of a through rate or made by combination either of local or proportional rates. Bird v. Director General, 92 I. C. C. 494, 496.

(f) The shipments apparently moved on through billing. A through route therefore already exists, although joint rates do not apply thereover. Arrogast & Bastian Co. v. L. V. R. R. 107 I. C. C. 105, 107.

§3. What is joint rate.

See Infra, §3½.

(a) Where joint rates are concerned each carrier has at least some control over those rates and contributes to the injury complained of. Midland Coal Co. v. M. V. R. R., 91 I. C. C. 571, 573.

(b) But it by no means follows that one carrier can add to the duly established rates of another carrier any amount it pleases, less than its own local rates, and publish and use that sum as a thru rate to points on the line of such other carrier. Such a through rate is neither a joint rate nor a combination rate. It is obviously not a joint rate, for joint rates can be made only by the concurrence or assent of connecting carriers. It is not a combination rate, for one of its component parts has no legal existence or sanction as a separate or local rate. Southern Class Rate Investigation, 100 I. C. C. 513, 681.

(c) The fact that the combination through rates were composed of proportional factors, the use of each of which was dependant upon the use of the other factor or factors, did not invest them with the character of joint through rates. Proportional rates on livestock, 109 I. C. C. 417, 424.

§3½. Participation in Through Traffic.

See Supra §3; Discrimination §7; Interstate Commerce Commission §2, §3.

(a) While there is no express prohibition in the Act against publication of joint rates in connection with a common carrier not subject to the Act, Commission has consistently held that line must be drawn between those carriers whose rates and practices Commission can control and those which it can not control; and upon this line of reasoning it has been Commission's ruling that joint rates can not be made between carriers subject to the Act and those not subject to the Act. Motor Truck or Wagon Transfer Service, 91 I. C. C. 539, 548.

II. ESTABLISHMENT BY CARRIER

See Common Carrier; Distance Rates §1 (r); Electric Lines IV; Proportional Rates I (d), II (t); Rail and Water Rates (ff); Tap Lines §4.

§4. In general.

(a) While there is no express prohibition in the act against the publication of joint rates in connection with a

common carrier not subject to the act, the Commission has consistently held that the line must be drawn between those carriers whose rates and practices it can control and those which it can not control; and upon this line of reasoning it has been its ruling that joint rates can not be made between carriers subject to the act and those not subject to the act. Tariffs embracing motor truck or wagon transfer service, 91 I. C. C. 539, 548.

(b) There is no provision in the law for the establishment of through rates by absorbing the local rates of another carrier for the purpose of establishing through rates over a through route composed of two or more carriers over which through route no joint through rate has been fixed by the agreement. Southern Class Rate Investigation, 100 I. C. C. 513, 681.

(c) Contention that addition of joint-line differentials would place defendant Fort Smith & Western at a disadvantage in competition with other trunk lines can not be sustained. The commission has repeatedly approved the general practice in the Southwest of adding differentials for joint-line hauls, on intrastate as well as interstate traffic, where rates are constructed on a distance basis, and the record does not warrant a reversal of such general practice. Accordingly, joint-line differentials have been prescribed which diminish in proportion to length of haul and are allowed only for distances not exceeding 500 miles. Oklahoma Corp. Commission v. A. & S. Ry. Co. 98 I. C. C. 183, 248.

§6. Circuitous Routes.

See Advanced Rates §18 (8); Long and Short Hauls §9.

ALL CITATIONS

Elimination of Routes on Transcontinental Traffic, 85 I. C. C. 108.

§8. Relation to Similar Points.

See Relative Rates.

(a) Complainant attacked through charges assessed on black strap molasses, carloads, shipped from New Orleans, La., and points taking same rates, to Cincinnati, O., there converted into alcohol and reshipped to destinations in Ohio, Indiana, Illinois, Wisconsin, Minnesota, Michigan, Pennsylvania, New York, Maryland, Connecticut and Massachusetts, as unjust and unreasonable, and, as compared with the through rates contemporaneously maintained from the same points to and from Peoria and Pekin, Ill., as unjustly discriminatory and unduly prejudicial. No evidence was introduced bearing upon the reasonableness of the rates per se, nor upon the issue of unjust discrimination . The gist of the case is the relationship between the through charges on blackstrap molasses in and alcohol out when the distilling is performed at Cincinnati, on the one hand, and at Pekin, on the other hand. The joint rates from New Orleans to the important consuming territories on both blackstrap molasses and alcohol are the same via Peking and Cincinnati. But to the same territory of consumption the full combinations of locals would be materially higher through Pekin. The same conditions applied as between Pekin and distilleries at other eastern points, and in order to alleviate this rate disadvantage transit arrangements were established at Peoria and Pekin by the C. & A., on Oct. 4, 1922 and by the I. C., on Nov. 7, 1922. Complainant seeks the establishment of similar arrangements at Cincinnati. It requires 350 pounds of blackstrap to make 100 pounds of alcohol. Under the transit arrangement in effect at Pekin the distiller pays the joint rate from point of origin to final destination published to apply on blackstrap or edible molasses, whichever is lower, on the 100 pounds of alcohol shipped out. On the 250 pounds of blackstrap which is wasted he pays the local rate from point of origin to Pekin. In addition, he pays a transit charge of 0.5c per 100 pounds on the 350 pounds shipped in. The joint rates from New Orleans to the eastern destinations being the same via both Pekin and Cincinnati, it follows that the distillers at both points would be on the same basis as to the through charges on the 100 pounds of alcohol manufactured, if the same transit arrangement were to be established at Cincinnati. The reason Cincinnati would have an advantage of 12.5c in every instance over Pekin, under such an arrangement, is that the inbound rate on blackstrap to Cincinnati is 25c as compared with a rate of 30c to Pekin. Consequently, the wastage of 250 pounds would cost the Cincinnati distiller 62.5c and the Pekin distiller 75c. The distance from New Orleans to both points is about the same. The tariff of the Illinois Central providing for transit service at Pekin is not concurred in by the Big Four or by any of the lines serving the destina-

tion territory therein indicated. The Big Four performs a switching service to and from the plant of complainants competitor at Pekin, from and to its connection at that point with the Illinois Central. For this service it receives its local switching charges, which are absorbed by the I. C. The Big Four had no impelling motive to grant transit at Pekin and it secures no portion of the charge made for that service. It takes no part in keeping the usual and necessary transit accounts. It is in the position of an agent of the I. C., a position which is not at all unusual and which is not unlawful because of its lack of concurrence in the I. C., transit tariff. Although various lines, including the Big Four, may participate in all or a partion of the haul of the finished product to its final destination, they do so on basis of their usual proportions of the through rate on alcohol from point of origin to final destination, as they would in any instance where they received shipments of alcohol from the I. C., or other connections. The Big Four can not be found guilty of undue prejudice although it serves both Pekin and Cincinnati. The record shows that it does not grant a similar transit privilege at any point on its lines. The lines which serve Cincinnati from New Orleans, such as the L. & N., and Southern do not reach Pekin with their own rail and have no voice in the establishment of the transit arrangements at that point. Conversely, the I. C., which serves Pekin, does not serve Cincinnati and would be powerless to remove the alleged undue prejudice by establishment of a similar arrangement at Cincinnati. HELD, charges complained of not unduly prejudicial or otherwise unlawful, complaint dismissed. Federal Products Co. v. I. C. R. R. 107 I. C. C. 271.

§9. **Right to favor own line.**

See Discrimination §7, §10; Routing and Misrouting §1.

(a) The intent of section 15 of the act is that if a railroad has traffic in its possession it shall be allowed to handle it by its own line as far as it can unless the public interest will suffer thereby. Jackson Traffic Bureau v. A. & V. Ry., 92 I. C. C. 89, 92.

(b) With certain exceptions a carrier may reserve to itself the long haul on traffic it originates or obtains from connections, but it may not under the guise of so doing restrict the markets in which its shippers may dispose of their products. Such restriction of markets may be as effectually accomplished through the imposition of higher rates over competitive routes as by closing them entirely. Lumber from Alabama and Mississippi, 92 I. C. C. 156, 160.

(c) In establishing a through route the Commission shall not require any carrier, by railroad, without its consent, to embrace in such route substantially less than the entire length of its line, provided that the route over such line is not unreasonably long as compared with another practicable through route which could otherwise be established. L. G. Everist v. C. M. & St. P. Ry., 92 I. C. C. 473, 474.

(d) To give practical effect to the provisions of section 15 for the establishment of through routes, the limitation on power of the Commission in paragraph 4 must be interpreted as prohibiting the Commission from requiring a carrier to turn traffic over to a connecting line, when to do so would require it to participate in a through movement embracing substantially less than the entire length of its line between the points in question. Rochester Switching case, 95 I. C. C. 30, 47.

(e) Commission has declined to require a carrier to participate in a thru route embracing substantially less than the entire length of its line between termini of the through route unless to do so would make such through route unreasonably long as compared with another practicable through route which could otherwise be established. Routing on Livestock, 100 I. C. C. 751, 755.

(fg) Carriers are entitled to the protection of their long haul only when it is over a reasonably direct route. Harriss, Irby & Vose v. B., S. L. & W. R. R., 92 I. C. C. 304, 305.

(h) Upon contention that establishment of through routes and joint rates sought would in several instances short-haul carriers participating in existing routes, in violation of section 15 (4) of the act, and in others divert traffic from existing routes without justification and thereby deprive carriers of traffic long enjoyed, HELD: First objection has no application unless carrier originates the traffic or receives it from a connection,

in which event it should be allowed to transport it as far as it can before delivering it to a connecting line. Relative to second objection, it is equally true that a carrier under usual conditions has no existing right to traffic still in possession of connecting lines. Flory Milling Co. v. C. N. E. Ry., 93 I. C. C. 129, 134.

(i) A carrier can not insist upon its long haul if undue prejudice results. Jackson Traffic Bureau v. G. & S. I. R. R. 102 I. C. C. 259, 260.

(j) Section 15 (4) has no application unless the carrier has originated the traffic or received it from a connection in which event it should under ordinary circumstances be allowed to transport the freight as far as it can before delivering it to a connecting line. On the other hand, it is equally true that a carrier under usual conditions has no existing right in traffic still in the possession of connecting lines. In other words, the right of an originating or intermediate carrier to its long haul is superior to that of a delivering line. Fort Smith S. &. R. I. Ry. v. A. & V. Ry. 107 I. C. C. 523, 524.

ALL OTHER CITATIONS

Simms Oil Co. v. H. & T. C. R. R. Co., 85 I. C. C. 537; Montana R. R. Commrs. v. C. M. & St. P. Ry., 88 I. C. C. 184.

§10. Status of Intermediate Carriers.

(a) This proceeding involves primarily a controversy between complainant and defendant M. P. R. R., arising from complainants desire to participate as an intermediate carrier in through routes and joint rates from various points of origin to destinations on the M. P., and beyond. In 102 I. C. C. 708, division 4 found that the through routes and joint rates sought by complainant were not necessary or desirable in the public interest, reversing its former finding made in 87 I. C. C. 617, to the effect that the establishment of such routes and rates would be in the public interest. The rates and routes sought by complainant would apply only on westbound traffic moving through Ola and Dardanelle, Ark., over its line and the Paris branch of the M. P., to Fort Smith, Ark., and points beyond. Questions presented for decision are (1) that establishment of the routes sought by complainant would necessarily require the M. P., to short haul itself in violation of section 15 (4) of the act, and (2) that the public interest would not be served by their establishment. The position of the M. P., with respect to section 15 (4) is untenable. The need of complainant and the benefit which it would derive from the proposed routes far outweigh any possible adverse effect upon the M. P., from the establishment of such routes. It is unnecessary in this case to rely solely upon the financial needs of complainant for the reasons stated below. In 87 I. C. C. 617, 619, it was found that complainants line was economically operated and of great benefit to the country which it serves, although its revenues had been insufficient to meet its operating expenses and fixed charges. The distance between Memphis, Tenn., and Fort Smith, over the route which complainant seeks to have established, is approximately the same as that over the M. P., alone, and there is nothing to show that any of the other routes sought would be unduly circuitous. There is ample proof that the routes sought would be of value to those shippers in many respects. HELD, through routes and joint rates prayed for found to be desirable in the public interest. Fort Smith S. & R. I. R. R. Co. v. A. & V. Ry. 107 I. C. C. 523.

§11. What is satisfactory thru route.
(2) When Through Route ordered or Denied.

(a) Upon further hearing, former report, 80 I. C. C. 383, affirmed and no such public demand exists as to warrant the commission requiring the publication of additional joint rates from Utah mines to destinations in the Northwest. Western Coal Rates, 89 I. C. C. 666, 677, 678.

(b) While it appears that the rates complained of are higher, distance considered, than those generally prevailing from nearby points to the destinations in question or to points in that vicinity, over the same or other routes, the question whether the rates are reasonable or unduly prejudicial can not be determined from that standpoint alone. Complainant was and is entitled to reasonable and nonprejudicial rates, but in determining whether the rates attacked are unreasonable or unduly prejudicial the Commission must consider all the circumstances surrounding the traffic. It is the conclusion that the Commission would not be warranted in requiring defendants to establish joint rates on coal

from and to the points in question, and upon the facts of record it finds that the combination rates applicable to these shipments are not shown to have been or to be unreasonable or unduly prejudicial. Chicago Heights Mfrs. Assn. v. B. & O. R. R., 95 I. C. C. 83, 85.

(c) The maintenance of alternative available through routes, if not unreasonably long, is undoubtedly an advantage to the carriers and beneficial to the public. K. C. M. & O. Divisions, 96 I. C. C. 378, 393.

(d) Request for establishment of certain additional through route and joint rates on wool from Pacific coast points and intermediate points adjacent thereto to eastern defined territories denied. In at least one instance relief sought would result in short-hauling originating carrier, and as to situation in general no sufficient reason appears for requiring opening of additional routes. Wool Rates Investigation, 1923, 91 I. C. C. 235, 265, 266.

(e) Complainant, Kansas & Oklahoma Ry. sought establishment of reasonable joint rates on grain and grain products from State Line, Kans., to interstate destinations and alleged existing joint rates from Milner, Kans., to those destinations are unreasonable. The original plan was to construct a line of railroad from Hugoton, Kans., a point on the Santa Fe thru Liberal, Kans., on Rock Island to Forgan, Okla., the northern terminus of a line of the M. K. & T. Fifteen miles of line have been constructed from Liberal northwest through Milner to Woods and 4 miles of line southeast from Liberal to State Line. The company is in the hands of a receiver and no further construction is now under way. The company has no freight cars and only one locomotive. It does not appear that the movement of the 56 cars of grain is indicative of any regular movement in the future from State Line even if the rates asked by complainant should be established. HELD: Joint rates not shown to be necessary or desirable in the public interest, complaint dismissed. Duvall v. C. R. I. & P. Ry., 101 I. C. C. 630.

(f) Overruling Conf. Ruling 341, FOUND: That where a common carrier subject to the act performs an intermediate service in connection with traffic moving at joint rates, it should concur in such joint rates and receive divisions thereof, divisional arrangements to be so adjusted as to, in effect, result in absorption thereof by line that delivers traffic to carrier performing the intermediate service. Peoria & Pekin Union, 93 I. C. C. 3, 22.

(g) Defendants' refusal to establish joint rates on grain and products from the West and South via Bangor, Pa., over certain through routes, with milling in transit at that point, found contrary to public interest and unreasonable. Because of business and transportation practices prevalent in dealing in grain and products, to compete upon an equality complainant requires joint rates with transit at Bangor equal to rates in effect over existing routes through other milling points. Moreover, if joint rates via Bangor are confined to routes involving substantial similarity in service to already existing routes with joint rates, and lawful rights of carriers are preserved, the commission is unable to see that results will be numerous unreasonable requests for extension of transit or that publication of such joint rates will result in undue multiplication of routes or diversification of traffic. Flory Milling Co. v. C. N. E. Ry., 93 I. C. C. 129.

(hi) Defendants' refusal to establish joint rates on grain and products from the West and South via Bangor, Pa., over certain through routes via which originating carrier would be short-hauled, or where an additional carrier would be injected without compensatory advantage of the shortened haul, found not unreasonable. Flory Milling Co. v. C. N. E. Ry., 93 I. C. C. 129.

(j) Defendants' refusal to establish joint rates on grain and products from the West and South via Bangor, Pa, over certain through routes, found not unreasonable where fourth section violation would be created, originating carrier short-hauled, or where an additional carrier would be injected without compensatory advantage of the shortened haul. Flory Milling Co. v. C. N. E. Ry., 93 I. C. C. 129.

(k) The public interest is not conserved by shutting out, by denial of joint rates, a miller from markets which he can reach by routes not necessitating performance of a greater total service for him than service over present routes over which joint rates apply unless some substantial right of carriers is hereby invaded. On the other hand, the commission would clearly not be justified in attempting to neutralize the disadvantage

of geographical location by requiring wasteful service or additional service without adequate compensation, although shipper may be in dire need. Flory Milling Co. v. C. N. E., 93 I. C. C. 129, 134.

(l) Upon contention that establishment of through routes and joint rates sought would in several instances short-haul carriers participating in existing routes, in violation of section 15 (4) of the act, and in others divert traffic from existing routes without justification and thereby deprive carriers of traffic long enjoyed, HELD: First objection has no application unless carrier originates the traffic or receives it from a connection, in which event it should be allowed to transport it as far as it can before delivering it to a connecting line. Relative to second objection, it is equally true that a carrier under usual conditions has no existing right to traffic still in possession of connecting lines. Flory Milling Co. v. C. N. E. Ry., 93 I. C. C. 129, 134.

(m) It is one of the duties of a common carrier to participate in joint rates if the public interest requires such participation. And equity does not demand that carriers be compensated by larger divisions because they are not in great need of certain joint rates, or because they would be financially bettered if they were not maintained. Pittsburgh & W. Va. Ry. Co., 61 I. C. C. 272, 282, 283. Alabama & Mississippi Ry. Co. v. A., T. & S. F., 95 I. C. C. 385, 394.

(n) Complainant alleged that it was unreasonable, unjustly discriminatory and unduly prejudicial for defendants to fail to establish through routes and joint rates via El Centro and San Diego, Calif., on traffic moving between points in Oregon and California, on the one hand, and points in other parts of the United States, on the other hand, and that the existing rates between those points are likewise unlawful. Many routes are open in connection with transcontinental rates, and, generally, to apply transcontinental rates to Sacramento and San Francisco and points south thereof, through San Diego, would not create hauls longer than hauls under existing available routes. On the merits there appears to be no warrant on the part of defendants for restricting the markets of San Diego industries when not similarly restricting the markets served by Los Angeles and other California cities. The through routes and joint rates sought would have to apply over the lines of the Tijuana & Tecate Ry. Co., and the Inter-California Ry. Co., both of which lines are located entirely within Mexico and are not parties defendant. HELD, Commission is without jurisdiction to establish for the future the through routes and joint rates sought, complaint dismissed. San Diego Chamber of Commerce v. A. & V. Ry. 102 I. C. C. 27.

(na) Establishment of through routes and joint rates on rail-and-water traffic from lower Michigan points via Detroit to Cleveland and Buffalo, by restoring differentials under all-rail rates previously in effect and which are now in effect in opposite direction, found not necessary or desirable in public interest. Interested shippers testified that if differential should be restored they would use boat lines because of saving in transportation charges but practically no evidence was offered tending to show that all-rail service was inadequate or unsatisfactory. Detroit & Cleveland Nav. Co. v. M. C. R. R., 102 I. C. C. 607.

(nb) Establishment of through routes and joint rates from Mississippi River crossings and points east thereof to points on Paris Branch of Missouri Pacific R. R., including Fort Smith, Ark., and points beyond, in connection with Fort Smith, Subiaco & Rock Island R. R. as intermediate carrier, based on revenue needs of latter, found not necessary or desirable in public interest. Opening of this additional route would not result in any increase in total traffic and that moving over it must be attracted from other available routes, principally the Missouri Pacific which is not in a position to withstand resulting loss in revenue, which loss would tend materially to exceed relief obtained by intermediate carrier. Fort Smith, S. & R. I. R. R. v. A. & V. Ry., 102 I. C. C. 708.

(o) Complainant, Ft. Smith Subiaco & Rock Island R. R., asked an order requiring the Arkansas Central and M. P., to establish through routes and joint rates on freight and passenger traffic moving to and from points on the A. C., (now the Paris branch of the M. P.) including Fort Smith, Ark., via the Subiaco from and to eastern interstate points through the Dardanelle-Ola-Little Rock, Ark., gateway. In 87 I. C. C. 617 the complaint was held open because of lack of proper parties defendant. Through routes and joint rates are now available on interstate traffic to and from points

on the Paris branch in connection with the Subiaco through its Daranelle-Ola gateway, but the movement of interstate traffic to and from such points is restricted to the M. P., through Fort Smith. The Commission found this route not unreasonably long. The prayer now is for westbound routes and joint rates via Little Rock, Ola., and the Subiaco, and is based not on allegations that these routes would be more desirable than existing routes, either because shorter in distance, or upon other grounds, but on allegations that the Subiaco urgently needs the revenue which the overhead business would produce for it, and that if it does not get revenue in this way it must cease operations. Any traffic moving over the Subiaco route must be attracted from other available routes, and it seems quite clear that under the circumstances here presented the M. P. would be the principal loser. It is very probable that that carrier is not at present earning a fair return on its property, and to the extent that its revenues are diminished by the diversion to the Subiaco route of traffic which it can and does handle, it would be less able than at present efficiently to function as part of the national transportation machine, to serve adequately those dependent upon it for transportation and to earn money for its stockholders. Furthermore, the amount of revenue thus diverted from the M. P., would largely exceed the revenue accruing to the Subiaco as its share of the new joint rates. The loss entailed upon the M. P., would thus tend to materially exceed the relief obtained by the Subiaco. While it undoubtedly would benefit that part of the public served by the Subiaco to have that line in a prosperous condition, it is the opinion of the Commission that the method here adopted by the Subiaco to improve its condition does not comport with that broad view of the public interest which the Commission is constrained to take. HELD, through routes and joint rates not necessary or desirable in the public interest, complaints dismissed. Fort Smith S. & R. I. R. R. v. A. & V. Ry., 102 I. C. C. 708.

(p) Upon investigation of commission on its own initiative, FOUND: That the Mississippi Central, B. & H. S., and the G., M. & N., should establish on short notice, effective the same date, and maintain and apply a through route and joint rates on lumber, c. l. of a certain amount per 100 pounds, from stations on the Mississippi, Brookhaven to Tallahala, inclusive, but not including Hattiesburg, and a certain amount from stations west of Brookhaven, to and including Natchez, to Mobile, and just, reasonable, and equitable divisions of such joint rates prescribed for the future. Cancellation of Rates and Routes via Mississippi Central, 100 I. C. C. 71.

(q) Upon investigation of commission on its own initiative, FOUND: That the Mississippi Central, B. & H. S., and the G., M. & N., should establish on short notice, effective the same date, and maintain and apply a through route and joint rates on lumber, c. l., of a certain amount per 100 pounds, from stations on the Mississippi, Brookhaven to Tallahala, inclusive, but not including Hattiesburg, and a certain amount from stations west of Brookhaven, to and including Natchez, to Mobile, and just, reasonable, and equitable divisions of such joint rates prescribed for the future. Cancellation of Rates and Routes via Mississippi Central, 100 I. C. C. 71, 77.

(r) Upon investigation by commission on its own motion, establishment of joint rates on prepared sizes of low-volatile bituminous coal from mines served directly by C. & O. Ry. Co., N. & W. Ry. Co., and the Virginian Ry. Co. to certain points in trunk line and New England territories deemed to be necessary and desirable in the public interest, and basis for such new joint rates prescribed. Anthracite Coal Investigation, 101 I. C. C. 363, 384.

(s) Through routes and joint rates on coal required to be established and maintained by the B. & O. in connection with the Strouds Creek & Muddlety R. R., a short line carrier located in the Gauley district of West Virginia. Tioga Coal Co. v. B. & O., 101 I. C. C. 611.

(t) Establishment of joint rates on grain and grain products from State Line, Kans., a point on complainant's line to destinations on the C., R. I. & P. Ry. not found to be necessary or desirable in the public interest. Evidence as to volume and nature of traffic and value of route to public was meagre. Duvall v. C., R. I. & P., 101 I. C. C. 630.

ALL OTHER CITATIONS

South Dakota R. R. Commrs. v. C. & N. W. Ry Co., 85 I. C. C. 217; Utah Gilsonite Co. v. A. T. & S. F. Ry. Co., 85 I. C. C. 561; Montana R. R. Commrs. v. C. M. & St. P. Ry. Co., 88 I. C. C. 183; Chi-

cago Live Stock Exchange v. Director General, as Agent, 88 I. C. C. 202; C. M. & St. P. Ry. Co. v. U. P. R. R. Co., 88 I. C. C. 312.

IV. REASONABLENESS AND DISCRIMINATION.

See Advanced Rates §3 (aa); Blanket Rates §10; Class Rates §2 (3k); Commodity Rates II; Discrimination §7; Equalization of Rates; Evidence §66; Local Rates and Combinations; Proportional Rates; Reasonableness of Rates §27½; Water Carriers V.

§13. In general.

(a) Complainant attacked joint rates on crude sulphur, carloads, from New York and Baltimore to Hamilton, Ont., as unreasonable and unduly prejudicial compared with rates to Buffalo, N. Y., and Detroit, Mich. Crude sulphur is shipped rail and water from Louisiana to north Atlantic ports from whence it is reshipped to inland destinations. Rate charged to Hamilton from New York 31c distance 480 miles, from Baltimore 28c distance 473 miles while the rate to Buffalo from New York is 31.5c dis-21.5c distance 413 miles. The rate to Buffalo is about 80% of sixth class. The great disparity, distance considered, between the rates to Hamilton and the rates to Buffalo, is not warranted by any transportation consideration. For movements within the trunk line territory the Commission has found in numerous cases that 80% of sixth class is a reasonable basis for commodity rates on crude sulphur. HELD, rates attacked unreasonable to extent they exceeded 28c from New York and 25c from Baltimore. Grasselli Chemical Company v. B. & O. R. R. 89 I. C. C. 383.

(b) Complainant attacked fifth class rate charged on 126 cars of gasoline from Point Breeze, Philadelphia, Pa., to Fresh Pond, Long Island, N. Y., was unjust, unreasonable and unduly prejudicial. Point Breeze is within the switching limits of Philadelphia. Fresh Pond is on the Long Island R. R. about 4 miles from Long Island City. Shipments moved, in tank cars furnished by shippers, over the Pennsylvania to Greenville Piers thence car ferry to Long Island float bridges, thence by switching movement to private side track of complainant, 106 miles, charged fifth class rate of 21.5c prior to July 1, 1922 and 19.5c on and after that date. No commodity rate has ever been published. Commodity rates on refined oils including gasoline are in effect from Philadelphia to points in trunk line and New England territories such as Albany and Rochester, N. Y., Boston and Worcester, Mass., Jersey City, N. J., and Pittsburgh and Scranton, Pa. These commodity rates are from 82.1% to 95.3% of the fifth class rates HELD, rates attacked unreasonable to extent they exceeded 20c prior to July 1, 1922 and 18c, thereafter, reparation awarded. Transcontinental Oil Company v. Pennsylvania R. R. 89 I. C. C. 739.

(c) Complainant attacked sixth class rate charged of 27.5c on nine cars of spelter from Locust Point, Baltimore, Md., to Apollo, Pa., during March and April 1921, as unjust and unreasonable to extent it exceeded 23c. Locust Point is served by the B. & O. Apollo is about 40 miles northeast of Pittsburgh on the Pennsylvania. Shipments moved via B. & O., to Everson, Pa., Pennsylvania beyond, charged sixth class 27.5c There was in effect from Baltimore to Apollo over the Pennsylvania a rate of 23c, which rate included a lighterage service within Baltimore Harbor. The same rate of 23c was applicable from Baltimore to a large number of consuming points in the New York-Chicago 60% territory. HELD, rate attacked unreasonable to extent it exceeded 23c, reparation awarded. Apollo Steel Company v. Pennsylvania R. R., 89 I. C. C. 747.

(d) Complainant attacked fifth class rates charged of 35 and 33c on 201 carloads of raw sugar shipped before March and August 1920 from Brooklyn and New York, N. Y., Weehawken, N. J., and Philadelphia, Pa., to Marine City, Mich., as unreasonable to extent they exceeded 27 and 25c. Some moved via D. L. & W., to Buffalo, P. M., to Port Huron, and D. B. C. & W., to destinations and others over Pennsylvania to Toledo, O., D. & T. S. L. and G. T. to Port Huron and D. B. C. & W., beyond. A commodity rate of 29c from Philadelphia to Marine City was available over the B. & O., and connections, but this route was not used. Commodity rates of 27c from New York and 25c from Philadelphia were in effect to Marine City but were subsequently canceled. The record justifies the conclusion that the circumstances governing

the application of commodity rates to the Ontario points substantially differed from those surrounding the movement of raw sugar to Marine City. HELD, rates attacked not unreasonable, complaint dismissed. Garcia Sugar Corporation v. N. Y. C. R. R., 92 I. C. C. 239.

(e) Complainant attacked commodity rates charged on numerous cars of zinc ore from Missouri, Kansas and Oklahoma to South Fort Smith, Ark., as unreasonable, unjustly discriminatory and unduly prejudicial. Complainant's plant, 5 miles from Fort Smith, is served by the M. P. The points of origin are the Joplin and Oklahoma fields. The former field includes points in southwestern Missouri, such as Joplin, and in southeastern Kansas, around Galena. The latter field lies in the extreme northeastern portion of Oklahoma in the vicinity of Picher. Ore originating on the short lines in Oklahoma moves to the junctions, Baxter, Quapaw, and Miami, for distances averaging 6 miles, and thence to South Fort Smith over either the Frisco to Fort Smith and M. P., beyond, or over the Gulf to Okay, Okla., and M. P. beyond. The average haul over these routes is 197 miles. Cars are generally loaded to their maximum capacity. Through routes from points on the short line to South Fort Smith are made up of combinations on the junction points mentioned. The rate applicable from all trunk line and junction points proper in both fields was and is the same, and constitutes the other factor of the through charge to Fort Smith. HELD: Through routes on zinc ore, carloads, from points on the Mineral Belt and Northeast Oklahoma to South Fort Smith not unreasonable, but unduly prejudicial to extent factors of the Mineral Belt and Northeast Oklahoma exceeded by more than 0.5c the factors of those lines on like traffic to the east side smelters. This undue prejudice was removed by voluntary adjustments made on different dates subsequent to Jan. 20, 1922, over the various routes of defendants. Athletic Mining & Smelting Co. v. K. C. S. Ry., 93 I. C. C. 119.

(f) Complainant attacked joint commodity rate charged on newsprint paper, carloads, from Thorold, Ont., to New York as unreasonable, unjustly discriminatory and unduly prejudicial. Thorold is on the Canadian National Rys., 50 miles from Black Rock, N. Y., where connection is made with the N. Y. C., D. L. & W., and other railroad reaching New York and 12 miles from Suspension Bridge, N. Y., where connection is made with the N. Y. C., L. V. and other railroads serving New York. Short line distance from Thorold to New York is C. N. to Black Rock and Lackawanna beyond, 444 miles. Newsprint paper is fifth class in official classification, but by exceptions is accorded sixth class rating. HELD: Rate attacked unreasonable to extent it exceeded 32c from August 26, 1920, to June 30, 1922, and 29.5c since that date, reparation awarded. Ontario Paper Co. v. C. N. Rys. 95 I. C. C. 66.

(g) Complainant attacked combination commodity rates charged on coal in October and November, 1920, from Meyersdale district in Pennsylvania and Fairmount district in West Virginia as unreasonable, unjustly discriminatory and unduly prejudicial to New Castle, Del. New Castle is on the Pennsylvania, 7.3 miles south of Wilmington, Del. Shipments from Fairmont moved over B. & O. to Wilmington and thence Pennsylvania 364 to 389 miles, charged combination rates of $3.43 and $1.26 to and from Wilmington. From Meyersdale district shipments moved B. & O. to Gyndman, Pa., thence Pennsylvania, distance ranging from 311 to 337 miles, charged $1.12 to Hyndman or Johnstown, Pa., and $3.18 beyond. From the same regions on the Pennsylvania the rates were $3.18 and $3.34. In accordance with its long standing policy the Pennsylvania did not join in maintaining these rates from mines on other lines to destinations local to its own rails, and its failure to do so is the gravamen of the complaint. HELD: Rates attacked not unreasonable or otherwise unlawful, complaint dismissed. Chicago Heights Mfrs. Assn. v. B. & O. R. R., 95 I. C. C. 83.

(h) Complainant attacked commodity rates charged on pulpwood, carloads, to Covington, Va., from Virginia, North and South Carolina, Tennessee and Georgia as unreasonbale and unduly prejudicial. Rates on pulpwood are published in amounts per cord, per 100 pounds, or per net ton and are usually distance rates. There is very little competition between the paper, extract, and excelsior mills in the purchase of their woods, but the value of the various woods is about the same, ranging from

$7 to $9 per cord. Pulpwood can be transported in any kind of equipment, except a flat car. Under the present rates Covington procures its hemlock and spruce principally from timberland adjacent to Cass and its other pulpwood from points as near Covington as possible, and from points on practically every railroad in Virginia. Covington, Coleman, Big Island, and Buena Vista are on the C. & O.; Hopewell, Bristol and Buena Vista are on the N. & W.; Canton and Bristol are on the Southern and Kingsport is on the C. C. & O. The only joint rates in effect from points on the Southern to the complaining mills are from its Norfolk division, ranging from 190 to 260 c for 120 to 260 miles. The C. C. & O. connects with the N. & W. at St. Paul, Va., 230 miles from Glasgow. It participates in no joint rates on this traffic. The Virginian connects with the Southern at Alta Vista 23, C. & O. at Potomac Yard and Doswell, Va., 219 and 178 miles from Covington. No joint rates are maintained from points on that line to complaining mills. Virginian connects with the Southern at Alta Vista 23 miles from Lynchburg and with N. & W. at Brookneal, Va., 34 miles from Lynchburg and at Roanoke, Va., 44 miles from Glasgow. S. A. L. connects with the C. & O. at Richmond and Norfolk, 244 and 294 miles from Covington. There are no joint rates on this traffic from points on its line. A. C. L. connects with C. & O. at Richmond and at Norfolk through the Belt line. A joint rate of 189c was in effect at the time of hearing from certain A. C. L. points to Canton for distances of 170 to 320 miles. The N. & W. and Virginian express willingness to apply the C. & O. proposed scale as proportional rates on their lines. Covington is located close to the line dividing central and southern territories and, in view of the nature of this traffic and the competitive situation disclosed by the record, is entitled to rates based as nearly as possible on a joint scale properly aligned with the lower level of rates in southern territory, on the one hand, and the higher level of rates in official territory, on the other. HELD: Rates attacked unreasonable and unduly prejudicial to extent they exceed rates ranging from 6c for 40 miles to 16.5c for 550 miles. West Virginia Pulp & Paper Co. v. Southern Ry., 96 I. C. C. 244.

(i) Complainants attacked rates on coal, carloads, from mines on the Virginian to interstate destinations as unreasonable and unduly prejudicial. It also attacked failure of the Virginian to establish the necessary track connections whereby complainants mine may enjoy rates over and joint service by the Virginian and C. & O., resulting in undue prejudice. Since the filing of this complaint the Commission has prescribed the New River district rates, east bound and westbound, from mines on the Kanawha, Glen Jean & Eastern an independent short line connecting with the Loup Creek branch of the C. & O. and from mines on the Gree brier & Eastern, an independent short line connecting with the Sewell Valley at G. & E. Jct. Complainants mines are in the New River district on the Virginian which geographically corresponds to the New River district on the C. & O. The two carriers maintain parity of rates on eastbound movements from mines in their respective districts. Other mines on the Virginian within its New River district receive the benefit of district rates to central territory under trackage agreements between the Virginian and the C. & O. Complainants mines and others served exclusively by the Virginian, are the only mines, in the districts thus far named, of the Outer Crescent, which are denied the benefit of district rates to central territory. HELD, rates on coal, carloads, from complainants mines on the Virginian to interstate destinations unreasonable and unduly prejudicial to extent they exceed rates maintained from main and branch line points on the C. & O., in the New River district. Wyoming Coal Co. v. V. Ry. 96 I. C. C. 359.

(j) In 85 I. C. C. 557, the Commission found the through rates on gilsonite from American, Utah to Colorado and states east thereof since May 7, 1920 were unreasonable to extent they exceed any quanitity factor of $10.35 per to applicable over the Uintah Ry. from American to Mack, Colo., junction with the Rio Grande, exceeded $9.75 per ton. Case reopened upon petition of Uintah Ry. It is clear that if the $9.75 rate remains in effect from American the attacked rate of $9.95 from Watson, 2 miles nearer Mack, can not be maintained also that the $10.50 from Rainbow, 1 mile beyond American, would be so excessively out of line that it could not in justice

remain undisturbed. HELD, upon the new record, rates attacked not unreasonable or otherwise unlawful, complaint dismissed, previous order vacated. Utah Gilsonite Co. v. A. T. & S. F. Ry., 96 I. C. C. 653.

(k) Respondents proposed joint rates which are from 4 to 7c lower than existing combinations on intermediate markets on grain, grain products and articles taking same rates, carloads, from 340 points in Minnesota, in Iowa, and Missouri on the C. G. W., D. M. & C. I., Ft. D. M. & S., M. & O., M. C. & C. L., M. N. & S., and W. C. F. & N., to practically the entire state of Texas. The proposed rates apply only over the lines named to Kansas City, Mo., thence over all the principal carriers beyond. The Rock Island and certain of its connections maintain one factor through rates from this general territory of origin to Texas and the southwest generally, and the rates here in issue from common points are the same as those maintained by that carrier to the same destinations. HELD, proposed rates reasonable. Grain to Texas, 96 I. C. C. 727.

(l) Complainant attacked joint class C rate of 50c charged on 7 cars of zinc concentrates shipped from Minnequa, Colo., to Collinsville, Okla., in March 1918 as unreasonable and unduly prejudicial to extent it exceeded the commodity rate of $2.70 per ton in effect from Colorado common points. Minnequa is 3 miles from Pueblo. It is grouped with and usually accorded the same rates as Pueblo and other Colorado common points, this basis subsequently becoming effective from Minnequa. HELD, rate attacked unreasonable to extent it exceeded $2.70 per ton, reparation awarded. Tulsa Fuel & Mfg. Co. v. Director General, 98 I. C. C. 411.

(m) Complainant attacked rates charged on shingles in mixed carloads with lumber, shipped between June 11 and Dec. 29, 1919 from Pacific coast points to Toledo, O., subsequently reconsigned to various destinations as unjust and unreasonable. Complainant routed the shipments via the M. & L. S. R. R., which was not a party to the 65c rate to Manistique and over the route of movement the rate to Toledo, was 81.5c made by adding the 5c arbitrary to the sum of rates in effect June 24, 1918 of 55c from points of origin to Duluth, 11c from Duluth to Manistique and 10.5c to Toledo. On Dec. 31, 1919 the M. & L. S., was made a party to the joint rates to Manistique. Complainant makes no comparison of distances or transportation conditions over the route of movement and over other available routes. HELD, rates attacked not unreasonable, complaint dismissed. Mauk Lumber Co. v. Director General, 98 I. C. C. 599.

(n) Complainant attacked class rates charged on newsprint ink, carloads, from Bayonne, Hoboken, and Jersey City, N. J., Brooklyn and New York, N. Y., Boston and Morrills, Mass., and Philadelphia, Pa., to Washington and Baltimore as unreasonable. For many years prior to Nov. 15, 1922 official classification rated printing ink, carloads, fourth class, minimum 30,000 pounds. On that date the rating was reduced to the present fifth class basis, minimum 36,000 pounds. From Boston the fifth class rate is the same to Baltimore and Pittsburgh while the first class rate is 12c higher to Pittsburgh than to Baltimore. From both Boston and New York to Washington the fifth class rate is 5c higher than to Pittsburgh, while the first class rate is 4.5c lower. From Boston, New York and Philadelphia the first class rates are higher to Washington than to Baltimore by 7.5c, 5c and 9.5c, while the fifth class rates are higher by 5c, 0.5c, and 6c, respectively. With respect to the rates from Philadelphia, the haul from Baltimore to Washington is a considerable portion of the aggregate haul from Philadelphia to Washington. Printing ink is rated fifth class in each of the classifications, and moves without exception on the class basis throughout the country. If a departure from the class basis is required on complainants traffic, it is evident that departures from that basis could not reasonably be avoided with respect to at least a large portion of such traffic in official classification territory. Certain of the class rates in this territory appear to need readjustment but the general class rate structure is now under consideration in another proceeding. HELD, rates attacked not unreasonable, complaint dismissed. Washington Publishers Asso. v. B. & O. R. R., 98 I. C. C. 668.

(o) Complainant attacked class rates from St. Paul, Minneapolis, Minnesota Transfer, Cloquet, Duluth and West Duluth, Minn., and Superior and South

Superior, Wis., to Fargo, N. D., as unreasonable, unduly prejudicial, and unjustly discriminatory against interstate commerce to the extent that they exceed the intrastate rates applicable to Moorhead, Minn., 1.2 miles east of Fargo; that the distributing distance class rates from Fargo to points in Minnesota are unreasonable, unduly prejudicial, and unjustly discriminatory against interstate commerce to the extent they exceed the rates from Moorheead and other Minnesota points to the same destinations; that the class rates to Fargo from Chicago, Ill., and from central, trunk line and New England territories made with relation to the Chicago rates are unreasonable and unduly prejudicial to extent they exceed 140% of the rates to St. Paul, Minn; that the class rates from Fargo to North Dakota are unreasonable, unduly prejudicial and unjustly discriminatory against intrastate commerce as compared with corresponding rates from the Twin Cities; that the class rates from Omaha, Neb., and Kansas City, Mo., and related points of origin to Fargo are unreasonable and unduly prejudicial to extent they exceed the rates to Duluth; that the class rates from California, New Mexico, Nevada and Utah points to Fargo are unreasonable and unduly prejudicial to extent they exceed rates to Twin Cities. They also asked for a through route from California points to Fargo via Butte, Mont., and of joint through rates over such a route no higher to Fargo than to St. Paul. Fargo is located at the extreme eastern boundary of North Dakota, on the west bank of the Red River, which is the dividing line beteween that state and Minnesota. It is served by the main lines of the N. P., and G. N., and a branch line of the Milwaukee. Fargo is 241 miles from Minneapolis and 252 miles from Duluth over the N. P., 232 miles from Minneapolis and 307 miles from Duluth over the G. N., and 295 miles from Minneapolis over the Milwaukee via its branch line north of Ortonville, Minn. **Rates From Minnesota Points to Fargo Valley City and Jamestown.** Valley City is 58 miles west of Fargo on the main line of the N. P., 299 miles from Minneapolis and 310 miles from Duluth. It is also served by the Soo Line and is over that line 291 miles from Minneapolis and 370 miles from Duluth. Jamestown is on the main line of the N. P., 34 miles west of Valley City, 325 miles from Minneapolis and 344 miles from Duluth. It is also served by the Midland Continental, a north and south line connecting with the Milwaukee at Edgeley, N. D., and with the Soo Line at Wibledon, N. D. Valley City meets the competition of the Twin Cities and Duluth in distributing fancy lines of groceries, but its strongest competition is with Fargo. The evidence leaves no doubt that jobbers at Jamestown and Valley City have been seriously handicapped and the industrial growth of these cities has been materially retarded by the rate situation complained of. The record leaves no doubt that the class rates now in effect from the Minnesota points and points taking the same rates to Fargo are less than reasonable maxima, but that Fargo is laboring under substantial disadvantage in the relationship which its rates bear to the rates available to its competitors in Minnesota, such as Moorhead, the Twin Cities and Duluth, due to the comparatively low level of the Minnesota intrastate rates. It further appears that Valley City and Jamestown are laboring under even greater disadvantages than Fargo in attempting to distribute their products in their natural trade territories. Fargo is the most important trade competitor of Valley City and Jamestown. Its advantage in rates is shown to be in part due to the relatively lower rates accorded it by the application of arbitraries over the Minnesota intrastate rates and in part to the inbound commodity rates and exceptions to the western classification on certain articles accorded to Fargo which are not accorded to Valley City and Jamestown. There are no circumstances and conditions of transportation which warrant the existing disparities in these rates or a different level of rates to one than to another of these points in western Minnesota and eastern North Dakota. HELD, class rates from Twin Cities and Duluth and Superior and points taking same rates to Valley City and Jamestown unreasonable to extent they exceed class rates ranging from 33c first class for 10 miles to 157c for 500 miles, with arbitraries for extra line hauls beginning with 8c first class to 1c class E. HELD, further the maintenance of class rates from the points of origin above named to Fargo, which are lower distance considered, than the class rates maintained from the same points of

origin to Valley City and Jamestown is unduly prejudicial to Valley City and Jamestown to extent the rates to the latter point exceed the rates to Fargo by more than the differences that would exist between the rates from said points of origin to Valley City and Jamestown on the one hand and Fargo on the other under the scale of maximum rates prescribed above. **Rates From Fargo to Minnesota Points.** Fargo merchants haul many of their shipments from Minnesota destinations to Moorhead by truck, where they are loaded into a car which is switched to Fargo, reworked, and placed in a train moving back through Moorhead to the Minnesota destinations. Transportation conditions do not justify any different basis of class rates from Fargo to Minnesota points 150 miles and less from Fargo over short line routes than from Moorheead and other competing Minnesota jobbing points to the same destinations. HELD, class rates from Fargo to Minnesota distant 150 miles and less from Fargo over short line routes are not unreasonably high, but are unduly prejudicial to Fargo to extent they exceed the rates maintained from the said Minnesota points to same destinations by more than the differences that would exist between the rates from said points of origin, on the one hand, and from Fargo on the other, to said Minnesota destinations under the scale of class rates previously prescribed, and that any greater difference or disparity between the aforesaid rates from Minnesota origin points and from Fargo results in unjust discrimination against interstate commerce from Fargo. HELD, further, the class rates from Fargo and Minnesota points of origin to points in Minnesota 150 miles and less from Fargo over short line routes are less than reasonable maximum rates, and that reasonable maximum rates from Fargo and the Minnesota origin points to said Minnesota destinations will be those prescribed, supra. **Rates From Chicago and Points East Thereof to Fargo.** Class rates from points east of Chicago to Fargo are based on the lowest combination, generally on the Twin Cities. Present class rates from Chicago to Fargo are joint rates ranging from nothing on second class to 14.5 on class A less than the combination on the Twin Cities. The joint rates from central, trunk line, and New England territories to the Twin Cities are published in tariffs subject to the official classification, while the rates from Chicago to Fargo are published in tariffs subject to the western classification. There can be no doubt upon this record that the present class rates from Chicago and points basing thereon in central, trunk line, and New England territories to Fargo place the latter point and its shippers at an undue disadvantage as compared with the rates to the Twin Cities. The finding that both of the factors of the Twin Cities combination from Chicago to Fargo are depressed is not conclusive that the joint through rate, which is only 0.5c lower than the combination is reasonable. HELD, class rates from Chicago to Fargo are unreasonable to extent they exceed rates ranging from 165c first class to 30c class E. HELD, further class rates from all points east of Chicago in central, trunk line and New England territories to Fargo are unreasonable to extent the factors from Chicago to Fargo exceed rates ranging from 149c first class to 27c class E. HELD, class rates from Duluth to Fargo on traffic from beyond Duluth by lake or by rail and lake are unreasonable to extent they exceed rates ranging from 85c first class to 15c class E. **Rates From Fargo to Points in Montana.** The present class rates from Fargo to points in Montana beyond Malta on the G. N., Melstone on the Milwaukee and Myers on the N. P., are the same as the rates from the Twin Cities, while to destinations in Montana east of those three points the rates from Fargo are lower. The material advantage is distance which Fargo holds over the Twin Cities entitles Fargo to better than equal rates at Montana points some distance beyond the territory in which differences now exist. It appears that Fargo distributors do not compete actually or potentially with distributors from the Twin Cities at Montana points more than 900 miles distant from Fargo. HELD, class rates from Fargo to points in Montana are not unreasonable. HELD, further, that to points in Montana more than 900 miles from Fargo over short line routes and to points in Montana east of Malta, Melstone and Myers the class rates from Fargo are not unduly prejudicial, but that to Malta, Melstone and Myers and to all points in Montana west thereof not more than 900 miles from Fargo over short line routes, they are unduly

prejudicial to Fargo and unduly preferential of Twin Cities to extent said rates from Fargo exceed rates which are less than the rates maintained from the Twin Cities to the same destinations by 25c on first class, and on the other classes by amounts ascertained by applying the same percentages to the first class rates so constructed as are reflected by the rates maintained from the Twin Cities to the same points.

Rates from Omaha and Kansas City to Fargo. The class rates from Omaha are uniformly higher to Fargo than to Duluth, although the difference is respective short line distances is only 9 miles in favor of Duluth. The direct route from Kansas City and Omaha to Fargo is through Sioux City and G. N. The haul over this route to both Fargo and Duluth is identical as far as Willmas, Minn., from which point the distances over the G. N., are 159 miles to Fargo, 101 miles to St. Paul and 197 miles to Duluth. HELD, class rates from Omaha and Kansas City to Fargo are unreasonable to extent they exceed from Omaha rates ranging from 155c first class to 28c class E and from Kansas City rates ranging from 174c first class to 31c class E. **Rates From California, New Mexico, Nevada and Utah to Fargo.** Defendants admit that Fargo may be entitled to the Duluth rates from California and points in Nevada and Utah taking the same rates. HELD, class rates from California, Nevada and Utah to Fargo are unreasonable to extent they exceed rates to Duluth. **Rates from and to Grand Forks, N. D.** While the issues do not embrace rates to or from Grand Forks the record fails to reveal any such difference in transportation conditions from and to Fargo and Grand Forks as would justify defendants in maintaining a different level of rates to one point than to the other. In making the readjustment required herein defendants should revise the corresponding rates from and to Grand Forks in harmony with the resulting rates from and to Fargo. **Application of Rates under Distance Scale Prescribed.** In computing distances under the scale of rates prescribed the shortest routes via existing connections for the interchange of carload traffic shall be used, embracing as a maximum the lines of not more than three line haul carriers, except where through routes for the transportation of class traffic are now in use by defendants which embrace the lines of more than three line haul carriers, and over which the distances are less. Lines unde common ownership or control will be considered as a single line, and where a portion of the same railroad is used more than once in computing a distance it will be counted as a separate line each time it is used. **Fourth Section Relief** Under appropriate application, consideration will be given to the matter of fourth section relief to enable circuitous lines or routes to meet the rates herein prescribed over short lines or routes and to maintain higher rates at intermediate points. Fargo Commercial Club v. A. & W. Ry., 98 I. C. C. 691.

(p) Rate on cotton seed from Memphis, Tenn., to Altheimer, Ark., found unreasonable to extent it exceeded rate from Memphis to Pine Bluff, Ark., which latter rate was published in accordance with rule 77 of Tariff Circular 18-A, application for publication thereof to Altheimer not having been made prior to shipments, and was not subsequently established thereto by carriers. Reparation denied for lack of proper parties complainant. Russell-Heckle Seed Co. v. Director General, 91 I. C. C. 63.

(q) In interest of tariff simplification it is Commissions opinion that joint rates on wool should be published from Pacific coast terminals and adjacent points in eastern destinations, if practicable, in one or a very few consolidated tariffs, and that such tariffs should include all transit rules, regulations, and practices appertaining to movement of wool. Wool Rates Investigation, 1923, 91 I. C. C. 235, 260.

(r) Rates on sewer pipe from Brazil, Ind., to Manitowoc, and Sheboygan, Wisc., and Menominee, Mich., found unreasonable as compared with lower unrestricted rates applicable over car-ferry routes across Lake Michigan to more distant points in Wisconsin, Minnesota and Michigan, and to extent they exceeded aggregate of intermediate contemporaneously in effect. Reparation denied due to lack of proof as to payment and bearing of freight charges. Chicago Fire Brick Co. v. Director General, 91 I. C. C. 755.

(s) Complainant attacked commodity rate charged of $4.40 on 25 cars of pig iron shipped between Nov. 21, 1918, and Jan. 14, 1920, from Everett and Earlston, Pa., to Boston, Mass., as unreasonable, unjustly discriminatory and unduly prejudicial. Distances from Everett and

Earlston, 593 and 595 miles, respectively. Prior to Nov. 1, 1918, the applicable rate was $3.80, but on that date increased to $4.40 following 49 I. C. C. 238. On Aug. 26, 1920, the $4.40 rate became $6.16. On Dec. 27, 1920, it was reduced to $5.32, which represented an increase of 40% over the rate of $3.80 in effect prior to Nov. 1, 1918. HELD: Rate attacked unreasonable to extent it exceeded $3.80, reparation awarded. Hunt Spiller Mfg. Corp. v. Director General, 100 I. C. C. 243.

(t) Complainant attacked rates charged on rig irons, carloads, from Iola, Kan., to Tulsa, Okla., as unreasonable and in 80 I. C. C. 335, the Commission found the following rates to be reasonable: 22c prior to June 25, 1918, 27.5c between that date and Aug. 26, 1920, and 37c from that date to July 1, 1922, and 33.5c thereafter. Reopening was had on request of defendants. In the original report the Commission stated that there is a regular and substantial movement of rig irons from Iola to Tulsa. The present record does not substantiate this. No shipments of rig irons moved from Iola to Tulsa over the Santa Fe from May 24, 1920, to Dec. 5, 1923, date of hearing. There were 49 cars of rig irons shipped during 1922 and 19 during 1923. These shipments all moved over the M. K. & T. The record does not establish that the 41.5c rate on oil well supplies is a reasonable maximum rate over either the short or long route from Iola to Tulsa. The rate on oil well supplies as such, is not in issue and the Commission is not prepared to determine upon this record what was or would be a reasonable rate on that commodity. HELD: Rates attacked not unreasonable, complaint dismissed. Bradford Rig & Reel Co. v. Director General, 100 I. C. C. 261.

(u) Complainant attacked joint and combination rates charged on 85 cars of rolled oats from Buffalo, N. Y., to destinations in California, Nevada, Oregon and Washington between July 1, 1922, and March 6, 1923, as unreasonable, unjustly discriminatory, unduly prejudicial and in violation of section four. Charged prior to Nov. 30, 1922, at joint rate of $1.41, and on those on and after that date at a combination of $1.21 to Toledo, O., or Detroit, Mich., composed of 16c to those points plus $1.05 beyond. Complainants case is grounded on the fact that, although reductions had been made in rates from certain transcontinental groups west of Buffalo, rates from transcontinental groups B, within which Buffalo is situated, were not correspondingly reduced until after these shipments moved. The record falls short of establishing that the rates charged were excessive and unreasonable for the transportation service rendered. HELD: Rate attacked not unreasonable or unjustly discriminatory, complaint dismissed. H-O Cereal Co. v. A. T. & S. F. Ry., 100 I. C. C. 297.

(v) When distances are relatively great, and when transfer at rate breaking points is not attended by unusual costs, the combination basis, using local rates, ordinarily is abnormal and unscientific and often discriminatory. The railroads should be regarded more and more as one national system, and the time may not be far distant when the Commission should proceed to the establishment of joint through class and commodity rates, lower than the combination of locals, between practically all points in the country. Southern Class Rate Investigation, 100 I. C. C. 513, 661.

(w) The Commission has condemned, expressly or in effect, the practice of basing interterritorial rates upon the combination of local rates to and from border points. Southern Class Rates Investigation, 100 I. C. C. 513, 661.

(x) Complainant attacked combination class rate charged on five carloads and six less carloads of pianos between 1922 and 1923 from Hammond, Ind., and Steger and Oregon, Ill., to Birmingham, Ala., as unreasonable and unlawful. Rates charged were lowest combination on the Ohio river crossings of first class on less carloads and second class, carloads. The rate sought are joint first class rates on less carloads and joint commodity rates on carloads maintained to Mobile, Ala., in other tariffs subject to the intermediate clause. No specific rate on pianos in carloads or less carloads from Hammond, Steger and Oregon to Birmingham was named in any other tariff. Birmingham is not indexed in the tariffs containing the intermediate rule, but joint traffic on the traffic here considered were published in those tariffs to Binghamton and Paris, Tex., local and junction points on the L. & N.; to Corinth and columbus, Miss., Junction points on the Southern; to Chickasaw, Ala., a local point on the Southern; and to Mobile, a junction point on the L. & N. and Southern. None of the shipments under

consideration moved through the points mentioned over such routes. Defendants show beyond question that the intermediate rule was not intended to operate in the manner contended for by complainant. The Commission has uniformly found that carriers tariffs must be construed strictly according to their language and that the intention of the framers is not controlling. It has also found that, although doubts as to the meaning of a tariff must be resolved in favor of the shipper and against the carrier which compiled it, the doubt must be a reasonable one; and that interpreting a tariff the terms used must be taken in the sense in which they are generally understood and accepted commercially, and neither carriers nor shippers can be permitted to urge for their own purposes a strained and unnatural construction. Complainant relies entirely upon a literal interpretation of the intermediate rule, but in determining a question of this kind all of the pertinent provisions of the tariffs must be considered together and if those provisions may be said to expression the intention of the framers under a fair and reasonable construction, that intention must be given effect. So far as the record discloses, complainant paid the higher rates charged without protest during a period of about 14 months, did not present his complaint until more than six months after the intermediate rule was changed so as to preclude his contention, and presented no request to the Commission for suspension of the new rule, which under the construction contended for, effected increased rates on his traffic. This tends to show that complainant was not misled to his damage by the intermediate rule under consideration. HELD: Rates charged not unreasonable or unlawful, complaint dismissed. Forbes & Sons Piano Co. v. A. G. S. Ry., 101 I. C. C. 74.

(y) In 74 I. C. C. 496 the Commission required defendants to establish through routes and joint rates in connection with the Michigan Railroad Co. between points on its lines, namely, Saugatuck, Vriesland, Gorest Grove, Jamestown, and Frankenmouth, Mich., on the one hand, and interstate points from and to which through routes and joint rates are maintained in connection with the Michigans Allegan-Battle Creek division, on the other. HELD: Joint rates may properly be on the same basis. Nor does there appear to be any persuasive reason why the divisions of such joint rates should not be on the percentage basis applying in connection with the Allegan-Battle Creek line. Michigan R. R. v. P. M. R. R., 101 I. C. C. 146.

(z) Complainant attacked as unreasonable, discriminatory and prejudicial to complainant, in their relation to the rates in effect for the transportation of livestock, from which fresh meat and packing house products are produced, from Ogden and other Utah points and fresh meat and packing house product rates from Ogden to Missouri river, Chicago, etc. The gravamen of this complaint is that the rates attacked on fresh meat and packing house products, and rates now in effect, are not properly related to the rates on live stock, and that rates on fresh meat and packing house products are unreasonable. Ogden, located within a large livestock producing area in north central Utah, is reached by the O. S. L., U. P., D. & R. G. W. and S. P. All of these lines serve complainant's plant. Local or joint rates were assessed on shipments to Chicago, and Missouri river and Mississippi river crossings, including New Orleans, and combinations based upon Chicago or the river crossings, not including New Orleans, were assessed on those to all other points, the Mississippi river proportional applying as a maximum to such points as Ottumwa. Complainant's evidence is directed mainly to the propriety of the rates from Ogden to Chicago, Omaha, Kansas City and St. Louis, especially Chicago and Omaha, both as specifics and as components of the combination rates. The short line distance, 990 miles, from Ogden to Omaha is 184% of the short line distance, 538 miles from Denver to Omaha. During the reparation period the rates on fresh meats and packing house products from Ogden to Omaha were 233 and 219% of the rates on those commodities from Denver to the same point, whereas the average of the class rates from Ogden was 187% of the average of those from Denver. At the time of the hearing the rates on fresh meats and packing house products from Ogden were 174 and 179% of the rates from Denver and the average class rates from Ogden was 184% of the average of those from Denver. That complainant is at a disadvantage in marketing his products at some, if not all, of the destinations named is clear. But it does not follow that the rates on the live animals and

on the products must be measured by the cost of service without consideration of other elements of rate making, or that complainants disadvantage arises from the fact that the adjustment attacked is not so measured. The value of the products is substantially greater than that of the live animals. Complainant is seeking, at the expense of the carriers, to reach, from a distance of about 1,000 or 1,500 miles, markets which are naturally tributary to the packers at the river cities and Chicago. Its disadvantage arises not from the rate adjustment attacked but from its geographical location and commercial conditions. **Atlantic Seaboard & Montreal and New Orleans.** The shipments to these points consisted principally of dry salt pork. The frozen meat moved to New York, Brooklyn and Boston, and rates constructed on the Mississippi river, of $2.69 and $2.235, respectively, were assessed. These were the domestic rates. The contemporaneous export rate from Ogden to New York and points taking same rate was $2. On the date of the hearing the domestic and export rates were $2.735 and $2.665, respectively. The rates from Ogden, on the date of the hearing from Ogden on packing house products, including lard and dry salt pork, applicable to either export or domestic shipments were $2.26 to New York, Weehauken, Guttenburg and Montreal; $2.24 to Philadelphia, $2.23 to Baltimore, $2.28 to Boston and $2.265 to New Orleans. During the period of movement there was in effect a rate of $1.565 on lard and lard substitutes from south Pacific coast terminals to these points. This rate also applied from intermediate points including West Weber, Utah, a point on the S. P., 6 miles west of Ogden. The rate on lard from Ogden to West Weber was 2.5c. The joint class rate to New Orleans was 3.5c higher than the combination to and from Denver, $1.665. Higher rates on packing house products, including dry salt pork, applied from West Weber and other points from which the $1.565 rate on lard applied. The Commission is not convinced that the rate on lard affords a fair measure of the reasonableness of complainant's rates. HELD: Rates attacked except the rates on fresh frozen meat to New York, Brooklyn and Boston, not unreasonable, unjustly discriminatory or unduly prejudicial. HELD: Further, rates on fresh frozen meat to New York, Brooklyn and Boston unreasonable to extent they exceeded $2, reparation awarded. Ogden Packing & Provision Co. v. A. T. & S. F. Ry., 101 I. C. C. 236.

(aa) Complainant attacked as unreasonable, unjustly discriminatory and unduly prejudicial the carload rates to California on fresh meat and packing house products from Ogden and Reno, and those rates plus the rates on livestock to Ogden from Utah, Idaho, Montana, Oregon, Wyoming and Nebraska and to Reno from points in Nevada. The real question in issue is whether or not the rates attacked on fresh meat and packing house products should bear a fixed relationship to the rates on livestock from and to the same points in order that complainant, as it asserts, successfully compete with packers in California in the distribution of these commodities in that state. Estimates of record of the purchases of stock made by the California packers at the Ogden yards range from 25 to 70% of the stock handled at those yards. But the record also shows that the California packers obtain the bulk of their livestock in California, Nevada and Oregon. The larger amount slaughtered at San Francisco and Los Angeles originates within 300 miles of those points. It appears that the purchases of livestock made by the California packers in competition with the Ogden company are confined to certain seasons or to certain kinds or classes of stock, and that those packers pay from 10 to 50c per 100 pounds more than complainant pays. It is true that the spread between the rates from Ogden on the livestock and the products may be such as to permit of this spread in the purchase price and yet prove to be of advantage to the California packers in marketing the products. But complainants have been and are able to obtain sufficient stock within their local territory to meet their requirements. Such advantage to the California packers can not, therefore, be said to subject complainants to undue prejudice in the purchase of the animals. The Commission has recognized that there may be a competitive relationship between livestock and its products, but have never established for general application products rates upon the basis of a fixed relation to the livestock rates, and the wide variances in percentage relationship between the rates in territories east of that here considered on livestock and its products instanced of record indicate that no fixed relation has been observed. Whether or no it is proper to meas-

ure complainant's rates on the products by a fixed relation to the rates on livestock, complainants are entitled to rates which are reasonable per se. Fresh meat and packing house products are rated third class and fifth class, respectively, in the western classification, but commodity rates are maintained thereon from Ogden and Reno to California destinations. The commodity rates are 10.5, 13 and 16c less than third class rates. To Los Angeles the corresponding differences were 32, 40 and 50c. The commodity rates on packing house products from Ogden to the California points have been and at the time of submission of this case were the same as the fifth class rates, but the mixture of articles thereunder is broader than that provided by the classification. The commodity rates from Reno on both fresh meat and packing house products are lower than the class rates. Class rates apply from the plants of the California packers to points in that state at which the principal rail distribution is made. After these cases were submitted substantial reductions were made in the rates on fresh meat and packing house products from Ogden and Reno to California points. The reductions became effective Oct. 3, 1922, from Ogden and Oct. 11, 1922, from Reno, and the rates now in effect are materially lower than the corresponding class rates. Each of the rival packing houses is entitled to a reasonable rate, which should be fairly related, the one to the other, upon the live animals from various points of production, that each is also entitled to a reasonable rate, which again should be so related, upon the products to the various markets of consumption, and that any locality which remains at a disadvantage after this has been done must sustain that burden, which is due to its location with respect to this business. The fact that the rates on the products are higher, even materially higher, than the rates on livestock does not necessarily warrant a finding that they are unreasonable. It may well be that the rates on livestock are too low to be used as a proper measure of the reasonableness of the rates on the products. The Ogden company must pay on shipments from its branch houses to consuming markets the same rates as those paid by the California packers located at those points of shipment. Even if the rates on live animals and the products were the same it does not appear that complainant would be able to compete with California packers on a profitable basis. The losses incurred in the operation of the branch houses materially exceeded the total freight charges on the shipments from Ogden to those points. Complainant's disadvantage seems to be due to their location with respect to this business and not to an improper relationship between the rates on their products and the rates on livestock. HELD: Rates attacked not unreasonable, unjustly discriminatory or unduly prejudicial, complaint dismissed. Ogden Packing & Provision Co. v. D. & R. G. W. Ry., 101 I. C. C. 258.

(bb) Complainant attacked commodity rates charged on five cars of slack coal shipped Nov. 10 and 11, 1922, from Rock Springs, Wyo., to Cornish, Utah, and diverted in transit to McMillan, Ida., as unjust and unreasonable. Rock Springs is a local point on the U. P., 45 miles east of Granger. Shipments originally billed to Cornish, a point on the Short line. On Nov. 12, 1922, complainant instructed U. P. to divert shipments to McMillan. Traffic from Rock Springs to McMillan generally moves over U. P. to Granger, Wyo., and Short Line beyond. As the instructions were not received in time to accomplish the diversion before the shipments had passed Granger they moved over U. P. to Ogden and Short Line beyond, distance 453 miles. Applicable rate over route of movement was $1.80 to Coalville, Utah, and $3.15 beyond. A joint rate of $3.15 in effect over the Granger route was subsequently made applicable over route of movement. HELD: Rate attacked unreasonable to extent it exceeded $3.15, reparation awarded. Colony Coal Co. v. O. S. L. R. R., 101 I. C. C. 330.

(cc) Complainant attacked commodity rates charged on 3 cars of newsprint paper shipped between Jan. 19 and April 6, 1922, from International Fall, Minn., to Arkansas City, Kans., as unreasonable and unduly prejudicial. Subsequent to the shipments and in compliance with 66 I. C. C. 571, the rate on newsprint paper from International Falls to Arkansas City was reduced from 77.5c to 60c, reduced on July 1, 1922 to 54c. Distance is about 1,039 miles. HELD: Rate attacked unreasonable to extent it exceeded 60c, reparation awarded. News Publishing Co. v. A. T. & S. F. Ry., 101 I. C. C. 419.

(dd) Complainant attacked sixth class rate of 77.5c charged on three cars of

peanuts from Suffolk, Va., and Plymouth, N. C., to Tupelo, Miss., as unreasonable, unjustly prejudicial and unjustly discriminatory. Tupelo is 105 miles southeast of Memphis, Tenn., on the Frsico and M. & O. In the adjustment of class rates from Virginia cities and North Carolina points to Mississippi valley territory it is located in the Memphis group. Two shipments moved Southern to Corinth, Miss., and M. & O., beyond; and one from Plymouth over Norfolk Southern to Charlotte, N. & C., Southern to Corinth, thence M. & O. A rate of 58c was applicable to Memphis, average short line distance from Suffolk and Plymouth to Tupelo, 879 miles, is 75 miles less than the like distance to Memphis. The 58c rate is not applicable to Memphis over the routes by which the shipments moved. It does apply, however, through Tupelo on shipments moving via Birmingham, Ala., thence Frisco. HELD: Rate attacked not unreasonable but unduly prejudicial to extent it exceeds the rates to Memphis, reparation denied. Northeast Miss. Traffic Bureau v. M. & O. R. R., 101 I. C. C. 451.

(ee) Complainant attacked class D rate of 94c charged on solid asphaltum, carloads, from Franklin, Pa., to Ranger, Tex., as unreasonable and unduly prejudicial as compared with rates from Franklin to Comanche and Duncan, Okla. Shipments moved N. Y. C. and Big Four to St. Louis, Mo., M. P. to Texarkana, Tex., and T. & P. beyond, 1,517 miles. The short workable route beyond St. Louis under the formula used in 77 I. C. C. 473, is over the Frisco to Vinita, Okla., M. K. & T. to Fort Worth, Tex., and T. & P. beyond, the total distance from Franklin in connection with this route being 1,442 miles. The class D rate of 70c was applicable on solid asphaltum from St. Louis to Ranger, 829 miles. A commodity rate of 27.5c was and is applicable on solid asphaltum from Franklin to St. Louis, 688 miles. Effective June 15, 1924, a commodity rate of 52c was established from St. Louis to Texas common point territory, resulting in a combination over that point of 79.5c from Franklin to Ranger. On June 4, 1924, a rate of 77c was established based on 25c class D differential over the commodity rate from St. Louis. On Feb. 28, 1925, carriers further reduced the rate from Franklin to Ranger to 75.5c. The class D rate from Franklin to Comanche and Duncan is 93c of 1c less than to Ranger, and on June and August, 1924, rates of 58c to Comanche and Duncan were established. HELD: Rate attacked unreasonable to extent it exceeds 63c, reparation awarded. Lone Star Gas Co. v. C. C. C. & St. L. Ry., 101 I. C. C. 465.

(ff) Joint-line combination rates applicable via Pecos, Tex., on traffic between El Paso, Tex., and points in New Mexico, found not unreasonable, discriminatory, or unduly prejudicial as compared with lower single-line joint rates applicable over a shorter route through Clovis and Belen, N. Mex. Complainant bases his case upon theory that if single-line basis of rates were available over the joint-line route, a more expeditious service would be possible by reason of relatively shorter mileage, but evidence as to present service over respective routes is vague. Moreover, establishment of joint rates over the joint-line route is not shown to be necessary in the public interest. El Paso Chamber of Commerce v. A. T. & S. F., 92 I. C. C. 75.

(gg) Rates on crude clay from Dedrick, McIntyre and Dry Branch, Ga., to Niagara Falls, N. Y., and New Brighton, Pa., found not unreasonable as compared with lower proportional rate applying to the Ohio river, which is restricted so as not to apply in constructing rates to Niagara Falls and New Brighton. Niagara Wallpaper Co. v. M., D. & S. R. R., 92 I. C. C. 329.

(hh) Fifth-class rate and rating on alkali salts, so-called potash, from Omaha, Nebr., to Dubuque, Iowa, assessed as factor of combination from Omaha to destinations east of Mississippi river, found not unreasonable or otherwise unlawful as compared with commodity rates applicable on through shipments from complainant's plant at Lakeside, Nebr., to same destinations, or as compared with lower rate subsequently established. Ordinarily complainant ships in bulk direct to consumers, but these shipments were unusual in that they were stored at Omaha because of insufficient storage facilities at complainant's plant; furthermore, the subsequent reduction of this factor is not sufficient to warrant a condemnation of the combination rate. Standard Potash Co. v. Diirector General, 92 I. C. C. 337.

(ii) Considering character of the commodity, amount of the rates, and extra service performed, a differential of 20

cents per net ton for joint-line hauls on slag found reasonable. Duquesne Slag Products Co. v. P. R. R., 92 I. C. C. 554, 562.

(jj) Through rates on interstate shipments of stone and products from South Amherst, Ohio, a local point on the Lorain & Southern R. R., a common carrier short line, found not unreasonable or otherwise unlawful. Non-absorption by New York Central of all of the Lorain & Southern's local charges, in and of itself, does not establish unreasonableness or undue prejudice, and fact that tariffs of New York Central named rates on stone from various points on its line within a radius of 25 miles from Amherst, the junction point of the two carriers, equal to the junction-point rate, does not establish unreasonableness or prejudice in rates from South Amherst, in absence of a showing with respect to operating situation at such other points. Ohio Quarries Co. v. N. Y. C., 92 I. C. C. 703.

(kk) Rates on zinc ore from points in Oklahoma on Miami Mineral Belt and Northeast Oklahoma railroads, and from trunk-line and junction producing points in Missouri, Kansas, and Oklahoma, to South Fort Smith, Ark., found not unreasonable but unduly prejudicial in favor of competitors operating zinc-smelting plants at Collinsville, East St. Louis, La Salle, Peoria, and Chicago, Ill., and Grasselli, Ind., to extent that factor of above-named carriers exceeded by more than 0.5 cent the contemporaneous factors on like traffic to the preferred plants. Nonprejudicial basis of rates prescribed. Athletic Mining & Smelting Co. v. K. C. S., 93 I. C. C. 119.

(ll) Aggregate of line-haul rates and trackage charges for use of tracks during period cars remain in hold yards awaiting delivery to elevators at Texas City, Tex., on export grain from points in Missouri, Iowa, Minnesota, Nebraska, Kansas, Colorado, and Oklahoma found unreasonable to extent they exceeded such line-haul rates exclusive of trackage charge. Reparation awarded. Armour Grain Co. v. A., T. & S. F., 93 I. C. C. 124.

(mm) Rates on wheat from various points in Kansas and Colorado, to Leavenworth, Ft. Leavenworth, and Atchison, Kans., and St. Joseph, Mo., milled in transit at Kansas City, Mo.-Kans., found unreasonable and unduly prejudicial to extent they exceeded contemporaneous through rates from and to same points on which milling in transit is allowed at points west of Kansas City. Reasonable rates prescribed and reparation awarded. Rodney Milling Co. v. M. P., 93 I. C. C. 200.

(nn) Mere fact of participation by carrier in joint rates in connection with which transit is allowed at points on other lines does not make it guilty of undue prejudice against shippers or localities on its own line. C. R. R. Co. v. U. S., 257 U. S. 247. Lange & Crist Box & Lbr. Co. v. B. & O., 93 I. C. C. 207, 208.

(oo) Whether, as a matter of rate making, in constructing through rates on the distance-scale basis, an allowance of a given number of miles should be made for river transfer service, or arbitraries in cents per 100 pounds be added to the rate computed on basis of strict mileage, is incapable of mathematical demonstration. Mileage for Mississippi Crossings, 93 I. C. C. 462, 475.

(pp) Under the law as it now stands carriers are under no obligation to make their terminal charges with a view to insuring a profit upon operations of other public terminals. Nor does it seem to the commission to have been contemplated that the expressed policy of Congress of developing public terminals at port cities is to be carried out by imposing unnecessary expense upon shippers and traffic, which would defeat a policy of real terminal improvement. Handling Charges on Cement, Fertilizer, and Salt, 93 I. C. C. 640, 644.

(qq) Rate on empty wooden boxes from Kansas City to Carl Junction, Mo., during Federal control found not unreasonable because in excess of the rate to Carthage, Mo., to which Carl Junction is intermediate. Complainant submitted no evidence bearing upon unreasonableness of rate assailed but takes position that because rate to intermediate point is higher than to more distant point, the higher rate is therefore unreasonable under section 1 of the act. but this does not follow. Defendants show that rate assailed compares favorably with rates on similar and other empty containers for similar hauls from Kansas City. Forrester-Nace Box Co. v. Director General, 93 I. C. C. 665.

(rr) Combination rates on coal from points in the Meyersdale district of Penn-

sylvania and Fairmount district of West Virginia to New Castle, Del., a local point on the Pennsylvania, found not unreasonable or otherwise unlawful as compared with joint rates maintained by carriers other than the Pennsylvania from these districts to numerous eastern and New England destinations. Shipments moved during abnormal periods of car shortage and the Pennsylvania defends its policy of refusing to join with other coal-originating lines in publishing joint rates to local points on its line on ground that it is unable to find consumers on its own rails for all coal which it originates, and to maintain such joint rates would cause crosshauling or substitution of two-line for one-line hauls with resulting reduction of transportation efficiency. Moreover, in 62 I. C. C. 49, the commission refused to condemn similar combinations. Chicago Heights Mfrs. Asso. v. B. & O., 95 I. C. C. 83.

(ss) Rate on canned goods from Mobile to Montgomery, when used as a factor in constructing rates moving by water from interstate points of origin found unreasonable as compared with distance rates prescribed in Memphis Southwestern Investigation, 77 I. C. C. 473, and with Alabama intrastate rates contemporaneously in effect from Mobile to Montgomery. Reasonable rate prescribed and reparation awarded. Schloss & Kahn Grocery Co. v. L. & N., 95 I. C. C. 618.

(tt) Combination rates assessed on sporadic shipments of wrought-iron pipe and oil-well supplies from Walden, Colo., located on the Colorado, Wyoming & Eastern, to Casper, Wyo., found unreasonable to extent they exceeded lower commodity rates, constructed by combining the Wyoming intrastate class rate and class rates of the short-line carrier. Reparation awarded. Carter Oil Co. v. C., B. & Q., 96 I. C. C. 215.

(uu) Applicable combination rate assessed on cull apples shipped from Lewiston, Idaho, to San Francisco, Calif., during Federal control, found not unreasonable because the factor Lewiston to Portland, Oreg., over route of movement, exceeded corresponding factor over a different route. Upon contention by defendant that a combination rate must be considered in its entirety, HELD: It is the measure of the rate assessed for the through service which must be considered. California Packing Corp. v. Director General, 96 I. C. C. 239.

(vv) Rates on pulp wood, for joint-line hauls, to Covington, Va., from certain points in southern territory, found unreasonable and unduly prejudicial to complainant and preferential of wood pulp and paper manufacturers at Coleman, Big Island, and Hopewell, Va., Canton, N. C., Kingsport, Tenn. and Bristol, Va.-Tenn. The general rate level is higher in southern than in official territory, while the reverse is true with respect to the commodity under consideration. Covington is situated close to the line dividing the two territories and in view of the nature of this traffic and the competitive situation disclosed is entitled to rates based as nearly as possible on a joint scale properly aligned with the lower level of rates in southern territory on the one hand, and the higher level in official territory on the other. Reasonable and nonpreferential and nonprejudicial rates based on joint distance scale prescribed for the future. West Virginia Pulp & Paper Co. v. S. Ry., 96 I. C. C. 244.

(ww) Rates on vegetable oils from Oklahoma points to Sherman, Tex., for distances of 325 miles or less, found unreasonable and unduly prejudicial to the extent they exceeded or exceed rates for like distances under the scale prescribed in Procter & Gamble, 64 I. C. C. 213, graded downward in manner indicated for single-line application, and for joint-line application, by addition of 2.5 cent differential to the single-line rates, which scale applies from origin points to Dallas and Fort Worth, competing points, and is in effect from Arkansas and Louisiana points to Sherman. Reparation awarded. Determination of future rates left pending decisions in Corporation Commission of Oklahoma v. A. & S. Ry. and Texas Cottonseed Crushers Asso. v. Same, now before the commission. Texas Chamber of Commerce v. A., T. & S. F., 96 I. C. C. 283.

(xx) Combination rates assessed on coal to specific interstate destinations from Hot Coal, Wyco, Jonben, Tracoal, Devils Fork, Corinne, and Fireco, W. Va., Points in the Winding Gulf section of the New River district served exclusively by the Virginia Railway found unreasonable and unduly prejudicial for the future to the extent they may exceed rates contemporaneously maintained from competing points on the main and branch line of the C. & O. in the New River district. Wyoming Coal Co. v. V. Ry. Co., 96 I. C. C. 359.

(xxa) Following American Creosoting case, 257 U. S. 247, no undue prejudice results where a carrier participates in joint rates with connecting lines upon whose rails transit arrangements are permitted while denying similar arrangements at points on its own rails. San Diego Chamber of Commerce v. A. & V., 102 I. C. C. 27, 30.

(xxb) Complainant attacked commodity rate charged on common brick, carloads, from Blue Island, Ill., in Chicago switching district to industries and team tracks in that district, during the period from June 25, 1918 to Dec. 5, 1918, as unreasonable. The rates charged were subsequently reduced to the basis prayed, and reparation only in issue. The shipments to South Chicago, Ill., moved over the joint route of the B. & O. C. T., and B. & O. The shipments to West Pullman, Ill.. over joint route of Rock Island and W. P. & S., and the other shipments over B. & O. C. T., to Illinois and Indiana, or over the Rock Island to stations in Illinois. Rate charged was 70c, except that on shipments over the B. & O. C. T., to Illinois stations the rate was 65c from June 25, 1918 to August 19, 1918. Reparation is prayed on the basis of rates of 30 and 40c, subsequently established. The rates charged included the flat increase of 2c per 100 pounds on June 25, 1918, which was applied generally to rates on brick for line hauls throughout the country. The rates on basis of which reparation is prayed represented a change in that basis of increase to 25% above the rates in effect on June 24, 1918. Considering the congested conditions in and around Chicago, a rate of 70c per ton, can scarcely be denominated a high rate even on a low grade commodity and for comparatively short distances. HELD, rates attacked not unreasonable and complaint dismissed. Illinois Brick Co., v. Director General, 102 I. C. C. 64.

(yy) Complainant attacked commodity rate of $2.25 charged on carloads of coal from mines in western Kentucky on defendants lines, to Franklin, Tenn., prior to July 1, 1922 and rate of $2.03 on and after that date, as unreasonable to extent they exceeded $1.50 and $1.35, respectively. Franklin is a local point on defendants line about 18 miles south of Nashville. Coal from mines on defendants lines in western Kentucky to Nashville and points beyond is generally hauled in trainloads. Cars for Franklin are hauled in local trains from Radnor yards through Mayton to destination where the train crews perform the switching. The distance from Mayton to Franklin is about 13 miles. HELD, rate attacked unreasonable prior to July 1, 1922 to extent it exceeded $1.94 per ton and $1.75 thereafter, reparation awarded. Lillie Mill Co. v. L. & N. R. R. 102 I. C. C. 67.

(zz) Complainant attacked combination rate charged on nine cars of lumber shipped in August 1923 from Manchester Vt., to Cobleskill, N. Y., as unreasonable and unduly prejudicial. Shipments moved over Rutland R. R., to Rutland, Vt., and D. & H., beyond 148 miles, charged $1.80 per ton to Rutland and $2.27 per ton beyond. Effective Dec. 27, 1923 a commodity joint rate of 17.5c per 100 pounds was established over route of movement. It appears that in Jan. 1923 complainant requested defendants to establish a joint rate between the points, but definite action was not taken thereon until the 17.5c rate was established. HELD, rate attacked unreasonable to extent it exceeded 17.5c, reparation awarded. Harder Mfg. Co. v. D. & H. Co., 102 I. C. C. 167.

(3a) Complainant attacked rate charged on alcohol, not denatured since Jan. 19, 1921 from St. Louis, Mo., to Peoria, Ill., as unreasonable and unlawful. In 87 I. C. C. 307 the Commission found rates attacked not unreasonable or otherwise unlawful and dismissed the complaint. HELD, original finding affirmed. Anheuser Busch, Inc., v. C. & A. Ry., 102 I. C. C. 169.

(3b) Respondents proposed to increase the rates on potatoes carloads, from Michigan, Minnesota and Wisconsin to Jellico and Knoxville, Tenn., and Birmingham, Ala., by cancelling the joint through rates to those points, leaving for application the Ohio river combination rates. Joint rates lower than the Ohio river crossings combination rates are published from Groups 2 and 11 only to Birmingham, the normal Ohio river combination basis applying from the other groups to that point. Joint through rates are published from all the groups to Jellico and Knoxville. No other joint rates to southeastern territory are published from the groups named. Joint rates apply to principal points in Mississippi valley territory. HELD,

proposed schedules not justified. Potatoes to Alabama and Tennessee, 102 I. C. C. 183.

(3c) Joint commodity rates on heavy traffic moving long distances are usually less than the combination rates. Potatoes to Alabama and Tennessee, 102 I. C. C. 183, 185.

(3d) Complainant attacked commodity rate on carload of mirrors from Chicago, Ill., to Los Angeles, Calif., on Jan. 16, 1924, as unreasonable. Shipment moved Burlington Kansas City, Santa Fe beyond, charged rate of $3.51. The rate of $2.03 applied on bed room furniture released to certain values, it being stated that the values of the mirrors shipped were no greater than such released values. There is no evidence to support that assertion. HELD, rate attacked not unreasonable, complaint dismissed. Barker Bros. Inc., v. C. B. & Q. R. R., 102 I. C. C. 241.

(3e) Complaint attacked commodity rates charged on four cars newsprint paper and wrapping paper from Nekoosa and Port Edwards, Wis., to San Antonio and Austin, Tex., Jan. 10 and June 2, 1919 as unjust, unreasonable, and illegal. In so far as the complaint alleged the collection of unreasonable charges it is barred because the informal complaint was not filed within the statutory period of one year from the termination of federal control. In so far as it alleged an overcharge it is not barred because the informal complaint was filed within the statutory period of two years six months from the termination of federal control. No reference to value was made in the billing and the rates of 99c on newsprint paper and 93c on wrapping paper were applied. HELD, rate attacked applicable, complaint dismissed. San Antonio Paper Co. v. Director General, 102 I. C. C. 243.

(3f) Complainant attacked commodity rate charged on coal since March 1922 from Harrisburg, Leford, El Dorado, Carrier Mills, and Norris City, Ill., to Hoopeston, Ill., over an interstate route, as unreasonable and that the relationship of that rate and the rates from the same points to Chicago, Ill., and Indianapolis and Vincennes, Ind., subjects Hoopeston to undue prejudice. Hoopeston is on the C. & E. I., 99 miles south of Chicago. It is also on the Nickle Plate west from Sandusky, O., to Peoria, Ill. All of the points of origin are on the Big Four. Carrier Mills is 7 miles and Ledford 3.7 miles south of Harrisburg. El Dorado is 7.5 miles and Norris City 20.6 miles north of Harrisburg. Shipments moved Big Four to Danville, 190 miles, thence N. Y. C., to Handy, Ill., 29 miles, thence Nickle Plate to Hoopeston, 11 miles, total distance 230 miles. All except one of the complainants are served only by the C. & E. I. The charges of that carrier for switching from the Nickle Plate is absorbed by that carrier. No joint rate is published over the route of the Big Four to Danville and C. & E. I., beyond 214 miles. The joint rate applicable over the route first described is $1.92. The rate requested is $1.50. Complainants are entitled to reasonable rates from the points named, but in considering the level of those rates their relationship to rates from other points in the southern Illinois group, and to rates from other groups in the same general territory of which they are apart, can not be ignored. The conditions affecting the rates to Chicago, Indianapolis and Vincennes are not comparable with those affecting the rates to Hoopeston, and the record does not justify the condemnation of the rates from the southern Illinois group to Hoopeston or the application to that point of lower rates from the points of origin named than those from the group. HELD, rates attacked not unreasonable or unduly prejudicial, complaints dismissed. Hoopeston Grain & Coal Co. v. C. & E. I. Ry., 102 I. C. C. 269.

(3g) Complainant attacked commodity rate of 26 2-3c charged on 60 cars of fuel wood shipped between June 12 and June 23, 1918 from Baca, Perea, and Thoreau, N. M., to El Paso, Tex., as illegal and unreasonable to extent it exceeded 20c. Shipments moved over Santa Fe to El Paso and were switched to Fort Bliss, Tex. Complainant had made application for a 20c rate to El Paso and this was published May 14, 1918 in Santa Fe tariff effective June 25. Complainant having received assurance that the rate would be established made a contract which called for delivery in June. The tariff naming the 20c rate was rejected by the Commission. HELD, rate attacked unreasonable to extent it exceeded 20c, reparation denied as the record does not show who paid and bore the freight charges. Complaint dis-

missed. Kaseman v. A. T. & S. F. Ry. 102 I. C. C. 315.

(3h) Complainant attacked combination rates charged on automobile and automobile parts, carloads, from groups A and M, to all points north of Willits, Calif., on the Northwestern Pacific in California as unjust and unreasonable. The main line of the Northwestern Pacific extends from San Francisco northward 284 miles to Eureka. It extends through Willits, which is 140 miles from San Francisco. Transcontinental rates from eastern defined territories are blanketed over a wide area in Pacific coast states of destination. They are likewise blanketed at eastern points of origin, and there is a wide variation in the distances via the various routes over which the rates apply. While Willits and points south thereof take the same blanket rates as are applicable to San Francisco, the rate to Eureka from the same points of origin is made by combination on San Francisco, using the commodity blanket rate to San Francisco plus the class rate of 84.5c beyond. Rates to all other points north of Willits are made on the same basis. HELD, rates attacked unreasonable to extent they exceeded the routes to California coast group points of destination, reparation awarded. Eriksen v. A. A. R. R. 102 I. C. C. 374.

(3i) Complainant attacked commodity rates on crushed stone (gypsum rock) from Blue Rapids, Kas., to Superior, Neb., since Nov. 1, 1921 as unreasonable, unjustly discriminatory and unduly prejudicial. Superior is about 1 mile north of the Kansas-Nebraska state line, served by the Burlington, Santa Fe, M. P., and Northwestern. Blue Rapids is on the M. P., and U. P., 104 miles southeast of Superior. By the U. P., to Marysville, Kas., St. J. & G. I., to Endicott, Neb., and Burlington distance is 102 miles. A longer route over the U. P., to Beatrice, Neb., thence Burlington 145 miles, is used to a considerable extent. The use of the longer route is apparently for the convenience of carriers. Rate prior to July 1, 1922 was 10c and on and after that date 9c. The Santa Fe publishes a distance rate applicable on crushed stone between Kansas points and Superior which for the distance of 104 miles is 6.5c. The M. P., likewise publishes a distance rate of 6.5c for this mileage on crushed stone between Kansas and Nebraska. The Kansas intrastate scale is 5.5c while a rate of 6c is applicable for the 143 mile haul from Blue Rapids to Bonner Springs, Kas., where a mill offering keen competition with complainant is located. A 6.5c basis for gypsum from Blue Rapids to Superior would practically remove the disadvantage experienced by complainant in competing with Kansas mills. The transportation characteristics of gypsum in this form are identical with those of crushed stone, and, as an ingredient of a manufactured product, the carriers enjoy both inbound and outbound hauls. HELD, rate attacked prior to July 1, 1922 unreasonable to extent it exceeded 7c, and 6.5c thereafter, reparation awarded. Nebraska Cement Co. v. M. P. R. R. 102 I. C. C. 411.

(3j) Complainants kilns are west of the Blue Ridge Mountains and are located in that section which extends from Kimballton and from Eagle Mountain on the west and south to Strassburg, Riverton and Leesburg north, served by the N. & W., Virginian, C. & O., B. & O., Southern and W. & O. D. Complainant alleged complainants produce agricultural lime at their plants and distribute the same in interstate commerce to North and South Carolina; that defendants participate in rates applicable on the transportation of agricultural line from Virginia to point in the California and also in rates on powdered limestone from Mascot, Tenn., and that rates on agricultural lime, carloads, from Virginia to Carolina destinations are unjust and unreasonable and unduly prejudicial compared with rates from Mascot, Tenn. About 1912 the state of Virginia recognizing that the correction of soil-acidity was a matter involving the prosperity and welfare of its people, engaged in the production of ground limestone and induced the defendants to publish rates that were very low for the transportation of that commodity within its borders. The same or similar bases of rates have since been extended until today they apply not only on intrastate traffic in verious southern states but also on traffic moving between those states. The ground limestone from Mascot comes into competition in the Carolinas with complainants agricultural line and moves on the rates which are on a materially lower basis than those applying on agricultural lime from Virginia kilns. The present rates on ag-

ricultural lime from the Virginia kilns are generally on a lower basis than applies on building or chemical lime, whereas under the carriers proposed adjustment no distinction is made in the rates on the above description of lime, but the carriers propose to establish the same rates on burnt lime of all kinds. HELD, that the maintenance by defendants of any higher level of rates to Carolinas on complainants agricultural lime than is maintained by defendants on ground limestone from Mascot to the same destination territory would result in rates from the Virginia kilns that are relatively unreasonable and unduly prejudicial has not been sustained. Any undue prejudice that may have been shown on this record to exist under the present adjustment of those rates will be removed as a result of the pending general revision of lime rates, complaint dismissed. Riverton Lime Co. v. A. & R. Ry. 102 I. C. C. 415.

(3k) Complainant attacked through commodity rates of 56 and 64c charged on cars of corn and oats from Iowa and Nebraska to Ogden and other Utah points in 1918 and 1919 as unreasonable and unduly prejudicial to extent they exceeded 51c, the rate to more distant points and subsequently made effective to Ogden and other intermediate points. The rates here attacked were considered in 87 I. C. C. 310 in which the Commission found the rates attacked unreasonable to extent they exceeded 51c. HELD, rate attacked unreasonable to extent it exceeded 51c, reparation awarded. Farrell v. C. M. & St. P. Ry., 102 I. C. C. 455.

(3l) Complainant attacked through commodity rate charged on copper bullion of $16.50 between June 25 and July 24, 1918 from Cananea, Mexico, to Perth Amboy, N. J., as unreasonable to extent it exceeded $9.06 for rail and water transportation and $10.56 for all rail service. The rail and water route was over the S. P., to Naco Ariz., E. P. & S. W., to El Paso, Tex., S. P.. to Galveston, Tex., and Morgan or Mallory lines to destination. The all rail route was over the S. P., to Naco, E. P. & S. W., Rock Island, E. J. & E., M. C., and L. V. Prior to June 25, 1918 the joint rail and water rate was $9.06 and all rate $10.56. Both rates were increased to $16.50 on that date, following G. O. 28. The issue is similar to that in 80 I. C. C. 121. There, as here, complainant relied upon its contention that the rates were unlawful to establish their unreasonableness. The rates were lawfully established under the law administered by the Commission and the Commission is without jurisdiction to determine whether they were lawfully established under the laws of Mexico. No evidence has been submitted to prove that the rates were unreasonable. HELD, rates attacked not unreasonable or otherwise unlawful under the act of federal control act, complaint dismissed. Green Cananea Copper Co. v. Director General, 102 I. C. C. 473.

(3la) Upon further hearing, finding in original report, 83 I. C. C. 712, that rate on anthracite bird's-eye coal from group mines in Pennsylvania to Thomson, N. Y., for joint-line haul, is unreasonable as compared with rate computed on basis of single-line haul, and further prescribing reasonable rate and awarding reparation, affirmed. United Paperboard Co. v. G. & J. Ry., 102 I. C. C. 502.

(3m) Complainant attacked commodity rates on salt, carloads from Anse La Butte, Avery, Salt Mine and Weeks Island, La., to all destinations in Mississippi as unreasonable, unduly prejudicial and in violation of the fourth section. The points of origin are near one another in southern Louisiana nearly due west of New Orleans, La., on the S. P., except Jefferson Island, which is on the G. C. L. Complainants give average distance from the Louisiana mines to New Orleans as 136 miles, and to Baton Rouge, La., 83 miles. Most of this traffic moves via these crossings. Short line distances to substantially all Mississippi destinations are figured through them. The record indicates that the short route is usually one of the routes over which the joint rate through to destination applies. Joint rates are generally maintained from Louisiana mines to Mississippi. They are, with few exceptions, based upon the New Orleans or Baton Rouge combinations, usually the latter, consisting of a proportional rate of $1.825 to either crossing and the local rate beyond. Combinations or joint rates constructed in like manner are applicable on salt to nearly all points in southern territory, but the proportionals to New Orleans and Baton Rogue reflected therein vary widely according to the state of destination. Such proportional on traffic to Alabama is the same

as to Mississippi, $1.825, to Georgia, South Carolina, and Florida, $1.58; and to states north of those named $1.095. Thus, traffic to Tennessee, immediately north of Mississippi enjoys a proportional rate to the above crossings of 73c which is only 40% of the rate on traffic to Mississippi. HELD, rates attacked unreasonable to extent they exceeded a distance scale ranging from $3.15 for 130 miles to $5 for 540 miles, reparation awarded. Mississippi Railroad Commission v. A. & V. Ry., 102 I. C. C. 540.

(3n) Complainant attacked commodity rate charged on coke dust or breeze coke, carloads, from Pittsburgh, Pa., to Moundsville, W. Va., as unreasonable, unjustly discriminatory and unduly prejudicial. Coke dust or breeze coke is the term applied to screenings from regular coke rejected for use in steel mills, shipments moving via B. & O., at rate of $2.02. No justification for rate charged was offered. A rate of $1.60 was published on March 2, 1925. HELD, rate attacked unreasonable to extent it exceeded $1.60 per ton, reparation awarded. United Zinc Smelting Co. v. Pennsylvania R. R. 102 I. C. C. 601.

(3na) Refusal of defendant rail carriers to establish through routes and joint rates on rail-and-water traffic from lower Michigan points via Detroit to Cleveland and Buffalo found not unjustly discriminatory or unduly prejudicial. No showing has been made that rail carriers participate in through routes and joint rates with a water carrier in competition with complainant, thereby establishing the allegation of undue prejudice, nor do facts of record support allegation of unjust discrimination. Detroit & Cleveland Nav. Co. v. M. C., 102 I. C. C. 607.

(3o) Complainant attacked commodity rates since Sept. 23, 1922 on crushed slate, carloads, from Delta, Pa., to Lockport, N. Y., as unreasonable, unjustly discriminatory and unduly prejudicial. Delta is on the Maryland & Pennsylvania, 33.4 miles southeast of York, Pa., where connection is made with the Pennsylvania. Lockport is on the N. Y. C., and Erie, about 25 miles northeast of Buffalo. Effective Sept. 10, 1923 a joint commodity rate of 17.5c was established from Delta to Lockport routing restricted via York, Pa., and Pennsylvania, and is still in effect. Complainant sought rates from Delta to Lockport which shall not exceed the rates from Delta to Erie. The distances from Delta to Erie and to Lockport are 401 and 382 miles, respectively. The rates on crushed slate from Delta to Erie were from Sept. 1, to Oct. 1, 1922, $3.42; from that date to Feb. 16, 1924 $3.20 and since that date $3.40. The movement of crushed slate from Delta began in September, 1922. A commodity rate to Lockport of $3.28 per ton was requested by complainant on Oct. 24, 1922. On Sept. 10, 1923 almost a year later, rate of $3.50 per ton was established. If this commodity is to move any distance it must be on comparatively low commodity rates. No satisfactory reasons are given for the long delay which followed complainants request for the establishment of a joint commodity rate. HELD, rate of $3.50 not unreasonable or otherwise unlawful, but from Sept. 23, 1922 to Sept. 10, 1923 combination of 30c applicable via Buffalo unreasonable to extent it exceeded 20.5c reparation awarded. Lockport Paper Co. v. M. & P. Ry. 102 I. C. C. 624.

(3p) Complainant attacked combination rates charged on one car of apples from Clearbrook, Va., to Jonesboro, Ark., on Oct. 16, 1922 as unjust, unreasonable and in violation of section four. Clearbrook is on the Pennsylvania, 6 miles south of Winchester, Va., which latter point is 20 miles north of Strasburg, Va. Shipment moved over Pennsylvania, B. & O., and Southern to Memphis, Tenn., and Frisco beyond, charged $1.035 but a lower combination was in effect of 92.5c by way of Pittsburgh, Pa., made 31.5c to that point and 61c beyond. Shipment was misrouted. Defendants maintained a joint commodity rate of 74.5c to Jonesboro, at time of movement, from Strasburg, Riverton and other Virginia points in the same vicinity on the B. & O., N. & W., and Southern. HELD, rate attacked unreasonable to extent it exceeded 74.5c, reparation awarded. Wimberly Grocer Co. v. Pennsylvania, R. R. 102 I. C. C. 637.

(3q) In 98 I. C. C. 339 the Commission found rates on newsprint paper, carloads, from New England, New York and Canada and from Philadelphia, Pa., to Baltimore, Md., not unreasonable, but that rates to Washington were unreasonable to extent they exceeded the rates to Baltimore by more than 3c from Phil-

adelphia and 2c from the other points of origin. HELD, original findings affirmed. Washington Publishers Asso. v. B. & O. R. R. 102 I. C. C. 662.

(3qa) Reshipping rates on logs to Louisville from stations in Kentucky and Tennessee on Scottsville-Hartsville branch of L. & N. found unreasonable to extent they exceeded lower contemporaneous rate on like traffic from equidistant main-line points of that carrier, which lower rate was subsequently established from branch-line points. Reparation awarded. Wood Mosaic Co. v. L. & N., 102 I. C. C. 684.

(3r) Complainant attacked commodity rates on newsprint paper, carloads, from Minnesota, Wisconsin, Indiana, Ohio, Virginia, New Jersey, New York, New Hampshire, Maine, Washington, and Oregon and from points in Canada, moving all rail except from West Linn, Ore., to Dallas and Fort Worth, Tex., as unreasonable on and after Mar. 1, 1920. The rates from Wisconsin, Minnesota and Ontario were prescribed to Dallas and Fort Worth in 66 I. C. C. 571. In effecting these revisions a rate of 60c was established from St. Louis to Texas common points on Dec. 15, 1922. The rates from producing points in central and eastern seaboard territories over the all rail and from the Pacific coast states, to Texas common points were reduced on or subsequent to June 15, 1922. From points in eastern seaboard territory over the rail ocean and rail routes the reductions became effective on June 1, 1922. RATES FROM FOX RIVER AND RELATED GROUPS. Newsprint paper is rated fifth class in the western classification. In the Paper case a rate of 82c was prescribed from the Fox river group to Texas common points, including Dallas and Fort Worth. The rates from the northern Wisconsin and Minnesota groupes were made 1c, and from International Falls, Fort Francis and Sault Ste Marie 5c over the Fox River groups rates. HELD, the Commission is unable to reach the conclusion that the rates on newsprint paper from the Fox River and related groups in Minnesota, Wisconsin and Ontario to Dallas and Fort Worth should have been in the past, or should be now or in the future, lower than the basis of rates applicable to Texas common points generally. The same conclusion applies to rates from points in defined and eastern seaboard territories from which the all rail rates to Dallas and Fort Worth are made differentials over, or by combination on, St. Louis, or other basing points. RATES FROM POINTS IN DEFINED TERRITORIES. Although complainants attack the rates from points in defined territories in Indiana, Ohio, Virginia and New York made differentials over the rates St. Louis they contend that the unreasonableness is due primarily to the measure of the factor west of St. Louis, and do not attack the measure of the differentials added thereto to make the through rates. The short line distances from St. Louis are stated to be 647 miles and 706 miles to Dallas and Fort Worth, respectively, and to Texas common points an average of about 800 miles. RATES FROM POINTS IN EASTERN SEABOARD TERRITORY. Complainants contend that the rates from points in eastern seaboard territory were unreasonable to the extent that the factor west of St. Louis exceeded 56.5c prior to July 1, 1922 which proposed rate is equivalent to the fifth class differential of 15.5c less than the rate of 72c claimed as reasonable from Fox River territory. The previous conclusion of the Commission herein respecting the claims for lower rates to Dallas and Fort Worth than to Texas common points generally negatives this contention. In revising the rates from these territories pursuant to the decision in the Paper case, defendants established, effective Dec. 15, 1922 a rate of 60c from St. Louis which reflects what would have been a rate of 66.5c from August 26, 1920 to July 30, 1922 and 49c from June 25, 1918 to August 25, 1920. The rates from eastern seaboard territory to Texas common points over the all rail routes are, and have been for a long time, made by combination on St. Louis or other basing points. They are the same from all points of origin. The joint rates from eastern seaboard territory over the rail ocean and rail routes through New York and Galveston are lower than the combination rates over the all rail routes, and as in the case of the all rail rates, the origin points are grouped with the same rate to points in Texas. The average distance from the points in eastern seaboard territory to New York is shown to be 334 miles, and from Galveston to Fort Worth and Dallas an average of 299 miles. The dis-

tance from New York to Galveston over the water route is about 2,180 statute and 1,887 nautical miles. For a number of years the class rates from eastern seaboard territory heretofore named, over to Texas common points, including Dallas and Fort Worth, have been substantially on a parity. The commodity rates, however appear to be lower from eastern seaboard territory. RATES FROM POINTS IN OREGON AND WASHINGTON. Newsprint paper producing points in Oregon and Washington are grouped and take the same rate to Texas common points. The only question before the Commission for determination respecting rates from Washington and Oregon to Dallas and Fort Worth is their reasonableness in the past and reparation on past shipments. Newsprint paper is a comparatively low grade commodity. It loads about 26 tons to the car and moves regularly and in substantial volume throughout the year. It is desirable traffic for the carriers. HELD, present rates not unreasonable but rates in past unreasonable to extent they exceeded between August 26, 1920 and June 30, 1922, 82c from Fox River group and 83c from northern Wisconsin and Minnesota; 87c from Ontario; 79c from Alexandria; 86.5c from Dayton; 93c from Big Island; $1 from Niagara Falls; $1.75 from the points in eastern seaboard territory heretofore named, over the all rail differential routes, and $1.22 from the same points of origin over standard routes; $1.12 from Washington and Oregon and 90c from eastern seaboard territory over the rail ocean and rail routes; that rates for the period from March 1 to August 25, 1920 and rates on and after July 1, 1922 where in excess of the above bases, made to reflect the general reduction of that date, were unreasonable to extent they exceeded rates made by deducting, respectively, from the rates found reasonable as above the percentages of increase authorized by the Commission on July 29, 1920 and the general reduction of 1922, reparation awarded. Wortham Carter Pub. Co., v. Director General, 102 I. C. C. 729.

(3s) In most cases recently before the Commission where rates on traffic moving in large volume have been found to be upon full combinations of locals the Commission has required the establishment of through rates less than the combinations. Morrell & Company v. N. Y. C. R. R. 104 I. C. C. 104, 137.

(3t) Complainant attacked commodity rates charged on green coffee, carloads, from New York to Austin, Tex., from New Orleans, La., to La Grange, Austin and San Antonio, Tex., during the period from Feb. 22, 1921 to Jan. 23, 1923 as unreasonable. Complainants expressed themselves as satisfied with the present rates from New Orleans, and those rates will not be considered. In 92 I. C. C. 14 the Commission found that on and since March 1, 1920 the rates on green coffee, carloads, from New York to Denison, Fort Worth and Dallas, Tex., were unreasonable to extent they exceeded 64 and 86.5c, prior and subsequent to August 26, 1920. Generally speaking the foreign coffee producers sell their products to importers located at the ports of entry and these importers distribute the coffee to roasters located at the ports and interior points. Upon arrival at the ports the coffee is stored in warehouses to await reshipment beyond. The temporary storage at the ports does not divest this traffic of its foreign character acquired at the time it begins its journey from the foreign port. The movement to the Gulf ports is only a step in its transportation to the interior destinations. Green coffee is rated fifth class in western classification. The Texas destinations are within the socalled Texas common point group but distance class rates apply when lower than the group rates. If the import rates from New Orleans to La Grange, Austin and San Antonio had remained in effect on and after June 25, 1918 they would have been 36.5c to LaGrange, 49c to Austin and 56c to San Antonio prior to August 26, 1920. The water and rail rate from New York to Austin was 65c on June 25, 1918. This rate became 90.5c on August 26, 1920 and 81.5c on July 1, 1922. Effective Feb. 1, 1923 a rate of 70c was established to Texas, common points, except Dallas, to which point the rate was 67c increased to 70c on June 1, 1925. Although the Commission has heretofore used a ratio of water miles to rail miles for the purpose of comparing rail and water and all rail rates, it is not prepared to accept this basis as a controlling principle in prescribing rates for rail and water hauls. Before this is done careful analysis should be made of the conditions surrounding the trans-

portation of the different lines. Under rail and water rates traffic must be unloaded from the ship and reloaded into cars. The Commission has heretofore called attention to the fact that the cost of operating a ship is practically the same whether it carries full cargo or no cargo, and that much depends upon the ability of the ship to obtain a proper load and return cargo. Transportation conditions in connection with both and rail haul and the water haul have changed from time to time, and the Commission has before it no definite comparison of the relative expenses of transportation. HELD, rates attacked unreasonable to extent they exceed from New Orleans to Austin and San Antonio, 66c prior to July 1, 1922 and 59.5c thereafter; from Galveston and Houston 56c prior to July 1, 1922 and 50.5c thereafter; from New York to Denison, Fort Worth, Dallas and Austin 61.5c and 83c prior and subsequent to August 26, 1920 and 74.5c on and since July 1, 1922, reparation awarded. Alexander Grocery Co. v. B. S. L. & W. Ry. 104 I. C. C. 155.

(3u) Respondents proposed both increases and reductions in their rates on grain, grain products, and alfalfa meal, carloads, from Colorado common points and points grouped therewith to destinations in Wisconsin and Upper Peninsula of Michigan. The rates in which changes are proposed apply to certain destinations north of the Milwaukee-Prairie du Chein line of the Milwaukee principally in Wisconsin. Although in a few instances the increases are as much as 8c, they are as a rule about 6c. The rates apply through Kansas City, Mo., or Omaha, Neb., where transit arrangements obtain. To the principal Wisconsin points the joint rates at present in effect are the same as those to Chicago, Ill., and Milwaukee, Wis., which on wheat are equal to the combination of a local rate of 33c to the Missouri river and a proportional rate of 17.5c beyond. According to the record the proportional rates do not apply to the destinations here considered, only local rates being in effect, or the same as the locals to Chicago and Milwaukee. The proposed joint rates equal the combination of locals to and from the Missouri river cities. This is quite generally the basis for rates on these commodities from points west of the Missouri river in Oklahoma, Kansas, Nebraska, Wyoming and eastern Colorado. Proportional rates are now in effect to some of the destinations and in those instances the proposed rates would exceed combinations on the Missouri river. To certain points in the northern part of the destination territory respondents proposed higher rates than those which apply from Utah common joints. This action was left unexplained. HELD, proposed rates justified except where they would exceed the present rates from Utah common points, the combinations of the local to and the proportionals beyond Omaha, or the rates to farther distant destinations in violation of the fourth section. Grain and grain products from Colorado, 104 I. C. C. 281.

(3v) Original report in 101 I. C. C. 363 prescribed rates and routes on low volatile bituminous coal from Virginia mines to New England. This proceeding was reopened for the purpose of developing the facts with respect to the need for the establishment of additional or new joint rates and through routes on such coal, both in run of mine and in prepared sizes, and coke from the New River, Pocahontas, Tug River, Kanawha, Coal River, Logan, Thacker, and Kenova districts in West Virginia and eastern Kentucky, from Clinch Valley districts Nos. 1 and 2 in Virginia and from the Big Sandy division of the C. & O., in eastern Kentucky, to all points in the middle Atlantic and New England states. Inquiry was also made into the reasonableness of the present rates and routes on semi-anthracite coal from mines in the vicinity of Pulaski, Va., and on bituminous coal, sem-bituminous coal and coke from the Meyersdale, Cumberland-Piedmont and Fairmont districts of Pennsylvania, Maryland and northern West Virginia to the same destination territories. At the hearing the B. & O., the principal carrier serving Somerset County field, expressed its intention to establish a proportional rate of 75c from this field to Johnstown, Pa., in the Clearfield district, which would open the entire eastern market to the coal operators in Somerset County. The Commission shall expect the B. & O. to publish this proportional rate to Johnstown so that it will become effective not later than the effective date of the rates published in compliance with the order herein. Handling at the Atlantic ports of bituminous coal in prepared sizes for shipment to New England by way of tidewater causes degradation to such an extent that the rail and water routes are

undesirable for the movement of this coal. This does not apply to run of mine coal. HELD, (1) That because of imminent shortage of fuel for household use in New England and some portions of the Middle Atlantic states an emergency, such as is contemplated by paragraph 4 of section 15 of the act, has arisen which requires immediate action, and (2) that it is in the public interest that as far as possible the serious consequences of such an emergency, such as the severe suffering on part of the public which would result from a shortage of household fuel, should be avoided and that it can be avoided to a large extent by the prompt establishment of joint all rail rates and through routes on prepared sizes of bituminous coal from mines in Virginia, southern West Virginia and eastern Kentucky to all destinations in New England and to points in the Middle Atlantic states. HELD, from all mines in the New River, Pocahontas, and Tug River districts and in Clinch Valley district No. 1, to all points in New England and New Jersey rates which shall not exceed by more than $1.10 rates from Clearfield district. From all mines in Clinch Valley No. 2 to all destinations on B. & O., Pennsylvania and Long Island, and New England and New Jersey rates not exceeding those from Pocahontas and Tug river. From all mines in the Kanawha, Coal River, Logan, Kenova and Thacker districts rates which shall not exceed the rates from New River, Pocahontas and Tug River by more than 25c. From all mines on the Big Sandy division of the C. & O., in Kentucky rates which will not exceed those from Tug River by more than 40c. Rates on prepared sizes of semi-anthracite coal, from McCoy and Merrimac, Va., on the Virginian Ry. and from stations Pulaski to Vicker, Va., on the N. & W., rates for the future will be unreasonable to extent they exceed rates on prepared sizes of bituminous coal from Pocahontas district to same destinations. Transportation of anthracite coal, 104 I. C. C. 341.

(3w) Complainant attacked commodity rates charged on coal, carloads from Alabama on the C. of Ga., to Florence, Ala., as unjust, unreasonable and unduly prejudicial. Between August 21 and Sept. 27, 1922 the complainant shipped five cars of coal from Grants, Ala., to Florence. Shipments moved C. of Ga., to Birmingham and L. & N., to destination by way of Columbia, Tenn., distance 257 miles, applicable rate $2.25. There were three possible intrastate routes, (1) C. of Ga., to Birmingham, Frisco to Jasper, Ala., Northern Alabama to Sheffield, Ala., and Southern beyond, 149 miles; (2) C. of Ga., to Birmingham, L. & N., to Decatur and Southern 152 miles, and (3) C. of Ga., to Birmingham, Southern to Parrish, Ala., Nor. Ala., to Sheffield and Southern 160 miles. The rate over the first and third routes is $1.69 and by way of the second route $3.37. The shipments were originally unrouted but due to a strike of machinists at the time of movement traffic over the short line intrastate route in connection with the Nor. Ala. was delayed, and the C. of Ga., at Birmingham was instructed to route four of the cars over L. & N., from that point. As no instructions were given as to the routing of the other car, it is admitted by defendants that it was misrouted and should have moved over one of the intrastate routes at a rate of $1.69. The interstate route over which the shipments moved is not the logical or reasonable route, and the record indicates that it will probably not be used except in case of an emergency. HELD, interstate rate not unreasonable or otherwise unlawful, overcharge to be refunded, complaint dismissed. Florence Chamber of Commerce v. C. of Ga. Ry., 104 I. C. C. 373.

(3x) Complainant attacked commodity rates charged on three cars of printed fruit wrapping paper from Los Angeles to Ordway and Rocky Ford, Colo., in July 1922 as unjust and unreasonable, charged $1.50 and $1.33, respectively. Contemporaneously defendants maintained a rate of 84.5c on printed wrapfruit wrapping paper, to Ordway and ping paper, also applicable on printed Rocky Ford from the principal paper producing points in Washington and Oregon. Subsequently the rate from Los Angeles was reduced to 94c, the present rate. HELD, rates attacked unreasonable to extent they exceeded 94c reparation awarded. Crown Williamette Paper Co. v. U. P. R. R. 104 I. C. C. 399.

(3y) Complainant attacked commodity rate charged on coke, in carloads, since April 16, 1923 from Chickamauga and Durham, Ga., Chattanooga and Alton Park, Tenn., to Pacific coast terminals as unreasonable, unjustly discrimi-

natory and as compared with the rates from Birmingham, Ala., unduly prejudicial. The coke ovens at Chickamauga are located on the C. of Ga., 13 miles south of Chattanooga. In 34 I. C. C. 10 the Commission found the rate on coke from Durham and Chickamauga to Pacific coast terminals unduly prejudicial as compared with rates from Birmingham and the Birmingham rates were made applicable. The rates on coke from Chattanooga, Chickamauga and Durham remained on a parity with the rate from Birmingham until April 16, 1923 when the rate from Birmingham over the L. & N., and S. P., via New Orleans was reduced from 68 to 60c, no change being made from the other points.. Complainants meet the most active competition in the sale of coke from Birmingham district. HELD, rate attacked not unreasonable or unjustly discriminatory but unduly prejudicial to extent they exceed rates from Birmingham district to the same destinations. Durham Coal & Iron Co. v. C. of Ga. Ry., 104 I. C. C. 483.

(3z) Complainant attacked commodity rate of 47c charged on glucose or corn sirup, in tank cars, from Clinton, Iowa and Roby, Ind., to Atlanta, Ga., as unreasonable. The distance from Chicago to Atlanta is 732 miles and the joint commodity rate of 47c has been applicable for more than two years. Contemporaneously there have been in effect rates of 41.5c from Chicago, Clinton and Roby to Birmingham and Montgomery, Ala., and New Orleans, La., for distances from Chicago of 649, 746 and 911 miles. Since August 23, 1923 a rate of 38c has been in effect from Chicago to Meridian, Miss., 721 miles. HELD, rate attacked unreasonable to extent it exceeded 38c reparation awarded. Cairo Syrup Co. v. I. H. B. R. R. 104 I. C. C. 487.

(4a) In 101 I. C. C. 474 Commission had before it rates on anthracite coal via joint line routes to points in upper New England. Respondents now come to the Commission for approval of a proposal for removing these disparities which contemplates some increases in the single line rates and generally reductions in the rates for joint hauls. It is proposed to increase the single line rate to Albany to $2.75 and to increase or reduce, as the case may be, the rates for the joint hauls to $2.88, the rates on pea size and generally on smaller sizes to be 25c less. The single line rate of $2.65 to points east of Geneva, N. Y., applies only from the Wyoming region. The joint line rates apply from the Wyoming, Lehigh and Schuylkill regions. The proposed rates would apply from all three regions. The average distance from the Lehigh and Schuylkill regions is substantially greater than that from the Wyoming region. The difference of 13c between the single and joint line hauls in this proposed readjustment does not appear to be unreasonable, nor is it great enough to place the retail coal dealer served by the joint routes under any serious handicap in competing with the dealer served by the single line at the same point. HELD, readjustment proposed will remove the existing undue prejudice and will not result in unreasonable rates. Anthracite Coal Investigation, 104 I. C. C. 514.

(4b) Complainant attacked commodity rates charged on brick carloads from its plant at East St. Louis to St. Louis, Mo., as unjust, unreasonable, unjustly discriminatory and unduly prejudicial. Shipments from complainants plant to destinations within the switching district of St. Louis move over the Alton & Southern to its connection with the Terminal at East St. Louis thence over Terminal across Eads bridge to points of delivery, or to connecting lines in St. Louis upon which the points of delivery are located. Prior to June 6, 1924 the rate of these defendants on all kinds of brick from complainants plant for Terminal delivery in St. Louis or for delivery to connecting lines such as the Belt, was 70c. On that date the Terminals rate of 50c for connecting line delivery was reduced to 40c. The distances from complainants plant at East St. Louis do not exceed 20 miles. For such distances the rate prescribed by the Commission in 68 I. C. C. 213 was 70c on common or facing brick and 90c on brick other than common. It is not shown that complainant has lost any sales at St. Louis by reason of the rate adjustment complained of and apparently shipments from its plant for delivery within the switching district of St. Louis move freely under the present rates. HELD, rates attacked not unreasonable or otherwise unlawful, complaint dismissed. H. & R. Mining Co. v. A. & S. R. R. 104 I. C. C. 671.

(4c) Complainant attacked class rate charged on 19 cars of scrap iron between July 1, 1922 and Jan. 1, 1923 from Superior, Wis., to Steelton, Minn., as inapplicable, unreasonable, unjustly discriminatory and unduly prejudicial. Steelton is at the western edge but within the corporate limits of Duluth, Minn., the shipments were unrouted and moved from complainants yard within the corporate and switching limits of Superior to plant at Steelton, route of movement being C. St. P. M. & O., to South Itasco, Wis., and D. M. & N., beyond, charged minimum class D rate of 6.5c. After the shipment moved a rate of 90c per long ton, minimum 40,000 pounds, was established and is still in effect. No evidence was offered attacking the present rate. Complainant contends that they should have moved over the Omaha to Rices Point, N. P., to Missabe Jct., and Missabe beyond at a combination rate of 2c per 100 pounds of the Omaha, N. P., switching rate of $2.25 per car and $11.50 per car of the Missabe. The 2c switching charge of the Omaha applied only on cars having a "road haul" defined as cars having "either destination or origin outside of switching limits." The cars here consideration admittedly originated within the switching limits of Superior, but it is complainants theory that because Steelton is shown as a station on the Missabe, and as reference is made in the tariffs of that carrier to certain switching areas at Missabe Junction and Steelton, the intervening distances necessarily involves a road haul. The conclusion, however, disregards the fact that the industrial section of Duluth extends beyond Steelton and includes that part of the city between Missabe Junction and Steelton. The movement over the route claimed by complainant is more in the nature of an intraterminal transfer than a road haul, and the 2c charge of the Omaha switching tariff is inapplicable over that route. HELD, shipment not misrouted and charges attacked not unreasonable or otherwise unlawful, complaint dismissed. Kaner v. C. St. P. M. & O. Ry. 104 I. C. C. 710.

(4d) A line which participates in a joint rate is not guilty of undue prejudice in failing to accord a transit service at a point on its line merely because another carrier party to the same joint rate does not accord transit service. Federal Products Co. v. I. C. R. R. 107 I. C. C. 271, 275.

(4e) Complainant attacked through class rates applicable on 23 cars of rough granite from Middlebrook, Mo., to Elmwood, Ill., between Dec. 1920 and April 1923 as unreasonable and discriminatory. Shipments originated at De Soto, Iron Mountain and Middlebrook, Mo., stations on the M. P., 45, 84 and 86 miles, south of St. Louis, Mo. Shipments moved M. P., to St. Louis, Mo., thence Burlington. The commodity rates to and from St. Louis subject to the combination rule would reduce the combinations of 9.5c plus 14.5c and 8.5c plus 13c from 24 and 21.5c, respectively, to 21.5c and 19c, respectively. HELD, rates attacked unreasonable to extent they exceed 24c prior to July 1, 1922 and 21.5c thereafter, reparation awarded. Burgoin & Company v. C. B. & Q. R. R. 107 I. C. C. 376.

(4f) Complainant attacked joint rate of 40.5c charged on cypress, ash and maple lumber shipped between Feb. 1923 and May 1924 from Gable, S. C., to Cincinnati, O., as unjust and unreasonable to extent it exceeded 34c. Gable is on the Alcolu R. R., a line extending 25 miles from its junction with the A. C. L., at Alcolu, S. C., all shipments being charged 40.5c and most of them delivered to defendant. Fifteen cars moved over various routes via Augusta, Ga., to destination. Five cars moved through Virginia cities gateways. The distances from Alcolu to Cincinnati varied from 791 miles over the shortest route of movement through Augusta to 964 miles via Richmond, Va. Except for general rate changes, complainant shows that the 34c rate to which basis it now seeks reparation had been voluntarily established and maintained for nearly eight years prior to the establishment of the rate attacked on Feb. 1, 1923. Defendants are unable to say how the 40.5c rate was constructed. HELD, rate attacked unreasonable to extent it exceeded 36.5c from Feb. 1923 to May 1924 from Gable to Cincinnati, reparation awarded. Gulf Red Cypress Co. v. Alcolu R. R. 107 I. C. C. 397.

(4g) Complainant attacked commodity rates on iron and steel articles, carloads and less carloads, from Coatesville, Milton and Harrisburg, Pa., Cleveland and Youngstown, O., Buffalo and Lackawanna, N. Y., and Claymont, Del.,

to Warren, Pa., as unreasonable, unduly prejudicial and in violation of the fourth section. Warren is served by the Pennsylvania and New York Central. Complainant is located on the Pennsylvania at a point called Struthers, about 2 miles from the Warren freight yards. The Pennsylvania is the short rate making line from Pittsburgh to Warren and has two routes, both entirely intrastate, between the points named one via Red Bank, 190 miles, and the other via New Castle, 170 miles. Practically all of complainants shipments from points in the Pittsburgh district, as well as other iron and steel traffic, moved over the route through Red Bank. There are numerous possible interstate routes between Pittsburgh and Warren, over some of which joint rates are published. At the time of the hearing, the rates from points in the Pittsburgh district to Warren, intrastate and interstate, were 23.5c carloads, and 33.5c less carloads, these being the fifth class and fourth class rates, applicable on iron and steel articles under the socalled Disque scale in effect in central territory. Subsequently the intrastate carload rate was reduced by the Pennsylvania Commission to 18c. There is some evidence of record relating to the rates from the points in issue outside of Pennsylvania. This evidence is mainly directed to the carload rates and only those will hereinafter be considered. RATES FROM BUFFALO. The commodity rate in effect to Warren is 81.5% of the fifth class rates, and is the same in amount as the rate from the latter point to Titusville, Oil City and Franklin, Pa., with which points Warren has been grouped as to rates from Buffalo since 1908. The present rate from Buffalo to Sharon, Sharpsville, and Greenville, Pa., and Leetonia, Niles and Warren, O., which points are listed as competitors of complainant and are served by the Pennsylvania, is 25c, or 9.5c higher than the Buffalo-Warren rate, whereas in 1908 those points paid a rate only 1.5c higher than Warren. While complainant lays stress upon the shorter distance from Buffalo to Warren than from Buffalo to a number of the competing points, these differences in distance are not great and their importance is minimized where rates are made on the group basis, as is the case in connection with many of the iron and steel commodity rates in this territory. RATES FROM CLEVELAND AND YOUNGSTOWN. The applicable rate from Cleveland to Warren is the fifth class rate of 25c, the same rate being in effect to Corry and Titusville, which are also on the class basis. Generally, short haul and interdistrict traffic in iron and steel articles in central territory has for many years moved on commodity rates somewhat lower than fifth class. These low rates resulted from the establishment by the Erie, which did not serve Pittsburgh, of a commodity rate from Youngstown to Cleveland which was 50% of the class rate. The carriers serving Pittsburgh thereupon equalized that rate from Pittsburgh to Youngstown the distance being almost equal. This was likewise reflected in other directions. The rate from Youngstown to Warren, 21c, is also on the class basis. To Titusville, which is 44 miles nearer to Youngstown, it is 20c, a class rate. Fifth class rates have generally been applied to the longer hauls in central territory comparable to those here considered, although there are many exceptions in the form of commodity rates. To points in short haul territory the same general situation prevails with respect to the rates from Youngstown as above outlined with reference to the rates from Cleveland. RATES FROM CLAYMONT. From Claymont the applicable commodity rate of 31c is 96.8% of the current fifth class rate. The same commodity rate applies to Oil City, Corry, Titusville and Franklin, Pa. Although Buffalo, Cleveland, Youngstown and Claymont are referred to as important iron and steel producing points, nothing is shown on this record with respect to the volume of movement therefrom to either Warren or the competing points referred to by complainant. FOURTH SECTION DEPARTURES. Applications of B. & O., seeking permission to continue to charge for iron and steel articles from Johnstown, Pa., to Titusville, Pa., rates which are lower than those maintained on like traffic from, to and between intermediate points. This situation has been corrected by the establishment of the same rate from Johnstown to Titusville as applies from the former point to Warren. To the extent involved herein the applications will be denied. SWITCHING SITUATION. Complainants plant is located in that part of the borough of Warren called Struthers, which is served only by the Pennsylvania. Defendant pub-

lishes switching charges, varying in amount, applicable to the interchange with the Central at Warren of numerous commodities. It does not publish such charges on iron and steel consigned to industries at Struthers. On any such shipments which arrive at Warren over the Central defendant charges its local fifth class rate of 11c per 100 pounds in effect from Warren to Struthers, for the movement from its connection with the Central to complainants plant. HELD, interstate rates on iron and steel articles from Pittsburgh, Cleveland and Youngstown Buffalo and Claymont to Warren and Struthers not unreasonable or otherwise unlawful. Charges of defendant Pennsylvania for interchange and switching at Warren of interstate inbound cars of iron and steel articles consigned to Struthers unreasonable to extent they exceeded prior to July 1, 1922, 66c per ton and subsequently 60c per ton, reparation denied. Hammond Iron Works v. Pennsylvania R. R. 107 I. C. C. 473.

(4h) In 93 I. C. C. 579, Division 3 found that the rate on bituminous coal, carloads, from Harrisburg, Ill., to Lafayette, Ind., from Oct. 1922 to June 1923 was not unreasonable and dismissed the complaint. The rates from Harrisburg to Indianapolis and destinations in Indiana to which rates are based on the rate to Indianapolis are lower than the rate to Lafayette because the rates to Indianapolis and vicinity reflect competition with Indiana mines. The rates from Harrisburg to Fort Wayne and South Bend, Ind., are lower than the rate to Lafayette because the rates to the former points are related to the rates to Chicago. HELD, original finding affirmed. Lafayette Box Board & Paper Co. v. C. C. C. & St. L. Ry., 107 I. C. C. 509.

(4i) In determining distances in compliance with the rates herein prescribed to or from Galveston, Tex., or New Orleans, La., the respective ports, the shortest routes via existing connections for the interchange of carload traffic shall be used, embracing as a maximum the lines or parts of lines of not more than three line-haul carriers, lines under common ownership or control to be considered as a single line. Galveston Commercial Asso. v. G., H. & S. A. Ry. Co., 100 I. C. C. 110, 123.

(4j) Joint rates on tin plate from McKeesport, Pa., Yorkville, Ohio, and Cumberland, Md., to New London, Wis., found not unduly prejudicial but found unreasonable. Complainant did not pay or bear freight charges based on the rates herein found unreasonable on shipments fromCumberland and is not entitled to reparation, but on the shipment from McKeesport and Yorkville some of which were sold F. O. B. origin, while it mikht be said that the consignee paid an invoice price which reflected freight charges based on the Pittsburg rate, the fact that these points took the same rate as Pittsburg is but a coincidence, and the evidence falls short of proving that complainant under these contracts paid or bore as such the freight charges assessed under the particular rates herein found unreasonable. It is clear upon this record that if the joint rates herein found unreasonable had not been in effect, complainant's invoices would still have reflected the rate from Pittsburg, as was actually the case, and not the rates from these points of origin. Reparation denied. Borden Co. v. A. A. R. R. Co., 100 I. C. C. 153, 156, 157.

(4k) Upon further consideration, findings in original report, 89 I. C. C. 356, to effect that joint rates on gasoline from points in Texas and Oklahoma to destinations in California and Washington were unreasonable to extent they exceeded lower combinations contemporaneously in effect for segments of same movement, modified and changed in accordance with so-called combination rule, reversed and rates found not to have been unreasonable or otherwise unlawful. Complaint dismissed. McLeob v. T. & P. Ry. Co., 100 I. C. C. 219.

(4l) Following 78 I. C. C. 273 and 87 I. C. C. 51, rates for rail portions of hauls on wood pulp, shipped all-rail or water-and-rail route from points in Oregon and Washington to Los Angeles, Calif., found not unreasonable as compared with lower contemporaneous rates on paper. Crown Williamette Paper Co. v. Director General, 100 I. C. C. 397.

(4m) In prescribing scales of distance rates for single and joint-line hauls, commission has almost invariably required lines under a common management and control to apply the single-line rates. These decisions were based on fact that such management and control result in certain benefits in opera-

tion and on commission's opinion that single-line rates would be reasonable for application over such lines. No reason is apparent for departing from these precedents. Livestock to, from, and between Points in Southeast, 101 I. C. C. 105, 107.

(4n) Applicable through charges assessed on an isolated shipment of coal from Marissa, Ill., to Anderson, Ind., found not unreasonable following 64 I. C. C. 503, 506, and cases cited therein. No evidence was offered to show that the through charges attacked were unreasonable and the separate factors are not under attack. Moreover, rates charged compare favorably, distance considered, with those prescribed in 85 I. C. C. 446. Municipal Elec. & Water Depts. v. C., C., C. & St. L. 101 I. C. C. 618.

(4o) Complainant attacked combination commodity rates on anthracite coal, carloads from producing fields in Pennsylvania to all points in Iowa as unjust and unreasonable, unjustly discriminatory and unduly prejudicial as compared with relatively lower rates to Chicago and Peoria, Ill., St. Louis, Mo., and St. Paul, Minn. With the exception of that moving via the Erie, practically all the anthracite that moves all rail to Iowa is billed first to Chicago and is there recognized. Such coal as moved over the Erie is billed to Hammond, Ind., and distributed from that point. From the mines to the Niagara frontier about 280 miles there is a proportional rates of $2.64. Thence to Chicago $2.42, 785 miles. From Chicago the rates applicable range from $2.14 to Burlington, for 206 miles to $3.89 to Sioux City for 509 miles. To the Missouri river points the rates are based on proportional commodity rates to and from the Mississippi river. The rates from Chicago are the same on all rail business as they are on the exlake traffic. The Chicago rates generally apply also from Milwaukee, Wis., and other west bank Lake Michigan ports to Iowa points, which involve longer hauls. They move a large quantity of anthracite shipped from the lake docks, and also some that arrives over car ferry lines, on which the same through rates to Iowa apply as are in effect via Chicago. Notwithstanding the much longer hauls the rates to the Iowa points yield considerably greater ton mile revenue than does the rates to Chicago. The combination rate from the mines to Chicago is $5.06. On the average the short line distance from the mines to the upper Mississippi river cities are roughly about the same as those to St. Louis, and there is no reason, from a distance standpoint solely, for lower rates to St. Louis than to the upper river cities. The wide differences between the rates to St. Louis and those to the upper river cities are not due to differences in transportation conditions, but to the fact that the policies pursued by the lines serving the upper river cities have differed from those pursued by the lines serving the lower river cities. It seems clear that although there is no water competition at St. Louis, the rate to that point, relatively speaking, is not a reasonable maximum rate. The relatively lower rates to Chicago and St. Louis do the upper river cities no tangible harm. HELD: through rates on prepared sizes of anthracite coal from the mines to points in Iowa unjust and unreasonable to extent they exceed the amounts shown below; Where present rate is $7.20 or $7.33, reduce to $6.81; $8.22 reduce to $7.40; $8.34 reduce to $7.66; $8.46 reduce to $7.86; $8.58 reduce to $8.06; $8.71 reduce to $8.26; $8.83 reduce to $8.38; $8.95 reduce to $8.50; on traffic destined to points intermediate between the river and the present $8.22 group the carriers will be expected to grade the rate of $7.40 back to merge into the rate of $6.81 prescribed for the river points. Iowa Railroad Commissioners v. C. R. R. Co., of N. J. 109 I. C. C. 27.

(4p) Complainant is entitled to reasonable through rates, and, while comparisons shown indicate that the separate components of the through rates charged are not greatly out of line for individual consideration, the Commission must consider the measure of the through rates for the through hauls from the mines to destinations in Iowa. Iowa Railroad Commissioners v. C. R. R. Co. of N. J. 109 I. C. C. 273, 283.

(4q) Complainant attacked rates and charges collected on 7 cars of wheat shipped from Eaton, Ossian and Helmer, Ind., to Jonesville, Mich., there milled and reshipped to Three Rivers, Kalamazoo and Hopkins, Mich., as unreasonable and unlawful. Shipment from Ossian moved over N. Y. C. & St. L., to Fort Wayne, Ind., thence N. Y. C. Shipments from Helmer moved Wabash to Butler, Ind., thence N. Y. C. From Fort Wayne and Butler the shipments moved north over the Fort Wayne-

Jackson branch of the N. Y. C., through Waterloo, Ind to Jonesville. At Jonesville the shipments were milled and the product reshipped, moving west over the N. Y. C., old road division to White Pigeon, Mich., and thence north over its Grand Rapids branch to destinations. The N. Y. C. main line, called the air line extends from Waterloo west to Elkhart from which point the Grand Rapids branch extends north through White Pigeon to the destinations named. The distance via Jonesville exceeds that via Elkhart by 26.4 miles. The published out of route charge for this distance is 3.5c. Charged joint through rates points of origin of the wheat to destination of the product plus 0.5c the transit charge, plus an improper out of route charge of 2.5c on the shipment from Ossian and the published out of route charge of 3.5c on the shipments from Helmer. The tariffs publishing the joint through rates from the points of origin to destinations with provisions for milling in transit at Jonesville carry no restrictions as to routing. HELD, out of route charges not legally applicable, reparation awarded, complaint dismissed Jonesville Milling Co. v. N. Y. C. R. R. 109 I. C. C. 601.

(4r) In 80 I. C. C. 185 the Commission found that rates on compoboard in carloads from Minneapolis, Minn., to various points in United States as not unreasonable but unduly prejudicial to extent they exceeded rates on other wall boards. Since March 15, 1922 commodity rates applicable alike on compoboard and wall board and lower than class B. rates have been provided from Minneapolis to all points in western trunk line territory, including Milwaukee and Chicago. The fourth section departures were brought about because the combinations on Milwaukee or Chicago to eastern territory were lower than the through fifth class rates but they were removed on or about August 27, 1923 when the joint commodity rates on wallboard from Minneapolis to all points in central territory established on Dec. 26, 1921 were made applicable on compoboard. HELD, rates attacked to points in central territory unreasonable to extent they exceeded aggregate of intermediates, reparation awarded. Green Lumber Co. v. A. A. R. R. 109 I. C. C. 710.

(4s) Complainant attacked joint through rates on sand and gravel, carloads, from Lafayette, Ind., to points in Illinois as unreasonable; unduly prejudicial as compared with the rates from Attica, Ind; and that failure of defendant Wabash to absorb the switching charge of the Nickel Plate for its haul from complainants plant to its connection with the Wabash to Lafayette Junction, all within the switching limits of Lafayette on sand and gravel destined to points in Illinois while contemporaneously absorbing such charge on other commodities to the same destinations, and on sand and gravel to points in Indiana, subjected complainant and its interstate traffic to the payment of unreasonable rates and to undue prejudice. Lafayette is 21 miles east of Attica and about 30 miles from the Illinois-Indiana border. Complainants plant is on the Nickle Plate about 2 miles from its connection with the Wabash. Joint sixth class rates now apply on sand and gravel from Lafayette to points on the B. & O., between Springfield and Altamont; points on the I. C., to and including Paxton, Leroy, Mattoon, Decator and Vandalia; and to most of the Kankakee & Urbana and Illinois Traction stations. The establishment of joint commodity rates is asked to these points. Joint commodity rates are now maintained from Attica to certain of these stations. Sand, Gravel and crushed stone are among the lowest graded commodities known to commerce. They can usually be obtained at nearby points, and do not and can not move great distances. The freight rates, therefore, have an important bearing on securing and developing the markets. The complainant has been satisfied by the adjustment of Jan. 1, 1926 in so far as the measure of the present commodity rates from Lafayette is concerned. HELD, joint sixth class rates unreasonable to extent they exceeded subsequently established rates, and rates from Lafayette unduly prejudicial to extent they exceed the rates from Attica by more than 10c per ton. Western Indiana Gravel Co. v. N. Y. C. & St. L. Ry. 109 I. C. C. 727.

(4t) Complainant attacked commodity combination charged of 45c on a car of bulk corn shipped May 8, 1923 from Jefferson, S. D., to Fowler, Colo., as illegal, unjust, unreasonable and in violation of the fourth section to extent it exceeded 33c. Shipment moved from Jefferson over C. M. & St. P., to Council Bluffs, Ia., U. P., to Denver, Colo., thence Santa Fe, charged 33c to Pueblo and 12c beyond. There was contempor-

aneously in effect a rate of 33c from the same point of origin to Trinidad, Colo., a point on the Santa Fe 110 miles south of Fowler and to which Fowler is intermediate. Fowler was named in the tariff, but it was not named in the item which carried the rates on bulk corn from Jefferson to Colorado points. As under the wording of the intermediate provision, rates apply to intermediate points only when they are not named in the tariff, the rate published to Trinidad was not applicable to Fowler. Effective August 15, 1923 defendants provided for application of Trinidad rate to Fowler. HELD, rate attacked unreasonable to extent it exceeded 33c, reparation awarded. Summit Grain Co. v. C. M. & St. P. Ry. 109 I. C. C. 763.

(4u) Complainant attacked joint commodity rates on 48 cars of cannel coal, shipped between May 4, 1915 and April 27, 1917 from Cannel City, Ky., to New York and New Jersey destinations as unreasonable. Charged $4.50 to Tuckahoe and $4.10 to the other destinations, except Harrison. To the latter point a charge in addition to the $4.10 was made by the delivering line for the movement beyond New York, but the propriety of that charge is not in issue. Prior to the movement of these cars complainant had negotiated with the N. Y. C., for reductions in the rates. Subsequently the rates were reduced to $3.67 to New York and $3.90 to Tuckahoe. HELD, rates attacked not unreasonable, complaint dismissed. Leach v. C. N. O. & T. P. Ry., 112 I. C. C. 38.

(4v) Complainant attacked commodity rate charged on wrapping paper, carloads, shipped since June 28, 1922 from Orange, Tex., to Wichita, Kans., as unreasonable to extent it exceeded rate to Kansas City, Mo. Short line distance from Orange to Wichita is 714 miles and to Kansas City 763 miles, 48.5c rate to Wichita earning over the short route 13.6 mills per ton mile and over route of movement 10.4 mills. The 43c rate to Kansas City earns 11.3 mills over short route Wichita is in Kansas City territory on traffic generally from Texas common points. The 66c rate from Orange to Hutchinson was prescribed in 95 I. C. C. 457. HELD, rates attacked unreasonable to extent they exceeded 66c prior to July 30, 1923, rate on and after that date not unreasonable, reparation awarded. Wichita Chamber of Commerce v. A. T. & S. F. Ry. 112 I. C. C. 67.

(4w) Complainant attacked commodity rates on coke, in car loads, from St. Louis to Colorado, Iowa, Kansas, Missouri and Nebraska as unreasonable and as compared with rates from Birmingham, Ala., and Chicago, Ill., unduly prejudicial. The Missouri river cities from Kansas City to Omaha are grouped with respect to the rates on coke from St. Louis, Chicago and Milwaukee. This is the usual western trunk line adjustment. From Memphis and southeastern points, the Missouri river cities are in two groups with respect to the rates on coke, one group from Kansas City to St. Joseph, Mo., usually designated as the lower Mississippi river points, and the other group consisting of Nebraska City and Omaha, Neb., the upper Missouri river points. Memphis is the natural gateway from the southeast to the Missouri river and the general adjustment of rates from the southeast to western trunk line territory is the combination of rates to and from Memphis. This basis has been departed from in the rates on coke from Birmingham. Coke is rated class D in western classification. Distance from Birmingham to Kansas City is 260 per cent of the distance from St. Louis to Kansas City and the rate on coke from Birmingham is only 142 per cent of the rate from St. Louis. The rate on pig iron from Birmingham to Kansas City is 245 per cent of the rate on pig iron from St. Louis to Kansas City, and the rate on cast iron pipe from Birmingham to Kansas City is 185 per cent of the rate from St. Louis to Kansas City. At the present time, the rates on coke from both St. Louis and Chicago are grouped with respect to destinations on the Missouri river and complainant does not desire to have this grouping disturbed. The short line distance from St. Louis to Kansas City is 278 miles and to Omaha from St. Louis 413 miles. Average distance from St. Louis to the principal Missouri river cities is 340 miles. The present rates on coke, carloads, from St. Louis to the Missouri river cities are unreasonable, high and, as compared with the rates from Chicago and Birmingham to the same destinations, unduly prejudicial. The evidence clearly shows that St. Louis is at a disadvantage in competition with Chicago and Birmingham at the Missouri river cities and that such disadvantage can be removed by the publication of rates from Chicago to the Missouri river cities 72c higher than from St. Louis, and rates from

Birmingham to the lower Missouri river cities, $2.04 higher, and to upper cities $2.64 higher than rates from St. Louis. HELD, rates on coke, carloads from St. Louis, Mo., to the Missouri river cities unreasonable to extent they exceed $3.25 to Missouri River cities and Missouri points and $3.49 to southwest Missouri and southeast Kansas points. HELD, further rates on coke from St. Louis to Missouri river cities southwest Missouri and southeast Kansas unduly prejudicial to St. Louis to extent difference in rates from St. Louis and Chicago is less than 72c and Birmingham and St. Louis $2.04 to lower cities and $2.64 to upper cities. Warren Coke Co. v. A. T. & S. F. Ry. 112 I. C. C. 71.

(4x) Complainant attacked commodity rates on sand, carloads from Michigan City, Ind., to Chicago and points in the Chicago district as higher than the rates from Millers, Gary, Liverpool, Willow Creek, Aetna, and Dune Park, Ind., to said destinations; that to other destinations, particularly those east and south of said point of origin, the rates from Michigan are the same as the rates from the other Indiana points mentioned, and that rates charged are unreasonable and unduly prejudicial. Michigan City is on the M. C., P. M., C. L. S. & S. B., N. Y. C. & St. L., and C. I. & L. The three first mentioned roads constitute the direct routes to Chicago. The distances to Chicago are, from Michigan City 56 miles, Willow Creek 38 miles, Dune Park 36 miles, Aetna, 33 miles, Millers 30 miles, Liverpool 30 miles and Gary 27 miles. The rate from all these points to Chicago proper for delivery on the originating line is 63c, but to stations within the Chicago switching district on practically all connecting lines the rate is 88c from Michigan City and 84c from the other points. The difference of 4c in the rate from Michigan City over the rate from other points was the result of a reduction made during 1922 in the rates from points other than Michigan City, and by lines other than those having the direct routes from Michigan City to Chicago. In so far as the allegation of undue prejudice is concerned, it should be noted that the differential between Michigan City and the alleged preferred points is less than that prescribed between the inner and outer zones, that the class rates from Michigan City have been found to be properly included in the higher 52 mile scale, where as the alleged preferred points are in the lower 35 mile scale. HELD, rate attacked not unreasonable, unduly prejudicial or otherwise unlawful, complaint dismissed. Bos Sand Co. v. A. T. & S. F. Ry., 112 I. C. C. 121.

(4y) Complainant attacked commodity rates charged on soft coal, carloads, from Illinois mines to Kansas City and St. Joseph, Mo., Atchison and Leavenworth, Kas., as unjust and unreasonable and as compared with the rates from mines of its competitors on the Alton and Wabash in the Springfield district, as unduly prejudicial. The great majority of complainants mines are in the Belleville district, several being in the southern part of the Springfield district, immediately north of the Belleville district. All are in the socalled inner group, the mines in which take the same rates to the St. Louis East St. Louis district. Rates are $2.98 and $2.92 on lump and fine coal, respectively. The rates to Leavenworth, Atchison and St. Joseph from these Alton and Wabash mines are 40c higher than those to Kansas City. Withdrawal of the Alton and its receivers as defendants was equivalent to withdrawal of the allegation of undue preference of mines on that road. The subsequent intervention of the Alton did not operate to revive this allegation. The only remaining issue of undue prejudice and preference was in connection with the Springfield district rates of the Wabash. It is clear that the Wabash is not responsible for, and can not by its own act, remove any of the undue prejudice from which complainants members may suffer because of the lower rates from the Springfield district. The Alton is responsible for the latter rates and the Wabash has only met the competition of that road. If the Wabash increased its Springfield rates to the Belleville basis, the lower rates of the Alton, not a defendant, would remain. The Wabash does not reach mines in the Belleville district but participates with its eastern connections in rates therefrom. It could not, without the consent of its connections, reduce those rates. Undue prejudice does not exist. The evidence in this proceeding does not warrant the conclusion that it would be proper to apply as maximum reasonable rates from the Belleville district to Kansas the rates now maintained by the Alton and Wabash from mines

in the Springfield district. HELD, rates attacked not unreasonable or unduly prejudicial, complaint dismissed. Fifth & Ninth Districts v. C. R. I. & P. Ry. 112 I. C. C. 139.

(4z) . Complainant attacked commodity rate of 25.5c charged on 33 cars of copperas from Farrell to Easton, Pa., interstate, between Jan. 9 and March 28, 1923 as unreasonable and unduly prejudicial. Copperas is a low grade commodity and contains from 40 to 50 per cent water. It is not susceptible to damage in transit, rated sixth class. Shipments moved N. Y. C., to Seneca, N. Y., and L. V., beyond 564 miles, A rate of 21.5c was in effect from Newcastle, Pa., to Easton, and applicable under an intermediate clause from Farrell on shipments moving over Erie and L. V., was established from and to the points considered over route of movement on Feb. 1, 1924. HELD, rate attacked not unreasonable or otherwise unlawful, complaint dismissed. Williams & Co. v. L. V. R. R. 112 I. C. C. 171.

(5a) Complainant attacked fifth class rates charged on fish and whale oil, carloads, from various points of origin to Port Ivory, Staten Island, N. Y., as unjust and unreasonable and in violation of the fourth section. Complainant attacked fifth class rates on fish oil, in tank cars and in wooden barrels and iron drums between August 1922 and June 1924 from various points of origin to Bayway and from Bayway to Philadelphia and Marcus Hook, Pa. The movement of fish oil is seasonal and occurs almost wholly during the period of production. Generally speaking, rates and ratings on crude and refined oils are the same. It is testified that refined oil is about 10c per gallon higher in value than the crude. There is little doubt that the entire adjustment on vegetable and fish oils within trunk line territory and between trunk line and central territories has been directly or indirectly affected by competition from the Pacific coast. It is also true that the effect or even the existence of this competition has been overestimated or mistakenly considered in many instances, resulting in the grouping of various oils as to which no competition existed with others highly comparative with the Pacific coast products. HELD, rates attacked not unreasonable from Ivorydale to Port Ivory, not unreasonable in the past but for future unreasonable to extent they exceeded certain specific rates from and to specific points, reparation denied. Procter & Gamble Mfg. Co. v. B. & O. R. R. 112 I. C. C. 177.

(5b) Complainant attacked class rates charged on a car of strawberries shipped June 5, 1922 from Stevensville, Mich., to Duluth, Minn., as unjust and unreasonable in violation of section 1 and section four. Shipment moved P. M. & to Indiana Harbor, Ind., thence I. H. B., and C. & N. W., C. St. P. & O., distance 559.2 miles, charged first class rate of $1.425 which was higher than combination of $1.175 made up of 56.6c to Chicago plus proportional rate of 61c beyond. HELD, rate attacked unreasonable to extent it exceeded $1.175, reparation awarded. Stacy Merrill Fruit Co. v. P. M. Ry., 112 I. C. C. 189.

(5c) Complainant attacked fourth class rates charged on cars of fresh tomatoes to Pittsburgh, Pa., from Silver Creek district in New York for average distance of 236 miles as unreasonable. Previous report 91 I. C. C. 358. Stock cars have been found to be preferable to refrigerator cars for the length of haul here considered, on account of the ventilation afforded. The cars must be assembled, thoroughly cleaned, and devoted entirely to the tomato traffic during the season of movement. The number of tomatoes which can be shipped on any particular day depends entirely on weather conditions and the cars must be held in readiness. Special train service is given. The fourth class rate from Silver Creek to Pittsburgh of 38c yields revenue of $106.40 per car, 32.2 mills per ton mile and 45c per car mile, using the average loading of 28,000 pounds. This revenue does not appear to be unduly high, considering the highly perishable nature of the commodity and the special transportation service required. Ripe tomatoes for canning purposes generally move to factories for distances not exceeding 50 miles. Commodity rates established for these short hauls are made with reference to truck competition. No such competition is possible with the traffic in question. HELD, rates attacked not unreasonable, complaint dismissed. Heinz Co. v. Director General 112 I. C. C. 206.

(5d) Complainant attacked fifth class rate of 72c charged on three cars of mine cars shipped during Feb. 1925 from Chattanooga, Tenn., to Carbon Hill,

Ala., as unjust and unreasonable to extent it exceeded a rate of 45c. Carbon Hill is local on the Frisco, 61 miles west of Birmingham. The cars can conveniently be loaded in coal cars. Shipments moved T. A. & G., to Gadsden, Ala., L. & N., to Birmingham and Frisco to destination, 223 miles. Prior to shipment the question of reduced rates was the subject of correspondence resulting in a proposal to publish a rate of 45c but Frisco refused to join in the rate. Over certain routes a rate of 43c is applicable in connection with the local rate of Frisco from Jasper, 19 miles less distance than Carbon Hill. Defendants offered no evidence in support of the rate attacked, and admit that rates to points in the immediate vicinity of Carbon Hill are substantially lower than rates to that point. HELD, rate attacked unreasonable to extent it exceeded 45c, reparation awarded. Gustafson Mfg. Co. v. St. L. S. F. Ry. 112 I. C. C. 277.

(5e) U. P., and D. & R. G. W., and their southwestern connections propose to revise their rates on grain and grain products, in carloads, from Utah and southern Idaho to Texas, Louisiana, Arkansas, Mississippi and Alabama and to cancel the application of such rates over routes through Texas. The present rates from quite a number of points in southern Idaho to the destination territory are lower than the rates from Utah common points and are applicable through Utah common points. Respondent proposes to revise their rates from Utah to the same basis as the rates from southern Idaho. A rate of 74.5c applies from numerous points in western Utah, Nevada and California to the destination territory, but no change is proposed in it. Increasing the rate to New Orleans from Utah common points and continuing the present lower rates from the more distant points will increase the discrimination under the fourth section at points of origin. HELD, schedules not justified. Grain and grain products from western points 112 I. C. C. 283.

(5f) In 109 I. C. C. 46, the Commission found the through fifth class rates charged on iron and steel articles, carloads from Buffalo N. Y., to Cleveland, Elyria and Lorain, O., unreasonable to extent they exceeded 23c, reparation awarded. Similar findings are requested for shipments moving prior to July 1, 1922 which through error the original findings did not cover. HELD, rates attacked prior to July 1, 1922 unreasonable to extent they exceeded 25c, reparation awarded. Columbia Steel Co. v. B. & O. R. R. 112 I. C. C. 287.

(5g) Complainant attacked joint commodity rate of 48.5c charged on a car of refined sulphur shipped Feb. 29, 1923 from Freeport, Tex., to Carl Junction, Mo., as unreasonable and unduly prejudicial. Shipment moved over H. & B. V., I. G. N., and Frisco. Rate contemporaneously applicable was 46c from Sulphur Mines, La., which is generally grouped with and takes the same rates as Freeport, this rate being established from Freeport Aug. 26, 1923. The rate from Freeport to Pittsburgh, Kas., a more distant point over the route of movement was 46c subject to rule 77. HELD, rate attacked unreasonable to extent it exceeded 46c, reparation awarded. Stauffer Chemical Co. v. H. & B. V. Ry. 112 I. C. C. 311.

(5h) Complainant attacked commodity rates charged on potatoes, carloads from Pocomoke, Md., and Virginia to Jacksonville, Fla., in July and August 1922 and 1923 and July, August and Sept. 1924, as unreasonable, unjustly discriminatory, unduly prejudicial and in violation of the fourth section. Shipments originated in what is known as the eastern shore of Virginia. Cape Charles is 12 miles from the southernmost point of the peninsula and Pocomoke City 64 miles north of Cape Charles. All of the other points are between Cape Charles and Pocomoke City, with the exception of Capeville, Va., which is on a branch line of the Pennsylvania extending in a southerly direction from a point on its main line 1.5 miles north of Cape Charles and is 7.4 miles from the latter point. The transportation of all the shipments involved a 36 mile float service from Cape Charles to Norfolk across Chesapeake Bay and Hampton Roads. Pennsylvania is the only line serving the territory. Distance to Jacksonville 725 miles, charged 72c from Pocomoke City, plus 4.5c per package from Capeville and 66.5c from the remaining points. Applicable rate combination to and from Cape Charles. At time of movement there was a rate of 65c from Wilson, N. Y., 1,360 miles, 63c from New York, and Philadelphia, 1,004 and 912 miles, 60c from Baltimore, 796 miles, 52.5c from Washington 756 miles and 45c from Norfolk, 657 miles. On March 18, 1925 carriers

reduced the rate from all points except Capeville to Jacksonville to 63c. HELD, rates attacked unreasonable to extent they exceeded 63c from all points except Capeville, the latter 4.5c over, reparation awarded. Hulsey Bessent Co. v. P. R. R. 112 I. C. C. 317.

(5i) Complainant attacked commodity rates charged on five cars of newsprint paper and printing paper shipped between Dec. 28, 1921 and May 23, 1922 from Port Edwards, Wis., and Wisconsin Rapids, Wis., to Dallas, Tex., as unreasonable. Charged $1.17. In 66 I. C. C. 571 the Commission found this rate to be unreasonable to extent it exceeded 82c on newsprint paper and 90c on printing paper. HELD, rate attacked unreasonable to extent it exceeded 82c on newsprint paper and 90c on printing paper, reparation awarded. Palmer & Co. v. C. G. W. Ry., 112 I. C. C. 323.

ALL OTHER CITATIONS

Utah Gilsonite Co. v. A. T. & S. F. Ry. Co., 85 I. C. C. 557; Beaver Sand Co. v. Director General, as Agent, 88 I. C. C. 115.

§13a. Burden of Proof.

See Evidence I.

(a) It is the measure of the rate attacked for the through service which must be considered. California Packing Corp. v. Director General, 96 I. C. C. 239, 242.

(b) Through rates, no matter how constructed, must in all cases be reasonable and where increases are proposed the burden is upon carriers to justify the resultant increased rates. Butter, Eggs, Dairy Products, and Poultry, 96 I. C. C. 19, 29, 30.

(c) Applicable combination rate assessed on cull apples shipped from Lewiston, Idaho, to San Franciso, Calif., during Federal control, found not unreasonable because the factor, Lewiston to Portland, Oreg., over route of movement exceeded corresponding factor over a different route. Upon contention by defendant that a combination rate must be considered in its entirety, HELD: It is the measure of the rate assessed for the through service which must be considered. California Packing Corp. v. Director General, 96 I. C. C. 239.

(d) It is not the separate factors in a through rate but the rate or charge as a whole to which the test of reasonableness must be applied. Iowa Railroad Commissioners v. C. R. R. of N. J. 109 I. C. C. 273, 284.

§13½. Factor of the rate.

See Claims §1 (a); Class Rates §2; Local Rates and Combinations (gg); Proportional Rates.

(a) The Commission has recognized the principle that ordinarily the rate charged as one factor of a combination on a through movement might well be less than the corresponding local rate covering the same haul. Salt cases of 1923, 92 I. C. C. 388, 437.

(b) Except that where one or both of the factors are depressed by special conditions, full combinations of locals on traffic moving in considerable volume results in unreasonable rates. Proctor & Gamble Distributing Co. v. St. L. S. F. Ry., 101 I. C. C. 563, 581.

(c) Rates on pulp wood from points in Idaho to Millwood, Wash., found unreasonable to extent that factor to Spokane exceeded by more than $4 the Northern Pacific's charge for the switching movement at Spokane, the corresponding factor subsequently established in conformity with distance scale found reasonable in Wood Rates between North Pacific Coast Points, 61 I. C. C. 159. Reparation awarded. Inland Paper Co. v. C., M. & St. P., 92 I. C. C. 29.

(d) Through rates on caustic soda from Painesville, Ohio, and Detroit, Midland, and Wyandotte, Mich., to Ardmore, S. Dak., found unreasonable to extent that commodity-rate factor from Chicago and Manitowoc to Ardmore exceeded like rates from Chicago to various points in Nebraska and Colorado for similar distances. Reasonable maximum rates prescribed and reparation awarded. Refinite Co. v. C. & N. W., 92 I. C. C. 266.

(e) Even though one factor of a combination rate appears unreasonable no reparation will be awarded by the commission if the through charges paid are not unreasonable. Standard Potash Co. v. Director General, 92 I. C. C. 337, 338.

(fg) Rates on acid phosphate from Nashville to Seymour, Ind., found unreasonable due to factor Louisville to Seymour. Complainant instanced lower rates from Nashville to New Albany and Jeffersonville, Ind., competing points,

and between other points for comparable distances. Reasonable rate prescribed and reparation awarded. Buhner Fertilizer Co. v. B. & O., 92 I. C. C. 756.

(h) Rates on zinc ore from points in Oklahoma on Miami Mineral Belt and Northeast Oklahoma railroads, and from trunk-line and junction producing points in Missouri, Kansas, and Oklahoma, to South Fort Smith found not unreasonable but unduly prejudicial in favor of competitors operating zinc-smelting plants at Collinsville, East St. Louis, La Salle, Peoria, and Chicago, Ill., and Grasselli, Ind., to extent that factors of above-named carriers exceeded by more than 0.5 cent, the contemporaneous factors on like traffic to the preferred plants. Nonprejudicial basis of rates prescribed. Athletic Mining & Smelting Co. v. K. C. S., 93 I. C. C. 119.

(i) Rate on wrapping paper from International Falls, Minn., to Chicago found unreasonable to extent that factor up to Duluth exceeded rate prescribed in Minnesota & Ontario Paper Co., 66 I. C. C. 571, from Fox River group to Chicago. Reparation awarded. Seaman Paper Co. v. Director General, 93 I. C. C. 139.

(j) Combination rates on lumber, box shooks, and articles taking lumber rates, from Williams, Flagstaff, and Holbrook, Ariz., to Nogales, Ariz., destined to points in Mexico, found not unreasonable or otherwise unlawful as compared with joint rates from California points to same destinations. The excessive charges complained of accrued solely in the local rate component of the connecting line in Mexico, which is operated as a separate road, is not a party defendant, and is not subject to the commissions jurisdiction. Arizona Lumber & Timber Co. v. A. E. R. R. Co., 96 I. C. C. 203.

(k) Third-class rates applicable on soapstone disks, loose, from Schuyler and Tye River, Va., to Toledo, Ohio, and Muncie, Ind., found unreasonble to extent components beyond Esmont, Va., exceeded fifth class. Maximum reasonable rates prescribed for future and reparation awarded. Toledo Cooker Co. v. N. & A., Ry., 93 I. C. C. 271.

(l) Combination rates on tripoli, in carloads, from Seneca, Mo., to destinations in central, trunk-line and Canadian territories found unduly prejudicial to the extent the factors beyond St. Louis exceed amounts having the same relationship to the sixth-class rates, which rates on silica from Tamms, Ill., bear to the corresponding sixth-class rates. St. Louis Traffic Bureau v. A., T. & S. F., 96 I. C. C. 421.

(m) Combination rates charged on wheat shipped during Federal control from various points in Colorado to Antonito, Colo., there milled, and the flour reshipped via Memphis to Nashville, Tenn., found not unreasonable, as compared with lower joint rates, with milling in transit privileges, subsequently established from Durango, Colo., and other intermediate points of origin to Memphis and lower joint rates contemporaneously in effect from Utah common points, with like privileges, to Cairo and Memphis, Tenn., except to extent that the aggregate of the factors assessed from Antonio to Nashville exceeded a rate herein prescribed as reasonable. Reparation awarded. Conejos Cooperative Mills & Mfg. Co. v. Director General, 98 I. C. C. 515.

(ma) Mere fact that through rates are same as combination of local factors to and from intermediate points does not constitute proof of unreasonableness in absence of a showing that neither factor is depressed below what would normally be a reasonable basis. Caruso & Co. v. C. & E. I., 102 I. C. C. 619, 621.

(mb) The components of inbound and outbound rates on two different commodities should not afford a criterion of the propriety of rates on one of them. New Orleans Joint Traffic Bureau v. B., S. L. & W., 102 I. C. C. 686, 691.

(n) It is elementary that the total charge under a through rate made on a combination basis may or may not be unreasonable because one of the factors is unreasonable. Wortham Carter Publishing Co. v. Director General, 102 I. C. C. 729, 738.

(o) Under ordinary conditions the practice of making through rates by adding to a rate for a long distance the local rate from the basing point to a destination, a relatively short distance beyond, can not be approved. Jewell Co. v. A. T. & S. F. Ry., 104 I. C. C. 380, 384.

(p) Rates on certain iron and steel articles from various points in Ohio, Kentucky, Indiana, Alabama, Illinois, Pennsylvania, New York, and Missouri to Dallas, Fort Worth, and Harrys, Tex., found unreasonable to extent that the factors from St. Louis, Mo., and points

taking the same rates exceeded, prior to the effective date of the general reductions in rates, a certain amount and from and including that date to extent they exceeded rates for similar distances as prescribed in Memphis-Southwestern Investigation, 77 I. C. C. 473. The rates from the other points of origin were and are unreasonable to extent they exceeded or may exceed the rates herein prescribed from St. Louis, plus the established differentials. Bases for award of reparation and reasonable rates for the future prescribed. Atlas Metal Works v. A., C. & Y. Ry. Co., 100 I. C. C. 173.

(q) Rates on China-wood oil from Pacific coast points to Cleveland, Ohio, found not unreasonable or in violation of the aggregate-of-intermediates clause of section 4 of the act. Applicable import tariff provided for alternative application of domestic tariff if lower, and domestic tariff, in turn, provided for aggregate-of-intermediates rates whereever found lower than joint rates. Under these double alternatives no fourth-section violation existed, but lower combinations applied on two of the shipments involved, resulting in overcharges. Refund of such overcharges directed and complaint dismissed. Glidden Co. v. E. R. R. Co., 100 I. C. C. 331.

(r) Contention that basing rates to and from Jacksonville, Fla., on traffic to Florida are, in effect, through rates which must be considered in their entirety, and that, so considered, reduction in the rate north of Jacksonville, coupled with proposed increase in rates south of that point, results in no change in the through rates, not sustained, only the rates south of Jacksonville being in issue. Commission is continually dealing with proportional rates without reference to other factors used in constructing through rates. Basing Rates on Paving Brick, 100 I. C. C. 390, 392.

(s) Following 78 I. C. C. 273 and 87 I. C. C. 51, rates for rail portions of hauls on wood pulp, shipped all-rail or water-and-rail from Camas, Wash., and West Linn and Lebanon, Oreg. to Floriston, Calif., found unreasonable to extent factors beyond San Francisco or Oakland, Calif., exceeded contemporaneous rates on like traffic from San Francisco or Oakland to Los Angeles, Calif. Reparation awarded. Crown Williamette Paper Co. v. Director General, 100 I. C. C. 397.

(t) Following 78 I. C. C. 273 and 87 I. C. C. 51, rates for rail portions of hauls on wood pulp, shipped all-rail or water-and-rail from Camas, Wash., and West Linn and Lebanon, Oreg., to Floriston, Calif., found unreasonable to extent factors beyond San Francisco or Oakland, Calif., exceed contemporaneous rates on like traffic from San Francisco or Oakland to Los Angeles, Calif. Reparation awarded. Crown Williamette Paper Co. v. Director General, 100 I. C. C. 397, 400.

(u) Rates on peanuts from points in Alabama, Florida, Georgia, South Carolina, and Tennessee to Chicago, Ill., Milwaukee, Wis., Canton and Cleveland, Ohio, South Bend, Ind., and Dubuque, Iowa, found unjust and unreasonable to extent that factors thereof north of Ohio River exceed those specified herein, which are prescribed as reasonable for future. United Fig & Date Co. v. A. C. L., 101 I. C. C. 138.

(v) Combination rates on cottonseed hull shavings from Hermitage, Tenn., to Peoria, Ill., consisting of class A rates to Ohio River crossings and commodity rates beyond, found unreasonable to extent the factor to the river crossing exceeded 15.5 cents prior to July 1, 1922, and 14 cents thereafter. Reparation awarded to that basis and reasonable rates prescribed for future. Barrett Co. v. N., C. & St. L. 101 I. C. C. 279.

(w) Applicable through charges assessed on an isolated shipment of coal from Marissa, Ill., to Anderson, Ind., found not unreasonable following 64 I. C. C. 503, 506, and cases cited therein. No evidence was offered to show that the through charges attacked were unreasonable and the separate factors are not under attack. Moreover, rates charged compare favorably, distance considered, with those prescribed in 85 I. C. C. 446. Municipal Elec. & Water Depts. v. C., C., C. & St. L., 101 I. C. C. 618.

(x) Complainant attacked charges to be collected on 25 cars of anthracite coal from Pennsylvania to Minneapolis, Minn., from June 11 to Sept. 19, 1921 as illegal, unjust and unreasonable. The real issue is with respect to the unreasonableness of certain additional charges due under the applicable tariffs which the Soo Line sought to recover by court action. Shipments moved to Suspension Bridge, N. Y., thence M. C., and A. A., to Manitowoc, Wis., and Soo beyond,

charged combination on Suspension Bridge. The rates charged for the movement to Suspension Bridge are not attacked. Charges beyond that point were based on joint rates of $4.865 prior to June 25, 1921 and $4.87 thereafter for which there was no tariff authority the rate applicable being combination of $5.44 based on Manitowoc. The joint rates were applicable via other routes and defendants offered no evidence in support of the reasonableness of the rates attacked. HELD, rates attacked unreasonable to extent the factor from Suspension Bridge exceeded $4.865 prior to June 25, 1921 and $4.87 on and after that date, undercharges waived, complaint dismissed. Elliott Fuel Co. v. M. St. P. S. S. M. Ry. 109 I. C. C. 385.

ALL OTHER CITATIONS

McFadden v. Director General, as Agent, 85 I. C. C. 365; Utah Gilsonite Co. v. A. T. & S. F. Ry. Co., 85 I. C. C. 557; Pitts v. T. & P. Ry. Co., 85 I. C. C. 635; Lilly Co. v. O. S. L. R. R. Co., 85 I. C. C. 644; Northwestern Clay Mfg. Co., v. R. I. S. Ry., 88 I. C. C. 131; Cleveland Provision Co. v. A. G. S. R. R. Co., 88 I. C. C. 161; International Harvester Co. v. N. Y. C. R. R. Co., 88 I. C. C. 368; Barrett Co. v. Director General, as Agent, 88 I. C. C. 535; Coal to Minnesota Points, 88 I. C. C. 631.

§14. Divisions.

See Absorption of Charges §5 (c); Divisions §4; Evidence §13 (2).

(a) Findings in original reports, 53 I. C. C. 656 and 58 I. C. C. 450, that divisions of joint rates on lumber and forest products accruing to tap lines under orders in The Tap Line case, 31 I. C. C. 490, must be measured by distance to the junction with the trunk line over the direct route of movement toward final destination, rather than by out of line movements involving wasteful transportation, affirmed. Wasteful Service by Tap Lines, 89 I. C. C. 327.

(b) Divisions of joint rates on bituminous coal and joint class rates accorded the Federal Valley R. R. Co., found unjust, unreasonable, and inequitable and just, reasonable, and equitable divisions for future prescribed. The road has been efficiently operated, is important to the public at large, territory served is dependent upon it for transportation, and it was shown that in the past it has failed to earn enough to cover operating expenses, taxes and fair return upon value. Ohio Farm Bureau Federation v. A. & W. Ry Co., 89 I. C. C. 489.

§15. Exceeding combination of intermediates.

See Evidence §13 (2), §13 (3), §13 (5); Local Rates and Combinations; Long and Short Hauls §6¾.

(a) Rate on cottonseed hulls from Greenville, Mass., to Marietta, Ga., exceeded the aggregate of intermediate rates to and from Atlanta, Ga. Reparation awarded. Pinson Brokerage Co. v. C. & G. R. R. Co., 89 I. C. C. 125.

(b) Through rate on scrap iron from South Range, Mich., to Duluth, Minn.; exceeded the aggregate of intermediate rates to and from Houghton, Mich. Reparation awarded. West End Scrap Iron & Metal Co. v. Director General, as Agent, 89 I. C. C. 149.

(c) Rate on gasoline and petroleum from North Baton Rouge, La., to Pikeville, Tenn., exceeded the aggregate of intermediates to and beyond Chattanooga, Tenn. Reparation awarded. Standard Oil Co. of Louisiana v. Y. & M. V. R. R. Co., 89 I. C. C. 157.

(d) There is no violation of the aggregate of intermediates clause of section 4 of the act unless carrier maintains a specific through rate which is higher than the lowest aggregate of intermediate rates over the same route. The product of intermediate rates treated by a rule which results in something less than the aggregate is not the aggregate within the meaning of this section. McLeod v. T. & P. Ry. Co., 89 I. C. C. 356, 357.

(e) Upon further argument, rates on iron and steel articles from Pittsburgh, Pa., and other points in western Pennsylvania to Cleveland, Lorain, Canton, and Akron, Ohio, found unreasonable to extent they exceeded the aggregate of intermediate rates contemporaneously in effect. Reasonable rates prescribed for future to Cleveland, Lorain, and Canton, and reparation awarded. Prior reports, 77 I. C. C. 439 and 78 I. C. C. 724. American Shipbuilding Co. v. Director General, as Agent, 89 I. C. C. 601.

(f) Long ago the Commission found that the fair measure of the reasonable-

ness of a joint through rate which exceeds the aggregate of the intermediate rates over the same route will be held to be the lowest combination that would apply if the joint through rate were canceled. Mason By Products Co. v. Director General, 92 I. C. C. 646, 649.

(g) Rates on petroleum and products from Lawrenceville, Ill., to Bristol, Va., Tenn., exceeded the aggregate of intermediate rates contemporaneously in effect. Reparation awarded. Indian Refining Co. v. Director General, as Agent, 89 I. C. C. 657.

(h) Rates higher than the aggregate of intermediate rates are prima facie unreasonable. Midland Coal Company v. St. L. S. F. Ry., 92 I. C. C. 283, 284.

(i) Rates which exceed the aggregate of intermediate rates are prima facie unreasonable. Mason By Products Company v. Director General, 92 I. C. C. 646, 648.

(j) A joint rate which exceeds the aggregate of the intermediate rates is prima facie unreasonable. Kaw River Sand & Material Co. v. Director General 93 I. C. C. 346, 347.

(k) Except in special and unusual circumstances the fair measure of the reasonableness of a joint rate that exceeds the combination between the same points via the same route will hereafter be held to be the lowest combination that would lawfully apply if the through joint rate were canceled. Omaha Chamber of Commerce v. A. B. & A. Ry., 93 I. C. C. 584, 586.

(l) Joint rates which exceed the aggregate of intermediates are not unreasonable where there is a showing that one or both factors of the lower combinations were depressed rates. Omaha Chamber of Commerce v. A. B. & A. Ry. 93 I. C. C. 584, 586.

(m) Joint rates constructed as those here in issue are higher than combinations of local or proportional rates when, as here, one factor of the combination covers transportation within 25% territory, and the other factor covers transportation within 35% territory or interterritorial traffic. The contrary is true on traffic moving between the higher rated territories. It is not a fair application of the rule to condemn these joint rates as unreasonable inasmuch as no compensating advantage is accorded when the situation is reversed. Omaha Chamber of Commerce v. A. B. & A. Ry., 93 I. C. C. 584, 586.

(no) Ordinarily the through rate should be somewhat less than the combination of intermediate rates. Deviations from this rule have been permitted in instances where it has been shown that one of the factors has been unduly depressed. Class and commodity rates from Utah, 95 I. C. C. 417, 422.

(p) Ordinarily it is the view of the Commission that where traffic moves in considerable volume, through rates should be lower than the sums of the separately established factors except in instances where one or both of such separately established factors is shown to be in some manner depressed. Through rates no matter how constructed, must in all cases be reasonable and where increases are proposed the burden is upon the respondents to justify the resultant increased rates. Butter, eggs, dairy products and poultry, 96 I. C. C. 19, 29.

(qr) A joint rate which exceeds the aggregate of intermediate rates is prima facie unreasonable. Illinois Steel Bridge Co. v. C. B. & Q. R. R., 96 I. C. C. 698, 700.

(s) The Commission has consistently adhered to the view in recent years that joint rates should be somewhat lower than the aggregate of intermediate rates because of the facts that ton mile earnings should decrease as distance increases and that, as a general rule, a through movement entails less terminal expense than two local movements to and from the intermediate point. Fargo Commercial Club v. A. & W. Ry., 98 I. C. C. 691, 723.

(t) Rate on cotton denims from Little Rock, Ark., to Beloit, Wisc., exceeded aggregate of intermediate rates contemporaneously in effect to and beyond St. Louis, Mo. Reparation awarded. Rosenblatt & Sons v. Director General, 91 I. C. C. 18.

(u) Application of joint rates which equal combination of locals is not of itself a sufficient reason for their condemnation. Lumber from Missouri Points to Iowa, 91 I. C. C. 218, 220.

(v) Rates on cypress lumber and lumber articles from Waycross, Hebardville, and Hopkins, Ga., to southeastern, eastern trunk-line, New England and central

territories found not unreasonable except in instances where prima facie showing is made in connection with through rates in excess of aggregate of intermediates. Hebard Cypress Co. v. A. & R. R. R. Co., 91 I. C. C. 343, 352.

(w) Following Hudson Mule Co., 63 I. C. C. 6, and Live Stock to, from and between Points in Southeast, 74 I. C. C. 419, rates on horses and mules from points north of Ohio and west of Mississippi river to Atlanta, Ga., and Birmingham, Ala., found unreasonable to extent they exceeded aggregate of intermediate rates contemporaneously in effect. Reparation awarded. Hudson Mule Co. v. Director General, 91 I. C. C. 459.

(x) Rate charged on c. l. shipment of hubs, in the white, from Tullahoma, Tenn., to South Clarksville, Va., found unreasonable to extent it exceeded combination rates contemporaneously in effect over route of movement. Reparation awarded. Lynchburg Chamber of Commerce v. N., C. & St. L. Ry., 91 I. C. C. 586.

(y) Complainant attacked combination class and commodity rates charged on crushed stone, carloads, reconsigned out of route or return hauled from nonproducing points as unreasonable. The car was shipped April 27, 1923, from Port Deposit, Md., consigned through error to Linden Hall, Pa., and reconsigned at Marysville, Pa., to Mendenhall, Pa. Charged $1.15 to Marysville, and sixth class of $4.30 Marysville to Mendenhall. Through Marysville to Mendenhall there is a combination of rates lower than that charged, constructed as follows: Port Deposit to Marysville, $1.15; sixth class rate Marysville to Bainbridge, Pa., $2.50; commodity rate from that point to Mendenhall, $1.15, less 30c, Jones I. C. C. U. S. 1. HELD: Rate attacked of $4.30 Marysville to Mendenhall unreasonable to extent it exceeded $1.75 per ton, reparation awarded. Budding Co. v. P. R. R., 100 I. C. C. 411.

(z) It is a generally accepted principle of rate making, which has frequently found expression in the Commission's decisions, that through rates should be less than the sum of the intermediate rates. Southern Class Investigation, 100 I. C. C. 513, 661.

(aa) Joint fourth-class rates on matches moving from Oswego, N. Y., to New York City by rail, thence by water to Charleston, S. C., Brunswick, Ga., and Jacksonville, Fla., found unreasonable to extent they exceeded the aggregate of the contemporaneous fourth-class rates from Oswego to New York and the commodity rates by water beyond. Reparation awarded. Diamond Match Co. v. Director General, 92 I. C. C. 68.

(bb) Proposed changes in tariff description of beets, carrots, and parsnips from Texas points to eastern destinations, by adding to description "with tops" the words "or clipped tops" found not justified. The clipped variety consists of those with only leaves removed, from 3 to 6 inches of the stems being retained to permit tying in bundles. The trade considers commodities so shipped as being "without tops," and on them lower rate apply under present tariff description. To permit the proposed change would effect increases and unauthorized departures from aggregate-of-intermediates provision of section 4 of the act, which carriers made no attempt to justify. Beets and Carrots from Texas, 92 I. C. C. 141.

(cc) The commission regards rates which are higher than the aggregate of intermediate rates as prima facie unreasonable where there is no evidence to overcome that presumption. Midland Coal Co. v. St. L.-S. F., 92 I. C. C. 283, 284.

(dd) Rates on alfalfa meal from Melina, Colo., to St. Louis, found unreasonable to extent it exceeded the aggregate of intermediates contemporaneously in effect. Reparation awarded. Denver Alfalfa Products Co. v. Director General, 92 I. C. C. 326.

(ee) Through rate on refuse molasses from Grants Pass, Oreg., to Oakland, Calif., found unreasonable to extent it exceeded aggregate of intermediates contemporaneously in effect to and from San Francisco. Reparation awarded. Mason By-Products Co. v. Director General, 92 I. C. C. 646, 648.

(ffgg) Rates which exceed the aggregate of intermediates are prima facie unreasonable; Davison & Namack Foundry Co., 81 I. C. C. 345, and fair measure of reasonableness of a joint through rate which exceeds aggregate of intermediates over same route is lowest combination that would apply if joint rate were canceled. Windsor Turned Goods Co., 18 I. C. C. 162. Mason By-Products Co. v. Director General, 92 I. C. C. 646, 648, 649.

(hh) While commission has consistently found that a joint rate that ex-

ceeds the aggregate of intermediate rates over the same line or route is prima facie unreasonable, it has never found that the charging of such a rate is an overcharge. Moreover, it has always maintained that "the statute requires rigid observance of the tariff, without regard to the inherent lawfulness of the rates specified." Pacific Adjustment Co. v. Director General, 93 I. C. C. 50, 52.

(ii) Joint rate on furniture from Fort Smith to Jackson found unreasonable to extent it exceeded the aggregate of intermediates to and from Vicksburg. Reparation awarded. Jackson Traffic Bureau v. A. & V., 93 I. C. C. 55.

(jj) Rates on steel grinding balls moving water-and-rail from Chrome, N. J., to Ada, Okla., via Galveston, found not unreasonable or in violation of aggregate-of-intermediates clause of section 4 of the act. Tariffs in effect provided for alternative application of maximum rates, whereby rates to Deming, N. Mex., and Clifton, Ariz., would apply if lower than rate to Ada. The Clifton and Deming rates, however, were restricted to routes other than route of movement, and application of the alternative rule was contingent upon specific reference being made to it in connection with rates to destination in the tariff, and no such reference was made in connection with rate to Ada. Moreover, rate from point of origin to Deming was higher than rate to Ada. Oklahoma Portland Cement Co. v. A., T. & S. F., 93 I. C. C. 203.

(kk) Joint rate on gasoline from Salt Lake City to Baker, Oreg., found unreasonable to extent it exceeded the aggregate of intermediate rates to and beyond Weiser, Idaho. Reparation awarded. Standard Oil Co. v. Director General, 93 I. C. C. 278.

(ll) Joint class E rates on sand from St. Joseph, applicable under the intermediate rule from Turner, Kansas., to Bolivar and Cabool, Mo., found unreasonable to extent they exceeded combinations to and from Kansas City. No evidence was presented by defendants to justify rates on basis higher than Kansas City combination. Reparation awarded. Kaw River Sand & Material Co. v. Director General, 93 I. C. C. 346.

(mmnn) Rates on horses and mules between Fort Worth, and points in Kansas and Missouri found unreasonable to extent they exceeded the aggregate of intermediates contemporaneously in effect. Reparation awarded. Horse and Mule Rates in the Southwest, 1924, 93 I. C. C. 479.

(oo) Joint rates from points in Florida to Omaha, to which were applied the interterritorial increases of 33⅓ per cent authorized in Increased Rates, 1920, 58 I. C. C. 220, in lieu of the territorial increases based on rates to and from Jacksonville, found not unreasonable or in violation of the aggregate-of-intermediates provision of section 4 of the act. Situation presents a "special and unusual circumstance" sufficient to justify a departure from a strict application of the rule laid down in Windsor Turned Goods Co., 18 I. C. C. 162, that the fair measure of reasonableness of a joint rate that exceeds the combination of locals is the lowest combination that would apply if the joint rate were cancelled. Moreover, it is not a fair application of the rule to condemn these joint rates as unreasonable inasmuch as no compensatory advantage is accorded when the situation is reversed. Omaha Chamber of Commerce v. A., B. & A., 93 I. C. C. 583.

(pp) A joint rate does not violate the aggregate-of-intermediates clause of the fourth section unless it exceeds the sum of the rates contemporaneously effective to and from some intermediate point. It can not be said to violate that clause if it must first be broken up into component parts in order to provide rates to and from an intermediate point which are lower in the aggregate, because in such event the basis of comparison is destroyed. Omaha Chamber of Commerce v. A. B. & A., 93 I. C. C. 583, 585.

(qq) A joint rate which does not violate the aggregate-of-intermediates clause of the fourth section may still be unreasonable because it exceeds the through charges which would be applicable in event of its cancellation. Omaha Chamber of Commerce v. A., B. & A., 93 I. C. C. 583, 585, 586.

(rr) Joint rates which exceed the aggregate of intermediates are prima facie unreasonable, but the presumption is rebuttable. La Crosse Chamber of Commerce v. Director General, 93 I. C. C. 602, 603.

(ss) Joint rates exceeding the sum of intermediate rates subject to the act contemporaneously in effect are prima

facie unreasonable. Alton Mercantile Co. v. A. & W. Ry., 95 I. C. C. 645, 656.

(tt) Joint rates on clean rice from points in Arkansas, Louisiana, and Texas to points in Oklahoma found unreasonable to extent they exceeded the aggregate of intermediates contemporaneously in effect, carrier having offered no evidence to rebut the presumption of prima facie unreasonableness attaching to such rates. Reparation awarded. Alton Mercantile Co. v. A. & W. Ry., 95 I. C. C. 645, 656.

(uu) Where traffic moves in considerable volume through rates should be lower than the sums of the separately established locals except in instances where one or both of such separately established factors is shown to be in some manner depressed. Butter, Eggs, Dairy Products, and Poultry, 96 I. C. C. 19, 29.

(vv) Combination rates assessed on shipments of fruits and vegetables originally consigned from western points to New York, but reconsigned from Croston, N. J., a hold point, to Philadelphia and Washington, found illegal to extent that they exceeded those which would have accrued at the joint rates from the point of origin to ultimate destinations, plus a reconsignment charge, the applicable transcontinental tariffs containing no restrictions prohibiting such movement. Freeman Grain Co., 68 I. C. C. 559. Van Dusen Harrington Co. 47 I. C. C. 59. Steinhardt & Kelly v. E. R. R. Co., 96 I. C. C. 229.

(ww) Contention that through and local rates from Mount Harris, Colo., to destinations in Nebraska, were in violation of aggregate of intermediates provision of the fourth section, not sustained. The the sum of the two separate rates and aggregate of intermediate rates within the meaning of the fourth section was not the sum of these rates subjected to combination rule. See Caddo Central Oil & Refining Co., 83 I. C. C. 734. Such aggregates were higher than rates charged and there was no violation of the fourth section. Crowell Lumber & Grain Co. v. Director General, 96 I. C. C. 259, 261.

(xx) Rate on bridge iron, in carloads, from Chicago territory to points in Texas, following decision in 87 I. C. C. 115, found unreasonable to the extent it exceeded the aggregate through charges contemporaneously in effect to and beyond Shreveport, La. Reparation awarded. Illinois Steel Bridge Co. v. C. B. & Q. R. R. Co., 96 I. C. C. 698.

(yy) Rate charged for the transportation of gasoline, in carloads, from points in Texas to Milwaukee, Wis., found applicable. While such rate, which was the through rate, was greater than the sum of the intermediate rates in violation of the fourth section, no unreasonableness or violation of the fourth section was alleged and no evidence of unreasonableness of the rate charged was offered. Complaint dismissed. Producers Refining Co. v. St. L. S. W. Ry. Co., 96 I. C. C. 701.

(zz) Sixth-class rate on potatoes, moving from Hightstown, Cranbury, Jamesburg, Plainsboro, Prospect Plains, and Windsor, N. J., to New York by rail, thence by water to Jacksonville, Fla., found unreasonable to extent it exceeded the aggregate of contemporaneous fifth-class rate from points of origin to New York and a proportional rate beyond. Reparation awarded. Chamberlin & Barclay v. C. S. S. Co., 98 I. C. C. 7.

(3a) Present rates, established subsequent to movement of shipments here in issue, on lumber from Gantt and Sports, Ala., to Pensacola, Fla., via Andalusia, Ala., found not unreasonable, but group rates assessed on shipments under consideration found to have been in contravention of the aggregate-of-intermediates clause of the fourth section and unreasonable to extent they exceeded lower combination on Andalusia contemporaneously in effect from origin points to destination. Reparation awarded. Pensacola Creosoting Co. v. C. of G. Ry., 98 I. C. C. 36.

(3b) Fifth-class rate on steel hoops shipped during Federal control from Allegheny, Pa., to Cleveland, Ohio, found unreasonable to extent it exceeded aggregate of the contemporaneous commodity rates to and beyond Youngstown, Ohio, the route via which a great majority of the shipments are known to have moved. Reparation awarded. Greif Bros. Cooperage Co. v. Director General, 98 I. C. C. 419.

(3c) Rates on molding sand from Ottawa and Utica, Ill., to Buchanan, Mich., found not unreasonable or otherwise unlawful except to extent they exceeded aggregates of intermediate rates contemporaneously in effect over routes of movement. Reparation awarded. Clark

Equipment Co. v. C., B. & Q. R. R. Co., 98 I. C. C. 465.

(3d) The commission has repeatedly said that a joint rate which exceeds the aggregate of the intermediates is prima facie unreasonable, and it is not convinced that the aggregate of the intermediates represents the proper measure for the future in the case here involved. National Asso. of Furniture Mfrs. v. A. A. R. R. Co., 98 I. C. C. 501, 508.

(3e) Rates on cement plaster from Plasterco, Plasterco Junction, and Hamlin, Tex., to Meridian, Miss., and Middlesborough, Ky., found unreasonable. Revision of rates following 64 I. C. C. 107 and 306 resulted in through rates which exceeded combination of proportional rates to Memphis, Tenn., and local beyond. Reparation awarded. Texas Cement-Plaster Co., v. A. & M. R. R. Co. 98 I. C. C. 519.

(3f) Through rates to certain North Dakota points exceed the aggregates of intermediate factors to and from Fargo, using to Fargo rates made by use of the exceptions to the classification. Fourth-section violations should be promptly eliminated. Fargo Commercial Club v. A. & W. Ry. Co., 98 I. C. C. 691, 714.

(3gh) The commission has consistently adhered to the view in recent years that joint rates should be somewhat lower than the aggregates of the intermediate rates because of the fact, among others, that, as a general rule, a through movement entails less terminal expense than two local movements to and from the intermediate point. Fargo Commercial Club v. A. & W. Ry. Co. 98 I. C. C. 691, 723, 724.

(3i) Complainant attacked commodity rate charged on 37 cars of lubricating oil and gasoline shipped between Oct. 5, 1921 and Jan. 4, 1922 from Burkburnett, West Port Arthur, Witchita Falls, Fort Worth, North Fort Worth, and Houston, Tex., to Dayton, O., as unjust, unreasonable, unjustly discriminatory, unduly prejudicial and in excess of aggregate of intermediate rates. Charged joint through rate of 61c. Complainant makes no showing that the through rate charged was higher than the lowest aggregate of intermediate rates over the routes over which the shipments moved. HELD, rate attacked not unreasonable or otherwise unlawful, complaint dismissed. Refiners Oil Co. v. P. R. R., 102 I. C. C. 249.

(3j) The fair measure of the reasonableness of a joint through rate that exceeds the combination between the same points via the same route is and will hereafter be held to be the lowest combination that would lawfully apply if the joint through rate were canceled. Refiners Oil Co. v. P. R. R. 102 I. C. C. 249, 251.

(3k) No presumption of unreasonableness attaches to a joint through rate applicable over a particular route because a lower combination applies over another route. Refiners Oil Co. v. P. R. R. 102 I. C. C. 249, 251.

(3ka) In original report, 89 I. C. C. 601, rates on iron and steel articles from points in Pennsylvania to Cleveland and Lorain, Ohio, were found unreasonable to extent they exceeded aggregate of intermediate rates over routes of movement. Some shipments moved via a route through Wellsville and others via route through Youngstown, the aggregate of intermediates via the Wellsville route being higher than via the Youngstown route. HELD: Finding was in fact a finding that rates were unreasonable per se and regardless of measure of aggregate of intermediates via Wellsville, the record amply supports a finding that rates over that route were unreasonable to extent they exceeded contemporaneous aggregate of intermediates via Youngstown. Reparation awarded. American Shipbuilding Co. v. Director General, 102 I. C. C. 530.

(3l) The fair measure of the reasonableness of a joint rate that exceeds the combination between the same points via the same route is and will hereafter be held to be the lowest combination that would lawfully apply if the joint through rate were canceled. See 18 I. C. C. 162. Hollingshead Co. v. T. & P. Ry., 102 I. C. C. 603, 604.

(3la) Joint rate on lumber from Golden, Miss., group points to Buffalo-Pittsburgh territory found unreasonable to extent it exceeded the aggregate-of-the-intermediate rates to and from Corinth, Miss. Northeast Mississippi Traffic Bureau v. A. & V., 102 I. C. C. 611.

(3m) The mere fact that through rates are the same as the combination of local factors to and from intermediate points does not constitute proof of unreasonableness, in the absence of a showing that neither factor is depressed

below what would normally be a reasonable basis. Caruso & Co. v. C. & E. I. Ry. 102 I. C. C. 619, 621.

(3n) It is a generally accepted principle of rate making which has frequently found expression in opinions of the Commission, that through rates should be less than the sum of the intermediate rates. Caruso & Co. v. C. & E. I. Ry. 102 I. C. C. 619, 621.

(3na) Rates on horses and mules from Wichita, Kans., to Houston and other Texas destinations found unreasonable to extent they exceeded the aggregate of the intermediate rates contemporaneously in effect from and to same points over route of movement. Reparation awarded. Wichita Chamber of Commerce v. Director General, 102 I. C. C. 745.

(3o) A through rate higher than the aggregate of the intermediate rates over the same route is prima facie, but not conclusively, unreasonable. The presumption of unreasonableness can be rebutted upon satisfactory evidence. Lewiston Elevator Co. v. C. G. W. R. R. 104 I. C. C. 473, 475.

(3p) Complainant attacked commodity rates charged on iron and steel articles, including steel bars, plates, rods, angles and other forms, from the Pittsburgh, Pa., district to Canton and Massillon, O., as unreasonable, unduly prejudicial and in violation of section four. Canton and Massillon are on the Pensylvania, B & O., and W. & L. E. Shipments to these destinations from the Pittsburgh district may move over the Pennsylvania or B. & O., direct or over those lines or the P. & L. E., in connection with the N. Y. C., and W. & L. E., through Youngstown and Alliance, O., among other junction points. Massillon is 7.8 miles west of Canton over the Pennsylvania which is the short line to both destinations. Alliance is 18.6 miles Canton on the same line. The distances from Pittsburgh to Canton and Massillon over the Pennsylvania are 101.6 and 109.4 miles, respectively. Rate charged to Canton was fifth class rate of 20c. The fourth section violation arise from the existence of combinations of 19c on Youngstown (9.5c and 9.5c) and 17.5c on Alliance (11.5c and 6c) and of a rate of 12.5c from Butler and Natrona, Pa., on the Butler branch of the Pennsylvania north and east from Pittsburgh to Butler. The latter rate applies through Pittsburgh. HELD, rate attacked unreasonable to extent it exceeded aggregate of intermediates, reparation awarded. Canton Bridge Co. v. B. & O. R. R. 107 I. C. C. 141.

(3q) Joint rates which exceed the aggregate of the intermediates have uniformly been found by the Commission to be prima facie unreasonable. The presumption of unreasonableness may be overcome by showing that the sum of the intermediate commodity rates was less than a reasonable maximum charge. Hamm Brewing Co. v. Director General 107 I. C. C. 600, 602.

(3r) Joint rates on tin plate from McKeesport, Pa., Yorkville, Ohio, and Cumberland, Md., to New London, Wis., moving via Ludington, Mich., thence by car ferry to Manitowoc or Kewaunee, Wis., thence by rail to destination, found not unduly prejudicial but unreasonable to the extent that they exceeded the combinaton of proportional and local factors which would have applied in the absence of joint rates. Proportional factors which would have been applicable were so restricted as to result in violations of section 4 from McKeesport and Yorkville, but not from Cumberland. Reasonable rates prescribed for the future, and reparation denied. Borden Co. v. A. A. R. R. Co., 100 I. C. C. 153.

(3s) Rate on watermelons and vegetables from Merced, Calif., to Spokane, Wash., found unreasonable to extent it exceeded the aggregate-of-intermediate rates contemporaneously applicable, but rates from certain other points in California to Spokane found not unreasonable. Reparation awarded. Nash Spokane Co. v. Director General, 100 I. C. C. 223.

(3t) Joint third-class rates on plate glass from Toledo and Rossford, Ohio, Saginaw, Mich., and Blairsville, Pa., to Memphis, Tenn., found not unjustly discriminatory or unduly preferential, but found to have been unreasonable to extent they exceeded the contemporaneous aggregate of intermediates, composed of third-class rates to Ohio River crossings and commodity rates beyond. Reparation awarded. Memphis Freight Bureau v. B. & O., 100 I. C. C. 327.

(3u) Upon general investigation instituted by commission on own motion of interstate class rates within southern territory and between southern and official territories, FOUND: Through rates

lower than combination of locals to and from boundary line should be established between official and southern territories, such rates to be relatively no higher than those prescribed for application within southern territory. Southern Class Rate Investigation, 100 I. C. C. 513, 664.

(3v) Commodity rates from points on the N., C. & St. L. to junctions with other lines may be increased sufficiently to prevent departures from the aggregate of intermediates rules of the fourth section. Dairy Products from Southern Points, 100 I. C. C. 756.

(3w) Rate charged on two carloads of cottonseed from Clarksville, Tex., to Memphis, Tenn., found unreasonable to extent it exceeded the aggregate-of-intermediates rates contemporaneously applicable over route of movement. Russell-Heckle Seed Co. v. M. P. R. R., 101 I. C. C. 29.

(3x) A rate which exceeds the aggregate of intermediates is prima facie unreasonable, but that presumption is not conclusive. See 78 I. C. C. 107. Ogden Packing & Provision Co. v. A., T. & S. F., 101 I. C. C. 236, 255, 256.

(3y) Complainant attacked fifth class rates charged on 13 cars of steel plates and channels and on iron and steel pipe shipped between Sept. 7, 1923 and August 30, 1924 from Girard, New Philadelphia, Youngstown and Newton Falls, O., to Parkersburg, W. Va., as unjust, unreasonable and in violation of the fourth section. Shipments moved over B. & O., through Wheeling, W. Va., HELD, rates attacked unreasonable to extent they exceeded the aggregate of intermediate rates of 19.5c from New Philadelphia and 21.5c from Girard, Youngstown and Newton Falls, reparation awarded. Parkersburg Rig & Reel Co. v. B. & O. R. R. 109 I. C. C. 209.

(3z) A through rate, particularly for long hauls, might be somewhat lower than the aggregate of intermediate rates. Iowa Railroad Commissioners v. C. R. R. Co. of N. J. 109 I. C. C. 273, 283.

(4a) Complainant attacked commodity rates on petroleum products, carloads, from March 15, 1918 and Feb. 27, 1920 from and to points in Wyoming, Idaho, Colorado, Utah and Montana as unjust, unreasonable and in excess of applicable rates to the extent they exceeded rates made in accordance with the socalled combination rule. No. 15069. Shipments moved interstate from Casper, Wyo., over the Burlington to Clearmont, Wyo., thence Wyoming, Ry. to Buffalo, Wyo. During the period of movement specific commodity rates were in effect from Casper to Clearmont and from Clearmont to destination. Applicable rates were joint fifth class rates considerably higher than the Clearmont combination. Basis of Clearmont combination using the combination rule was established May 15, 1922. No. 15069 (subs. 1 to 9.) Charged combination of rates the trunk line tariffs providing for the use of the combination rule. HELD, through fifth class rates from Casper Wyo. to Buffalo were applicable and prior to August 13, 1918 unreasonable to extent they exceeded the aggregate of intermediate rates, and on and after that date unreasonable to the extent they exceeded the rate under the combination rule, reparation awarded. Continental Oil Co. v. Director General 109 I. C. C. 289.

(4b) The aggregate of intermediate rates must be determined without reference to the combination rule. Darnell Commission Co. v. M. P. R. R. 109 I. C. C. 427.

(4c) Complainant attacked joint rate of $1.07 charged on three cars of dried beans shipped Nov. 24, 1917 and March 11 and 27. 1918 from Wilmington and Modesto, Calif., to Jacksonville, Fla., as unjust, unreasonable and unduly prejudicial to extent it exceeded $1.04. Shipments were routed by shipper S. P. Sunset L. & N., S. A. L. and moved as routed through New Orleans, La., thence L. & N., either to River Junction, Fla., or Montgomery, Ala. and thence S. A. L., and connections. The sole question is whether a combination rate based on a point that contemplates an out of line or back haul of over 1,000 miles represents the aggregate of intermediate rates via the route over which shipment moves. HELD, rate applicable was the joint through rate applied, complaint dismissed. Resser & Fitch v. Director General, 109 I. C. C. 724.

ALL OTHER CITATIONS

Cities of Marshall and Jefferson v. T. & P. Ry. Co., 85 I. C. C. 115; Fies & Sons v. Director General, as Agent, 85 I. C. C. 195; Elk Brand Shirt & Overall Co. v. D. & S. Ry. Co., 85 I. C. C. 320; Municipal Electric & Water Depts. v. C. I. & W. R.

R. Co., 85 I. C. C. 446; Fort Wayne Rolling Mill Corp. v. Director General, as Agent, 85 I. C. C. 523; Simms Oil Co. v. H. & T. C. R. R. Co., 85 I. C. C. 537; Parkersburg Rig & Reel Co. v. Director General, as Agent, 85 I. C. C. 665; Hoskins Lumber Co. v. Director General, as Agent, 85 I. C. C. 740; Darling & Co. v. Director General, as Agent, 88 I. C. C. 208; Jackson Paper Co. v. B. S. L. & W. Ry. Co., 88 I. C. C. 219; Ridenour-Baker Mercantile Co. v. A. T. & S. F. Ry. Co., 88 I. C. C. 273; Coal to Minnesota Points, 88 I. C. C. 631; Indiana Board & Filler Co. v. W. Ry. Co., 88 I. C. C. 754.

§15½. Rate Via Other Routes.

See Evidence §47.

(a) Joint-line combination rates applicable via Pecos, Tex., on traffic between El Paso, Tex., and points in New Mexico, found not unreasonable, discriminatory, or unduly prejudicial as compared with lower single-line joint rates applicable over a shorter route through Clovis and Belen, N. Mex. Complainant bases his case upon theory that if single-line basis of rates were available over the joint-line route, a more expeditious service would be possible by reason of relatively shorter mileage but evidence as to present service over respective routes is vague. Moreover, establishment of joint rates over the joint-line route is not shown to be necessary in the public interest. El Paso Chamber of Commerce v. A. T. & S. F. 92 I. C. C. 75.

ALL OTHER CITATIONS

Portland Flouring Mills Co., v. G. N. Ry. Co., 88 I. C. C. 94.

§16. Reparation.

See Procedure Before Commission V; Reparation.

(ab) Even though a factor of a combination rate appears to be unreasonable no reparation will be awarded if the through charges paid are not unreasonable. Standard Potash Co. v. Director General 92 I. C. C. 337, 338.

(c) Under a joint rate the liability is joint and several. Consolidated Coal Co. v. Director General, 93 I. C. C. 53, 54.

(d) On the question of reparation the reasonableness of the joint rate as a whole must be considered. Ontario Paper Co. v. C. N. Rys., 95 I. C. C. 66, 72.

(e) Relying on joint rate and route quoted by originating carrier's agent, complainant specified such rate and route in bill of lading, and prepaid charges. However there was no joint rate in connection with originating line, and higher combination rate was applicable. Undercharges collected at destination. Route of movement was shortest route in connection with originating line, and applicable rate was lowest available rate via any route over which originating line could have received a haul. Notwithstanding fact that originating carrier misquoted rate to complainant, it was not obligated to turn shipment over to competing carriers at point of origin and forego a haul thereon. Newsom v. M. & O. R. R. Co., 91 I. C. C. 68.

(f) Where joint rates are concerned each carrier has some control over those rates and contributes to injury where they are unreasonable. But where through rates are made up of separate locals of individual carriers, none of whom control any factor except that maintained by it, or contribute to injury except to extent of unreasonableness in its particular rates, to find in such cases that carriers are jointly and severally liable would be to require one or more carriers to bear injury done by another or other participating carriers where former had no control over actions or rates of latter, and under circumstances which render it impossible for carriers thus injured to obtain contribution from other carrier or carriers. Midland Coal Co. v. M. V. R. R. Co., 91 I. C. C. 571, 573.

(g) Where an unreasonable joint rate has been collected, liability of parties to such action is joint and several, and Commission may award reparation against one of defendant roads which participated in traffic, even though other roads which performed a part of service are not made parties defendant. See 6 I. C. C. 378 and 21 I. C. C. 20. Midland Coal Co. v. M. V. R. R. Co., 91 I. C. C. 571, 572, 573.

(h) Shipments originated during Federal control but were delivered after that period had terminated. Upon contention of Director General that Commission may not award reparation on such shipments because corporate carriers are not made defendants. HELD: Applying well-established principle that charging of an unreasonable rate is a tort, and that parties to such rate are jointly and severally liable for damages resulting from its collection, recovery may be had from Direc-

tor General in connection with such shipments. Darnell Taenzer Case, 245 U. S. 531; International Nickel Co., 66 I. C. C. 627. Omaha Refining Co. v. Director General, 91 I. C. C. 575, 576.

(ij) Complainant seeking reparation, as overcharges, based upon violation of aggregate of intermediates provision of section 4 of the act, dismissed following Portland Seed Co. case, 264 U. S. 403. While case cited did not involve violations of that clause, the court's reasoning is conclusive as applied to it as well as to long-and short-haul clause. Published rates must be charged and paid whether lawful or not; and while an unlawful rate may subject carrier to payment of penalties to the Government, its charging does not give shipper any right save to recover "the full amount of damage sustained in consequence of any such violation of the provisions of this act." It would be going too far to find that unauthorized publication established the lower aggregate of intermediate rates as the maximum permissible charge, and only rate which could be demanded. Pacific Adjustment Co. v. Director General, 93 I. C. C. 50.

(k) On shipments moving during Federal control objection to complaint was raised by director general because one participating carrier was not named as a party defendant; also that since another carrier named was not under Federal control the commission's jurisdiction does not extend to that portion of the transportation over the latter's line. HELD: Rate attacked is a joint rate and, even if Federal control had not intervened, it would not have been necessary to name all carriers participating in the transportation as parties defendant. Moreover, under joint rates liability of defendants is joint and several. Consolidated Coal Co. v. Director General, 93 I. C. C. 53, 54.

(l) Where shipments move under joint rates, the nonjoinder of one of the participating carriers as a party defendant is immaterial. Gulf City Mfg. Co., 66 I. C. C. 763. Standard Mineral Co. v. N. S. R. R., 95 I. C. C. 704, 705.

(m) Facts that rates to an intermediate point were in excess of those to more distant points is not proof of unreasonableness, nor, in absence of evidence of specific damage to shipper, is it a sufficient basis for an award of reparation. Vessler Co. v. E. J. & E. Ry., 96 I. C. C. 75, 76.

(n) Shipments originated during Federal control but were delivered after that period had terminated. Complaint named delivering carrier only as a party defendant. FOUND: Since rates charged were joint rates the nonjoinder as defendants of other carriers participating in the transportation is not material. See 66 I. C. C. 763. Stailey Lbr. Co. v. P. R. R., 96 I. C. C. 175, 176.

(o) Shipments of milk and cream from Iowa points to Omaha, Nebr., moved over indirect route via Tara, Iowa, some of the shipments being unrouted and others being routed via Illinois Central. Charges based upon applicable rates were collected. Upon contention that shippers are entitled to through express rates to Omaha via Onawa or Sioux City, or to joint baggage and express rates equal to express rates applicable over these routes prior to decision in Express Rates on Milk and Cream, 74 I. C. C. 427, HELD: Contention has force in connection with demand for reasonable route and rate for future but its cogency is not apparent as to shipments in the past. Furthermore, as to shipments which were unrouted, there is no distinction in principle between this case and the situation presented in 24 I. C. C. 626, wherein commission refused to award reparation to basis of subsequently established joint through rate based upon the aggregate of intermediates over short lines which was lower than joint rate over more indirect route of movement. Kirschbraun & Sons v. G. N. Ry. Co., 100 I. C. C. 28, 32, 33.

(p) Contention by carriers that no reparation may be awarded covering a period of more than two years prior to filing of a subcomplaint; that original complaint did not put in issue the through rates; that a finding of unreasonableness and award of reparation can not be made because carrier participating in one factor is not a party defendant; and that as to the other factor reparation to full amount can not be made against delivering carrier named in original complaint because other participating carrier is not a party, not sustained. Allegations in original complaint specify through rate and are in substantially same form as in previous cases where commission found rate charged unreasonable to extent a specified factor exceeded a certain amount. See 92 I. C. C. 29; 88 I. C. C. 535; and 87 I. C. C. 668, 672. Delivering carrier named in

original complaint participated in joint-rate factor and is jointly and severally liable irrespective of whether other participant in that joint rate is a party to the proceeding. Barrett Co. v. N., C. & St. L., 101 I. C. C. 279, 280, 281.

V. TARIFFS AND CONSTRUCTION.

See Tariffs IV.

§17. In General.

(a) Neither through billing, uninterrupted movement, continuous possession by the carrier, nor unbroken bulk, is an essential of a through interstate shipment. There are common incidents of a through shipment; and when the intention with which a shipment was made is in issue the presence, or absence of one or all of these incidents may be important evidence bearing upon that question. But where it is admitted that the shipment made to the ultimate destination had at all times been intended, these incidents are without legal significance as bearing on the character of the traffic. The mere fact that cars received on interstate movement are reshipped by the consignee, after a brief interval, to another point does not of course establish an essential continuity of movement to the latter point. The reshipment, although immediate, may be an independent intrastate movement. The instances are many where a local shipment follows quickly upon an interstate shipment and yet it is not to be deemed a part of it, even though some further shipment was contemplated when the original movement began. Shipments to and from distributing points often present this situation, if the applicable tariffs do not confer reconsignment or transit privileges. The distinction is clear between cars of that character and the one at bar, where the essential nature of the traffic as a through movement to the point of ultimate destination is shown by the original and persisting intention of the shippers which was carried out. Goldsboro Chamber of Commerce v. A. C. L. R. R., 91 I. C. C. 315, 320.

(b) In interest of tariff simplification it is commission's opinion that joint rates on wool should be published from Pacific coast terminals and adjacent points to eastern destinations, if practicable, in one or a very few consolidated tariffs, and that such tariffs should include all transit rules, regulations and practices appertaining to movement of wool. Wool Rates Investigation, 1923, 91 I. C. C. 235, 260.

§18. Application of Proportional Rate.

See Supra §13½; Across Lake Rates (b); Facilities and Privileges §11½, §15, §18; Proportional Rates; Reconsignment §6¼.

(a) Wherever the through rate is equal to the sum of the locals a dealer situated at the point where the locals combine, as, in this case, at Cairo, may avail himself of such advantages as may result from making two shipments instead of one, but to obtain such advantages he must bear the increased expense incident to two shipments and there must in fact be two shipments without any carrier or agent of the carrier acting for the shipper. Stetson Cutler & Company v. N. Y. N. H. & H. R. R. 91 I. C. C. 3, 5.

(b) Grain moving from country stations to reshipping points is subject to local rates and upon reshipment by rail, buyer at reshipping point pays difference between reshipping rate and joint all-rail rate from points of origin to ultimate destination. This difference, known as a "specific," is ordinarily less than local rate to reshipping point and results in a refund out of original charges to that point. Armour Grain Co. v. Director General, 92 I. C. C. 482, 483.

(ba) Rate assessed on wheat moving from Chappell, Nebr., to Wichita, Kans., there stored and later reshipped to San Diego, Calif., found not unreasonable. While tariff carrying rate claimed was applicable over circuitous route of movement because unrestricted in its application, on other hand, tariff of carrier moving the shipment into transit point did not authorize storage at that point where outbound movement is made over other lines, as was the case here. Moreover, shipment here moved out of direct route to such extent as to entail wasteful transportation of the nature objected to by commission in 73 I. C. C. 116. Wallingford Bros. v. C., R. I. & P., 102 I. C. C. 239.

(c) Complainant attacked net or reshipping rates of 9 and 11.5c charged on logs, carloads, shipped prior to and from and after August 26, 1920 to Louisville from points in Kentucky and Tennessee

on the Scottsville-Hartsville branch of the defendant as unjust and unreasonable to extent they exceeded 7.5c and 9.5c. From Gallatin, Tenn., a point on the main line of defendant 159 miles south of Louisville, a branch line extends northeast to Scottsville, Ky., a distance of 35 miles. From Hartsville Junction, Tenn., a point on the Scottsville line a branch extends southeast a distance of 11 miles to Hartsville, Tenn. From points on the Scottsville-Hartsville branch at which complainants shipments originated the distances to Louisville are from 174 to 194 miles, and the route is interstate. Prior to July 19, 1913, rates from stations on the branch line described were the same as those in effect from equidistant main line points but in making reductions on that date defendant through oversight left unchanged rates from said stations. On Aug. 20, 1920 when complainants first shipment was made, the net rate on logs to Louisville from points on the Scottsville Hartsville branch was 9c as compared with 7.5c on equidistant main line points. On June 5 1922 defendant published the 9.5c rate from points on the branch line. HELD, rates attacked unreasonable to extent they exceeded 7.5c prior to August 26, 1920 and 9.5c thereafter to May 27, 1922, reparation awarded. Wood Mosaic Co. v. L. & N. R. R. 102 I. C. C. 584.

(d) Contention that through rates on China-wood oil, higher than a combination composed of a commodity factor applicable on whale, fish, and coconut oil and fifth-class factor were in violation of section 4, not sustained. The commodity factor was not specifically applicable on China-wood oil and it would not be proper to base a fourth-section violation on an assumption of analogy. Glidden Co. v. E. R. R. Co., 100 I. C. C. 331, 332.

(e) Class A rates on shipments of household and office electric fans and motors, from Springfield, Ohio, to San Francisco, Calif., found not inapplicable or unreasonable. Lower combination sought, composed of a factor applicable on "sugar-making machinery" including "fans" and "motors" found not applicable to complainant's shipments which could not be put to any normal use in connection with machinery in a sugar mill. Therefore, no violation of the aggregate-of-intermediates provision of the fourth section existed. Robbins & Meyers Co. v. C., C., C. & St. L. Ry. Co., 100 I. C. C. 418.

§20a. Combination Rule.

See Infra §21.

(a) Although the combination rule, designed as a temporary expedient, is undesirable as a permanent tariff rule, carriers publishing one factor of a through rate under which there is substantial movement, should not be permitted to cancel application of the rule to that factor, unless carriers publishing other factors join in the cancellation or in the publication of joint through rates. Cancellation of Combination Rule on Petroleum, 73 I. C. C. 146. Combination Rule on Box Shooks, 89 I. C. C. 219, 220, 221.

(b) Proposed cancellation of combination rule in connection with proportional rate from Grand Junction, Colo., to other Colorado points on box shooks and car strips from Pacific coast, found not justified. Carriers publishing joint rates to Grand Junction would be compelled to protect existing through rates and accept a less compensation than the published point rates; tariffs containing joint rates to Grand Junction and proportional rate beyond would contain conflicting provisions as to application of the combination rule, resulting in confusion in application of the through rate; and complications as to division of joint rate would result. Combination Rule on Box Shooks, 89 I. C. C. 219.

(c) The so-called combination rule was adopted by the director general as a temporary expedient whereby combination rates on certain commodities, each factor of which had been increased under his General Order No. 28 by specific amounts should thereafter reflect only the increase which they would have received had they been published in the form of joint rates. It provided that where no specific through rates are in effect between points of origin and destination and two or more factors, increased under the general order, are used to construct the through rate, a specific amount shall be deducted from each factor and a specific amount added to the sum of the reduced factors thus obtained. Combination Rule on Box Shooks, 89 I. C. C. 219, 220.

(d) Applicable point rates on gasoline from points in Texas and Oklahoma

to destinations in California and Washington found unreasonable to extent they exceeded lower combinations contemporaneously in effect for segments of the same movement, modified and changed in accordance with the so-called combination rule. Reparation awarded. McLeod v. T. & P. Ry. Co., 89 I. C. C. 356.

(e) Complainant attacked commodity rates charged on rough quarry stone, carloads, from the Bedford district, Ind., to Minneapolis and St. Paul, Minn., as unjust, unreasonable and unduly prejudicial. The Monon and the Milwaukee handled about 95% of the stone from the Bedford district. Rates of 27 and 29c apply from the Bedford district to a large group of destination points extending from Duluth, Minn., and Superior and Ashland, Wis., on the north to a considerable portion of western Wisconsin, southeastern Minnesota and eastern Iowa. The rates to other destinations in western trunk line territory are largely grouped. A violation of the long and short haul clause of the fourth section was shown to exist, as there are no through rates to Taylors Falls, Minn. Using the proportional rate of 16c to Chicago and 12c beyond, under the combination rule, as rate of 25.5c applied to Taylor Falls to which the Twin Cities are intermediate. On June 1, 1923 a through rate of 27c was published to Taylors Falls, which became applicable to intermediate points. No movement of stone to these points were shown. They are well within the group of destination points taking the rate of 27c. To all points in the United States except Omaha, Neb., and the Twin Cities the rates from the Bedford district on rough and dressed stone are the same. HELD, rates attacked not unreasonable except prior to June 1, 1923 they were in violation of the long and short haul clause of the fourth section, complaint dismissed. Young v. C. I. & L. Ry., 89 I. C. C. 428.

(f) Where carriers under Federal control published the so-called combination rule, which provides a method for constructing through rates made by use of combinations, and tariffs do not restrict its application to Federally controlled lines, there is a holding out to shippers of the rate so constructed which publishing carriers must protect, and the principle laid down in the Sligo case, 62 I. C. C. 643, 73 I. C. C. 555, applies. This situation is applicable to shipments moving to points on nonfederally controlled lines, even though such carriers do not concur in the rule or carry a similar rule in their tariffs, and is equally applicable to intrastate shipments moving during Federal control. McCloud River Lumber Co. v. Director General, as Agent, 89 I. C. C. 645, 647.

(g) Where carriers under Federal control publish the so-called combination rule, which provides a method for constructing through rates made by use of combinations, and applicable of the rule is specifically restricted so as not to apply in connection with rates between points on such roads and points on lines not under Federal control, "except * * * where specific reference hereto is made in tariffs," the rule applies from points on nonfederally controlled lines whose tariffs make specific reference to the rule. McCloud River Lumber Co. v. Director General, 89 I. C. C. 648, 649.

(h) Upon rehearing, prior report, 58 I. C. C. 442, modified and shipments of lumber from Hopkins, Fla., to Baltimore, Md., and other points, during Federal control, found overcharged. None of the applicable tariffs specifically referred to tariff which provides a rule for the construction of through rates made on combination under which but a single increase was to be added to sum of the separate factors, nor did the latter make specific reference to applicable tariff. Following Acme Cement Plaster Co., 81 I. C. C. 298, the combinations to and from Jacksonville, Fla., each increased 5 cents under General Order No. 28 of director general were applicable. Reparation awarded. Union Cypress Co. v. F. E. C. Ry. Co., 89 I. C. C. 679.

(i) Complainant attacked combination rates charged of $4.62 on 82 cars of coke shipped between June 10 and June 20, 1922 from Cascade, W. Va., to Monessen, Pa., as unjust, unreasonable and unduly prejudicial to extent it exceeded $1.82. Shipments moved via Morgantown and Kingwood to Morgantown, W. Va., B. & O., to West Youghiogheny Transfer, Pa., and P. & L. E., beyond, charged $1.26 to Morgantown, $1.68 Morgantown to West Youghiogheny Transfer, and $1.68 from that point to Monessen. Prior to June 21, 1922 there was no joint rate from Cascade to Monessen, but on that date a joint rate of $1.82 was established in response to an application made to the B. & O. by complainant on or about

May 26, 1922. The rate was established on short notice. HELD, rate attacked unreasonable to extent it exceeded $1.82, reparation awarded. Pittsburgh Steel Company v. B. & O. R. R., 89 I. C. C. 749.

(j) Respondents proposed to cancel the application of the so-called Jones rule for constructing combination rates in connection with livestock from Washington, Idaho, Montana and North Dakota to various destinations, principally the primary livestock markets. The increases would range from 2.5 to 4.5c. HELD, proposed schedules not justified. Combination rule on livestock between western points, 92 I. C. C. 205.

(k) The Commission has given its approval to the efforts of the carriers to eliminate the combination rule by the publication of joint through or proportional rates to take care of the traffic which would move under the combination rule. It has refused to allow the cancellation of the rule where it would result in increased rates. Combination rule on livestock between western points 92 I. C. C. 205, 206.

(l) Complainant attacked combination rate charged on 37 cars of coke from Indianapolis, Ind., to Harriet, N. Y., between October 1918 and March 1919, as unjust and unreasonable. They attacked rate charged on 14 cars of coke from Indianapolis, Ind., to Niagara Falls during the same period as unjust and unreasonable and that the rate on a commodity described as Reilly carbon coke, pitch coke, petroleum coke and coke shipped between June and December 1919, from St. Louis Park, Minn., to Harriet Station, Black Rock, N. Y., and to Niagara Falls as unjust and unreasonable. On the N. Y. C., Harriet and Black Rock are separate agency stations within the Buffalo district, 13.1 and 9.7 miles north of Buffalo. When through rates are published to Harriet for hauls of appreciable distances, they are the same as the rates to Buffalo and Black Rock. There being no through rate to Harriet on complainants commodity, the applicable rates were combinations in excess of the rate to Buffalo or Black Rock, to Harriet and Niagara Falls, via route of movement over L. E. & W., and N. Y. C., of $5.10 and $5.20, respectively, composed of commodity rates of $2.30 from Indianapolis to Cleveland, O., $1.90 from Cleveland to Black Rock and 90c and $1 beyond. Effective March 15, 1919, the rate of $3.40 became applicable on coke from Indianapolis to Black Rock, Harriet, and Niagara Falls in connection with the N. Y. C., Reilly coke is a residuum of coal tar-pitch. Coal tar pitch was rated 80% of sixth class and took rates of $3.40 from Indianapolis to Niagara Falls and $6.40 from St. Louis Park to Black Rock. HELD, rates attacked unreasonable to extent they exceeded $3.40 from Indianapolis and $6.40 from St. Louis Park, reparation awarded. Acheson Graphite Company v. Director General, 92 I. C. C. 215.

(m) Complainant attacked commodity rates charged on sugar, carloads, from California to Indiana as unduly prejudicial to points in Indiana and unduly preferential of Chicago and other Illinois points. Complainant attacked rates on sugar, carloads, from Colorado, Idaho, Kansas, Nebraska and Utah to points in Indiana as unreasonable, unjustly discriminatory and unduly prejudicial. Rates from the origin territories in question to Indiana are made on a combination basis by using commodity rates up to the Mississippi river, Chicago, or points taking the same rate as Chicago and fifth class beyond. The factor to Chicago from California is 79c from Colorado 56c and from Utah and Idaho 69.5c. The rates from western points to Chicago are made by the western carriers for the purpose of enabling western producers to meet at Chicago the competition of eastern and southern sugar refiners and are less than maximum reasonable rates. HELD, rates attacked not unreasonable or unduly prejudicial, complaints dismissed. Indiana Public Service Commission v. A. T. & S. F. Ry., 92 I. C. C. 279.

(n) Respondents proposed to cancel the combination rule for constructing combination rates on common brick between points on their lines in Iowa, Wisconsin, Minnesota, North Dakota, South Dakota, Montana, Idaho, Oregon and Washington. The rates on brick were published in conformity with 80 I. C. C. 179, and are used in constructing combination rates. Under the terms of the combination rule, such combinations are now subject to a 2.5c deduction. The proposal is to cancel reference to this rule in connection with the rates on common brick only, which will result in the application of the full combination of

local rates. HELD, proposed schedules not justified. Combination rule on common brick, 92 I. C. C. 289.

(o) Complainant attacked combination rate charged on two cars of gum veneer shipped from Clarendon, Ark., to Newport, Vt., in December, 1920, as unjust, unreasonable and excessive to extent it exceeded 60c applicable on lumber. Applicable rate was $1.075 composed of a commodity rate of 32.5c to East St. Louis, and fifth class 75c beyond. HELD, rate attacked not unreasonable, complaint dismissed. Frosts Veneer Seating Company v. St. L. S. W. Ry., 92 I. C. C. 317.

(p) Where one of the tariffs used in making combination commodity rates on coal contained the combination rule there was a holding out to the shipper of the rate so constructed which the carrier should protect. National Supply Co. v. Director General, 92 I. C. C. 610, 611.

(q) A provision in a tariff carrying rate which may be used in combination to the effect that the rates are subject to the combination rule in Morris I. C. C. U. S. 1 is equivalent to the publication of said rule in the rate tariff. Armour Fertilizer Works v. Southern Ry. 93 I. C. C. 186, 188.

(r) Respondents proposed to restrict the application of the socalled combination rule for constructing through rates on lumber from the Mississippi valley and southern points of origin to Ohio and Mississippi river crossings, when shipments are destined to a point beyond these crossings. In 81 I. C. C. 745 the Commission found that the proposed schedules had not been justified. The record shows that if the proposed schedules had been allowed to become effective, certain of the rates involved would have been increased. HELD, proposed schedules not justified. Cancellation rule for combination rates, 93 I. C. C. 614.

(s) The mere desire to eliminate the combination rule is not a justification for increased rates. Cancellation rule for combination rates, 93 I. C. C. 614, 615.

(t) Rate on sand from Nichols, N. Y., to Athens, Pa., found unreasonable to extent it exceeded lower rate to Miland and Ulster, Pa., further distant points. Tariff publishing lower rate referred to rule 77 of Tariff Circular 18-A and provided that upon reasonable request therefor rates in tariff would be established from or to intermediate points, and such lower rate, was subsequently established to Athens. Reparation awarded. Warren Bros. Co. v. Director General, 91 I. C. C. 559.

(u) In 89 I. C. C. 356, the Commission found joint rates charged on gasoline, carloads, between August 26 and Dec. 31, 1920, from Texas and Oklahoma to California and Washington as unreasonable. Joint through rates of $1.26 from the points of origin to destinations in California, and $1.46 to Richmond Beach were applicable. The tariff naming these rates provided that if the aggregate of intermediate rates over the route traversed was less than the joint rate, such aggregate of rates would be applied. When the shipments moved, separately established intermediate rates to and beyond junction point is Oklahoma, Kansas and Texas, aggregated more than the joint rates. The tariffs naming the intermediate rates provided that where charges were constructed by a combination of separately established rates to and from junction points through charges would be obtained by deducting from one intermediate rate 4.5c, adding to the figure thus obtained the rate for the remainder of the through haul in effect on June 24, 1918, and to the total so obtained adding 4.5c to make the through rate. After modifying the published intermediate rates under the rule described the resulting combinations would be less than the joint rates. The specific joint rates were not rendered inapplicable under the alternative rule in the same tariffs for the intermediate rates did not aggregate less than the joint rates. Complainants introduced no other evidence with respect to the reasonableness of the join thru rates charged. HELD: Rates charged not unreasonable or otherwise unlawful, complaint dismissed. McLeod v. T. & P. Ry., 100 I. C. C. 219.

(v) Respondents proposed to cancel the application of the so-called combination rule in connection with the rates on brick and on drain tile, carloads, from Mason City, Rockford and Sheffield, Ia., to Minnesota basing points, including the Twin Cities and the head of the lakes, also Wisconsin points; to increase the rates on brick from Mason City to destinations on the Omaha and Soo Line in Wisconsin; and to cancel the commodity rates on brick, drain tile and other clay

products from Iowa producing points, such as Rockford, Mason City, Des Moines and Acme to Ashland, Wisc., over the Rock Island in connection with Soo Line. **Cancellation of Application of Combination Rule.** The tariffs sought to be amended are now subject to the combination rule. The suspended schedules publish an exception to the application of that rule in connection with the rates from Mason City to Minnesota basing points and to Wisconsin. Most of the tariffs publishing the rates beyond the Twin Cities and other basing points make reference to the combination rule so that, generally speaking, no increased through rates would result under the principle announced in 62 I. C. C. 643 and 73 I. C. C. 551. **Increased Rate from Mason City to Wisconsin Destinations on Omaha and Soo Line.** Prior to Nov. 11, 1924, the rate on brick from Mason City to destinations in Wisconsin on the Omaha and Soo Line was 12c. By schedules filed to become effective July 15, 1924, the M. & St. L., proposed to reduce this rate to 10.5c This was suspended in 93 I. C. C 81, but was permited to become effective Nov. 11, 1924. The suspended schedules here under consideration propose to restore the rate existing prior to the reduction under 2184. **Cancellation of Rates from Iowa Producing Points to Ashland, Wisc.** No commodity rates are maintained in intermediate points on the Soo Line, but the present 10.5c rate to Ashland is subject to rule 77 tariff circular 18-a. The cancellation of the commodity rate would eliminate the possible operation of rule 77, leaving in effect to Ashland and intermediate points, the class E rate. The class rate to Ashland would be greatly in excess of the aggregate of the commodity rates on Twin Cities. HELD: Suspended schedules not justified. Combination Rule on Brick and drain tile, 101 I. C. C. 729.

(w) Although the Commission has frequently indicated that the combination rule designed as a temporary expedient, is undesirable as a permanent tariff rule, it does not think that carriers publishing one factor of a through rate under which there is substantial movement, should be permitted to cancel the application of the combination rule to that factor, unless carrier publishing the other factors join in the cancellation or in the publication of joint through rates. Combination Rule on Brick and Drain Tile, 101 I. C. C. 729, 730.

(x) Proposed cancellation of combination rule in connection with rates on cotton and linters from the South and Southwest to the North and East, without first providing joint through rates for application in absence of that rule, found not justified. Innumerable rate increases would result in absence of such rule on traffic moving through New Orleans, Memphis, and other gateways, which carriers made no attempt to justify. While combination rule, as applied to cotton and linters, may be objectionable, that fact alone does not justify its cancellation and application of resulting higher rates. Combination Rule on Cotton and Linters, 92 I. C. C. 165.

(y) The so-called combination rule was adopted by director general as a temporary expedient whereby combination rates, each factor of which had been increased under General Order No. 28 by specific amounts, should thereafter reflect only increase which they would have received had they been published in form of joint rates. It provided that where no specific through rates are in effect between points of origin and destination, and where two or more factors, increased under the general order, are used to construct the through rate, a specific amount shall be deducted from each factor and a specific amount added to sum of reduced factors thus obtained. Combination Rule on Cotton and Linters, 92 I. C. C. 165, 166.

(z) While the combination rule as applied on certain commodities may be objectionable, that fact alone does not justify its cancellation and application of resulting higher rates. Combination Rule on Cotton and Linters, 92 I. C. C. 165, 167.

(aa) Proposed cancellation of combination rule in connection with shipments of livestock from Washington, Idaho, Montana, and North Dakota to primary markets, found not justified. To many destinations present rates would be protected under decision in Sligo case, 62 I. C. C. 643, because most tariffs of eastern lines carry the combination rule, but to points on roads which do not publish the rule increases would result. While commission has approved effects of carriers to eliminate this rule by publication of joint through or proportional rates to take care of traffic which would move under the rule, it has refused to allow its cancellation where increases would result. Combination Rule on Livestock, 92 I. C. C. 205.

(bb) Proposed cancellation of combination rule on common brick between points on lines of Great Northern and Northern Pacific in Iowa, Wisconsin, Minnesota, the Dakotas, Montana, Idaho, Oregon, and Washington, found not justified. Proposal to cancel application of the rule in connection with common brick only, would result in many instances in rates higher than those approved in the General Brick case, 68 I. C. C. 213, 80 I. C. C. 179. Moreover, confusion would result from application of full combination of locals as certain lines serving many destinations in above territory carry reference to the rule in their tariffs and have not joined in the proposal to cancel the same. Combination Rule on Common Brick, 92 I. C. C. 289.

(cc) Shipments moved during Federal control on combination rates. Certain carriers carried in their tariffs the combination rule which provided a method for constructing through rates made on combination. Other carriers participating in the movement neither participated in tariffs carrying the rule, nor carried a similar rule in their tariffs. HELD: Following Sligo case, 62 I. C. C. 643; 731 I. C. C. 551, rates charged on basis contrary to the rule found inapplicable. Reparation awarded. Bird v. Director General, 92 I. C. C. 494.

(dd) No joint rates were in effect and shipments moved under a two-factor combination. Tariff of one participating carrier carried the combination rule which provided a method for constructing through rates made on combination, but did not specifically provide for its use in connection with first component of the through rate. Carrier publishing other factor made no reference to the rule nor carried a similar one in its tariff. HELD: Following Sligo case, 62 I. C. C. 643 and 73 I. C. C. 551, rates constructed in conformity with the rule were legally applicable. Shipments found overcharged and reparation awarded. Minneapolis Steel & Machinery Co. v. Director General, 92 I. C. C. 603.

(ee) No joint rates were in effect and shipments moved under a two-fold combination. Tariff of one participating carrier carried the combination rule which provided a method for constructing through rates made on combination, but did not specifically provide for its use in connection with first component of through rate. Carrier publishing other factor made no reference to the rule nor carried a similar one in its tariff. Contention that above circumstances precluded application of the rule, and to find otherwise would contravene certain provisions of section 6 of the act and of Tariff Circular 18-A, not sustained following Sligo case, 62 I. C. C. 643 and 73 I. C. C. 551. Minneapolis Steel & Machinery Co. v. Director General, 92 I. C. C. 603, 604; National Supply Co. v. Director General, 92 I. C. C. 610, 611.

(ff) Shipments moved under combination rates and charges were collected on basis of separate components. Tariff of one participating carrier contained the combination rule, which provided a method for constructing through rates made on combinations, but other participating carrier made no reference to the rule or carried a similar rule in its tariff. Nor did tariff containing the rule specifically restrict its application so as to render it inoperative in connection with traffic here involved. HELD: Carrier publishing the rule must protect the aggregate rate constructed in conformity therewith, and other carrier is entitled to retain its full local. Refund of overcharges directed. Armour Fertilizer Works v. S. Ry., 93 I. C. C. 186.

(gg) Proposal to restrict application of the combination rule so that it will apply only where all issues publishing factors used in arriving at through rates from origin to destination carry reference to the rule and authorized an affirmative application thereof, found not justified. Carriers made no effort to justify increased rates, which would result in instances where the rule is published in a separate combination tariff and no reference is made there to in connection with one factor of a combination, although such reference is made in connection with other factors. While commission has repeatedly sanctioned efforts to eliminate the rule by publication in its stead of joint or proportional rates, it has denied authority to cancel it where unjustified increases would result. Combination Rule on Lumber, 93 I. C. C. 279.

(hh) The legal effect of the publication of the lower rates under authority of Rule 77 is equivalent to an admission by defendants that the higher rates to intermediate points involved were unreasonable. Producers Refining Co., 69 I. C. C. 403; Pittsburg Crucible Steel Co., 81 I. C. C. 659; and Pacific Grain Co., 85 I. C. C. 710. Reparation awarded. Randall Brothers v. L. & N., 96 I. C. C. 342, 344.

(ii) Rate on sand from Portsmouth, Ohio, to Charleston, W. Va., found unreasonable to extent it exceeded lower rate subsequently established on same commodity from and to same points in accordance with the so-called combination rule. Reparation awarded. Fuller Co. v. Director General, 98 I. C. C. 468.

(jj) It appears sufficient to point out that the combination rule was not applicable when a joint through rate was in effect, nor when one of the factors of the combination rate was a class rate and the other a commodity rate. Bourgoin & Co. v. C. B. & Q. R. R. 107 I. C. C. 376.

(kk) Upon further consideration, findings in original report, 89 I. C. C. 356, to effect that joint rates on gasoline from points in Texas and Oklahoma to destinations in California and Washington were unreasonable to extent they exceeded lower combinations contemporaneously in effect for segments of same movement, modified and changed in accordance with socalled combination rule, reversed and rates found not to have been unreasonable or otherwise unlawful. Complaint dismissed. McLeod v. T. & P. Ry. Co., 100 I. C. C. 219.

(ll) Tariffs of originating lines neither carried nor made reference to the so-called combination rule which provided a method for constructing through rates made on combination, while tariff of other participating carrier made reference thereto. There is no merit in contention that in order to apply this rule each tariff naming the factors of such combination rates should refer to tariff containing the rule. HELD: Principal laid down in Sligo case, 62 I. C. C. 643; 73 I. C. C. 551, is controlling, and rates charged were in excess of those applicable. Reparation awarded. Hardwick Stove Co. v. Sou Ry. Co., 100 I. C. C. 409.

(mm) Proposed cancellation of so-called combination rule in connection with rates on cotton and cotton linters, from Louisiana and Arkansas points to points in the South, North, and West, resulting in increased rates to points principally in the Southeast, central territory and trunk-line territory in all instances where the rates through New Orleans, La., a desirable concentration point, are made on the combinations to and from that point under the combination rule, found not justified. Combination Rule on Cotton and Cotton Linters, 101 I. C. C. 63.

(nn) Proposal to cancel application of so-called combination rule in connection with rates on brick and articles taking same rates, and on draintile, from Iowa producing points, including Mason City, Rockford, and Sheffield, to Minnesota basing points, including the Twin Cities and head of the lakes, also Wisconsin points, found not justified. Although the combination rule, designed as a temporary expedient, is undesirable as a permanent tariff rule, carriers publishing one factor of a through rate under which there is substantial movement, should not be permitted to cancel application of the rule to that factor, unless carriers publishing the other factors in the cancellation or in publication of joint through rates. See 89 I. C. C. 219. Combination Rule on Brick and Draintile, 101 I. C. C. 729.

(nna) Proposed cancellation of combination rule on brick and related articles from Texas points to interstate destinations, the effect of which would be to prevent application of a single increase in combination rates which are lower than joint rates, but which would not prevent the application of lower combinations untreated by the rule, found not justified. Carriers made no attempt to justify increases which would result, relying solely upon the short-hauling provision of section 15 (4) of the act, not in point, no attempt here being made to establish joint rates in the first instance. In addition, the commission had condemned the cancellation of combination rules without the substitution of some method of rate publication which would have effect of holding the rates to their former level or to a level which is affirmatively shown to be reasonable. See 81 I. C. C. 745; 93 I. C. C. 614. Combination Rule on Brick, 102 I. C. C. 97.

(nnb) Combination rates assessed on shipments moving from Edmonton and Patricia, Canada, to Chicago, Ill., found inapplicable. Tariff naming rates covering one factor of combination made reference to combination rule which provided a method for constructing through rates made on combination and, by express terms, limited application, to continuous rail shipments. There being an original and continuing intention on part of shippers that cattle should move

through to Chicago, the doctrine of the Settle case, 260 U. S. 166 is controlling, and following principle laid down in the Sligo case, 62 I. C. C. 643; 73 I. C. C. 551, shipments were subject to rates made by application of combination rule. Reparation awarded. Chicago Live Stock Exchange v. Director General, 102 I. C. C. 452.

(nnc) Governing tariff specifically provided that through rates made on combination were to be subjected to single increase under General Order No. 28 of director general. Shipments moved under combination rates to each factor of which increase was added. HELD: Following Acme Cement Plaster Co., 81 I. C. C. 298, shipments were overcharged to extent that charges exceeded those which would have accrued by application of single increase to sum of factors. Reparation awarded. Lehigh Portland Cement Co. v. Director General, 102 I. C. C. 617.

(oo) Publication of or reference to the combination rule which need not be made in each tariff naming a factor of the combination, is a holding out of a manner of making rates on through shipments which the carrier publishing or making reference to the rule must protect. Pacific Coast Shippers Asso. v. Director General 109 I. C. C. 166, 167.

(pp) Where one of the carriers comprised in the through route authorizes by its tariff the use of the combination rule there is a holding out to the shipper by that carrier of a through rate constructed in accordance with that rule, which that carrier must protect. Ladd Lime & Stone Co. v. L. & N. R. R. 109 I. C. C. 251, 252.

ALL OTHER CITATIONS

Cancellation of Rule for Combination Rates, 85 I. C. C. 101.

§20½. Concurrences.

See Class Rates §2 (3k).

(a) Although the combination rule, designed as a temporary expedient, is undesirable as a permanent tariff rule, carriers publishing one factor of a through rate under which there is substantial movement, should not be permitted to cancel application of the rule to that factor, unless carrier publishing other factors join in the cancellation or in the publication of joint through rates. Cancellation of Combination Rule on Petroleum, 73 I. C. C. 146. Combination Rule on Box Shooks, 89 I. C. C. 219, 220, 221.

(b) Where carriers under Federal control publish the so-called combination rule, which provides a method for constructing through rates made by use of combinations and tariffs do not restrict its application to Federally controlled lines, there is a holding out to shippers of the rate so constructed which publishing carriers must protect, and principle laid down in the Sligo case, 62 I. C. C. 643, 73 I. C. C. 555, applies. This situation is applicable to shipments moving to points on nonfederally controlled lines, even though such carriers do not concur in the rule or carry a similar rule in their tariffs, and is equally applicable to intrastate shipments moving during Federal control. McCloud River Lumber Co. v. Director General, as Agent, 89 I. C. C. 645, 647.

(c) Upon general investigation on commission's own motion of interstate class rates and l. c. l. commodity rates within southern territory and between southern and official territories. FOUND: Joint rail-water-rail class rates between interior points in eastern territory and interior points in southern territory are necessary and desirable in public interest and should be established, in lieu of present noncurrence rates, between such points in all cases where maximum reasonable rail-water-rail rates are herein prescribed. Southern Class Rate Investigation, 100 I. C. C. 513, 683.

§21. Intermediate Clause.

See Supra §20a; Tariffs §13a.

(a) The application to the shipment of the through rate—which is often less than the sum of the intermediate rates in and out of the point of original destination—is the distinctive feature of reconsignment, and separates it from reshipment, which is otherwise quite similar. Any consignee has a right to reship goods received by him, without removal from the car, upon payment of the freight charges to that point, the goods going forward under a new transportation contract. When the through rate is equal to the sum of the intermediates in and out, reconsignment and reshipment differ only as to the rules applicable to them particularly the rules found in the demurrage codes of the carriers. Stetson Cutler & Company v. N. Y. N. H. & H. R. R., 91 I. C. C. 3, 4.

(b) Proposed modification of rules governing intermediate application of rates on lumber and articles taking same rates from stations on the St. L.-S. F. Ry. between St. Louis and Springfield, Mo., to Missouri River cities and certain points beyond, for purpose of eliminating application of St. Louis rates from such points found not justified. Combination rates which would result would be in line with rates from points in surrounding territory to same destinations, but because of maintenance of lower rates from St. Louis to points beyond Missouri River, would violate the long-and-short-haul provision of the fourth section. Intermediate Rule on Lumber, 92 I. C. C. 153.

(c) Contention that lower rate from Lake Charles, La., a more distant point than Columbia, La., on traffic moving to Howard, Kans., was subject to rule 77 of Tariff Circular 18—A, which authorizes establishment of rates from intermediate points not exceeding that from next more distant station, not sustained, since application tariffs carrying lower rate from Lake Charles provided specific routing under which Columbia was excluded. Transcontinental Oil Co. v. A., T. & S. F., 92 I. C. C. 285.

(d) Shipments moved under combination rates and charges were collected on basis of separate components. Tariff of one participating carrier contained the combination rule, which provided a method for constructing through rates made on combinations, but other participating carrier made no reference to the rule or carried a similar rule in its tariff. Nor did tariff containing the rule specifically restrict its application so as to render it inoperative in connection with traffic here involved. HELD: Carrier publishing the rule must protect aggregate rate constructed in conformity therewith, and other carrier is entitled to retain its full local. Refund of overcharges directed. Armour Fertilizer Works v. S. Ry., 93 I. C. C. 186.

(e) Shipments moved under combination rates. Tariff governing second component carried the combination rule which provided a method for constructing through rates made on combination. Tariff of originating carrier carried no similar rule, nor made reference to any tariff in which such rule was carried. HELD: There was a holding out to shipper of rates constructed in accordance with the rule which publishing carrier must protect. See Sligo case 62 I. C. C. 643. Reparation awarded. California Cotton & Factorage Co. v. Director General, 93 I. C. C. 260.

(f) Proposal to restrict application of the combination rule so that it will apply only where all issues publishing factors used in arriving at through rates from origin to destination carry reference to the rule and authorize an affirmative application thereof, found not justified. Carriers made no effort to justify increased rates which would result in instances where the rule is published in a separate combination tariff and no reference is made thereto in connection with one factor of a combination, although such reference is made in connection with other factors. While commission has repeatedly sanctioned efforts to elimate the rule by publication in its stead of joint or proportional rates, it has denied authority to cancel it where unjustified increased rates would result. Combination Rule on Lumber, 93 I. C. C. 279.

(g) Rate on peaches from Fort Valley, Georgia, to Watuppa, Mass., found not unreasonable, discriminatory or unduly prejudicial as compared with rate in effect at time of movement from Eufaula, Ala., a farther distant point to which Fort Valley is directly intermediate over route of movement, or with lower rate established after shipment moved. Existence of the fourth-section departure, protected by an appropriate application, is not in itself proof that rate from Fort Valley was unreasonable. The subsequent reduction was part of a voluntary general reduction in rates from Georgia to New England points, made at request of shippers in order to enable them to meet adverse marketing conditions. Under the circumstances it can not be regarded as implying any admission on part of carriers that prior rate was unreasonable. Gentile Bros. Co. v. C. of G. Ry., 93 I. C. C. 328.

(h) Former report, 81 I. C. C. 745, in which proposed cancellation of the combination rule for constructing combination rates on lumber between southern points and Ohio and Mississippi River crossings, and proposed restriction of routing over Atlantic Coast Line from southern points to Virginia gateways were found not justified, affirmed upon reargument. Carriers made no attempt to justify increased rates which would result; moreover the tariff provision does

not fully conform to requirements of section 6 of the act and is objectionable in that restriction proposed makes necessary a search of other tariffs in order to determine whether there are joint rates over any route before it can be determined whether the combination rule is applicable. Cancellation Rule for Combination Rates, 93 I. C. C. 614.

(i) The commission has no desire to continue indefinitely operation of the so-called combination rule, but on contrary feels that carriers should use all due diligence in eliminating that rule from their tariffs, as it is not a desirable method of publication or one which fully meets requirements of section 6. Cancellation Rule for Combination Rates, 93 I. C. C. 614, 615.

(j) Tariffs of originating lines neither carried nor made reference to the so-called combination rule, which provided a method for constructing through rates made on combination. Tariffs of other participating carriers either carried the rule or made specific reference thereto. The rule, however, restricted its use to lines under Federal control and since originating carriers were nonfederally controlled, the rule laid down in the Sligo case, 62 I. C. C. 643; 73 I. C. C. 551, that there is a holding out to shipper of the rate constructed in conformity with the rule which publishing carrier must protect, is not controlling. Combinations, both factors of which were increased under General Order No. 28 of the director general, found to have been legally assessed. Pendleton & Gilkey v. Director General, 95 I. C. C. 699.

(k) Shipments moved under combination rates both factors of which were increased under General Order No. 28 of the director general. Tariff of initial line did not contain the so-called combination rule, which provided a method for constructing through rates made on combination, nor did tariffs naming the separate factors refer one to the other. The combination rule, however, was contained in a supplement governing one of the factors. HELD: Principle laid down in the Sligo case, 62 I. C. C. 643; 73 I. C. C. 551, applied and but a single increase should have been added to the through rate. Reparation awarded. M'Fadden & Bros. Agency v. Director General, 95 I. C. C. 734.

(l) Proposed cancellation of the "intermediate clause" in connection with transcontinental rates on lumber from Pacific coast, Hawley-Truckee, and Arizona groups to destinations in Kansas, Oklahoma, Texas, Iowa, Missouri, Arkansas, Louisiana, Wisconsin, Ohio, West Virginia, New York, and Pennsylvania; also to eliminate Bradford and East Bradford, Pa., from Group K, found not justified. If suspended schedules become effective rates to unnamed intermediate points will become higher than to farther distant points and thereby create new and unauthorized fourth-section departures, and will transfer to Group E certain points geographically located in Group F territory. Lumber from Pacific Coast, 95 I. C. C. 744.

§22. What is Legal Rate.

See Supra §18, §20; Basing Points and Lines §3 (q); Facilities and Privileges §18; Legal Rate; Local Rates and Combinations (xx); Tap Lines; Tariffs §3 (1), §3 (2), §18.

(a) Complainant attacked commodity rate of $5.70 charged on 59 cars of coke shipped during federal control from West Virginia points to Minneapolis as inapplicable. Shipments originated at Carbondale, Longacre, MacDonald, Thurmond and Turkey Mound, W. Va., moving to Manistique, Mich., and Soo Line beyond, charged $3.80 to Manistique and $1.90 beyond. The Soo Line tariff carried a rule for the construction of combination rates on through movements of coke, which provided that the applicable rates should be the sum of the components in effect June 24, 1918, plus an arbitrary amount of 75c whenever the sum of those components equaled or exceeded $3. On that date the rates were $3.10 from Carbondale and Longacre and $3.05 from the other points to Manistique and $1.50 beyond, and on that basis the legal rates for application of these shipments were $5.35 and $5.30. HELD, rates attacked not applicable, but rates of $5.35 from Carbondale and Longacre and $5.30 from the remaining points of origin, shipments overcharged, reparation awarded. Minneapolis Steel & Machinery Co. v. Director General, 92 I. C. C. 603.

(b) Complainant attacked as overcharge rates charged on two cars of lumber shipped Sept. 8 and Oct. 5, 1921 from Falco, Ala., to Manitou Beach and Northville, Mich. Shipments moved over A. F. & G., to Galliver, Fla., L. & N., via Nashville, Tenn., Memphis Junc-

tion, Ky and Evansville, Ind., to East St. Louis, Ill., thence as routed, T. St. L. & W., in connection with P. M., in one instance, and via C. N., in another, to destinations. A rate of 30c was applicable from Falco to Louisville and 24c in effect beyond. This latter rate was not restricted as to routing, and complainant contends that it was applicable over the L. & N., from Louisville, via Amqui, Tenn., Evansville and East St. Louis, and the Louisville combination was applicable over route traversed under rule 5B of tariff circular 18A. Applying the combination rule in Jones U. S. 1, to the Louisville combination, the through rate would become 24c to Louisville plus 6.5c or a total of 49.5c. The Louisville combination was applicable without the necessity of hauling the shipments to Louisville and back to the junction point. HELD, shipments overcharged, reparation awarded on basis of 49.5c. McGowin Foshee Lumber Co. v. A. F. & G. Ry., 95 I. C. C. 451.

(c) Complainant attacked fifth class rates charged in sugar between Mar. 2, and July 28, 1920, from Philadelphia, Pa., and New York to St. Louis, Mo., as illegal. Charged fifth class 50.5c from Philadelphia and 52.5c from New York. Complainant seeks refund to basis of commodity rates of 40 and 42c. The tariff named these rates on sugar to East Mississippi river crossings and St. Louis, Mo., with a note stating that they applied only as proportional rates to East Mississippi river crossings specified, on traffic destined to points beyond, to which no through rates are in effect. There is no restriction on the rates to St. Louis. HELD: Legal rates are 40 and 42c, defendants should refund overcharges, complaint dismissed. National Candy Co. v. Pennsylvania R. R., 101 I. C C. 43.

(d) Complainant formerly shipped intrastate shipments via joint-line interstate routes to obtain benefit of rates lower than those applying intrastate. Carriers subsequently limited application of interstate tariff to interstate traffic. Upon complaint assailing rates charged on shipments moving intrastate via intrastate routes, HELD: Limitation in interstate tariff precluded its application to complainant's shipments. Moreover, commission's jurisdiction over intrastate rates is prescribed by sections 3 and 13 of the act, and it has no authority under the law to pass upon the measure of such rates except as provided in those sections. Nebraska Cement Co. v. C. & N. W., 92 I. C. C. 457.

(e) Rates on steel grinding balls moving water-and-rail from Chrome, N. J., to Ada, Okla., via Galveston, found not unreasonable or in violation of aggregate-of-intermediates clause of section 4 of the act. Tariffs in effect provided for alternative application of maximum rates, whereby rates to Deming, N. Mex., and Clifton, Ariz., would apply if lower than rate to Ada. The Clifton and Deming rates, however, were restricted to routes other than route of movement, and application of the alternative rule was contingent upon specific reference being made to it in connection with rates to destination in the tariff, and no such reference was made in connection with rate to Ada. Moreover, rate from point of origin to Deming was higher than rate to Ada. Oklahoma Portland Cement Co. v. A., T. & S. F., 93 I. C. C. 203.

(f) Rate assessed on petroleum fuel oil from Loftus, Calif., to Bisbee, Ariz., found inapplicable. Applicable rate which exceeded aggregate of intermediates found in contravention of section 4 of the act, and unreasonable to extent it exceeded lower group rate applicable from farther distant points in southern California, which lower rate carriers subsequently extended to Loftus. Reparation awarded. Gilmore Co. v. P. E. Ry., 93 I. C. C. 357.

(g) Shipments of apples and pears moving on through rates may be stopped in transit at points in c. f. a. territory for privilege of storage, regardless of points of origin, provided storage point is on a direct line and directly intermediate between point of origin and final destination. Proposal of the B. & O. to restrict application of joint rates on such commodities stored in transit at c. f. a. points to shipments moving into and out of transit points over its own rails, found not justified. Numerous increases and an abnormal rate situation would result which carrier made no attempt to justify. Storage in Transit of Apples and Pears, 95 I. C. C. 101.

(h) Due to embargo shipments of feldspar from Keene, N. H., to Manchester, Conn., were forwarded over an indirect route to Willimantic, Conn., thence reconsigned to destination. Combination rates assessed found unreasonable, the initial factor to extent it ex-

ceeded lower rate subsequently established and equivalent to 90 per cent of sixth class, the basis maintained by carriers in this territory, and the Willimantic-Manchester factor as compared with rates for entire distance via the direct route and with rates and earnings on numerous comparable commodities for like distances. Reasonable rate for the Willimantic-Manchester factor prescribed and reparation awarded. Orford Soap Co. v. B. & M., 95 I. C. C. 615.

(i) No specific joint rates were published from Petersburg, Va., to Pueblo, Colo. Tariff naming joint rates from Petersburg to Columbus, N. Mex., in which Pueblo was not specified, carried an intermediate-point rule. The joint rates were not restricted to any particular route, nor did the tariff in any way limit movements up to the Pueblo gateway. The route via that gateway was not unreasonable or unduly circuitous, all defendants herein were parties to the Columbus rates, and in connection with other participating carriers made up to the latter point "a line or route" on which Pueblo was directly intermediate. FOUND: Under the circumstances, rates to Columbus were applicable to Pueblo and shipments here involved were overcharged. Reparation awarded. Frazier Saddlery v. M. P. R. R. Co., 96 I. C. C. 1.

(ia) Upon contention of complainant that under Conference Ruling 239 had there been no joint through rate published a lower combination rate would have applied, FOUND: A rate can not be said to be unlawful because under a different state of facts a lower rate would have applied. Refiners Oil Co. v. P. R. R., 102 I. C. C. 249, 250.

(j) Neither through billing, uninterrupted movement, continuous possession by the carrier, nor unbroken bulk, is an essential of a through interstate shipment. These are common incidents of through shipments; and when the intention with which a shipment was made in issue, the presence, or absence, of one or all of these incidents may be important evidence bearing upon that question. But where it is admitted that the shipment made to the ultimate destination had at all times been intended, these incidents are without legal significance as bearing on the character of the traffic. Chicago Livestock Exchange v. Director General 102 I. C. C. 452, 454.

(k) Where there is an original or continuing intention to ship goods from a point in one state to a point in another state the commerce is interstate and its character, as such, is not changed by mere accidents or incidents of billing. United States Finishing Co. v. N. Y. N. H. & H. R. R. 107 I. C. C. 412, 413.

(l) Combination rate assessed on a shipment of lumber from Rose Lake, Idaho, to Danvers, Ill., found inapplicable and illegal to extent it exceeded the rate applicable to both Chicago Heights and Peoria, Ill. Danvers is intermediate between Peoria and Chicago Heights, and while the tariff carrying the rate to these points did not prescribe a specific rate to Danvers, it carried an intermediate clause. The commission has frequently found that if carriers desire to restrict the application of a joint rate to any particular route they should do so by clear and unequivocal language. With no routing restrictions shown in the tariff naming the joint rate sought, the shipment is properly entitled to such rate. Reparation awarded. Rose Lake Lumber Co., Ltd., v. O. S. L. R. R. Co., 100 I. C. C. 221.

(m) Upon contention of complainants that commodity rates in effect when shipments moved were not legally published, in that the tariff did not show proper cancellation of the previous issues, and therefore no through commodity rates were established, leaving the class rates to apply, FOUND: Tariff carrying the rates charged states on its title-page "cancels I. C. C. No. 166," and this is sufficient to constitute cancellation of that tariff in full, notwithstanding an item on another page under the heading "Cancellation" which explains the reason of the noninclusion of rates from or to certain stations which theretofore had been named. Failure to comply with the requirement of the railroad administration that freight-rate authority shall be obtained for all changes in rates of carriers under Federal control does not invalidate the tariff. Nash Spokane Co. v. Director General, 100 I. C. C. 223, 226.

ALL OTHER CITATIONS

Muse Lumber Co. v. Director General, as Agent, 85 I. C. C. 267; Simms Oil Co. v. H. & T. C. R. R. Co., 85 I. C. C. 537.

VI. RIGHT TO WITHDRAW OR MODIFY.

§24. In General.

See Infra §26; Supra §9, §14; Advanced Rates §2½ (d), §5 (2) (m), §5 (2½) (i), §5 (6) (b) (j), §7 (6), §17 (p) (ee) (ll) (3g); Commodity Rates §2½ (b), §5 (a) (r) (4j) (4va); Distance Rates §1 (f); Long and Short Hauls §6⅞ (q); Proportional Rates II (e) (i) (q) (u) (w); Rail and Water Rates (j) (aa) (ll); Restricted Rates; State Rates and Regulations (uu); Water Carriers IV.

(a) Proposed cancellation of combination rule in connection with proportional rate from Grand Junction, Colo., to other Colorado points on box shooks and car strips from Pacific coast, found not justified. Carriers publishing joint rates to Grand Junction would be compelled to protect existing through rates and accept a less compensation than the published joint rates; tariffs containing joint rates to Grand Junction and proportional rates beyond would contain conflicting provisions as to application of the combination rule resulting in confusion in application of the through rate; and complications as to division of joint rates would result. Combination Rule on Box Shooks, 89 I. C. C. 219.

(b) Proposed cancellation of provision for free out-of-line haul and transit arrangement at Springfield, Mo., on grain originating at points on St. L.- S. F. Ry. Co. west of Neodesha, Kans., and north of Enid, Okla., and to apply in lieu of present arrangement, the general transit rules which provide for additional charges for out-of-line hauls, found justified. The Frisco's earnings under existing rates are extremely low and it can not continue to permit transit at Springfield at the direct-line rates in view of the additional haul of 174 miles. Moreover, no points are accorded more liberal transit arrangements than Springfield would have if suspended schedules are permitted to become effective. Transit on Grain at Stations in Missouri, 89 I. C. C. 349.

(c) Proposal to restrict joint rates on lumber from Pacific coast points to stations on Copper Range R. R. to shipments handled via C., M. & St. P. Ry. via McKeever, Mich., or delivered to that carrier at Missouri River gateways, found not justified. In justification respondents urge that Copper Range has divisional arrangements with the Milwaukee but none with the Duluth, South Shore & Atlantic, which it connects at Houghton, Mich., and that the Copper Range receives a shorter haul frequently involving the participation of an additional carrier when traffic moves through Houghton. However, under proposed restrictions traffic to the Twin Cities could not be forwarded under joint rates to points on Copper Range because the Milwaukee would not receive shipments at Missouri gateways. Routing on Lumber, 89 I. C. C. 351.

(d) Proposed cancellation of joint rates on oil, crude and fuel, from north Texas points to Louisville, Ky., and Jeffersonville and New Albany, Ind., substituting therefor the lowest combinations and placing those rates on same basis as gas oil, found justified. Crude, fuel and gas oils generally take same rates and crude and fuel oil rates herein under consideration were depressed because of carrier competition. Standard Oil Co. v. M.-K.-T. R. R. Co., 89 I. C. C. 463.

(e) Proposed cancellation of joint rates on coal, from eastern Kentucky and Tennessee and southwestern Virginia to St. Paul, Minneapolis, and Minnesota Transfer, Minn., leaving in effect higher combination rates, found not justified; but guided primarily by transportation considerations, such as distance, and fact that the transportation involves at least a three-line haul, leads to conclusion that a rate somewhat in excess of the present rate has been justified. Cancellation of Coal Rates to Minnesota, 89 I. C. C. 573.

(f) L. & N., and connections proposed to cancel the joint rates applicable on coal moving from districts served by them in eastern and southeastern Kentucky, eastern Tennessee and southwestern Virginia, to St. Paul, Minneapolis and Minnesota Transfer, Minn., in connection with the Rock Island, leaving in effect higher combinations. The usual basis of rates on coal from the Crescents to the Northwest is the combination on the gateway through which the traffic moves. These gateways include Chicago and Peoria, Ill., and the west bank Lake Michigan ports. Combination rates through the several gateways, except Peoria, are generally equal-

ized by the publication of proportional rates. In this case the vital consideration should not become obscured. The Commission should be careful not to permit the consideration of market competition to overshadow fundamental factors. It should be guided primarily by transportation considerations, such as distance, the fact that in the transportation of this coal from eastern Kentucky to the Northwest at least a three line haul is necessary, and generally, in addition, both Ohio and Mississippi river crossings. Giving due weight then, to all these material considerations it is difficult to escape the conclusion that a rate somewhat in excess of $4.86 has been justified. The Commission is not justified in denying the establishment of reasonable rates from eastern Kentucky mines simply because to do so happens to increase the existing differences between the rates from those mines and the rates from southern Illinois mines. The more pertinent consideration is the effect which the continued maintenance of these rates from these particular Crescent mines in eastern Kentucky to less than 7% of the destinations in the Northwest will have upon the level and basis of rates maintained from all the other Crescent mines with which other mines the eastern Kentucky mines are grouped. Eastern Kentucky mines are not to be denied entry to the Northwest markets, but there is no justification for according these mines an undue advantage in rates in order to secure such entry. It is to be observed that other mines and carriers in the Crescents are not urging any change in their present level or basis of rates. HELD, Rates proposed not justified but respondents have justified a rate of $5.40 to the Twin Cities from the origin territory hereinbefore described. Cancellation of coal rates to Minnesota, 89 I. C. C. 573.

(g) Proposed schedules limiting to certain direct routes the application of distance rates on stocker or feeder cattle moving from points on the Texas-Mexican Ry. to Arkansas City, Wichita, and Wichita Union Stock Yards, Kans., the effect of which will be to eliminate admittedly circuitous routes through Coffeyville, Kans., found justified. Livestock between Texas and Kansas Points, 89 I. C. C. 720.

(h) Respondents proposed to change the routing of traffic between Texas and southwestern points, on the one hand, and eastern and New England points on the other, by the cancellation of all class and commodity rates applicable as proportional rates from or to Port Arthur, Tex., and as joint rates in connection with rail lines, of the Transmarine Corporation, a steamship line operating between Port Newark, N. J., and Port Arthur, and the substitute Beaumont, Tex., for Port Arthur as a port of call for its vessels, the proposed schedules to name the same proportional rates to or from Beaumont, and the same rates in connection with the same and other rail carriers operating to and from Beaumont, as are now maintained to, from, or via Port Arthur. The interior points in the southwest and the eastern and New England territories will not be affected by the proposed cancellation, as the routing on through traffic will only be charged from "via Port Arthur" to "via Beaumont". The change in rates that will occur will be the cancellation of the rates to or from Port Arthur, and the substitution in the future of increased rates to or from Port Arthur applicable via Beaumont, when in connection with the Transmarine Corporation. HELD, proposed schedules justified. Routing between Texas and Eastern territories, 91 I. C. C. 455.

(i) D. S. S. & A., and Soo Line proposed to eliminate certain southern carriers from their respective tariffs naming joint rates on carbide of calcium, carloads, from Sault Ste Marie, Mich., to various southern destinations, and to cancel certain joint rates mentioned. At present the South Shore publishes joint rates on carbide of calcium from Sault Ste. Marie to Bessemer, Birmingham, Ensley, Fairfield and Mobile, Ala.; Memphis and Chattanooga, Tenn; New Orleans, La., and Pascagoula and Vicksburg, Miss. It is proposed to eliminate as participating carriers the Birmingham Southern, the C. N. O. & T. P., and L. & N., and to cancel the present joint rates, leaving in effect combinations on Cairo, Ill. The Soo Line tariff proposed to eliminate the C. N. O. & T. P., L. & N., M. & L. S., and Southern as participating carriers in the joint rates of 59c to Memphis and 74c to Mobile, New Orleans, Pascagoula, Vicksburg and a few other points. In view of the low level of the joint rates and the fact that it does not appear that the combined commodity rates, which would take their place, would result in unreasonable

charges, HELD, the proposed schedules justified. Carbide of Calcium from Sault Ste Marie, 91 I. C. C. 649.

(j) Respondents proposed to cancel commodity rates on woven wire cloth, carloads, from points in defined territories to certain points in Arkansas. Woven wire cloth, carloads, other than copper, brass or bronze, is rated fifth class, minimum 30,000 pounds, in all three classifications. Copper, brass, and bronze woven wire cloth, carloads, is rated third class, minimum 30,000 pounds. Present commodity rate from St. Louis territory to Little Rock, Ark., is 35c while fifth class rate is 76.5c. Iron woven wire cloth is substantially more valuable than merchant iron, bar iron, horseshoes, and many other commodities earning higher car revenues. The proposed schedules will increase the rates on woven wire cloth in many instances over 100% and will materially affect the continuance of the manufacture of screen doors and windows at the points where plants are now located. HELD, rates on copper, brass and bronze woven wire cloth may be published not in excess of the proposed rates while rates on iron woven wire cloth from St. Louis territory should not exceed to Fayetteville and Little Rock 56c, to Stuttgart and Benton 57.5c, to Malvern and Pine Bluff 59c, to Fort Smith 60.5c and to Canden 63.5c. Woven wire cloth to Arkansas, 92 I. C. C. 120.

(k) Respondents proposed to cancel joint commodity rates on lumber, carloads, from stations on the A. C. Ry., A. T. & N. Ry., B. S. & M., and W. & C. Ry. to points on the C. & O., Ashland, Ky., to East Huntington, W. Va., and to cancel the route via the M. & O., in connection with joint rates on the same commodity to the same destinations from points on the G. M. & N., and J. & E., and to restrict the routing in connection with joint rates on the same commodity to such destinations from stations on the D. & W., M. & A., M. E., M. & O., so that they will apply only via Rives, Tenn., and the I. C., and C. & O., or via Humboldt, Tenn., and the L. & N., to Louisville and C. & O., beyond. All of the origin points are located south of the C. & G., Ry., which extends from Greenville, Miss., through Winona, Miss., to West Point, Miss. The cancellation of joint rates from stations on the A. C., A. T. & N., B. S. & M., and W. & C., to the Huntington group would leave in effect full combination rates and would result in higher rates to Ashland and Huntington than to points immediately beyond. The rates proposed are the same as those which now apply to points on the C. & O., Wilson, W. Va., to Elk, W. Va., which is the next group of destination points east of East Huntington. The rates to points on the C. & O., both east and west of the Huntington group, are constructed generally on the combination basis. With respect to the cancellation of routing via the M. & O., in connection with joint-rates on lumber from points on the G. M. & N., and J. & E., respondent seems to be dissatisfied with the divisions it receives out of the joint rates. HELD, respondents have not justified the proposed schedules. Lumber from Alabama and Mississippi points, 92 I. C. C. 156.

(l) Respondents proposed to cancel the application of the so-called Kelly rule combination published in Jones I. C. C. U. S. 1 in connection with the rates on cotton and cotton linters contained in certain tariffs applying from points in the south and southwest to various destinations in the North and East. The proposed cancellation is with respect to the rates on cotton and cotton linters from the south and southwest to destinations principally north of the Ohio and Potomac rivers. The combination rule as applied to cotton and cotton linters may be objectionable, but that alone does not justify its cancellation which will result in higher rates in innumerable instances. HELD, proposed schedule not justified. Combination rule on cotton and cotton linters, 92 I. C. C. 165.

(m) Respondents proposed to restrict the application of the socalled Kelly rule, in connection with rates on lumber and other forest products from Ohio and Mississippi river crossings, Chicago, Ill., and related points, to destinations in central and western trunk line territories, when used as factors of combination rates. The suspended provision represents a new attempt on the part of the carriers to avoid the consequences of the lawful, although unintended and unforseen, operation of the combination rule. It would cancel the application of the combination rule in so far as traffic moving under such instances is concerned, and would thus increase present rates. The Commission has repeatedly sanctioned the carriers efforts to eliminate

that rule by the publication in its stead of joint or proportional rates, but have denied authority to cancel it where unjustified increased rates would result. HELD, suspended rates not justified. Combination rule on lumber, 93 I. C. C. 279.

(n) Respondents proposed to establish joint rates on cedar lumber and cedar shingles from north Pacific coast points to southern points as provided in Countiss tariff I. C. C. 1136. The proposed rates would result in both increases and reductions in the present rates but do not reflect the lowest available combinations now in effect. No evidence was offered in support of the suspended schedules. HELD, proposed rates not justified, but tariffs may be published providing for rates not in excess of the lowest available combination. Lumber and shingles from North Pacific coast to southern points, 93 I. C. C. 501.

(o) Respondents proposed, by an exception to the applicable tariffs, to prevent the Salt Lake & Utah from participating as an intermediate carrier in traffic from eastern transcontinental groups to Arizona, British Columbia, California, Idaho, Mexico, Montana, Nevada, New Mexico, Oregon and Utah, on respondents lines. Protestant operates an electric line extending from Salt Lake City to Payson, Utah, 67 miles. Protestant transports freight, express, mail and passengers between points on its lines. It has a connection at Provo, Utah, with the D. & R. G., by means of a direct interchange, and with the L. A. & S. L., and with the Utah Ry by means of a switching movement performed by the D. & R. G. At Salt Lake City protestant has a direct connection with respondent which performs the switching movement for protestants interchange with all other roads entering Salt Lake City. The record indicates that if protestant is eliminated from the through routes on traffic which moves into Salt Lake City over respondents lines there will be an increase in rates over that route to points on protestants line. Rates to those points are not named specifically but apply over that route under an intermediate application clause and elimination of protestant from the through route will make this clause inapplicable in connection with shipments to those points. Respondent has offered no justification for any increases in those rates. The record shows that a great amount of transcontinental traffic solicited by general agents of protestant will not originate on the lines of respondent but will be delivered to respondent at Omaha and that respondent will participate in such traffic only as an intermediate carrier. HELD, suspended schedules not justified. Routing via Salt Lake & Utah R. R., 95 I. C. C. 237.

(p) Respondents proposed to cancel joint commodity rates on cotton linters, carloads, delivered to carrier uncompressed, to go through to destination uncompressed, from Texas and Oklahoma to Indianapolis, and Marion, Ind., leaving applicable higher combination rates If the suspended schedules are allowed to become effective the lowest combination to Cleveland, Detroit and Boston would make on Chicago and not on East St. Louis, and the combinations on both Chicago and Danville would be lower than the present joint rates to Buffalo and Pittsburg. The rates to Chicago are in the main unrestricted as to routing and this traffic may move through either Indianapolis or Marion to that point. The proposed cancellation of the joint rates to Indianapolis and Marion would, therefore, result in fourth section violations. HELD, suspended schedules not justified. Cotton linters to Indiana points, 95 I. C. C. 514.

(q) Respondents proposed to cancel joint rates on lumber, carloads, from Alabama served by the A. T. & N., and by the W. & C., to certain points in Dominion of Canada. A. T. & N., is a short line of railroad which extends from Calvert, Ala., northward through York, Ala., to Reform, Ala. Calvert is 35 miles north of Mobile, Ala., on the Southern; 113 miles north of Calvert is York, where the A. T. & N., connects with the Southern and Reform is 73 miles north of York. Respondent participates in joint rates from points on several independent short line connections in the immediate vicinity of the A. T. & N., and although the tariffs publishing these rates are described as applying from Mississippi valley territory as distinguished from southeastern territory, two of these short lines, the Alabama Central and Birmingham Selma & Mobile, connect with respondents Montgomery branch east of the A. T. & N. The proposed schedules would result in undue prejudice to shippers of lumber on the A. T. & N., and the Choctaw, and in un-

due preference of their competitors, who continue to enjoy joint rates participated in by respondent. HELD, suspended schedules not justified. Lumber from Alabama to Canadian points, 96 I. C. C. 709.

(r) C. M. & St. P. Ry., respondent proposed to cancel certain proportional class rates applicable from Rock Island, Ill., and Davenport, Ia., to Iowa destinations on its lines. From points east of the Indiana Illinois state line to destinations in Iowa on respondents lines one route is over various lines to Peoria, Ill., thence C. R. I. & P., to Davenport and respondent beyond, known as the Peoria route. Another route between the same points is over various lines to Chicago, Ill., thence over respondents lines through Sabula, Iowa, north of Davenport. This route will be known as the Chicago route. The through rates over the Peoria and the Chicago routes are combinations of flat rates to Davenport or Sabula and proportional rates beyond. The proposed schedules would increase the combination over the Peoria route, which is 9c less than over the Chicago route, and would increase the rate 9c on shipments diverted to the Chicago route when moving on the Sabula combination. Respondents purpose is to secure to itself, between Chicago and Sabula, the haul east of the river that now goes to the Rock Island between Peoria and Davenport. HELD, proposed schedules not justified. Proportional rates from Upper Mississippi crossings, 96 I. C. C. 715.

(s) Proposed cancellation of commodity rates on boots and shoes from various New York points to trunk-line and New England territories and application of higher class rates in lieu thereof, found not justified. Only justification assigned for proposed cancellation to Boston, Mass., is that New England carriers requested that this be done in order to prevent its extension to other points, while cancellation to such points as Philadelphia, Richmond, and Norfolk is proposed in order to satisfy a complaint of Baltimore, Md., for removal of unjust discrimination. However, present rates have been long in effect, have evidently been satisfactory to carriers, and it was not shown that there has been such change in condition as to warrant adjustment sought, or that present rates are unremunerative or unreasonably low. Boot and Shoes from New York Points, 91 I. C. C. 591.

(t) Proposed withdrawal of certain southern carriers from participation in joint rates on carbide of calcium from Sault Ste. Marie, Mich., to various southern points, and cancellation of joint rates to Birmingham, Ala., rate points and to Chattanooga, Tenn., leaving higher combination rates in effect, found justified. present joint rates are subnormal as compared with rates from other producing points, and proposed rates compare favorably with rates for like distances from Sault Ste. Marie and other producing points to destinations in Alabama, Georgia and Tennessee, to which commodity rates are published. Carbide of Calcium from Sault Ste. Marie, 91 I. C. C. 649.

(u) Proposed cancellation by International-Great Northern R. R. Co. of its participation in rates on Cotton and cotton linters from the Southwest, via rail-and-water, to eastern points, when moving through New Orleans, La., which would result in substantial increases, prevent movement to New Orleans, and thereby increase movement through Texas ports, found not justified. Only justification shown is that respondent serves Texas ports more directly than it serves New Orleans, that there is an additional haul beyond its lines to move cotton through New Orleans, and that it desires to retain all revenues accruing out of joint rates for rail haul from points of origin to ports. Cotton and Cotton Linters from Southwest, 91 I. C. C. 717.

(v) Respondents proposed to make numerous changes in rates, fares and charges between, from, to, and via points in Arkansas, Louisiana, Mississippi and Alabama over the so-called Natchez route. The Natchez route extends from Hope, Ark., and Shreveport, La., over the L. & A., to Vidalia, La., where it uses the ferry of the M. P., over the Mississippi river to Natchez, Miss., thence over Mississippi Central to Hattiesburg, Miss., the B. & H. S. to Beaumont, Miss., and G. M. & N. to Mobile, Ala. The distances are from Shreveport to Mobile, 547 miles, Natchez to Mobile, 246 miles, from Natchez to Hattiesburg, over the Mississippi Central, 150 miles, Hattiesburg to Beaumont over the B. H. & S., 27 miles, Beaumont to Mobile over the G. M. & N., 69 miles. At the time of the hearing the B. H. & S., and the

G. M. & N. were hauling carload freight between Hattiesburg and Mobile for the account of the Mississippi Central without any agreement with respect to the compensation therefor. Under the schedules now in effect the Mississippi Central technically offers or concurs in transportation at stated charges from and to points east of Hattiesburg which it neither reaches nor serves by trackage arrangements with its connecting lines. Respondents purpose in filing the schedules here under suspension was to remove this anomaly. None of the interested carriers has shown any disposition to impede the free movement of through traffic over the Natchez route between Shreveport and Mobile, as it has existed since Jan. 19, 1925, The three principal companies apparently regard as futile any further attempts to arrange for joint operations by the Mississippi Central into Mobile. Apparently, none of them desires any joint or dual operations and none contemplates filing a supplemental petition. The most important tariff changes occasioned by the discontinuance of the Mississippi Centrals freight service to and from Mobile are those in which numerous respondents, at the request or upon the instructions of the Mississippi Central, propose to cancel through routes and joint rates on lumber. They propose to transfer the Hattiesburg branch stations from the Mississippi Central to the B. & H. S. list, to eliminate all routes over the Miss. Cent. via Mobile and connections to the Ohio river and central territory, leaving other more direct routes available with no increases in rates. Like changes are proposed in rates on lumber to the middle eastern mining district, canceling rates to points on the L. & N. to which no other routes are open. The routes through Mobile to these destinations are indirect, in some instances circuitous, and the public interest does not require their continuation. HELD: Suspended schedules justified except the Miss. Cent. has failed to justify the reasonableness of the combination rates which would result from the proposed cancellation of its rates on lumber from points on its line to Mobile. It proposed a joint rate of 14c for the future. The public interest requires the publication and maintenance of joint rates on lumber from points on that line west of Hattiesburg over the B. & H. S. and G. M. & N. to Mobile. HELD: Further, following rates will be reasonable on lumber to Mobile: Brookhaven to Tallahala, but not including Hattiesburg, 13c and west of Brookhaven, to and including Natchez, 14c. Reasonable divisions will be 5.5c to G. M. & N., 2.5c to B. & H. S., remainder to Miss. Cent. Cancellation of Rates and Routes via Miss. Cent., 100 I. C. C. 71.

(w) Respondents proposed to cancel joint rates on coal, carloads, from Mines on the Brazil branch of the C. I. & W. to numerous destinations and to eliminate the C. A. & S. from participation in the joint rate to Chicago and other points. The C. & E. I. had published a tariff August 10, 1919, carrying joint rates on coal. When the C. I. & W. took over the Brazil branch it adopted this tariff so far as it applied from or to points on the Brazil branch. Previously the rate to Chicago was restricted to the C. & E. I., but the C. I. & W. made it applicable over all routes of participating carriers. On Oct. 29, 1923, the C. A. & S. was added as a participating carrier and so the Chicago rate became applicable via West Melcher, the C. A. & S., Morocco and N. Y. C., which makes the short line distance. The elimination of the C. A. & S., as a participating carrier was due solely to the dispute over divisions. The dispute over divisions affords no grounds for eliminating the C. A. & S. as a participating carrier to any of the destinations. HELD: Schedules not justified. Coal from Indiana Mines, 100 I. C. C. 350.

(x) Respondents proposed to cancel the application of the so-called Kelly combination rule published in Jones I. C. C. U. S. 1, in connection with the rates on cotton and cotton linters from Louisiana and Arkansas to destinations in the south. The proposed cancellation would increase the rates 18c per 100 pounds on cotton and cotton linters from Arkansas and Louisiana points to points principally in the southeast, central territory, and trunk line territory in all instances where the rates through New Orleans are made on the combinations to and from that point under the so-called Kelly combination rule. HELD: Proposed schedules not justified. Combination Rule on Cotton and Cotton Linters, 101 I. C. C. 63.

(y) Respondents proposed to cancel present joint rates on lumber, carloads, from certain points on the main line and branches of N. & W., respondent, in southwestern Virginia, West Virginia and Tennessee over routes through Kenova,

W. Va., and other western gateways, including Buffalo, N. Y., to trunk line and New England territories, with the result that higher combinations would become applicable. Two sets of joint thru rates on lumber are in effect from and to the points considered. One set applies via eastern junction points, Hagerstown Md., Shenandoah Jct., W. Va., and Norfolk, Va. These rates are from 6 to 9c lower than those in the other set applicable over the so-called western routes via Kenova and other junctions including Buffalo. In connection with traffic moving from the points here dealt with the latter routes are materially longer than the former. The rates which it is proposed to cancel are of many years standing and are not shown to be unreasonably low. The sole justification of-Chicago was restricted to the C. & E. I., fered for their cancellation is that there to justify the expense of continuing them in the tariffs. HELD: Suspended schedules not justified. Lumber from Virginia, West Virginia to East, 101 I. C. C. 727.

(ya) Proposed cancellation of commodity rates on furniture, c. l. and l. c. l. from and to points in c. f. a. territory and substitution therefor of classification basis and in certain instances exception basis, which would result in both advances and reductions, found not justified except as to l. c. l. traffic. Proposed cancellation while at same time continuing relatively lower commodity basis from producing points in adjoining territories would seriously disturb long-standing and important relationships, and create undue prejudice against southern Indiana manufacturers. Furniture from C. F. A. Territory, 92 I. C. C. 97.

(z) Proposed cancellation of proportional commodity rate on strawboard from Delphi and Lafayette, Ind., to upper Mississippi River crossings, leaving in effect rates 90 per cent of sixth class, found not justified. Resulting increased through rates to points west of Mississippi River would not conform to relationship with rates from Chicago group to same destinations, prescribed in Indiana Public Service Commission. 88 I. C. C. 728. Strawboard from Delphi and Lafayette, 92 I. C. C. 113.

(aa) Proposed cancellation of special commodity rates on woven-wire cloth from points in defined territories to points in Arkansas, leaving higher class rates in effect, found justified as to copper, brass, and bronze woven-wire cloth, but not justified as to iron woven-wire cloth. In many instances proposed schedules would increase rates on iron woven-wire cloth over 100 per cent, result of which would be to materially affect continuance of manufacture of screen doors and windows at points in Arkansas where plants are now located and which have built up and fostered the industry under the present commodity rates. Woven-Wire Cloth to Arkansas, 92 I. C. C. 120.

(bb) Proposed cancellation of routing via M. & O. R. R., in connection with joint rates on lumber from points on the Gulf, Mobile & Northern, and Jackson & Eastern to points on the C. & O. Ry., found not justified. Only justification offered was that there is not enough revenue in the business to pay for handling, the M. & O. apparently being dissatisfied with divisions it receives out of the joint rates. Lumber from Alabama and Mississippi Points, 92 I. C. C. 156.

(cc) Proposed cancellation of joint commodity rates on lumber from points in Alabama and Mississippi to points on the C. & O., which would leave in effect full combination rates and result in rates to Ashland, Ky., and Huntington, W. Va., higher than to points immediately beyond, found not justified. Lumber from Alabama and Mississippi, 92 I. C. C. 156.

(dd) Proposed cancellation of transit privileges by M.-K.-T. R. R. of Texas on grain originating on or moving via the C., R. I. & P. and C., R. I. & G., found not justified. Sole justification offered by respondent is demand of the Rock Island for proportion of the rate from origin to transit station, instead of division from origin to ultimate destination, but a dispute among carriers over divisions is no justification for increased rates. The Rock Island is a party to the joint through rates under which transit is accorded and is not concerned with transit privileges accorded by respondent, as transit privileges are local to carrier according them. Transit Privileges on Grain, 92 I. C. C. 161.

(ee) Proposed withdrawal of D., L. & W., Erie, and Lehigh Valley from participation in through joint lake-and-rail and rail-lake-and-rail rates from and via various Great Lakes ports to points on certain of their eastern connections, which will result in increased rates via such routes, found justified except as to

routes the continuance of which is necessary and desirable in the public interest. Purpose of proposed withdrawal is to throw burden of handling traffic upon carriers who are able to handle it most expeditiously and economically, and proposed restrictions will not leave any destination territory without a practicable route. Lake and Rail Rates to Eastern Destinations, 92 I. C. C. 183.

(ff) Proposed elimination of wire, nails, and staples from list of iron and steel articles permitted to be shipped in mixed carloads, for purpose of making tariffs in southwestern territory uniform, found not justified. Respondents' endeavor is prompted by request of parties who desire an adjustment that will force movements through Texas jobbers. Increased rates can not be justified solely upon showing of desire for uniformity in tariff provisions. Moreover, shippers or dealers, whose interests are not to be considered subordinate to others, avail themselves of mixtures now in effect, and desire of other dealers to bring about purchases from them is no warrant for increasing transportation burden to be borne by consumers. Iron and Steel Articles to Southwest, 93 I. C. C. 31.

(gg) Proposed cancellation of joint commodity rates on cement plaster from Pyramid and Sweetwater, Tex., to certain destinations on the St. L.-S. W. Ry., leaving in effect higher combinations, found not justified. The joint rates were published contrary to instructions and sole justification offered is carrier's desire to correct this error. However, no rate change is proposed from competing points at which cement-plaster plants are located, and such a rate disadvantage would exclude protestant from markets at local Cotton Belt points. While protestant would be able to reach competitive points at equal rates, it would not enjoy as liberal routing privileges as its competitors. Moreover, protestant is as favorably situated with respect to distance as are its competitors, and no reason appears why it should not have same basis of rates. Cement Plaster from Pyramid and Sweetwater, 93 I. C. C. 315.

(hh) Proposed joint rates on cedar lumber and shingles from north Pacific coast points to southern points, which would result in both increases and reductions, the former predominating, but not reflecting lowest available combinations now in effect, found not justified. Lumber and Shingles from North Pacific Coast, 93 I. C. C. 501.

(ii) Proposal to cancel joint commodity rates on cotton linters, uncompressed, from points in Texas and Oklahoma to Indianapolis and Marion, Ind., leaving in effect higher combinations based on upper Mississippi River crossings, found not justified. Present rates on this traffic to Indianapolis and Marion are the same as to Chicago, to which point they are intermediate over certain routes through East St. Louis, and proposed rates would result in violations of the long-and-short-haul clause of section 4 of the act. Cotton Linters to Indiana Points, 95 I. C. C. 514.

(jj) Proposal to cancel rates and minimum weights on wooden hoops from Group C points to western destinations and establish higher rates based upon lower minima, in compliance with carriers' interpretation of the commission's order in Ozark Cooperage & Lbr. Co., 91 I. C. C. 329, found not justified. Reasonableness of the rate was not in issue in the case cited and in pointing out that carriers should not protect themselves from unduly lower charges per car by prescribing minimum weights which can not be loaded in ordinary equipment available the commission merely intended to dispose of a contention that the minimum assailed was justified because earnings under the rate applicable in connection therewith were less than reasonable. The commission did not intend to sanction an increase in rates. Carriers do not contend here that present rates are unreasonable and offered no justification of the proposed rates which reflect substantial increases. Wooden Hoops to Western Destinations, 95 I. C. C. 519.

(kk) Proposal to cancel application of wrought-iron pipe commodity rates on iron or steel sucker and pull rods from St. Louis and points in c. f. a. territory to destinations in Kansas and Missouri, leaving in effect higher class rates, found not justified. Pull rods and sucker rods have hitherto been accorded same rates and no justification was offered for the proposed rates under which rates on pull rods would be materially higher than on sucker rods. While evidence indicates that present rates are in need of revision and that present relationship of these rates with those to Oklahoma points results in prejudice to localities

in the latter territory, the class rates proposed would result in some instances in rates higher than those to Oklahoma points and considerably higher in many cases than those proposed by carriers in a pending proceeding. Sucker and Pull Rods from St. Louis, 95 I. C. C. 599.

(ll) Proposed adjustment of joint rates on soapstone or talc, crude or ground, from points in North Carolina to points located principally in central territory, which would result in both increases and reductions, the former predominating, found not justified with respect to increases. Present rates are based on proportionals on talc to Ohio River crossings, plus proportionals on Georgia clay beyond. Proposed rates base on same proportionals to Ohio River and 80 per cent of sixth class beyond, except to Chicago and Milwaukee. In 95 I. C. C. 704, rates on talc from Hemp, N. C., to East St. Louis and Vandalia, Ill., were found unreasonable to extent they exceeded substantially present basis. Schedules ordered canceled without prejudice to filing of new ones publishing the reduced rates. Soapstone or Talc from North Carolina, 96 I. C. C. 191.

(mm) Proposed cancellation of joint rates on lumber from points in Alabama served by the A., T. & N. and the Washington & Chotaw, two shortline carriers, to certain Canadian points, which would result in the application of higher rates, found not justified. Lumber from Alabama to Canadian Points, 96 I. C. C. 709.

(nn) Proposed cancellation of joint rates on lumber, from points in Alabama, served by the A., T. & N. and the Chotaw, two short-line carriers, to Canadian destinations would result in undue prejudice to shippers of lumber on those lines, and in undue preference of their competitors, who will continue to enjoy joint rates participated in by the Mobile & Ohio. Lumber from Alabama to Canadian Points, 96 I. C. C. 709, 710.

(oo) Proposed joint rates to Omaha, Nebr., via Kansas City lower than the existing combinations on intermediate markets on grain, grain products, and articles taking same rates, in carloads from points in Minnesota, Iowa and Missouri on the Chicago Great Western and certain connecting short lines, to destinations in Texas, found to result in undue prejudice to Omaha and undue preference of Kansas City in so far as the carriers interested may participate in the movement via both gateways and maintain transit service at both, but in all other respects to have been justified. Grain to Texas, 96 I. C. C. 727.

(pp) Proposal to cancel interstate commodity rates on iron and steel articles from certain points on W. & L. E. in Ohio to destinations on P. & L., E. in Ohio and Pennsylvania, and to apply the higher fifth-class rates in lieu thereof, found not justified. The fact that the class basis is maintained over other lines from and to points involved is not controlling. Iron and Steel Articles from Ohio to Pennsylvania Points, 98 I. C. C. 151.

(qq) Following 73 I. C. C. 396, and other cases cited, proposed cancellation of numerous l. c. l. and any-quantity commodity rates from points in southeastern and Carolina territories to destinations in Mississippi Valley, leaving effective generally higher-class rates, found justified, except as to such rates on marble, granite and stone. This adjustment will place l. c. l. shippers on an equality and at the same time correct fourth-section departures. Commodity Rates between Points in Southern Territory, 98 I. C. C. 627.

(qqa) Proposal to cancel l. c. l. commodity rates on clean rice from, to, and between points in southern territory, designed primarily for purpose of bringing about uniformity and to remove discriminations, leaving in effect higher class rates, found not justified. Rates on basis of those approved in Southern Class Rate Investigation, 100 I. C. C. 513, approved. Rice between Points in Southern Territory, 102 I. C. C. 79.

(qqb) Proposal to increase rates on potatoes from Michigan, Minnesota, and Wisconsin groups to Jellico, Knoxville, and Birmingham, by cancelling joint through rates, leaving in effect higher Ohio River combinations, and designed to correct a maladjustment, escape widespread reductions, remove discriminations, and comply with the long-and-short-haul rule, found not justified. Joint commodity rates on heavy traffic moving long distances are usually less than combinations, and on potatoes joint rates are maintained from Texas and the northern groups here involved to other Mississippi Valley points. Joint rates have been car-

ried in these tariffs and reissues thereof for the past 15 years. Moreover, carriers were expected to revise commodity rates somewhat in line with distance class rates prescribed in 100 I. C. C. 513, 663, and neither the through rates nor combinations here in issue conform to any distance standard. Potatoes from Alabama and Tennessee, 102 I. C. C. 183.

(qqc) Proposal to increase rates on potatoes, c. l., from certain groups in Michigan, Minnesota and Wisconsin to Jellico and Knoxville, Tenn., and Birmingham, Ala., by cancellation of joint through rates and application of Ohio River combination rate, for the avowed purpose of correcting maladjustment, establishing a uniform and non-discriminatory basis of rates to southeastern territory, and complying with long-and-short-haul rule, found not justified. Upon contention by respondents that joint rates to destinations here involved were published in error and that southern carriers' attention was only recently directed to these joint rates by the commission's refusal to longer permit fourth-section departures by the maintenance of higher rates at intermediate points than to Birmingham, Jellico, and Knoxville, HELD: These tariffs have been reissued many times during the past 15 years, and the joint rates have been carried in all of them. Suspended schedules ordered cancelled and proceeding discontinued. Potatoes to Alabama and Tennessee, 102 I. C. C. 183.

(qqd) Proposed cancellation of commodity rates on tanning extract from Norfolk and Newport News to Memphis, Chicago, and other destinations in c. f. a. territory, leaving in effect higher class rates, found not justified. Suspended schedules would create departures from long-and-short-haul provisions of fourth section of the act. Tanning Extract from Norfolk and Newport News, 102 I. C. C. 196.

(rr) Respondents proposed to cancel certain joint commodity rates on poles, piling, and on box and crate shooks from Sand Point, Kootenai, and Culver, Ida., to group points in California on the W. P., and Sacramento Northern. The points of origin are on the N. P., about 70 miles east of Spokane, Wash. Sand Point is served by two other carriers. Generally speaking, the territory of destination lies southward from Marysville toward San Francisco, but not south of Stockton and San Jose. At present a joint commodity rate of 62c applies on poles. The principal justification advanced was the failure to discover any movement under the present rates during and subsequent to 1924. HELD, justification not justified. Forest Products from California and Nevada, 102 I. C. C. 224.

(rra) Proposal to cancel commodity rates on salt cake from Pacific coast and related points to certain destinations in Wisconsin, leaving in effect higher class rates, found not justified. The present rates compare favorably with those on like and similar traffic between points in same general territory. Carriers propose their cancellation here, but such rates would continue in effect to other destinations in that territory. Salt Cake from Pacific Coast, 102 I. C. C. 261.

(rrb) Proposed cancellation of joint commodity rates on certain forest products, including doors, not screened or glazed, door panels, veneered, and kindling wood from points in north Pacific coast territory to Michigan City and Gary, Ind., which will leave in effect the same basis of rates as that now accorded other points in c. f. a. territory and, on articles other than doors, not screened or glazed, and panels, will result either in no increases or in very small increases, found justified. The changes proposed appear to be the only practicable method under present conditions of placing Michigan City and Gary on a uniform basis with surrounding territory, and leave something to be desired, particularly in comparison with the considerably lower rates to points directly west of the Chicago rate group. Forest Products from North Pacific Coast, 102 I. C. C. 319.

(ss) Respondents proposed to cancel the present commodity rate of 35.5c on clean rice, carloads, from New Orleans, La., to Bowling Green, Ky., thereby making effective to Bowling Green by intermediate rule of the tariff the carload rate of 47c now applicable from New Orleans to Louisville, Ky. Bowling Green is on the L. & N., 73 miles northeast of Nashville, Tenn., 114 miles south west of Louisville, Ky., and 693 miles from New Orleans. On traffic from New Orleans over respondents line Nashville is intermediate to Bowling Green and the latter point is intermediate to Louisville. There is and has been no carload movement of rice to

Bowling Green from New Orleans. HELD, schedules justified. Rice from New Orleans, 104 I. C. C. 333.

(tt) Respondents proposed to eliminate the Wabash as a participant in the joint rates on grain products, in carloads, from Chicago, Joliet, Lockport, and Peoria, Ill., to destinations in Arkansas on the M. P., and its connections. The elimination of the Wabash from the carriers named will effect only the rates from Chicago, as the Wabash does not serve the other points of origin. It will result, however, in increases in the rates on grain products from Chicago to destinations in Arkansas on the M. P., when shipped over the Wabash. The increase in the rate on corn products to Little Rock will amount to 5.5c, the present joint rate from Chicago being 30c and resulting combination based on St. Louis, Mo., 35.5c. The burden of justifying these increased rates rests upon respondents. To urge that combination rates are the general basis for constructing rates from points on the Wabash to the territory of destination is not sufficient. In fact, it is contrary to the frequently expressed view that the through rate should be somewhat less than the sum of the rates to and from an intermediate point. It is important to note that the Wabash is at no disadvantage by reason of circuity of route and that no evidence has been submitted which in any way tends to indicate that the joint rates from Chicago to the destinations on the M. P., in Arkansas are depressed. Grain products to Arkansas points, 104 I. C. C. 742.

(uu) Respondents proposed to cancel joint commodity rates on wheat, oats and flour, carloads, from points on the L. A. & S. L., to destinations in Louisiana, Oklahoma and Texas, which would result generally in the application of higher combination rates. Respondents state that the purpose of the suspended schedules is to remove from the tariffs certain departures from the long and short haul provision of the fourth section the existence of which was developed at the hearing in No. 16112 now pending. In that proceeding rates on grain and grain products from Utah and other western states to the destination territory here considered are in issue. The proposed rates would create new fourth section departures. Respondents admit that the rates proposed would not accomplish the results desired. HELD, schedules not justified. Grain and grain products to Louisiana, 104 I. C. C. 753.

(vv) Respondents proposed the elimination of the Pennsylvania as a participant in joint rates on grain and grain products, in carloads, from Minneapolis and other points in Minnesota and Wisconsin and from Missouri river points to New Orleans, La., and other Gulf ports and destinations in Mississippi drawal of the Pennsylvania from participation in these rates had its origin in a dispute over divisions. Respondents are willing to cancel the proposed schedules in so far as rates from points in Minnesota and Wisconsin are affected. The carriers evidence is confined to justification of the withdrawal of the Pennsylvania from participation in the joint rates from Omaha, Neb., South Omaha, Neb., and Council Bluffs, Iowa to New Orleans, La. Although the question of fourth section relief is not here presented the principles as to wasteful transportation applied in fourth section as in other cases have equal application here. HELD, proposed withdrawal of the Pennsylvania from participation in the joint rates from the Missouri river to New Orleans justified. Grain and grain products to Mississippi valley, 107 I. C. C. 167.

(ww) Respondents proposed to cancel the carload and less carload commodity rates on cheese from southern Wisconsin points to Chicago, Ill., and certain other destinations and leave the higher third class rates to apply. The territory here concerned is substantially that part of Wisconsin south of the line of the G. B. & W., running between Green Bay, Wis., and Winona, Minn. The movement is regular throughout the year. Production is steadily increasing. Claims for loss and damage of cheese in carload shipments are negligible. Cheese from the northern part of Wisconsin, from New York state, the second largest producing territory in this country and from substantially all other producing points to Chicago moves on third class rates. Respondents purpose is to align the rates on cheese from Wisconsin with the general level of rates to Chicago on that commodity. The present commodity rates from Wisconsin points to Chicago which it is here proposed to cancel average about 25% less than third class over the North-

western and about 27% less than third class over the Milwaukee. Many of the present rates which it is here proposed to cancel are those prescribed by this Commission in 16 I. C. C. 85, as modified by subsequent general changes. HELD, schedules not justified. Cheese to Illinois and Wisconsin 107 I. C. C. 340.

(xx) Respondents proposed to cancel the present commodity rates on peanuts, carloads and less carloads, from producing, shelling and cleaning points in Virginia and North Carolina to destinations in southeastern and Mississippi valley territories, and to apply in lieu thereof sixth class rates carloads and fourth class rates less carloads. The territory of origin from which the proposed rates apply includes points in southeastern Virginia and points in North Carolina taking Virginia cities rates. Of these points Suffolk, Va., may be used as a representative point. Under the proposed adjustment, the present rates to New Orleans, 63.5c carloads and $1.0035 less carloads, would apply as proportional rates to New Orleans, Natchez, Vicksburg, and Memphis, on shipments destined to points west of the Mississippi river, except to points in Colorado, New Mexico and Wyoming. Peanuts, not roasted or salted, are rated in the southern classification sixth class, carloads, and fourth class, less carloads. Except to the points to which increases are proposed, the sixth class rates from the Virginia and North Carolina points apply. The commodity rates to the points herein issue are lower than the rates to intermediate points the rates proposed representing the highest rate to any intermediate point, and the fourth section departures being thereby eliminated. The rates on peanuts from Suffolk to Louisville, Ky., and Cincinnati, O., are now lower than the rates to Knoxville, Chattanooga, or Atlanta, and rates to the river crossings apply over routes through these points. Any increase in the rates to the intermediate points would increase the discrimination against those points. The present rates to Nashville do not exceed the rates to Evansville, Ind., but the increased rates to Nashville would exceed the rates to Evansville, thereby creating a departure from the provisions of the fourth section. Apparently, except for rates between comparatively few points, there are no less carload commodity rates in southeastern and Mississippi valley territories at least there is no general line of such rates and to the destinations here in issue no less carload commodity rates are shown to apply except from the Virginia and Carolina points here proposed to be canceled. HELD, carload rates not justified. less carloads justified. Peanuts from Virginia and North Carolina, 107 I. C. C. 343.

(yy) Proposed tariff changes in rates, fares and charges over the Natchez route issued in connection with the discontinuance of the Mississippi Central's operation and trackage arrangements between Hattiesburg, Miss., and Mobile, Ala., in order to remove the existing anomalous tariff situation herein described, found justified except that the Mississippi Central has failed to justify the reasonableness of the combination rates which would result from the proposed cancellation of its rates on lumber from points on its line to Mobile. Reasonable rates on lumber prescribed, and order entered requiring the establishment of a through route and joint rates, and just, reasonable, and equitable divisions of such joint rates prescribed for the future. Adjustments of divisions on all interstate shipments handled by B. & H. S., and G., M. & N., for account of the Mississippi Central by reason of the existing anomalous tariff situation should be based upon strict mileage prorates. Cancellation of Rates and Routes via Mississippi Central, 100 I. C. C. 71.

(zz) Proposed concellation of through routes and joint rates on lumber from certain points in Mississippi to Mobile, Ala., over the Natchez route found not justified. The N. O. G. N. and G. & S. I., can reach Mobile in connection with the Louisville & Nashville and the commission should not require them to continue in effect rates from points on the upper portions of their lines over the Natchez route and thus short-haul themselves. Moreover, from points on the lower portions of their lines their two-line hauls in connection with the L. & N. are so much shorter than the three, four or five line route through Hattiesburg and Beaumont that the latter may be regarded as unduly circuitous and impracticable. Lumber will not move on rates higher than the blanket rates and

the prescription of higher reasonable rates over such routes would be futile. Reasonable rates prescribed for the future, and order entered requiring the establishment of through routes and joint rates and just, reasonable, and equitable divisions of such joint rates prescribed for the future. Cancellation of Rates and Routes via Mississippi Central, 100 I. C. C. 71, 75.

(3a) Proposal to eliminate Chicago, Attica & Southern as a participating carrier in joint rates on coal from mines on Brazil branch of Cincinnati, Indianapolis & Western to numerous interstate destinations, due solely to dispute over divisions, found not justified. Coal from Indiana Mines, 100 I. C. C. 350.

(3b) Proposed cancellation of joint rates on lumber from points on the Norfolk & Western in southwestern Virginia and related points, via routes through Kenova, W. Va., to eastern destinations, leaving in effect higher combinations, found not justified. Sole justification offered for the proposed cancellation is that there is not sufficient movement under such rates to justify expense of continuing them in tariffs. However, the rates are of many years' standing and are not shown to be unreasonably low. Lumber from the Virginias to Eastern Destinations, 101 I. C. C. 727.

(3c) Respondent proposed to cancel joint rate of 5c maintained by S. A. L., and Southern on common brick from Van Wyck, S. C., to Charlotte, N. C., and to leave in effect respondents single line rate of 5c between the same points. Distance over joint route is 38 miles, and over respondents line 46 miles. If the joint rate is cancelled the rate over the two line route will be a combination of intermediate rates. or the rate to some point beyond Charlotte held as maximum to Charlotte, and will be higher than 5c. Respondents route is not unduly long. Rate over that route is the rate prescribed by the Commission on common brick for the distance, and the record of past routing by protestant does not argue for the maintenance of the joint route as a real necessity to protestant. HELD, schedules justified. Routing brick and clay products, 112 I. C. C. 252.

ALL OTHER CITATIONS

Proportional Commodity Rates, 85 I. C. C. 40; Elimination of Routes on Transcontinental Traffic, 85 I. C. C. 108; Rating on Empty Wooden Barrels, 85 I. C. C. 154; Brick and Draintile from St. Louis, 85 I. C. C. 353; Sisal from Gulf Ports, 85 I. C. C. 467; Routing on Lumber from A. T. & N. R. R. Stations, 85 I. C. C. 527; Cantaloupes and Melons from California, 88 I. C. C. 340; Grain and Products from Minnesota and Wisconsin, 88 I. C. C. 365; Classification Exceptions on Empty Egg Cases, 88 I. C. C. 376; Scrap Iron to Terre Haute, 88 I. C. C. 410; Grain from Oklahoma to Mobile, 88 I. C. C. 515; Coal to Minnesota Points, 88 I. C. C. 631.

VII. DUTY TO FURNISH FACILITIES.

See Supra §24; Cars and Car Supply.

§26. Restriction of Routes and Rates.

(a) Proposed restriction of proportional rates on grain and products from Missouri river points to Cairo, Ill., for beyond, to traffic moving beyond Cairo "via rail lines," which would result in increased rates when outbound movement is by water, found not justified. Respondents failed to establish beyond doubt necessity for differentiating between traffic moving beyond Cairo by water and that moving beyond by rail. Moreover, if suspended schedules were allowed to became effective proportional joint rate would exceed aggregate of intermediate proportionals and, in its application to shipments to Cairo for beyond by water, would thus violate fourth section. Grain and Products from Missouri River, 91 I. C. C. 365.

(b) Proposed restriction of routing on grain and products originating upon line of Missouri Pacific in Kansas and Nebraska and destined to Texas so that one-factor rates south of Kansas City will not apply via Frisco, M. K. & T., or Kansas City Southern, found justified. Commission has recognized that carriers may ordinarily insist upon long haul for traffic which they originate provided routes afforded by them are not unreasonably long. No undue prejudice or preference will result, for if proposed tariffs are permitted to become effective only routes of which Missouri Pacific is initial carrier will be available south of Kansas City. Grain from Western Trunk Line Points, 91 I. C. C. 632, 647.

(c) Proposed withdrawal of certain southern carriers from participation in joint rates on carbide of calcium from Sault Ste. Marie, Mich., to various southern points, and cancellation of joint rates to Birmingham, Ala., rate points and to Chattanooga, Tenn., leaving higher combination rates in effect, found justified. Present joint rates are subnormal as compared with rates from other producing points, and proposed rates will compare favorably with rates for like distances from Sault Ste. Marie and other producing points to destinations in Alabama, Georgia and Tennessee to which commodity rates are published. Carbide of Calcium from Sault Ste. Marie, 91 I. C. C. 649.

(d) Proposed cancellation by International-Great Northern R. R. Co. of its participation in rates on cotton and linters from the Southwest, via rail and water, to eastern points when moving through New Orleans, La., which would result in substantial increases, prevent movement to New Orleans, and thereby increase movement through Texas ports, found not justified. Only justification offered is that respondent serves Texas ports more directly than it serves New Orleans, that there is an additional haul beyond its lines to move cotton through New Orleans, and that it desires to retain all revenues accruing out of joint rates for rail haul from points of origin to ports. Cotton and Linters from Southwest, 91 I. C. C. 717.

(e) Respondents proposed to restrict the application of joint rates on grain and grain products, carloads, from certain primary markets, such as St. Paul and Minneapolis, Minn., Chicago and Peoria, Ill., and St. Louis, Mo., and intermediate territory between those points and Missouri river cities, to destinations in Colorado, Kansas, Missouri, Nebraska, Oklahoma and Wyoming, so that they will apply only on shipments originating beyond the primary markets named. Generally speaking, the proposed schedules would have the effect of increasing the rates on shipments originating at the Twin Cities and at most intermediate points to the basis of the combination of local rates on the Missouri river. It is proposed to increase the rates on local shipments from Chicago and the other primary markets mentioned in the same amount as the rates from the Twin Cities are increased. From a few intermediate points the establishment of rates on the combination basis would result in reductions. The present rates from the Twin Cities, Chicago, and the other primary markets above named to these destinations apply both on local traffic from those markets and on traffic originating beyond, and are generally the same in amount as those mentioned in the opposite direction. They apply as maxima at intermediate points and have been in effect upon the present basis for a number of years. The present rates from the Twin Cities are constructed on basis of arbitraries or components of 17.5c on wheat and 16c on coarse grain to the Missouri river, plus the rates beyond. These arbitraries or components to the Missouri river are the same as the rates applying proportionally in the opposite direction. A set of local rates to the Missouri river higher than those on basis of the proportional rates in the opposite direction is in effect from these primary markets and most of the intermediate points. It is these local rates, most of them higher and some of them lower, that respondents are seeking to apply on local traffic from these primary markets and intermediate points, except in instances where flat increases of 6c on wheat and 5.5c on corn are proposed to be made, as later appears, leaving the rates now applicable to apply only as proportional rates from the primary markets named. HELD: Proposed schedules not justified. Grain from Western Trunk Lines, 100 I. C. C. 745.

(f) Proposal to restrict basis for computing distance for application of mileage rates on brick and articles taking same rates between points in Oklahoma and Texas and between points in Arkansas and Oklahoma, to distances over routes embracing as a maximum, lines or parts of lines of not more than three carriers, without exception, found not justified. Increases in rates will result to certain destinations in Texas to which the short line distances from Oklahoma are now figured over four or more lines; Texas intrastate rates are figured by use of routes embracing more than three lines; and schedules on other commodities are not similarly limited. Brick between Oklahoma and Texas Points, 93 I. C. C. 210.

(g) Proposal of carriers in c. f. a. territory to restrict application of combination rule on livestock so that it will only apply where all factors used in arriving at through rates from origin to

ultimate destination carry reference thereto and authorize an affirmative application thereof, found not justified. Such restriction would not merely relieve respondents of assumption of deductions from western lines' separately established rates, but also from their own, since the rule would not apply where any carrier in the through route did not make appropriate reference thereto. This would result in increased charges, the burden of justifying which rests upon respondents. Moreover, from some origin points tariff of western carriers still refer to the rule, and an inadmissible result of the restriction would be to make rates to be applied by respondent eastern lines depend upon separate tariffs of western lines. This would not accord with requirements of section 6 of the act. Combination Rule on Livestock, 93 I. C. C. 458.

(h) Proposed cancellation of a route, in connection with the Southern Ry., on peaches, under joint commodity rates from points in Georgia and Alabama and from Chattanooga, to interstate destination and Canada, found not justified. This proceeding arises out of a disagreement between carriers as to proper distribution of the peach traffic, the Southern's action being motived by a desire to obtain greater revenues by an increased volume of traffic instead of by increased divisions. Such disputes, however, afford no justification for increased rates; moreover, proposed cancellation, if permitted, will deprive shippers of a practicable route maintained for many years, unless they assume responsibility of routing over that route at increased rates which would result. Peaches from Alabama, Georgia, and Tennessee, 93 I. C. C. 534.

(i) Shipments of apples and pears moving on through rates may be stopped in transit at points in c. f. a. territory for storage, regardless of point of origin, provided storage point is on a direct line and directly intermediate between point of origin and final destination. Proposal of the B. & O. to restrict application of joint rates to shipments moving into and out of transit points over its own rails, found not justified. Numerous increases and an abnormal rate situation would result, which carrier made no attempt to justify. Storage in Transit of Apples and Pears, 95 I. C. C. 101.

(j) Proposed elimination of Salt Lake & Utah R. R. as an intermediate participating carrier in routing of westbound transcontinental traffic, found not justified. Its elimination from through routes on traffic moving into Salt Lake City over the Union Pacific's lines will result in increased rates over that route to points on the Salt Lake & Utah. Moreover, various transit services would remain available to competing shippers served by the D. & R. G. under transcontinental rates whereas shippers on the Salt Lake would be compelled to pay higher combinations. Respondent offered no justification for the resulting increases. Routing via S. L. & U. R. R., 95 I. C. C. 237.

(k) Proposed restricted application of joint rates on grain and grain products from certain primary markets, such as St. Paul and Minneapolis, Minn., Chicago and Peoria, Ill., and St. Louis, Mo., and intermediate territory between those points and Missouri River cities, to destinations in Colorado, Kansas, Missouri, Nebraska, Oklahoma and Wyoming, so as to apply only to shipments originating beyond the primary markets named, resulting in many instances of violations of the aggregate of intermediates clause of fourth section of the act, which the proposal designs to eliminate, found not justified. Grain from Western Trunk Lines, 100 I. C. C. 745.

TIME ZONES

(a) Upon petitions, Commission reopened the case to determine whether the boundary line between the Eastern time zone and Central time zone should be so modified as to include Marysville, Kenton and Findlay, O., and any portions of central Ohio in the Eastern time zone. In the tenth supplemental report 88 I. C. C. 135 the Commission modified previous orders defining the limits of Eastern and Central time zones in Ohio so as to include within the eastern time zone the city of Columbus and that portion of the state lying between Toledo and Columbus on and east of the eastern division of the Ohio Central lines of the N. Y. C., from Walbridge to Fostoria; and H. V. Ry., from Fostoria to Columbus. In the eleventh report, 88 I. C. C. 343 the Commission authorized the N. Y. C., to operate under eastern time its Ohio Central line from Toledo through Bowling Green, Findlay, Kenton, Peoria and Marysville, to Columbus

and its branch from Peoria to St. Marys, all of which railway is in the central time zone. Commercial relations of Findlay, Kenton and Marysville are with Toledo on the north, Columbus on the south, and Cleveland and Pittsburgh on the east all of which observe eastern time. HELD, previous orders modified so as to include Marysville, Findlay and Kenton and that part of Ohio on and east of the Ohio Central lines from Toledo to Kenton, the Big Four from Kenton to Bellefontaine, and Ohio Central from Bellefontaine to Columbus within the eastern time zone. Standard Time Zone Investigation, 91 I. C. C. 686.

(b) Upon supplemental report, previous orders defining limits of United States standard Eastern and Central time zones modified so as to include cities of Findlay, Kenton and Marysville, Ohio, and that part of Ohio on and east of Ohio Central lines of New York Central R. R. from Toledo to Kenton, C. C. C. & St. L. Ry., from Kenton to Bellefontaine, and Ohio Central lines from Bellefontaine to Columbus. Inclusion within Eastern zone of such municipalities will remove many inconveniences to commerce, simplify operations of trains with respect to time to be observed, and will not interfere with safe operation of railways or necessitate any change of division points. Standard Time Zone Investigation, 91 I. C. C. 686.

(c) Law prescribing standard time mentions no particular occupations or trades as entitled to special consideration in fixation of zone boundaries, but makes "convenience of commerce and the existing junction points and division points of common carriers" of controlling importance. Standard Time Zone Investigation, 91 I. C. C. 686, 688.

ALL OTHER CITATIONS

Standard Time Zone Investigation, 88 I. C. C. 343.

TOLLAGE CHARGES

(a) Domestic class rate, which included absorption of part of tollage charges at New Orleans, on imported flint pebbles shipped to Dewey, Okla., assessed as a result of cancellation of import commodity rate on account of no movement, under general policy of director general with respect to unused rates, found unreasonable as compared with import rate to Kansas City, a farther distant point, which rate included absorption of all tollage charges and was subsequently established to Dewey. Reparation awarded. Dewey Portland Cement Co. v. A., T. & S. F., 93 I. C. C. 311.

TOP ICING

See Perishable Freight; Refrigeration §3½a.

(a) In 104 I. C. C. 79 Commission found new schedules should be published which will provide for transporting not to exceed 7,500 pounds of top ice at rates named in the schedules under suspension. Subsequently at a conference held by the director of public service with counsel for protestants and respondents an agreement satisfactory to all concerned was reached whereby the amount of top ice which should be permitted to be placed on top of the load was to remain at a maximum of 7,500 pounds on all commodities, except cauliflower in straight or mixed carloads and on cauliflower the maximum amount of top ice permitted was to be increased from 7,500 pounds to 9,600 pounds. This action is without prejudice to either side again bringing up the matter when the results of the cooperative investigation now being conducted by the Department of Agriculture shall have become known. Protective service rules on perishable freight, 109 I. C. C. 657.

TOWAGE

See Water Carriers.

(a) Service of towing vessels from and to piers, in connection with the dumping and trimming of coal, found not to be "transportation" within the meaning of section 1 (3) of the act and beyond the commission's jurisdiction. The tugboat service is a marine service performed for the vessel and not in connection with the delivery of the coal. The towing is done before and after delivery, can not reasonably be said to be in connection with it, and the service is clearly not within the law. Southern Transp. Co. v. N. & W., 101 I. C. C. 211, 223.

TRACK STORAGE

See Demurrage; Storage.

(a) Off track storage not in transit, track storage, and demurrage are con-

trolled by the tariffs in effect contemporaneously with the accrual of these services, and therefore are subject to such changes as lawfully may be made in the applicable tariffs during the period of accrual. Humphreys Co. v. Director General, 96 I. C. C. 317, 318.

(b) "Track-storage charges" are very similar to demurrage charges, except that instead of being for detention of cars they are primarily for use of the track space occupied by cars in yards. Team-Track Storage at Chicago, 92 I. C. C. 117, 118.

TRACKAGE CHARGES

ALL CITATIONS

Swift & Co. v. T. & P. Ry. Co., 88 I. C. C. 610; Trackage Charges at St. Louis, 38 I. C. C. 693.

TRACKAGE CONTRACTS

(a) A carrier's right of way, which is merely a right of user in common with use made of the same property by others, may be compared with trackage rights given by one railroad to another, the tracks being used jointly, or with the right of a railroad in a street used in common with the public. In either case the right is not valued the same as though the right of way were owned or used exclusively by carrier being valued. See Texas Midland R. R., 75 I. C. C. I, 123. New York Dock Ry. v. B. & O. R. R. Co., 89 I. C. C. 695, 705.

(b) Contention that there is no violation of long-and-short-haul provision of section 4 of the act where carrier, under a trackage agreement, operates over another carrier's line between given points and there is no concurrence on part of latter in published rate of former, but a higher rate is charged to an intermediate point in which both lines concur, not sustained. See 81 I. C. C. 497. Shanks & Gannon Co. v. C., C., C. & St. L., 102 I. C. C. 462, 464.

TRAIN CONTROL EQUIPMENT

(a) This report is made after inspection and test of the automatic train stop system of the Miller Train Control Corporation on the Chicago division of the C. & E. I. Ry., following 69 I. C. C. 258. The C. & E. I., will be expected to comply at once with the following requirements as to inspection, tests, and maintenance: 1. Arrangements should be made for careful inspection and test of the train stop equipment on all locomotives operated in train stop equipped territory upon arrival at and before departure from designated inspection and repair points. The inspection and test should include all parts of the apparatus, and before each trip the sealed cutout valve should be inspected to see that its seal is unbroken and the apparatus properly cut in for service. The roadside apparatus should be frequently inspected and tests for crosses and grounds and the ramps frequently inspected to insure that they are in proper operative condition. In the following specific respects the railway company should promptly take the necessary action to carry into effect the recommendations made: 1. The interval between a ramp and the signal in advance should be sufficient in all cases to provide adequate braking distance. 2. At crossovers such arrangements should be made as to afford maximum signal protection to main track traffic. 3. All movements leading to main tracks should be protected through the signal system. 4. For movements at and through interlocking plants ramps should only be energized for high speed routes. Automatic train control devices, 96 I. C. C. 345.

TRANSFER

See Allowances §8 (7); Electric Lines IV; Facilities and Privileges §15a, §15½; Motor Truck Service (a).

TRANSIT

See Compress Companies and Charges; Concentrating Rates and Privileges; Facilities and Privileges §15; Routing and Misrouting §8½; Stoppage in Transit; Through Routes and Joint Rates §19.

TRANSPORTATION

I. WHAT IS TRANSPORTATION SERVICE.
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III. OPERATION OF RAILROAD.

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CROSS REFERENCES

See Act to Regulate Commerce VI; Additional Charges and Services; Allowances §8 (4⅞) (5), §10, §11, §12, §12 (2); Common Carrier III; Crimes §12; Exclusive Contracts; Express Companies §5, X; Facilities and Privileges II, §10; Passenger Fares and Facilities §12; Refrigeration §13; Special Rates and Services; Storage; Tap Lines; Track Storage; Water Carriers.

I. WHAT IS TRANSPORTATION SERVICE.

§1. In General.

(a) The word "transportation" as used in section 1 (12) of the act is not limited in its meaning to transportation for compensation, but includes also transportation of carrier's own coal over its line. Assigned Cars for Bituminous Coal Mines, 93 I. C. C. 701, 715.

(b) What is transportation within meaning of the act is a question of fact as well as law. Where a carrier sets a car at a warehouse used by an auction company, and at which no freight other than that to be sold at auction by that company is handled, carrier thereafter having no further connection with the shipment, transportation service ceases with unloading of the car at the warehouse, the same as it would cease with unloading of a car at team tracks in yards if warehouse were located blocks away from the yards and had to be reached by truck, whether such warehouse is leased from carrier or someone else. Storage Rules on Fruits and Vegetables, 95 I. C. C. 87, 90.

(c) Service of docking and undocking, running lines, and furnishing fresh water to ships in connection with the dumping and trimming of coal into vessels found not to be "transportation" within the meaning of section 1 (3) of the act, and beyond the commission's jurisdiction. Southern Transp. Co. v. N. & W. Ry., 101 I. C. C. 211, 221, 223.

II. DUTY OF CARRIER TO TRANSPORT.

§2. In General.

See Cars and Car Supply IV, V; Common Carrier §6; Facilities and Privileges II; Routing and Misrouting II.

(a) The Pine Bluff & Northern discontinued the station at Fletcher, Ark., reached by a movement over track owned by an individual, but failed to so notify the Rock Island who continued to carry it in tariffs in which the P. B. & N. concurred. Individual owned the private track was then permitted to exact a charge of $50 per car on traffic moving thereover, and employees of the P. B. & N. were instructed to refuse traffic at that point until such charges were paid. HELD: Such refusal was a failure to furnish transportation within meaning of section 1 (4) of the act. Reparation awarded. Miles Lumber Co. v. C., B. & Q. R. R. Co., 89 I. C. C. 761.

(b) Fact that an individual is permitted to make a charge for service which the carrier is bound under its tariff to furnish, can not deprive shippers of their right to hold the carrier responsible for the consequence of its act, and a carrier is answerable in damage for a refusal to accept cars for transportation to a certain point, resulting in shippers being put to expense of having them transported to a station where they would be accepted. Miles Lumber Co. v. C. B. & Q. R. R. Co., 89 I. C. C. 761, 764.

(c) Complainant alleged that defend-

ant Pine Bluff & Northern, unlawfully refused and failed to provide transportation for 12 cars of lumber tendered during the period of June 25, 1920 to May 16, 1921, for shipment to points in Illinois and Indiana and that charges collected were illegal. The P. B. & N., lies wholly in Arkansas. Its own line extends 7.1 miles practically due south from its junction at McCreanor with the Rock Island to Cullor. It operates 0.9 miles south of Cullor to Shullville over rails belonging to H. N. Street, its general manager, who has an equitable interest in the P. B. & N., by virtue of a partly completed contract of purchase. A Rock Island tariff issued June 30, 1919 effect throughout the time covered by the shipments, published rates from Fletcher to the destinations of the shipments or which could be used in combination with rates in other tariffs to make rates to such destinations, which were the same as the rates from Cullor. The P. B. & N., concurred in the tariff. Motive power on the P. B. & N., when these shipments moved, was provided by a locomotive owned by Street, but operated by the receiver. Subsequent to the discontinuance of service to Fletcher by the receiver, Street agreed to permit his locomotive to haul cars to Cullor from points beyond Shullville for $4 per car but not less than four cars at one time, to be paid to him by Shull. The latter notified complainants that thereafter there would be a charge of $50 per car on lumber moved from his track from Fletcher to the connection with the P. B. & N., at Cullor and directed the employees of the P. B. & N., at Cullor not to move any cars loaded at Fletcher until this charge had been paid. Complainants offered the shipments in issue to the P. B. & N., at Fletcher, but that road refused to accept them there. Its employees advised complainants that before the cars were placed at Fletcher it would be necessary for complainants to pay Shull the $50 charge. Complainants made such payments to Shull or to other employees of the railroad acting at the time as his agents, the cars were hauled to Cullor by the locomotive and crew which moved traffic for the P. B. & N., and the railroad accepted them at Cullor and issued bills of lading from that point. The charges of $50 were imposed before the P. B. & N., accepted the shipments. Since neither the P. B. & N., nor its connections at McCreanor and beyond received more than the published tariff rate from Fletcher, the charges attacked were not overcharges above the legal tariff rate. In a legal tariff the P. B. & N., represented Fletcher to be a point on its own line and named a rate therefrom. By this tariff it held itself out to serve shipper as a common carrier from that point. HELD the wrongful refusal of the agents of the P. B. & N., to accept cars for shipment at a point indicated by its tariffs as a station on its line put complainants to the expense of having the cars transported to the station at which they were accepted, reparation awarded. Miles Lumber Co. v. C. B. & Q. R. R., 89 I. C. C. 761.

(d) Refusal of defendant carrier, under appropriate tariff provisions, to accept shipments of rags (except in compressed covered bales) and waste paper at Piers 41 and 68, North River, Manhattan Borough, New York, N. Y., because of the fire hazard, endangering other and more valuable property, and even life itself, found not unreasonable, but unreasonable as to Pier 13, North River, and Pier 26, East River, to extent the restrictions preclude receipt at and shipment from such piers of carload shipments of dry rags and dry waste paper so baled as to prevent loss of pieces (sifting) from the bales, and reasonably free from loose edges, strips, pieces, fibers, or other parts protruding from the bales or surrounding them. National Asso. Waste Material Dealers v. D., L. & W. R. R. Co., 98 I. C. C. 606.

(e) Proposal of L. & N. to refuse to accept l. c. l. shipments of alcoholic liquors, and to cancel rates thereon, on ground that cost of guarding such shipments under its present transportation facilities and rates is not remunerative, found not justified. Movement of l. c. l. shipments solely by express would deprive shippers, located where there are no express company offices, of any transportation facilities, respondent has expressly held itself out to accept this traffic by obtaining the necessary Government permit, the traffic is not inherently any more dangerous or objectionable from a transportation standpoint in l. c. l. than in c. l. lots, and it does not appear that requests for transportation in l. c. l. have been or are likely to be unreasonable. Alcoholic Liquors via L. & N., 102 I. C. C. 202.

§5. Delivery by Carrier.

See Infra §5a; Drayage; Express Companies §2; Side Tracks and Spur Tracks; Spotting; Stock Yard Companies; Switch Tracks and Switching §5.

(a) A legal duty is imposed upon all common carriers of freight to receive for carriage all proper articles tendered at suitable places of receipt. A carrier may not select preferred freights and refuse to handle other articles because they are less remunerative or more inconvenient to handle. National Asso. Waste Material Dealers v. D. L. & W. Ry., 98 I. C. C. 606, 611.

(b) Delivery charge on ex-lake iron ore at Carnegie Steel Company's plant at Youngstown, Ohio, found applicable and not unreasonable. Contention that movement of the ore within yards of complainant to its incline tracks, where it is received and handled by an unloading mechanism operated by complainant, does not constitute spotting of cars or placing of cars for unloading within meaning of the tariffs, not sustained, the service being performed at convenience of complainant and almost wholly under its directions. Mere fact that the special service following delivery at interchange tracks may be less than that generally included in deliveries at private sidings does not prove the charge unreasonable. Carnegie Steel Co. v. Director General, 96 I. C. C. 527.

(c) Line-haul rates were limited to delivery on "interchange tracks" in Iron Ore Rates Cases, 41 I. C. C. 181, 44 I. C. C. 368, this delivery being regarded as equivalent to usual team-track or private-siding delivery. It was contemplated that the interchange tracks would be so located the service under the line-haul rates would end at or near the plant gate. Carnegie Steel Co. v. Director General, 96 I. C. C. 527, 532.

(d) Difference of location of interchange tracks at which delivery is made without charge other than the line-haul rate constitutes undue prejudice to complainant and undue preference of the Youngstown and Haselton plants, which should be removed by locating points of interchange at latter-plants within a reasonable distance of point of connection between the rails of the line-haul carriers and the industry tracks. Carnegie Steel Co. v. Director General, 96 I. C. C. 527, 535.

(e) In the absence of instructions to the contrary, it is the right of a carrier, and ordinarily would be the appropriate course, to place a car for unloading promptly upon arrival at destination. Milne Lumber Co. v. C. & N. W. Ry. 107 I. C. C. 653, 655.

(f) Refusal of defendant carriers to permit cars to be unloaded without the surrender of original bills of lading and payment of proper charges on shipments on which the charges were subject to prepayment, but which were not collected at point of origin, can not be construed as improper tender of delivery under the tariffs. Johnson v. O. S. L. R. R., 101 I. C. C. 39, 42.

§5a. Delivery to Carrier.

See Supra §5.

ALL CITATIONS

Divisions Received by Brimstone R. R. & Canal Co., 88 I. C. C. 62.

§5½. Extension of Line.

(a) Contention that installation of switch connection sought would complete a new connecting railway between the Illinois Central and defendant without a certificate of public convenience and necessity having been first obtained, as required by law, for extension of line, not sustained. Dering Coal Co. v. C., C., C. & St. L., 96 I. C. C. 143, 151.

§7½. Receipt by Consignee.

ALL CITATIONS

Smokeless Fuel Co. v. N. & W. Ry. Co., 85 I. C. C. 395.

§10. Unloading or Loading at Terminal.

See Facilities and Privileges §10; Loading and Unloading; Minimums; Terminal Facilities.

(a) Shippers urge that line-haul rates include loading and unloading services, and under the law carriers not only must justify charges for such services, but burden is upon them to show that line-haul rates heretofore contemplating loading and unloading services are reasonable when demanded for road-haul alone. FOUND: Same line-haul rates are assessed on shipments to and from industrial sidings and outlying team tracks, also to or from other points in same group or for similar distance, under which rates no loading or unloading is included. Such facts indicate that the general measure of rates

are not unreasonable for line-haul service alone and warrant conclusion that if carriers justify charges for loading and unloading, they have borne their burden of proof under the law. Loading and Unloading C. L. Freight, 101 I. C. C. 394, 413.

III. OPERATION OF RAILROAD.

§11½. In General.

(a) It is neither necessary nor practicable to reflect in a general rate structure all the differences in transportation conditions that affect particular movements. Nebraska Livestock Cases, 89 I. C. C. 453, 457.

(b) Ordinarily the service of making up and breaking up trains is an operating incident compensation for which is included in the transportation rate. Where, however, such service is rendered in some instances and not in others, and in still others is only service performed by a common carrier, the charge for that service should be separately stated. Peoria & Pekin Union, 93 I. C. C. 3, 22.

ALL OTHER CITATIONS

C. M. & St. P. Ry. Co. v. U. P. R. R. Co., 88 I. C. C. 312.

§15. Right to Traffic.

See Explosives and Dangerous Articles (c).

TRANSPORTATION ACT

See Act to Regulate Commerce VI; Claims §1½; Statute of Limitations.

TRAP CARS

See Demurrage §10; Ferry Charges.

(a) Switching charges collected by Hoboken Manufacturers R. R. Co. on trapcar loads of l. c. l. freight switched by it from complainant's warehouse at Hoboken, N. J., to C. R. R. of N. J. at Weehawken, N. J., for interstate movement, found inapplicable. The Hoboken Manufacturers may not lawfully make a charge in addition to line-haul rate for switching cars direct from complaint's plant to line-haul carrier, as that would be charging for a service not actually rendered, and the hauling of such cars to its freight station before delivering to line-haul carrier is for its own convenience, is not required under the contract of transportation, and the shipper may not be assessed a charge therefor in addition to line-haul rate. Reparation awarded. Jewel Tea Co. v. C. R. R. Co. of N. J., 98 I. C. C. 424.

TRUCK COMPANIES

See Motor Truck Service.

(a) A trucking company is not a carrier subject to the act. Consequently the trucking company is not a proper party to a joint tariff. Tariffs embracing motor truck or wagon transfer service, 91 I. C. C. 539, 547.

TWENTY-EIGHT HOUR LAW

(a) Railroad does not "knowingly and willfully' violate 28-Hour Law (Comp. St. §§ 8651-8654), unless, with knowledge that statute is about to be violated, it purposely and intentionally disregards statute. United States v. Southern Ry. Co., 1 Fed. (2d) 607.

UNDERCHARGES

I. CONTROL AND REGULATION.
§1. Jurisdiction of Commission.
§1½. Jurisdiction of courts.
II. DUTY OF CARRIER TO COLLECT
§2. In general.
§3. Defenses.
III. EVIDENCE.
§3½. In general.
§4. Admissibility of tariff copies.
§5. Burden of proof.
§6. Testimony as to rate.
IV. LIABILITY TO PAY.
§7. In general.
§7½. State courts and laws.
§8. Waiver.
§9. Pleading.
§10. Statute of Limitations.

CROSS REFERENCES

See Claims §1 (i); Freight Charges; Reparation §20½.

II. DUTY OF CARRIER TO COLLECT.

§2 . In general.

(a) Where contract of shipment of cut stone provided for rate less than published schedule filed with interstate commerce commission, carrier could recover difference, since scheduled rate formed part of contract of shipment by operation of law, and parties could not contract for less rate than schedule filed

with commission. Missouri Pac. R. Co. v. Pfieffer Stone Co. (Ark., 1924) 266 S. W. 82.

(b) Carrier of interstate shipment, under Interstate Commerce Act (U. S. Comp. St. § 8563 et seq), cannot estop itself from collecting undercharge of freight rates. Nashville C. & St. L. Ry. Co. v. Gilliam (Ala. 1924), 101 So. 889.

(c) Carrier of interstate shipment may collect undercharge, though agent made mistake as to amount due, and lien was lost by delivery of freight on payment of less than legal rate. Nashville C. & St. L. Ry. Co. v. Gilliam (Ala., 1924) 101 So. 889.

(d) Director General of Railroads was not estopped to sue for balance due on freight on coal billed by mistake at less than proper rate, though defendant sold the coal at a small profit under supervision of federal government, taking freight rate into account, so that payment of difference would result in loss in view of Const. § 214, and Ky. St § 817, relative to preferences. Davis, Director General of Railroads v. Moody (Ky., 1924), 261 S. W. 1101.

III. EVIDENCE.

See Evidence.

§6. Testimony as to Rate.

See Tariffs §19.

ALL CITATIONS

Beaumont Chamber of Commerce v. Director General, as Agent, 85 I. C. C. 139.

IV. LIABILITY TO PAY.

§7. In general.

(a) That weighing coal on railroad scales would have required carrier to make an extra haul, which was impracticable under war-time conditions, did not excuse billing of coal without notice to consignee at inaccurate tipple weights, and carrier should have attempted to reach an agreement with consignee for a proper allowance, or made allowance in its best judgment subject to adjustment. New York & Pennsylvania Co. v. New York Cent. R. Co. (Pa., 1924) 124 Atl. 428.

(b) Receipt in full "of the above account" given by carrier upon payment of the freight on an import shipment at the current rate of exchange HELD not to preclude a recovery by it of additional freight figured at the nominal exchange provided for in the bill of lading. Pennsylvania R. Co. v. Cameron (Pa., 1924) 124 Atl. 638.

(c) A showing that a railroad, seeking to recover freight on an import shipment at the normal rate of exchange provided for in bill of lading rather than at current rate, had paid steamship at the normal rate, HELD to establish it was not attempting to recover for itself alone. Pennsylvania R. Co. v. Cameron (Pa., 1924) 124 Atl. 638.

(d) The provisions of Interstate Commerce Act requiring carriers to charge no less than their published rates, and giving them the right to recover the difference if a lower rate is paid, are not for the benefit of the carrier, but for the protection of the public from discriminations, and a limitation by Congress of the time within which an action for such recovery may be brought violates no vested right of the carrier. Button v. Atchison, T. & S. F. Ry. Co., 1 Fed. (2d) 709.

(e) Director General of Railroads was not estopped to sue for balance due on freight on coal billed by mistake at less than proper rate, though defendant sold the coal at a small profit under supervision of federal government, taking freight rate paid into account, so that payment of difference would result in loss in view of Const. §214, and Ky. St. §817, relative to preferences. Davis v. Moody (Ky., 1924) 261 S. W. 1101.

(f) On interstate shipments carrier can compel shipper to pay difference between legally established interstate rate and lower rate quoted or collected by mistake or otherwise. Missouri Pac. R. Co. v. Pfieffer Stone Co. (Ark., 1924) 266 S. W. 82.

(g) Under Interstate Commerce Act (U. S. Comp. St. § 8563 et seq.), fixing freight charges, defendants, named as ones to be notified, in bill of lading, naming shipper both as consignor and consignee, who paid freight and received shipment, became in lay the consignees and owners, and were liable to railroad for undercharge of freight, and no agreement with shipper nor estoppel by conduct of railroad could relieve them. Nashville C. & St. L. Ry. Co. v. Gilliam, (Ala., 1924) 101 S. 889.

(h) A common carrier must collect the amount of an undercharge on an interstate shipment from one legally liable, and under the facts of this case the defendants, who brought merchandise then in the course of transportation, to be delivered, agree to pay and paid the freight charges as a part of the purchase price, accepted the shipment, and undercharge was made, are liable to the carrier therefore, though they were not named consignees in the bill of lading. Chicago Great Western Ry. Co. v. Schmit (Minn., 1925) 203 N. W. 618.

(i) Where consignee of a shipment of coke, purchased f. o. b. point of shipment, contracted to pay freight, and carrier collected from it the freight then considered due, though by error an undercharge, it cannot collect the deficiency from shipper. Louisville & N. R. Co. v. Central Iron & Coal Co., 44 Sup. Ct. 441.

§8. Waiver.

(a) Outstanding undercharges on past shipments of pea hullers, being the difference between the first-class rates erroneously assessed and the double first-class rates applicable, defendants should waive collection of that portion representing the excess of the double first-class rates over the rates of one and one-half times first-class found reasonable herein, and the remaining portion should be collected. Star Pea Huller Co. v. C., N. O. & T. P. Ry. Co., 98 I. C. C. 357, 360.

(b) Upon further hearing, former report 58 I. C. C. 164, collection of separate charges for loading and unloading livestock at the Chicago stockyards, in addition to the line-haul rates found unlawful and unreasonable, and amount of reparation due and parties entitled thereto determined herein. So far as applicable to shipments coming under the jurisdiction of the commission, collection of undercharges may be waived. Chicago Live Stock Exchange v. A., T. & S. F., 100 I. C. C. 266, 273.

(c) On shipments of liquid asphalt from Port Neches, Tex., to Morrilton, Conway, and Galla, Ark., on which there has not yet been a final adjustment of charges, undercharges should be waived to the basis of the rate herein found reasonable. Texas Co. v. K. C. S., 101 I. C. C. 177.

§10. Statute of Limitations.

See Statute of Limitations.

(a) An action by a railroad company to recover charges, before the passage of Transportation Act 1920 (Comp. St. §8563 et seq.), was governed as to limitation by the state statutes. Button v. Atchison, T. & S. F. Ry. Co. 1 Fed. (2d) 709.

(b) Where an action by a carrier to recover charges was not barred by the state statute of limitation of three years, but a reasonable time for commencement of the action still remained at the time of enactment of Transportation Act Feb. 28, 1920, §424 (3), being Comp. St. Ann. Supp. 1923, §8584, and providing that such actions shall be begun within three years from the time the cause of action accrues, "and not after," the federal statute should not be construed to extend the time for bringing the action for three years from the date of its passage and beyond the time fixed by the prior state statute, which it superseded, but should be construed as it reads, and the action is barred in three years after the cause of action accrued. Button v. Atchison, T. & S. F. Ry. Co. 1 Fed. (2d) 709.

UNPUBLISHED RATES

See Evidence §60; Interstate Commerce Commission §13; Reparation §15; Routing and Misrouting §12.

(a) Where rates assessed are attacked as being unreasonable, and there are no specific rates or ratings applicable on the commodity transported, it is the commission's duty to determine whether charges collected were unreasonable. Memphis Frt. Bureau, 17 I. C. C. 90; Refinite Co., 68 I. C. C. 545. Atlas Portland Cement Co. v. Director General, 92 I. C. C. 171, 172.

USE OF COMMODITY

See Classification §10; Discrimination §7½.

VALUE

See Classification §11; Evidence §61; Reasonableness of Rates §38.

WAGON TRANSFER

See Allowances §8 (7) (a); Motor Truck Service.

WAR TAXES

(a) The Commission is without power to order refund of war taxes. McClintick & Company v. P. M. Ry., 93 I. C. C. 69, 70.

(b) The Commission is without jurisdiction to award reparation for excess war taxes paid. Randall Bros v. L. N. R. R., 96 I. C. C. 342, 345.

(c) The commission is without power to order refund of war taxes. Gullikson v. Director General, 102 I. C. C. 327, 330.

ALL OTHER CITATIONS

West End Chemical Co. v. L. A. & S. L. R. R. Co., 85 I. C. C. 339; Wyoming Sugar Co. v. Director General, as Agent, 88 I. C. C. 213.

WAREHOUSES

See Facilities and Privileges §16½; Storage.

(a) Practice of carriers in employing certain warehouse companies to perform terminal services in connection with the loading and unloading of c. l. package freight at Baltimore, for which allowances are paid, while refusing to employ other warehouse companies to perform similar services, found not to result in discrimination, preference, or prejudice. Complainant's primary business is that of a public storage warehouse, and its sole purpose in bringing its complaint is to make more profit of its warehouse business. Moreover, complainant is not a shipper or receiver of freight and has no relation with a common carrier which would result in a discrimination against it in violation of the act, the discrimination forbidden therein being in respect of transportation. See 51 I. C. C. 535. McCormick Warehouse Co. v. P. R. R., 95 I. C. C. 301.

(b) Contention that a warehouse company can not lawfully be agent of shipper and carrier in respect of same transaction at same time not sustained, following Diffenbaugh Case, 222 U. S. 42, where the agency for the railroad includes unloading, sending of notices, collection of freight charges, etc.; and that for the shipper storage after free time, separation of traffic, etc. McCormick Warehouse Co. v. P. R. R., 95 I. C. C. 301, 306.

WATER CARRIERS

I. CONTROL AND REGULATION.
§1. In general.
§2. Jurisdiction of Commission.

II. DISCRIMINATION AND REASONABLENESS.
§3. In general.

III. TARIFFS AND CONSTRUCTION.
§4. In general.
§5. Reparation.
§5½. Bills of lading.

IV. THROUGH ROUTES AND JOINT RATES.
§6. In general.
§6½. Free transportation.
§6½a. Barge lines and rail carriers.

V. EVIDENCE.
§7. In general.

VI. REASONABLENESS OF RATES.
§8. In general.
§9. Port differentials.

CROSS REFERENCES

See Bills of Lading §3; Break Bulk Rates; Coastwise Traffic; Discrimination §8 (5); Export Rates and Facilities; Foreign Commerce; Merchant Marine Act; Panama Canal Act; Port to Port Rates; Rail and Water Rates; River Crossings; Special Contracts §2 (b); Towage; Water Competition.

I. CONTROL AND REGULATION.

See Control and Regulation.

§1. In General.

(a) The policy of Congress "To promote, encourage, and develop water transportation, * * * and to foster and preserve in full vigor both rail and water transportation as declared in section 500 of the transportation act, 1920, can be effectuated only under rate adjustments which will permit of an equitable distribution of the available traffic. Reduced Commodity Rates to Pacific Coast, 89 I. C. C. 512, 538.

(b) It is the policy of Congress as declared in section 8 of merchant marine act, 1920, and §500 of transportation act, 1920, to promote, encourage, and develop transportation by water and to foster and preserve in full vigor both rail and water

transportation. Wool Rates Investigation, 1923, 91 I. C. C. 235, 248.

(c) It is important that all ports be kept open and in as vigorous condition as possible so that water lines may be attracted thereto and the public given the cheapest and most efficient service, both by water and by rail. Galveston Commercial Asso. v. G. H. & S. A. Ry., 100 I. C. C. 110, 122.

(d) It is the policy of Congress as declared in section 500 of the transportation act, 1920, to promote, encourage, and develop water transportation, service, and facilities in connection with the commerce of the United States, and to foster and preserve in full vigor both rail and water transportation, and the provisions of section 8 of the merchant marine act, 1920, are of the same tenor. Galveston Commercial Asso. v. G., H. & S. A. Ry. Co., 100 I. C. C. 110, 122.

(e) The national policy is that a navigable river is a public highway, a natural avenue of commerce, and the public interests demand that its advantages be utilized to the fullest extent. The same language is applicable to the ocean. Nelson S. S. Co. v. B. A. & P. Ry., 109 I. C. C. 529, 536.

§2. Jurisdiction of Commission.

See Interstate Commerce Commission I; Jurisdiction of Commission.

(a) The Supreme Court held that common carriers by water having joint tariffs on file with the Commission under which they operate jointly with railroads in transporting interstate passengers and property over through routes partly by railroad and partly by water are agents of interstate commerce, and as such may be lawfully required to classify their accounts and make statistical reports of their entire business as common carriers. Wool rates investigation, 1923, 91 I. C. C. 235, 276.

(b) Congress has not placed intercoastal steamship lines under Commission's jurisdiction to same extent as rail carriers. Their port-to-port rates are exclusively under jurisdiction of United States Shipping Board, and water carriers are free to charge any rate so long as they do not exceed maximum schedules on file with that board. Wool Rates Investigation, 1923, 91 I. C. C. 235, 275.

(c) Common carriers by water having joint tariffs on file with Commission under which they operate jointly with railroads in transporting interstate passengers and property over through routes partly by railroad and partly by water are agents of interstate commerce, and as such may be lawfully required to classify their accounts and make statistical reports of their entire business as common carriers. Goodrich Transit Co. Case, 224 U. S. 194. Wool Rates Investigation, 1923, 91 I. C. C. 235, 276.

(d) Commission has no power to prevent a water carrier, over which it has jurisdiction by reason of its participation in joint interstate rates with carriers by railroad, from abandoning operation of its vessels. Duty to furnish reasonable service while engaged in business as a common carrier is to be distinguished from obligation to continue in business. Lucking v. D. & C. Nav. Co., 265 U. S. 346. Routing to and from Eastern and New England Territories, 91 I. C. C. 455, 456.

(e) Hauls by motor truck from inland points to the docks of a water carrier can not be said to be transportation over which Commission has jurisdiction or a service that can be required of a common carrier. Trucking companies can not, under such conditions, be acting as agents for common carriers, and since they are not carriers subject to the Act, they are not proper parties to joint tariffs. Conf. Ruling 441. Motor-Truck or Wagon Transfer Service, 91 I. C. C. 539, 540, 548.

(f) The commission is directed "to foster and preserve in full vigor both rail and water transportation." But water transportation can not enjoy full vigor if it is confined to traffic which moves from port to port. If water lines are to thrive they must be able to draw traffic from interior points. U. S. War Dept. v. A. & S. Ry., 92 I. C. C. 528, 538.

(g) The commission has power under section 6 (13-b) of the act to establish through routes between rail and water carriers and prescribe maximum rail-and-water and rail-water-and-rail rates over the rail and water lines even though the water line is not used under a common control, management, or arrangement for continuous carriage or shipments. Houston Cotton Exchange v. A. & A. R. R. Corp., 93 I. C. C. 268.

(h) While Congress has expressed a policy looking to development of public

terminals at port cities, it has not delegated authority to the commission to enforce that policy. Scope of the commission's activities is limited by terms of the interstate commerce act, and unless proposed terminal charges are found to be in contravention of some provision of that action it is beyond the commission's power to condemn them. Handling Charges on Cement, Fertilizer, and Salt, 93 I. C. C. 640, 643, 644.

(i) The transportation act, 1920, gave the commission the power, which it did not theretofore possess, to require the establishment of through routes "where one of the carriers is a water line," even though the rail line would thereby be shorthauled. (Paragraph 4, section 15, of the act.) Southern Class Rate Investigation, 100 I. C. C. 513, 680.

(j) Complaint alleging unreasonableness of intrastate rates on fuel oil previously transported via tank steamers from interstate points of origin dismissed for want of jurisdiction, no common control, management, or arrangement for continuous carriage or shipment existing between rail carrier and tank steamers, the latter being owned and operated exclusively for transportation of its own commodities. Washington Dehydrated Food Co. v. G. N. Ry., 102 I. C. C. 363.

ALL OTHER CITATIONS

North Carolina Pine Asso v. A. C. L. R. R. Co., 85 I. C. C. 270.

II. DISCRIMINATION AND REASONABLENESS.

See Infra VI; Discrimination; Reasonableness of Rates.

§3. In General.

(a) It is important that all ports be kept open and in as vigorous a condition as possible so that water lines may be attracted thereto and the public given the cheapest and most efficient service, both by water and by rail. Galveston Commercial Asso. v. G., H. & S. A. Ry. Co., 100 I. C. C. 110, 122.

III. TARIFFS AND CONSTRUCTION

See Tariffs.

§5½. Bills of Lading.

See Bills of Lading.

(a) Failure or refusal of rail and water carriers to establish through routes and joint rates and issue through bills of lading on shipments of wool and mohair from interior point via Pacific ports and Panama Canal to Boston, Mass., and other north Atlantic ports found not unjust, unreasonable or otherwise unlawful. There is no evidence to indicate that present all-rail and rail-and-water routes are inadequate to expeditiously handle traffic under normal conditions; moreover, rail and water lines do not participate in arrangements for continuous carriage and shipment, separate bills of lading being required for rail and water hauls. Wool Rates Investigations, 1923, 91 I. C. C. 235, 276, 277.

IV. THROUGH ROUTES AND JOINT RATES.

§6. In General.

See Through Routes and Joint Rates.

(a) Where either the rail or the water carrier has suitable dock facilities, the ownership or control by the one or the other is immaterial, at least in so far as concerns a prescription of through routes and joint rates or of proportional rail rates to or from the port from or to which the traffic affected is taken by the water carrier, except as the ownership or control may bear upon the question of reasonable compensation for the use of the facilities. State of New York v. N. Y. C. R. R., 95 I. C. C. 119, 127.

(ab) Failure or refusal of rail and water carriers to establish through routes and joint rates and issue through bills of lading on shipments of wool and mohair from interior points via Pacific ports and Panama Canal to Boston, Mass., and other north Atlantic ports, found not unjust, unreasonable, or otherwise unlawful. There is no evidence to indicate that present all-rail and rail-and-water routes are inadequate to expeditiously handle traffic under normal conditions; moreover, rail and water lines do not participate in arrangements for continuous carriage and shipment, separate bills of lading being required for rail and water hauls. Wool Rates Investigation, 1923, 91 I. C. C. 235, 277.

(b) Common carriers by water having joint tariffs on file with Commission under which they operate jointly with railroads transporting interstate commerce over through routes partly by railroad and partly by water are agents of interstate commerce, and as such may be law-

fully required to classify their accounts and make statistical reports of their entire business as common carriers. Goodrich Transit Co. Case, 224 U. S. 194. Wool Rates Investigation, 1923, 91 I. C. C. 235, 276.

(c) Proposed change in routing of traffic between Texas and southwestern territory and eastern and New England territories, by cancellation of all class and commodity rates applicable as proportionals from or to Port Arthur, Tex., and as joint rates in connection with rail lines of Transmarine Corporation, a water carrier, and proposed substitution of Beaumont, Tex., for Port Arthur as a port of call for its vessels, found justified. Routing in through traffic will only be changed from "via Port Arthur" to "via Beaumont," and only change in rates will be cancellation of rates to or from Port Arthur, and substitution of increased rates to or from that point applicable via Beaumont, when in connection with Transmarine Corporation. Routing to and from Eastern and New England Territories, 91 I. C. C. 455.

(d) The law does not prohibit either a rail or water carrier subject to the Act from interchanging business with motor trucks an entering into proper arrangements to acquaint the shipping public with total charges for full movement. But such arrangements are not required by law, and fact that they may be entered into does not extend terms of the act to include motor-truck service. Motor-Truck or Wagon Transfer Service, 91 I. C. C. 539, 540, 548, 549.

(e) Complainant attacked failure and refusal of defendants to establish and maintain through routes and joint and/or proportional rates over defendants and complainant's water line between points in California, Oregon, Washington, Idaho, Montana, North Dakota, South Dakota and Minnesota subject to the same terms and conditions and divisions of rates as are maintained and observed in connection with traffic moving over the Pacific Steamship Company McCormick Steamship Co. and defendant's lines has prevented complainant from enjoying freight traffic which it could rightfully expect to receive, and is unjust, unreasonable, discriminatory, unduly preferential of said steamship companies, and unduly prejudicial to complainant. G. N. Ry. agreed to establish the rates prayed for in connection with its lines. Tariffs naming the Nelson Steamship Company as a participating carrier on joint through business by its line have been filed with the Commission by the G. N. Ry. The record convinces the Commission that the Nelson Steamship Company is financially responsible, that its service is satisfactory, and that the establishment of the through routes and rates prayed for is desirable in the public interest. Complainant is shown to be transporting the same classes of freight at the same time between the same ports at the same agreed rates and under substantially similar circumstances and conditions as its competitors. While it is likewise true that the service rendered by the intervening steamship lines is also satisfactory, yet this fact alone is not sufficient under the law to warrant the defendants in preferring the interveners to the disadvantage and prejudice of complainant. HELD, defendants are ordered to join complainant in establishing through routes and joint rates to same extent as maintained by them with Pacific Steamship Company and McCormick Steamship Company between the same points. Nelson S. S. Co. v. B. A. & P. Ry., 109 I. C. C. 529.

(f) The Commission has repeatedly declined to sustain the pleas of rail carriers that their existing water line connections were ample and satisfactory as a reason for not requiring them to make similar arrangements with another water line. Nelson S. S. Co. v. B. A. & P. Ry., 109 I. C. C. 529, 536.

(g) If rail carriers are permitted to choose the particular boat lines with which they will establish through routes and joint rates, they will be able to dictate who shall operate on the water and who shall not, for a boat line which is accorded a monoply of the through rail and water traffic will soon be able to drive its competitors out of business. The spirit of the act is to maintain the freedom of our ports and to allow boat lines to engage in traffic upon equal terms. To permit the rail carriers serving a port to favor one boat line or another would destroy the freedom of competition between boat lines which the act is intended to preserve, and would practically close ports to all but the favored vessels. Nelson S. S. Co. v. B. A. & P. Ry., 109 I. C. C. 529, 536.

(h) Complainant attacked failure of

defendants to establish and maintain joint rail and water commodity rates on plain iron wire, carloads, and less carloads, from Fostoria, O., to Savannah, Ga., and Jacksonville, Fla., while maintaining joint rail and water commodity rates from Pittsburgh, Pa., and from Youngstown, Cleveland and Greenwich, O., to the same destinations, as unduly prejudicial. Fostoria is on the main line of the B. & O., 243 miles west of Pittsburgh. The related points in Ohio in the order of distance west of Pittsburgh, are Youngstown, 78 miles, Cleveland 168 miles, Greenwich 194 miles, Lorain 198 miles and Plymouth 212 miles. From Baltimore shipments moved over M. & M. Transportation Co. The latter is a defendant in this case and is the delivering carrier in connection with the rail and water rates whether the traffic originates at Pittsburg, Cleveland or other points. HELD, rates attacked unduly prejudicial to Fostoria to extent they exceed by more than 2.5c the rail and water rates from Cleveland. Seneca Wire & Mfg. Co. v. B. & O. R. R., 112 I. C. C. 95.

§6½a. Barge Lines and Rail Carriers.

See Barge Lines; Free Transportation.

(a) Complainant, State of New York, operating the barge canal, alleged defendant be required to furnish a transportation service between said Erie basin terminal and shippers located on defendants tracks in Buffalo, shippers located on its tracks at any other point in said state, and shippers located at any other point in said state on the tracks of any other railroad with which defendant can interchange traffic; that such transportation service shall include the furnishing by defendant of necessary rolling stock for movement of traffic between said terminal and shippers located on defendants tracks at all points in said state, the operation upon the said terminal tracks, by defendants motive power and servants, of all rolling stock moving to or from said terminal, and the spotting, placing and removal of rolling stock therein and therefrom; and that defendant establish proper rates for such service. Defendants tracks adjacent to the terminal are also used by the M. C., T. H. & B., and G. T., and about 100 passenger trains pass over them each day. They are also used in switching service between defendants facilities and interchange points with its connecting rail lines. Defendant has on occasion spotted cars on the switch connection and removed cars therefrom and expresses willingness to do so in the future, but it refused to operate over the States tracks. As the state and the canal carriers have no railroad motive power or cars, and it would be impracticable and uneconomical for them to purchase and operate the same, the practical effect of this refusal is to preclude any interchange of traffic at the terminal between the rail and canal carriers. The docks and other terminal facilities for interchange at Buffalo are the property of the state of New York but they are fully available to all canal craft and appear to be adequate for the purpose contemplated by the complaint. It is to be observed that the presence in any case of a common carrier by water is an essential element only in an establishment of through routes and joint rates, in the nature of things, for such a purpose the presence of a rail line and a water line would be necessary. In an establishment of rail line proportional rates the Commission may also designate the vessels in connection with which they are to apply, but that is not obligatory. But neither through routes and joint rates nor proportional rates are defendant with its already available here sought. All that is asked is that motive power and other equipment, provide the transportation service and perform upon the terminal tracks the operating service necessary to an interchange of traffic at the terminal. Under the terms of the statute the power of the Commission to require it is distinct and complete. Under another section of the act the Commission has power to require a railroad to extend its line and for obvious reasons this includes authority to require the carrier to operate the extension. So, the power of the Commission to require this defendant rail line to construct or connect with the terminal tracks necessarily includes the power to require that line to perform the operating service. That power is expressly invoked in this case, and nothing is asked of the canal lines. HELD, it is in the public interest that defendant should perform the transportation and operating services in accordance with the prayer of the complaint, subject to the usual tariff provisions

with respect to the opening and closing of navigation of the canal. State of New York v. N. Y. C. R. R., 95 I. C. C. 119.

V. EVIDENCE.

See Evidence.

§7. In General.

(a) In a comparison of water transportation with rail transportation, where a ratio is used for the water haul, the ratio used can not be supposed to be the exact equivalent of the water haul expressed in terms of rail mileage. A comparison of such dissimilar services can not be made with mathematical accuracy. Reduced Commodity Rates to Pacific Coast, 89 I. C. C. 512, 524, 525.

VI. REASONABLENESS OF RATES.

See Supra II; Loss and Damage; Reasonableness of Rates.

§9. Port Differentials.

See Port Differentials.

(a) Differential adjustment of rates applying through various Atlantic and Gulf ports found not to result in unreasonableness or undue prejudice to Boston and other New England ports. Rate-making lines serving Canadian ports are beyond the commission's jurisdiction, while those reaching other competing Atlantic and Gulf ports are served by lines which have no control over rates to the New England ports. While there is basis for finding undue prejudice to Boston in view of its advantage in distance and transportation conditions, in instances where carriers controlling rates to that point also reach the competing ports, complaints failed to show that Boston suffers injury from the present relationship or that a change therein would inure to its benefit. Maritime Asso., Boston Chamber of Commerce v. A. A. R. R., 95 I. C. C. 539.

(b) Upon contention that theory of port differentials violates provision of clause 6, section 9, Article I of the Constitution of the United States which reads, "No preference shall be given by any regulation of commerce or revenue to the ports of one State over those of another," HELD: Complaints are brought before the commission under the interstate commerce act and invoke exercise of powers thereby delegated by Congress under the commerce clause of the Constitution. Clause 3, section 8, Article I. As an agency of Congress the commission must assume that in laying statutory duties upon it the Congress has not transcended its powers. Maritime Asso. Boston Chamber of Commerce v. A. A. R. R., 95 I. C. C. 539, 542.

(c) For many years prior to the World War there was a generally prevailing policy to offset inland rail differentials in whole or in part by differences in the ocean rates to and from north Atlantic ports. Since the World War it has been and is now the generally prevailing policy to equalize these ocean rates. Maritime Asso. Boston Chamber of Commerce v. A. A. R. R., 95 I. C. C. 539, 554.

WATER COMPETITION

See Advanced Rates §18 (2); Differentials; Discrimination §3½a, §8, §8 (5); Equalization of Rates §4 (4); Evidence §14 (1) (3) (4) (5); Long and Short Hauls; Motor Truck Competition; Panama Canal Act; Reasonableness of Rates §8 (4) (5); Reduced Rates §4½; Water Carriers.

WEIGHTS AND WEIGHING

I. CONTROL AND REGULATION.
- §1. In general.
- §2. Jurisdiction of Commission.

II. METHODS OF COMPUTING CHARGES.
- §2½. In general.
- §3. Actual weight.
- §4. Capacity weight.
- §5. Estimated weight.
- §5½. Origin weights.
- §6. Reweighing.
- §7. Scaleage and shrinkage.
- §7a. Tolerance.
- §7½. Track scales.
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III. DISCRIMINATION.
- §8. In general.

IV. EVIDENCE AND BURDEN OF PROOF.
- §9. In general.

V. REPARATION.
- §10. In general.

VI. TARIFFS AND CONSTRUCTION.
- §11. In general.
- §12. Inspection bureaus.

VII. REASONABLENESS OF CHARGES.
- §13. In general.

CROSS REFERENCES

See Bills of Lading §7; Classification §4, §11½, §21; Evidence §65; Express Companies §11 (3); Mails; Minimums; Reasonableness of Rates §41; Refrigeration V.

II. METHODS OF COMPUTING CHARGES.

§2½. In General.

(a) The Commission has approved the principle of the graduated scale, but it has repeatedly said that if carriers desire to protect themselves from unduly low charges per car they should not do so by prescribing minimum weights which can not be loaded in the ordinary equipment available, and that it is unreasonable to base charges on a minimum to which cars are incapable of being loaded. Cotton batting in W. T. L., territory, 91 I. C. C. 535, 537.

(b) Complainant attacked the charge of 50c collected by the Terminal Ry. for weighing on their industry track scale numerous cars of freight shipped from their plants to interstate destinations during and since federal control as inapplicable, unreasonable, unjustly discriminatory and unduly prejudicial. Certain of complainants employees, by agreement, are also sworn weighmasters of the inspection bureau look after the weighing and keep the records thereof. These and other obligations are assumed by complainants in consideration of the carriers members of the inspection bureau accepting the weights and descriptions as certified on shipping orders, bills of lading, or weight certificates by such weighmasters as the basis for assessing freight charges. The charges assessed is named in an individual tariff of the terminal company and its subsidiary lines, to apply on cars weighed in transit over consignees or consignors private scales located within the plant or adjacent thereto on lead to plant. The record as a whole indicates the conclusion that the cars were weighed at complainants request and primarily for their own benefit. The applicable charges can not be said to be unreasonable. HELD, rates attacked not unreasonable, unjustly discriminatory or unduly prejudicial, complaints dismissed. Walsh Fire Clay Products Co. v. Director General, 95 I. C. C. 439.

(c) Respondents proposed to make certain changes in the method of assessing freight charges in the carload minimum weights, in the weights per package and in the commodity descriptions, applicable in connection with gathering charges, or proportional rates, on citrus fruits, carloads, from interior points in Florida to Jacksonville, Fla., and other gateways to transcontinental territory. Present proportional rates when for beyond are based on a distance scale, naming rates in cents per box, minimum 24,000 pounds, prescribed in 22 I. C. C. 11. Present proportional rate on citrus fruit, carloads, from Orlando to Jacksonville, when for beyond, is 23c per box, minimum 300 boxes. Proposed rate is 29c per 100 pounds, minimum 30,000 pounds, 95 pounds per box of oranges and 85 pounds per box of grapefruit, to be applied. The proposed rate of 29c was arrived at by converting the rate of 23c per box, based upon 80 pounds, into a rate in cents per 100 pounds, which was done by adding 25% to the rate per box to obtain the rate per 100 pounds. Then, in order to avoid the scale weighing of cars, respondents provided for the assessment of charges under the proposed rates by multiplying the weights of 95 pounds per box of oranges and 85 pounds per box of grapefruits by the number of the boxes in the car. This would result in substantial increases. There are no transportation or traffic conditions which would warrant higher proportional rates from interior Florida to Jacksonville when destined to transcontinental territory than when destined to eastern territory. Respondents have not proved that the actual weight per box have increased in an amount which would warrant increases in freight charges. The conclusion herein will be without prejudice to the filing of new schedules on short notice naming specific joint rates from interior Florida points to this transcontinental territory no higher than the aggregate of the proposed proportionals and the reduced proportionals beyond, provided that no departures from the fourth section will result. HELD, proposed schedules not justified. Citrus fruit between points in Florida, 95 I. C. C. 532.

(d) Complainant attacked overcharges collected on 20 cars of coal during federal control from Indiana, Kentucky, and West Virginia and Ohio to Tipton

and Hartford City, Ind., as result of defendants failure to comply with tariff provisions governing the weight of such shipments. Upon complainants request, the cars were reweighed at destinations by the delivering line, the L. E. & W., under a tariff published by that carrier which provided in substance that destination weights would govern, subject to a tolerance of 1% of the lading weight, minimum 500 pounds. Charges were assessed on the highest weights ascertained, which in 12 out of 15 shipments were those obtained on scales of originating lines. HELD, applicable charges were collected on the two shipments that originated on the H. V., at Pomeroy and Nelson Yards, O., on the shipment that originated on the N. & W., at Chattaroy, W. Va., and on the three shipments on which charges were collected based on weights ascertained on scales of delivering line. HELD, further, charges collected exceeded charge based on weights ascertained on scales of the delivering line on the remaining 11, shipments were overcharged, reparation awarded. Burkhart & Company v. Director General, 96 I. C. C. 77.

(e) Shipments of coal on which charges were based on weights ascertained on scales of originating lines found overcharged to extent they exceeded those based on delivery line's weights. Tariffs naming applicable rates provided that they were subject to reweighing charges published in participating carriers' tariffs, and shipments were, therefore, entitled to reweighing privilege published in a tariff of delivering carrier naming rules and regulations governing weighing and reweighing of c. l. freight. Reparation awarded. Burkhart & Co. v. Director General, 96 I. C. C. 77.

(f) Rates on fresh vegetables, not otherwise specified, in certain packages, from producing points in South Carolina to New England, eastern trunk line, and central territories found unreasonable to extent the rates on the 1 and 1.5 bushel packages exceed one-third and one-half, respectively, of the present rates on similar traffic in 3-bushel packages, in connection with a carload minimum of 600 bushels in each case. Revenues would be the same on a carload minimum regardless of the size of the package used and while there is probably some additional service by and expense to defendants in connection with handling of shipments in smaller packages it is not such as to warrant a difference in the rates. Reasonable rates prescribed for the future. South Carolina Produce Asso. v. A. & R. R. R., 96 I. C. C. 107.

(g) Rates on cabbage from Charleston, S. C., to New England, eastern trunk line and central territories, in 1-bushel packages found unreasonable to extent they exceed the present rates per 100 pounds on cabbage in 1.5 and 3 bushel packages from and to the same points. Reasonable rates prescribed for the future. South Carolina Produce Asso. v. A. & R. R. R., 96 I. C. C. 107, 110.

(ga) Rules, regulations, and practices of southern carriers with respect to weighing of c. l. shipments of hay found not unreasonable, discriminatory, or unduly prejudicial. Allegation that defendants customarily assess charges on basis of destination weights not sustained, record showing that practice under rules is to accept weight which circumstances indicate most nearly comports with actual weight, whether it be the weight certified by shipper, ascertained at track scales of carrier, or reported by consignee at destination. While latter is accepted in certain specific instances, it by no means follows that it would be proper in all instances. However, rules and regulations with respect to weighing of this traffic should be published in a tariff. Toberman, Mackey & Co. v. S. Ry., 102 I. C. C. 359.

(h) Complainant attacked through rate charged on a car of yellow pine lumber shipped from Franklinton, La., to Jackson, Miss., on June 4, 1922 there dressed and forwarded to Bloomington, Ind., as illegal. Shipment moved over N. O. G. N., to Jackson, Miss., and I. C., beyond, charges based 11.5c on 84,100 pounds of rough lumber which moved from Franklin to Jackson in two cars and 27c the balance of the through rate of 38.5c on dressed lumber, weighing 38,640 pounds, which moved from Jackson to Bloomington in a single car. No satisfactory evidence was offered to show that the rough lumber did not, in fact, weigh 84,100 pounds. There is manifest discrepancy in the inbound and outbound weights, but the record does not disclose which was erroneous or warrant the conclusion that the charges collected were in excess of those applicable. HELD, complaint dismissed. Milne Lumber Co. v. N. O. N. E. R. R. 104 I. C. C. 493.

§3. Actual weight.

(a) Complainant attacked less carload rates charged on lubricating oil, crude oil, fuel oil, and fuel oil distillate, from Jacksonville, Fla., to Georgia between March 2 and Oct. 16, 1922, based upon actual weight of the shipment as unreasonable, unduly prejudicial and unduly preferential of intrastate traffic in Georgia and Florida. The actual weights applied to complainants shipments resulted in higher charges than would have resulted from the use of estimated weights. Estimated weights applied and now apply on intrastate shipments in Florida, and prior to May 1, 1923, intrastate in Georgia. Intrastate traffic in Georgia is now on the same basis as interstate traffic from Jacksonville. Estimated weights on petroleum are still applicable in conection with intrastate Florida on both carload and less carload traffic. There was no evidence relating to the movement in Florida. The actual weight of complainants shipments of lubricating oil in wooden barrels was 455 pounds as against the estimated weight sought of 410 pounds. HELD, charges assessed based on actual weights not unreasonable or unduly prejudicial, complaint dismissed. Gulf Refining Co. v. A. & W. P. R. R., 95 I. C. C. 731.

(b) Charges resulting from use of actual weights on l. c. l. shipments of petroleum and products, in packages, from Jacksonville to points in Georgia, found not reasonable or unduly prejudicial as compared with lower charges based upon estimated weights applying intrastate in Georgia and Florida. Comparison was also made with tariff which provided for use of estimated weights from Jacksonville to Georgia destinations but record establishes that such weights were for use in connection with c. l. shipments only. Moreover, actual weight of complainant's shipments exceeded estimated weight sought. Gulf Rfg. Co. v. A. & W. P., 95 I. C. C. 731.

(c) Charges on one locomotive crane, with detached parts, found to have been assessed on basis of greater weight than provided for in tariff. Applicable tariff item provided for assessment of charges on actual weight, minimum 60,000 pounds, for crane and minimum of 24,000 pounds for each additional car. Actual weight of shipment exceeded total minimum for crane and 2 additional cars used, and charge should never have been assessed on basis of actual weight. Raleigh Granite Co. v. S. A. L. Ry. Co., 96 I. C. C. 573.

(d) Complainant alleged that the refusal of defendants to refund to complainant amounts collected on carload shipments of hay in excess of the charges based on the weight of the shipments at destination as established by affidavits, certificates, or other evidence, while customarily assessing charges on that basis against hay dealers generally, was and is unreasonable, unduly prejudicial and unjustly discriminatory. The allegation that defendants customarily assess charges on the basis of destination weights is not sustained. On the contrary the record shows that it is the practice of defendants under the rules to accept the weight which the circumstances indicate most nearly comports with the actual weight of the shipment, whether it is the weight certified by the shipper ascertained at the track scales of the carrier, or reported by the consignee at destination. While the latter is accepted in certain specific instances, it by no means follows that it would be proper in all instances. HELD, rules not unreasonable, unduly prejudicial or unjustly discriminatory, complaint dismissed. Toberman Mackey Co. v. Southern Ry. 102 I. C. C. 359.

§5. Estimated Weight.

See Estimated Weight.

(a) Respondents proposed to establish in southern territory an estimated weight of 1,000 pounds per animal on shipments of horses and mules, carloads, where actual weights are not furnished by the shipper. The schedules under suspension provide that where actual weights on horses and mules are not furnished, an estimated weight of 1,000 pounds for each animal will be applied. When shipments of horses and mules move on actual weights ascertained by the carriers there is often delay and frequently the through fast trains are missed. This results from the fact that tare weights stenciled on the cars mean little when they are loaded with such animals, because bedding and sometimes partitions are put in the cars by the shippers, the weight of which can not be ascertained. It follows that the car must be weighed twice, once after they

have been prepared by the shipper to receive the animals and again after the loading has been completed. The application of a reasonable estimated weight on horses and mules is desirable from the standpoint of both shippers and carriers, as it has the effect of reducing delays, such as are incident to weighing, and the cost of feeding in transit. The proposed estimated weight does not appear to be excessive. HELD, proposed schedules justified. Estimated weights on horses and mules, 91 I. C. C. 215.

(b) Complainant attacked weight and rate charged on three cars of grapes shipped from Decatur, Mich., to Chicago, Ill., during Sept. 1921 as unreasonable, unjustly discriminatory and unduly prejudicial. Charged 55.5c per 100 pounds. The 20,000 pound minimum is prescribed by the official classification but under exceptions thereto, and in the absence of a weight agreement provided for by the exceptions, complainants shipments were subjected to an estimated weight of 20 pounds per basket. If complainant was not satisfied to ship under the estimated weight provision of the tariff he should have entered into a weight agreement under which he could move his shipments at their actual weights. These provisions do not appear on this record to have been or to be unreasonable. HELD, charges attacked not unreasonable or otherwise unlawful, complaint dismissed. Odell v. M. C. R. R., 92 I. C. C. 643.

(c) Complainant attacked commodity rate charged on one car of yellow pine lumber shipped July 22, 1922 from Tupelo, Miss., to Memphis, Tenn., as unlawful in violation of section 6. The car contained 19,105 feet of lumber. The tariff provided that where shipments do not pass over track scales, the following estimated weights will be used: 4,000 pounds when green and 3,250 pounds when seasoned. The car was not weighed, charged 7.5c per 100 pounds at estimated weight of 80,000 pounds. Defendant admitted that the car was not weighed and also admitted complainants statement of its footage contents. Notwithstanding the absence of any definite rule which may be followed, it seems clear from the facts of record that the material comprising complainants shipment may not be classed as green lumber and, therefore, under defendants tariff was subject to the estimated weight provided for seasoned lumber. HELD, charges collected inapplicable to extent they exceeded those at rate of 7.5c weight 62,091 pounds, reparation awarded. Leake & Goodlett v. St. L. S. F. Ry., 93 I. C. C. 73.

(d) Complainant attacked weights on 50 cars of gravel shipped from Detroit, Minn., to Lake Park, Minn., between Sept. 10 and Nov. 19, 1919, as inapplicable and unreasonable. Points of origin and destination are on the N. P. Shipments were not weighed or measured. There were no track scales either at the loading or the unloading point. No tariff provision was made for ascertaining the weight of gravel shipped in cars which were not weighed. Based upon an estimated weight freight charges were collected based on rate of 2.5c per 100 pounds, weight of gravel 3,200 pounds per cubic yard. The record will not support a finding that the weight used were erroneous. HELD, shipments overcharged, complaint dismissed. County of Becker, Minn., v. Director General, 93 I. C. C. 368.

(e) By appropriate tariff provision an estimated weight is frequently substituted for the actual weight in order to expedite the service and reduce the cost of transportation. Gulf Refining Co. v. A. & W. P. R. R., 95 I. C. C. 731, 732.

(f) Complainant attacked charges collected on spinach, carloads, between Dec. 1920 and Jan. 1922 from Texas to various destinations, based on the gross weight per basket at the point of origin, including ice, as unjust, unreasonable, unduly prejudicial and illegal to extent they exceeded charges which would have accrued at an estimated weight of 20 pounds per basket, including ice. The commodity is transported, either by freight or express, in refrigerator cars the bunkers of which are filled with ice by the carrier. For some years spinach was shipped both by freight and by express at an estimated weight of 20 pounds per bushel basket, with or without ice. Effective Feb. 28, 1920 the Director General canceled the provisions for estimated weights on spinach shipped by freight and adopted a rule that charges thereafter would be assessed upon basis of actual weights. Effective Jan. 30, 1922 the billing weight of 20 pounds per basket with or without ice, was reestablished and has since been

maintained. There is no showing that the weights on which charges were based were erroneous. In fact complainants evidence lends support to the conclusion that the weights were substantially correct. HELD, charges attacked not unreasonable or otherwise unlawful, complaints dismissed. Frost v. A. & G. Ry., 96 I. C. C. 15.

(g) Proposal to establish in southern territory an estimated weight of 1,000 pounds per animal on horses and mules, when actual weights are not furnished by shipper, found justified. Purpose of proposed schedules is to provide a method for fair ascertainment of charges without delays incident to weighing and without temptation for overcrowding that a charge per car offers. Application of a reasonable estimated weight is desirable from standpoint of both shippers and carriers, as it has effect of reducing delays, such as are incident to weighing, and cost of feeding in transit, and estimated weight here proposed does not appear excessive. Estimated Weights on Horses and Mules, 91 I. C. C. 215.

(h) Proposed cancellation of estimated weights on shipments of asparagus by express from points in Arizona and California found not justified, but in view of fact that actual weights to-day are in excess of estimated weights an increase in estimated weights so as to more nearly approximate average weights of present-day shipments, found justified. Express Weights on Asparagus from Arizona and California, 92 I. C. C. 254.

(i) Charges, based upon estimated weight per basket, assessed on grapes, found not unreasonable or otherwise unlawful because not based on actual weights or minimum prescribed by governing classification. Such minimum was published under exceptions to the classification, which provided that in absence of a weight agreement, shipments would be subject to an estimated weight per basket. Complainant did not enter into agreement under which he could have moved shipments at actual weights, and if he was not satisfied to ship under estimated-weight provision such an agreement should have been entered into. In absence of such agreement shipments were properly subject to estimated-weight provision. Odell v. M. C. R. R., 92 I. C. C. 643.

(j) Charges, based on estimated weight of green lumber, collected on shipment of yellow-pine lumber found inapplicable to extent they exceeded charges based on estimated weight of dry lumber. Shipment here involved was accumulated in complainant's yard over a period of six months, and notwithstanding absence of any definite rule which may be followed in determining when lumber passes from green to dry stage, material comprising this shipment may not be classed as green lumber, and was therefore subject to estimated weight on seasoned lumber. Shipment found overcharged and reparation awarded. Leake & Goodlett v. St. L.-S. F., 93 I. C. C. 73.

(k) Charges resulting from use of actual weights on l. c. l. shipments of petroleum and products, in packages, from Jacksonville to points in Georgia, found not unreasonable or unduly prejudicial as compared with lower charges, based upon estimated weights applying intrastate in Georgia and Florida. Comparison was also made with tariff which provided for use of estimated weights from Jacksonville to Georgia destinations, but record establishes that such weights were for use in connection with c. l. shipments only. Moreover, actual weight of complainant's shipments exceeded estimated weight sought. Gulf Rfg. Co. v. A. & W. P., 95 I. C. C. 731.

(l) Charges on spinach from Texas to various destinations, based on gross weight per basket at point of origin, including ice, found not unreasonable or otherwise unlawful as compared with charges based upon an estimated weight of 20 pounds per basket, including ice. Director General canceled provision for estimated weights on shipments moving by freight, but on express shipments they were continued in effect. After Federal control terminated express competition developed to such an extent that it was necessary for rail carriers to reestablish the billing weight of 20 pounds per basket if they wished to continue to participate in the transportation. Frost v. A. & C. Ry., 96 I. C. C. 15.

(m) Complainant attacked charges collected on three tank cars of petroleum black oil shipped April 8, 9 and 11, 1921 from Houston, Tex., to Cleveland, O., as unjust, unreasonable and in violation of section 6 of the act in that they were based on an estimated weight of 7.4 pounds per gallon instead of 6.6 pounds

per gallon. Petroleum or petroleum products, including crude oil, gas oil, and fuel oil, in tank cars are rated fifth class in western classification. Petroleum black oil is not specifically named in the list. The estimated weight of these products for tariff application is 6.6 pounds per gallon, except that for crude, gas and fuel oils it is 7.4 pounds per gallon. A witness for complainant admitted that its weight is from 7.8 to 7.9 pounds per gallon. HELD, estimated weight of 7.4 pounds per gallon not unreasonable or otherwise unlawful, complaint dismissed. Warren Refining & Chemical Co. v. C. N. O. & T. P. Ry. 102 I. C. C. 277.

(ma) Charges collected on petroleum black oil, in tank-car loads, based on estimated weight of 7.4 pounds per gallon, which was the same estimated weight as applies on crude, gas, and fuel oils, found not unreasonable or otherwise unlawful. While other petroleum and its products carried an estimated weight of 6.6 pounds per gallon, black oil was not specifically named in the list of oils carrying such estimated weight. Moreover, actual weight of the black oil here shipped exceeded estimated weight upon which basis charges were assessed. Warren Refining & Chemical Co. v. C., N. O. & T. P., 102 I. C. C. 277.

(n) Complainant attacked present estimated billing weights on shipments of ice cream, by express, and the rates and charges resulting therefrom, as excessive, unreasonable and unjustly discriminatory. Ice cream moves by express throughout the United States. It is shipped in quantities ranging from 1 to 5 gallons or more. The 5 gallon shipment is the common, or standard, package and the testimony relates to that size. In the year 1891 the express companies extended to ice cream shipments a 25% reduction from the gross weight, in accordance with their general rule covering all perishable food products moving under ice, which represented a shrinkage allowance for the melting of the ice. In 1904 estimated billing weights were voluntarily established by the carriers on ice cream shipments, as follows: 1 gallon 30 pounds, 2 gallons 50 pounds, 3 gallons 60 pounds, 4 gallons 80 pounds, 5 gallons 100 pounds; over 5 gallons in the same tub, 18 pounds per gallon. The use of the estimated weights served the convenience of the express company, the shippers, and the consignees, permitted more expeditious handling through the saving of the time required to weigh the shipments, and made the charges per can or per tub uniform. In 59 I. C. C. 265 the Commission approved an increase in the above estimated billing weights, that for the 5 gallon shipment being increased from 100 to 115 pounds, and the other sizes in proportion. In that case weight tests of a considerable number of 5 gallon packages at several points disclosed averages ranging from 145 to 172 pounds. The recent weighing tests, now incorporated in the record, do not support the contention of complainant that the present estimated billing weight of ice cream in 5 gallon tubs is unreasonable. On the contrary, it is shown that the average gross weight of shipments in new style gallon tubs exceeds the average gross weight of old style 5 gallon tubs, and that the actual average gross weight of all shipments, in 5 gallon tubs is greater than that upon which the present estimated billing weight is based. HELD, estimated billing weights not unreasonable or unjustly discriminatory, complaint dismissed. National Asso. of Ice Cream Mfrs. v. Amer. Ry., Exp. 107 I. C. C. 267.

(o) Respondents proposed to increase estimate weights on lettuce in crates of specified dimensions moving transcontinentally eastbound from points west of Albuquerque, Belen and Deming, N. M., El Paso, Tex., and Salt Lake City, Utah, also certain points in northern California on the Southern Pacific. There are four socalled standard crates. Three of these, the Brawley standard, the Brawley special and the Los Angeles standard, each measure, on the inside, 13 inches in depth and 18 inches in width; all measure 24.5 inches in length on the outside but inside, the Brawley standard is 23 1-8 inches, the Brawley special 21 7-8 inches, and the Los Angeles standard 21 5-8 inches. The traiffs permit the loading in each crate of a maximum of 30 pounds of ice and the evidence is that between 25 and 30 pounds per crate are actually loaded. The average carload consists of 320 crates, and if 30 pounds are loaded per crate, the crate ice aggregates 9,600 pounds. Originally all lettuce was shipped with ice in the crates and under standard refrigeration. In about 1920 the practice became general of loading additional ice, of a weight varying during different seasons from

1,500 to 9,600 pounds or even more, on top of the load. This ice, generally in small pieces, melts slightly during loading and later freezes again, forming an ice blanket over the load. During the past year approximately 90% of the shipments from the Imperial Valley moved with no ice in the bunkers and with only crate and top ice to protect them. During very warm periods shipments move under standard refrigeration, with top and crate ice. Hearing in this case was had before decision in 104 I. C. C. 79, wherein the Commission found carriers had justified the assessment of charges on a maximum of 7500 pounds of ice placed in the bodies of cars of $5 per car if the transportation is confined within the limits of two contiguous origin groups, and in all other cases 20% of the stated refrigeration charge which otherwise would be applicable. Prior to Feb. 15, 1925 respondents tariffs contained no provision for estimated weights on lettuce. Prior to Jan., 1, 1922 respondents made estimates of average weights and then deducted 5 pounds for ice meltage. Since Jan. 1, 1922, estimated weights, carried in bulletins not on file with the Commission, have been used, with a meltage allowance of 10 pounds. The note provided "above weight applies when not more than 30 pounds (gross) of ice is placed in each crate. When a greater amount of ice is used per crate or crates not conforming to above dimensions are used, actual weights will apply subject to tariff minimum weight." Respondents published a supplement which so amended the note that an estimated weight of 76 pounds would apply on all four sizes of crates. The average load of a car of lettuce is 320 crates, and each additional 5 pounds in the estimated weight of the crates means an increase in the weight of the loading of 1,600 pounds, additional revenue to New York of $28 per car, car mile earnings 13.2c. HELD, respondents have justified estimated weight of 76 pounds named in the schedules under suspension. Lettuce from Pacific coast territory, 107 I. C. C. 559.

(p) Complainant attacked rates charged on fresh and green vegetables, in carloads, from South Carolina to New England, eastern trunk line and central territory as unreasonable. Former report in 96 I. C. C. 107. The burden is upon the complainants to show the unlawfulness of the present method of stating the rates. The basis proposed by complainants would necessitate the use of minimum weights on some of these commodities which can not be loaded, a practice which has been condemned. If rates on these commodities were published on a weight basis, it would be a practical necessity, in the interest of economical and expeditious handling, that estimated rather than actual weights be used. This record does not contain a sufficient showing upon which to base a schedule of estimated weights. The record discloses no convincing reason why rates on vegetables, generally, should be made with relation to rates on potatoes, except perhaps the matter of convenience. Cabbage is transported from this territory either in refrigerator cars under ice or ventilator cars. Commodity rates have been the rule from South Carolina and other southern producing points for a long period of time. They are not made, nor is there any convincing reason shown of record why they should be made with relation to class rates. From this territory along the coast of South Carolina, moreover, class rates are shown to be on relatively low basis, because, it is stated, of the influence of water competition. Lettuce and spinach, move in considerable volume from this territory, spinach principally in ventilator cars and lettuce in refrigerator cars under ice. HELD, rates under attack not unreasonable, reparation awarded on such rates as were found unreasonable in the former report. Fourth section denied. South Carolina Produce Asso. v. A. & R. R. R. 107 I. C. C. 613.

§5½. Origin Weights.

(a) Complainant alleged that in Feb. 1919 a carload of coal was shipped from Hazard, Ky., to Monon, Ind., that it paid freight charges on a weight of 109,000 pounds and that charges collected were inapplicable to extent they exceeded charges computed on a weight of 89,000 pounds. Complainants evidence proves only that the actual weight of the car was 4,000 pounds greater than the marked weight, and upon that weight complainant is entitled to reparation. Were the Commission to base its opinion in cases of this character upon the invoice weight of the shipment the door would be open to collusion and fraud, making rebating an easy matter. HELD, shipment overcharged

$4.90, reparation awarded. Monon Lumber Co. v. Director General, 109 I. C. C. 429.

§6. Reweighing.

(a) Complainant attacked defendants rules, regulations and practices relating to the weighing and reweighing of interstate shipments of bituminous coal as unreasonable and otherwise unlawful. Most of the testimony related to the so-called tolerance rules and defendants practice thereunder. Tolerance is the allowable margin of error between the origin and destination scale readings, arising from difference in scales, or errors in weighing, or absorption of evaporation of moisture by the shipment in transit, which must be exceeded as a condition precedent to the correction of the billed weight and the reweighing of the shipment free. Carriers rules generally provide that freight charges will be assessed on the basis of weights obtained at initial weighing stations, and that such origin weights must be adhered to unless shown to be incorrect. In cases where consignees question the accuracy of origin weights and request a reweighing, the tolerance rule of the delivering carrier is applied in the settlement of the controversy. The tariffs of the Big Four, a defendant herein, provide a tolerance on coal of 1% with a minimum of 1,000 pounds, and in addition contain the note relating to differences in weight due to evaporation, whereas the tariffs of the Pennsylvania, and some other lines referred to, provide a tolerance of 1% with a minimum of 500 pounds, for variation in scales or errors in weighing, with an additional allowance of 1% of the origin weight on account of moisture evaporation. HELD: Rules attacked not unreasonable or otherwise unlawful, complaints dismissed. Smith & Duckworth v. C. C. C. & St. L. Ry., 100 I. C. C. 300.

(b) Complainant alleged that because of failure of defendant to reweigh two cars of anthracite coal shipped from Parsons and Mahoney Plain scale, Pa., and received at Mentone, Ind., Dec. 31, 1923, and to show gross, tare and net weights on the freight bills, and because of demand by defendant for weighing and additional transportation charges for movement to and from Fort Wayne, Ind., it has been damaged in the sum of $500. Mentone is a local point on the N. Y. C. & St. L., 48 miles west of Fort Wayne, Ind. There are no track scales at Mentone and the nearest intermediate point at which there are scales is Fort Wayne. Prior to their delivery complainant made request of defendant's agent at Mentone, apparently not in writing, that all of its shipments of coal and coke be reweighed, and upon arrival of the two cars it refused to receive them until they had been reweighed. The cars were taken to Fort Wayne, reweighed and again tendered for delivery with a charge of $3.60 per car for reweighing and a transportation charge, the amount of which is not shown on record. On Jan. 1, 1924, complainant made a request in writing that all of its coal and coke shipments be reweighed prior to delivery. Under the present rules complainant is entitled to have shipments reweighed upon proper request, but it can not be held that a general request that all of its shipments be reweighed comes within the meaning of the rules. HELD: Complaint dismissed. Mentone Lumber Co. v. N. Y. C. & St. L. Ry., 101 I. C. C. 421.

(c) Shipments of coal on which charges were based on weight ascertained on scales of originating lines found overcharged to extent they exceeded those based on delivering line's weights. Tariffs naming applicable rates provided that they were subject to reweighing charges published in participating carriers' tariffs, and shipments were, therefore, entitled to reweighing privilege published in a tariff of delivering carrier naming rules and regulations governing weighing and reweighing of c. l. freight. Reparation awarded. Burkhart & Co. v. Director General, 96 I. C. C. 77.

(d) Rules, regulations and practices of defendant carriers relating to the weighing and reweighing of interstate shipments of bituminous coal, under the so-called tolerance provisions of the tariffs, found not unreasonable or otherwise unlawful as compared with the tolerance provisions of other carriers. Moreover, such rules, regulations, and practices conform generally to the code of rules governing the weighing and reweighing of carload freight, incorporating many of the principles enunciated in 28 I. C. C. 7, adopted by American Railway Association and endorsed by the commission. Smith & Duckworth v. C., C., C. & St. L. Ry. Co., 100 I. C. C. 300.

(e) Under its tariff, defendant found not required to reweigh all shipments of coal and coke prior to delivery upon a general request, without definite information as to particular shipments. Mentone Lbr. Co. v. N. Y., C. & St. L., 101 I. C. C. 421.

(f) Complainant attacked commodity rates charged on carloads of coal shipped between Dec. 31, 1917 and Oct. 15, 1919, from Brazil, Carbon and Superior, Ind., to Muncie, Ind., as based on excessive weights and in excess of the applicable charges under the weighing rules and regulations under the applicable tariffs. The coal was shipped from Carbon and Superior and moved over the Central Indiana to Muncie. The carrier did not maintain track scales at either Carbon or Superior. Defendant states that the coal from Carbon and a portion of that from Superior was weighed on track scales at those points maintained and operated by the mines; that the weight of the remainder of the coal from Superior was determined by the net weights maintained and operated from tipple scales at the mines; and that the weights so obtained were used by the mining companies for invoice purposes and were furnished to the carrier for waybilling. Complainants paid for the coal on the basis of the weights furnished to the carrier and the freight charges were assessed on those weights. The question of the weight of shipments is one of fact, and the actual weight constitutes the true basis upon which the assessment of freight charges should be made. Complainants made no request to have the shipments reweighed, as they were entitled to do, and apparently did not weigh them on arrival at destination. HELD, complaint dismissed. Curtis v. Director General, 109 I. C. C. 378.

§7. Scaleage and Shrinkage.

See Facilities and Privileges §12.

(a) Shipment of cedar posts from Noxon, Mont., to Rushville, Nebr., found overcharged, due to inadequate allowance having been made for snow on the load in weighing. Noll Lumber Co. v. C. & N. W. Ry. Co., 98 I. C. C. 589.

§7a. Tolerance.

(a) Rules, regulations, and practices of defendant carriers relating to the weighing and reweighing of interstate shipments of bituminous coal, under the so-called tolerance provisions of the tariffs, found not unreasonable or otherwise unlawful as compared with the tolerance provisions of other carriers. Moreover, such rules, regulations, and practices conform generally to the code of rules governing the weighing and reweighing of carload freight, incorporating many of the principles enunciated in 28 I. C. C. 7, adopted by American Railway Association and endorsed by the commission. Smith & Duckworth v. C., C., C. & St. L. Ry. Co., 100 I. C. C. 300.

(b) Code of rules governing weighing and reweighing provides that tolerance on coal and coke does not include evaporation tolerance but that it shall be determined and published in initial carrier's tariff. These rules have not been adopted in their entirety by all carriers. Smith & Duckworth v. C., C., C. & St. L. Ry. Co., 100 I. C. C. 300, 301.

(c) Tolerance is the allowable margin of error between origin and destination scale readings, arising from differences in scales, or errors in weighing, or absorption or evaporation of moisture by the shipment in transit, which must be exceeded as a condition precedent to the correction of the billed weight and the reweighing of the shipment free. In cases where consignees question the accuracy of origin weights and request a reweighing, tolerance rule of delivering carrier is applied in settlement of the controversy. Smith & Duckworth v. C., C., C. & St. L. Ry. Co., 100 I. C. C. 300, 301.

§7½. Track Scales.

See Supra §5½.

(a) No track scales were located at either loading or unloading point, and no tariff provision was made for ascertaining weights of gravel shipped in unweighed cars. Charges assessed on shipments not weighed or measured, based upon an unfiled circular issued by carrier to station agents and conductors, which provided for use of certain estimated weights on this commodity when shipped under above conditions, found legally applicable. Practice of carriers in issuing circulars respecting use of estimated weights on unweighed shipments was considered by commission in weighing of Freight by Carriers, 28 I. C. C. 7 and not condemned. Moreover, un-

less these rules are incorporated in tariffs they are not usually filed with regulatory bodies. Becker County v. Director General, 93 I. C. C. 368.

(b) Charge for weighing outbound freight on private scales of certain shippers at St. Louis, Granite City, Madison, and East St. Louis, served by the Terminal R. R. Asso. of St. Louis and its subsidiaries, found not unreasonable, discriminatory, or unduly prejudicial. Evidence merely stated that other concerns and competing manufacturers at St. Louis and various sections of the country operate private track scales and are assessed no weighing charge by carriers serving them. These facts, however, are insufficient to sustain allegations of discrimination and prejudice. In support of allegation of unreasonableness it was contended that service performed by carriers is substantially the same whether cars are weighed on private or carrier scales, and, as it is duty of carrier to weigh freight, any charge is unreasonable. However, the weighing was performed at complainants' request and primarily for their own benefit, and it follows that they should properly pay for the service. Walsh Fire Clay Products Co. v. Director General, 95 I. C. C. 439.

(c) The Commission has repeatedly expressed the view in cases involving claims for refunds of charges based upon alleged improper weights that the scale weight must govern in the absence of convincing proof of error. Monon Lumber Co. v. Director General, 109 I. C. C. 429, 439.

IV. EVIDENCE AND BURDEN OF PROOF.

§9. In general.

See Bills of Lading §7; Evidence I.

(a) Complainant attacked charges on a car of red cedar posts shipped Dec. 9, 1922 from Noxon, Mont., to Rushville, Mont., as unreasonable in that allowance was made for only 4 inches of snow on the car instead of 2 feet as stated in the bill of lading. When the car was weighed at Paradise, Mont., only 4 inches was visible to the weigher, on which basis charges were collected. The weather bureau maintains stations at Heron and Plains, Mont., short distances northwest of Noxon and Paradise, respectively. Readings are taken at 5 o'clock daily. The record data show 1 inch of snowfall at Heron on Dec. 8 and 29 inches on the following day. Only a trace of snow fell at Plains on Dec. 8 and a light rain occurred on Dec. 9 prior to 5 o'clock P. M., on the 9th, although snow was falling at Paradise at 10:30 P. M., on the 9th. Inasmuch as this car was not billed out of Noxon until some time on the 9th it apparently encountered the heavy snowfall in that vicinity. Consequently the notation in the bill of lading of 2 feet on the load seems correct. At 175 pounds per inch of depth and a rate of 59c per 100 pounds, the overcharge amounted to $20.65. HELD, refund of overcharge ordered. Noll Lumber Co. v. C. & N. W. Ry., 98 I. C. C. 589.

(b) Where it was impossible to estimate weight of coal hauled, over carrier's tracks, and billed by carrier at false weights, except by approximation, due to carrier's failure to weigh, all doubts were resolvable against carrier. New York & Pennsylvania Co. v. New York Cent. R. Co. (Pa., 1924) 124 Atl. 428.

V. REPARATION.

See Reparation.

§10. In general.

(a) That carrier's failure to weigh coal and its issuance of waybills, etc., based on tipple weights, enabled shipper to make excess charges against consignee did not make carrier liable therefor; such overcharge constituting a new and independent wrong not within carrier's contemplation, and carrier being under no obligation to weigh in order that accounts for purchase could be adjusted. New York & Pennsylvania Co. v. New York Cent. R. Co. (Pa., 1924) 124 Atl. 428.

VI. TARIFFS AND CONSTRUCTION.

See Tariffs.

§11. In General.

(a) No track scales were located at either loading or unloading points, and no tariff provision was made for ascertaining weights of gravel shipped in unweighed cars. Charges assessed on shipments not weighed or measured, based upon an unfiled circular issued by carrier to station agent and conductors, which provided for use of certain esti-

mated weights on this commodity when shipped under above conditions, found legally applicable. Practice of carriers in issuing circulars respecting use of estimated weights on unweighed shipments was considered by commission in Weighing of Freight by Carriers, 28 I. C. C. 7, and not condemned. Moreover, unless these rules are incorporated in tariffs they are not usually filed with regulatory bodies. Becker County v. Director General, 93 I. C. C. 368.

VII. REASONABLENESS OF CHARGES.

§13. In general.

See Reasonableness of Rates.

(a) Complainant attacked class rates charged on locomotive cranes, with detached parts, from Gilmerton, Va., to Greystone, S. C., as unreasonable, unjustly discriminatory and unduly prejudicial. Moved, June 22, 1922. Locomotive cranes or derricks on own wheels are rated 80% of sixth class, and item provides for use of actual weight of car of contents, minimum 60,000 pounds subject to a note which provides that if additional car or cars are required on account of detached or overcharging parts, the minimum shall be increased 24,000 pounds for each additional car. The sixth class rate prior to July 1, 1922 was 49c, rate applicable 39.2c. Charged originally on 108,000 pounds, but subsequently collected on 156,500 pounds. Gilmerton is on the N. & W., 15 miles east of Suffolk, Va. Greystone is on the S. A. L., 127 miles west of Norfolk. Shipments moved N. & W., to Norfolk, N. & P. Belt to Portsmouth, Va., and Seaboard to destination, 135 miles. There is no showing other than a statement of the rates and the location of the points that the rate attacked was unjustly discriminatory or subjected complainant to undue prejudice. HELD, rate attacked not unreasonable or otherwise unlawful, but weight used should have been 116,860, overcharges to be refunded. Raleigh Granite Co. v. S. A. L. Ry., 96 I. C. C. 573.

(b) Where carrier wrongfully failed to weigh coal, but billed it at tipple weights, thereby overcharging consignee, carrier, in view of its tariff, HELD entitled to be paid on basis of minimum carload weights only, in absence of evidence of greater weights. New York & Pennsylvania Co. v. New York Cent. R. Co. (Pa., 1924) 124 Atl. 428.

(c) Consignee was entitled to recover from initial carrier excess freight paid to connecting carrier on coal; such overpayment being a natural consequence of initial carrier's act in billing coal at tipple weights and in failing to weigh coal on its own scales. New York & Pennsylvania Co. v. New York Cent. R. Co. (Pa., 1924) 124 Atl. 428.

WHARFAGE

See Allowances §8 (8); Dockage; Facilities and Privileges §16; Water Carriers §6¾.

WORDS AND PHRASES

See Classification §28 (l) (m) (q).

(a) Bars, as well as rods, may be straight, crooked, bent, curved, deformed, and presumably may be coiled. New England Drawn Steel Co. v. Director General, 93 I. C. C. 171, 172.

(b) "Stringpiece" is the raised outer edge of a dock. Coastwise Lumber & Supply Co. v. P. R. R., 93 I. C. C. 288, 289.

(c) A bicycle is neither a freight nor a passenger vehicle. United Cycle & Supply Co. v. B. & O., 93 I. C. C. 689, 690; Jones v. P. R. R., 93 I. C. C. 697, 698.

(d) A rig-iron outfit consists of certain parts of a well-drilling outfit, and comprises two steel shafts, two steel bands, two pieces of small pipe, one box of bolts, three pieces of bar iron, machine castings, and five kegs of nails, and also certain wooden parts, such as bull-wheel and calf-wheel cants and arms and pins in the rough. A set of rig irons does not include the essential parts of a well-drilling outfit, such as engine boiler, derrick, drilling tools, cable, and crown block, without which it would be impossible to drill a well with rig irons. Parkersburg Rig and Reel Co. v. C., R. I. & P., 95 I. C. C. 181, 182.

(e) "Lumber." As that commodity is carried in railroad tariffs it is well understood to embrace a prepared, usually or always sawed, product of the forests. The Standard Dictionary defines it as "Timber sawed into merchantable form, especially boards." National Reduction Corp. v. Director General, 95 I. C. C. 284, 285.

(f) "Haydite," a substitute for sand, gravel, and crushed stone in concrete

construction, made from any clay from which brick can be made. The clay is broken up and baked into clinkers in rotary kilns, then ground or pulverized. Haydite Co. v. A., T. & S. F., 96 I. C. C. 312, 313.

(g) Balsam wool: A builders' material manufactured from the fibre of spruce or balsam trees It is competitive with other insulating materials. Dower Lumber Co. v. N. P. Ry. Co., 98 I. C. C. 9.

(h) Plates, ship: Term can mean only plates for use in the construction of ships, and even if there was anything obscure or uncertain about the term, the lower rate would have been applicable or the shipments here involved, since an obscure or uncertain tariff provision must be construed against its framers. Sabin v. S., P. & S. Ry. Co., 98 I. C. C. 471, 474.

(i) Value for remelting purposes as used in the tariffs in connection with "Scraps or pieces of iron or steel," defines the nature of the article, and they do not make the rate to be applied dependent upon its use. Steel articles having a recognized commercial value other than that of the elementary metal from which they are manufactured do not properly come within the description scrap steel. Alaska Junk Co. v. Spokane, Portland & Seattle Ry. Co., 98 I. C. C. 551.

(j) Viz, is generally read "namely or "to wit" and is commonly employed to make specific that which has theretofore been stated in general terms. St. Louis Fruit & Vegetable Asso. v. L. &. N. R. R. Co., 98 I. C. C. 553, 556.

(k) A bicycle is a means of conveyance or travel for persons, is non-self-propelling and comes within the definition of a "light, non-self-propelling passenger vehicle." United Cycle Supply Co. v. B. & O., 101 I. C. C. 334, 336.

(l) The term "car service" as used in the act relates to vehicles used in the transportation of property. Los Angeles Passenger Terminal Cases, 100 I. C. C. 421, 426.

(m) Docking and undocking, defined. Southern Transp. Co. v. N. & W., 101 I. C. C. 211, 221.

(n) Dumping and trimming, defined. Southern Transp. Co. v. N. & W., 101 I. C. C. 211, 212, 213, 216, 217.

(o) A fleshing is described as the scrapings of meat from the inside of cattle and calf hides and the skins of larger meat animals used generally in canneries. Glue stock in Official Classification Territory, 101 I. C. C. 601, 603.

(p) Service of running lines in connection with the docking and undocking of vessels at piers, defined. Southern Transp. Co. v. N. & W., 101 I. C. C. 211, 223.

(q) A "split-delivery" car contains a c. l. shipment under a single bill of lading from one consignor to one consignee, made up of separate shipments to be delivered to two or more ultimate consignees. Loading and Unloading C. L. Freight, 101 I. C. C. 394, 403.

(r) "Joint mine": In Ridge Coal Mining Co., 62 I. C. C. 259, the commission defined a joint mine as being one located on the rails of only one railroad but served by one or more additional railroads. Brady v. B. & O., 102 I. C. C. 19, 23.

(s) "Rough rice": Rice, after being threshed and while still in the hull is known as rough rice, and in this state is sold to the rice mills. New Orleans Joint Traffic Bureau v. B., S. L. & W., 102 I. C. C. 686, 687.

(t) "Specific rates": Rule 6 of Tariff Circular 18-A provides that commodity rates must be specific and that they must not be applied to analogous commodities. If a tariff should be filed naming commodity rates on "grain products," for example, the commission could require carriers to correct it by specifying a full list of articles to be included within that designation. A commodity rate on a specific article of transportation, stated definitely as so many cents per 100 pounds, is a specific commodity rate, notwithstanding the fact that the same rate is not repeated in the tariff in conection with each point of origin and each point of destination from and to which the rate is made to apply. Miller & Lux v. S. P., 102 I. C. C. 137, 139.

(u) "That is, all-rail, or rail-and-water:" Conference Ruling 214 (c) provides that in absence of specific through routing by shipper it is duty of carrier's agent to route shipments via cheapest route; that is, all-rail, or rail-and-water.

Contention that words "that is, all-rail or rail-and-water" were intended to be illustrative and not to define the only two possible classes of routes, not sustained. Natural meaning attached to wording of ruling indicates that it was intended to state explicitly the kinds of classes embraced therein. Petertyl v. N. Y., N. H. & H., 102 I. C. C. 693, 694, 695.

(v) "Unclaimed shipments": The term "unclaimed" implies, in absence of actual refusal, the failure of consignee to claim or accept shipment. Advice given carrier by consignee to effect that he would be unable to pay freight charges for several days, which may be construed to mean that shipment would be accepted within a few days, is not the equivalent to claiming shipment, which contemplates a demand for delivery and a readiness to pay charges. National Fire Proofing Co. v. Bellfonte Central R. R. Co. 102 I. C. C. 345, 346.

YARDAGE

See Allowances §8 (8).

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Brock v. Chicago, R. I. & P. Ry. Co., (Mo., 1924) 266 S. W. 691. Personal Injuries (r).
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Butler Paper Co. v. C. I. & W. Ry., 102 I. C. C. 311. Equalization of Rates §2 (k); Reasonableness of Rates §28 (31), §32½ (31); Reparation §6 (3ka) (3kb), §8½ (ra).
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Buxton Smith Co. v. A. T. & S. F. Ry. Co., 89 I. C. C. 373. Claims §1½ (a); Class Rates §2 (f); Commodity Rates §5 (d); Evidence §13 (1) (a); Reasonableness of Rates §7½ (i), §28 (1).
Buxton-Smith Co. v. E. P. & S. W., 92 I. C. C. 227. Perishable Freight (h); Refrigeration §4 (b) (h).

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Caddo Central Oil & Refining Co. v. K. C. S. Ry., 98 I. C. C. 39. Commodity Rates §5 (3q); Discrimination §4 (cc), §4¾ (j), §8 (1) (d); Long and Short Hauls §4 (3d); Reasonableness of Rates §28 (7a).
Cairo Cotton Oil Mill v. I. C. R. R., 91 I. C. C. 765. Long and Short Hauls §5 (j); Reasonableness of Rates §7½ (p), §28 (qq).
Cairo Cotton Oil Mill v. M. & O. R. R., 107 I. C. C. 299. Commodity Rates §5 (5z); Reasonableness of Rates §32½ (uu).
Cairo Syrup Co. v. I. H. B. R. R., 104 I. C. C. 487. Through Routes and Joint Rates §13 (3z).
Caldwell v. Pullman Co. (S. C., 1925) 128 S. E. 504. Personal Injuries (q); Sleeping Car Companies (m) (n).
California Cotton & Factorage Co. v. Director General, 93 I. C. C. 260. Advanced Rates §8½a (b); Reparation §6 (k) (oo); Tariffs §9a (d) (k); Through Routes and Joint Rates §21 (e).
California Cotton & Factorage Co. v. Director General, 109 I. C. C. 293. Advanced Rates §8½a (x).
California Cotton Mills Co. v. S. Ry., 95 I. C. C. 7. Cars and Car Supply §8 (d) (f); Commodity Rates §5 (yy).
California Grain Co. v. Director General, as Agent, 85 I. C. C. 680. Advanced Rates §6½, §15, §18 (½); Reasonableness of Rates §7½.
California Growers' & Shipper's Protective League v. S. P. Co., 100 I. C. C. 79. Blanket Rates §10½ (3b) (3c); Evidence §12 (l) (rr) (ss), §45 (e); Percentage Rates (v) (w); Perishable Freight (d); Protective Service (b); Reasonableness of Rates §28 (8k); Refrigeration §2 (a).
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California Packing Corp. v. Director General, 96 I. C. C. 239. Evidence §47 (f), §57½ (d); Local Rates and Combinations (pp); Routing and Misrouting §1½ (c), §2 (d), §3 (a), §4 (w) (x), §5 (d), §7 (g), §7½ (n), §7¾ (a); Through Routes and Joint Rates §13 (uu), §13a (a) (c).
California Rand Silver v. C. & W. Ry., 93 I. C. C. 197. Basing Points and Lines §3 (h); Branch Lines §1 (m); Classification §17 (nn).
California Sales Company v. Director General, 92 I. C. C. 619. Classification §22 (t) (ww); Reparation §6 (nn), §17½ (k).
Calumet Baking Powder Co. v. A. & N. R. R. R. Co., 109 I. C. C. 249. Overcharges (pp); Reparation §7 (ii).
Calumet Fertilizer Co. v. L. & N. R. R. Co., 91 I. C. C. 31. Differentials §8 (i); Equalization of Rates §2 (d), §4 (4) (b); Evidence §13 (1) (c); Reasonableness of Rates §28 (cc) (dd); River Crossings (b) (c).
Calves to Texas, 112 I. C. C. 163. Live Stock Shipments (3d).

Cameron Co. v. A. & S. Ry., 102 I. C. C. 31. Blanket Rates §10 (i), §13 (cca); Differentials §8 (zz); Discrimination §4½ (t); Evidence §12 (1) (3sa); Reasonableness of Rates §28 (9u).
Campbell Construction Co. v. L. C. & S. E. Ry., 93 I. C. C. 99. Long and Short Hauls §6¾ (i); Reasonableness of Rates §32½ (wx).
Campbell Construction Co. v. L. C. & S. E. Ry., 95 I. C. C. 603. Cars and Car Supply §9 (a); Demurrage §14¼ (h), §16 (e) (o); State Rates and Regulations (5c).
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Laumer Lumber Co. v. A. C. L. R. R., 96 I. C. C. 93. Demurrage §3½ (a) (d); Embargoes (e).
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Levy & Zentner Co. v. A. T. & S. F., 101 I. C. C. 361. Commodity Rates §2 (o); Evidence §12 (1) (3l); Perishable Freight (g).
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Liberty Glass Co. v. M. P. R. R. Co., 89 I. C. C. 362. Classification §20 (b); Reasonableness of Rates §26½ (a), §28 (k).
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Louisville & N. R. Co. v. A. H. Cleaver & Co., (Ala. 1924) 101 So. 597. (State Shipment.) Bills of Lading §11½ (a); Tariffs §3 (l) (n).
Louisville & N. R. Co. v. Johnson's Adm'x (Ky., 1925), 270 S. W. 58. Common Carrier §8 (h); Passenger Fares and Facilitics §13 (d) (e) (f) (g) (h) (i) (j) (k).
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Mason Valley Mines Co. v. W. P. R. R. Co., 100 I. C. C. 180. Branch Lines §1 (cc); Discrimination §3½ (c), §4 (oo); Divisions §3 (p) (w), §9 (jj) (kk) (ll); Evidence §2 (h), §18 (h), §61 (h); Percentage Rates (x); Reasonableness of Rates §28 (8o).
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Mauk Lumber Co. v. Director General, 98 I. C. C. 599. Classification §7 (o); Evidence §64 (q); Reasonableness of Rates §32½ (tt); Reparation §11 (b); Through Routes and Joint Rates §13 (m).
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McClave & Son v. A. C. L. R. R., 100 I. C. C. 405. Facilities and Privileges §15 (3h), §18 (g); Local Rates and Combinations (4b).
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McMahan v. Montour R. Co., (Pa., 1925) 128 Atl. 918. Safety Appliance Acts (q).
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McNeely v. Town of Vidalia (La., 1924) 102 So. 422. Ferry Charges (c).
Memphis Frt. Bureau v. A. A. R. R., 102 I. C. C. 489. Canada (z); Long and Short Hauls §4 (3ob) (3p); Reasonableness of Rates §28 (10m).
Memphis Freight Bureau v. A. C. L. R. R., 109 I. C. C. 31. Classification §22 (4f).
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Memphis Freight Bureau v. C. & O. Ry., 112 I. C. C. 55. Claims §2 (e).
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Miami Copper Co. v. A. & E. Ry., 104 I. C. C. 467. Tank Car Shipments (w).
Miami Copper Co. v. A. E. R. R., 93 I. C. C. 221. Blanket Rates §6 (b); Reasonableness of Rates §32½ (aa) (bb).
Michigan Electrochemical Co. v. C. & N. W. Ry., 98 I. C. C. 435. Tank Car Shipments (o) (s).
Michigan Public Utilities Commission v. Duke, 45 Sup. Ct. 191. Common Carrier §8 (g); Courts §10 (d); State Rates and Regulations (3x) (3y) (3z) (4a).
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Michigan Traffic League v. A. A. R. R. Co., 85 I. C. C. 47. Evidence §12 (l); Procedure Before Commission §5; Rail-and-Water Rates.
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Mid-Continent Equipment & Machinery Co. v. M. & O. R. R. Co., 85 I. C. C. 683. Long and Short Hauls §5; Tariffs §13a.
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Midland Coal Co. v. M. P. R. R. Co., 89 I. C. C. 101. Class Rates §2 (d); Commodity Rates §4 (a); Reparation §6 (b), §7 (b).
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Midland Linseed Products Co. v. N. Y. C. R. R., 96 I. C. C. 447. Classification §17 (s) (3u).
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National Supply Co. of Texas v. C. C. C. & St. L. Ry., 92 I. C. C. 295. Advanced Rates §3 (m); Classification §22 (p), §28 (r); Reasonableness of Rates §7½ (y).
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National Zinc Co. v. A. T. & S. F. Ry., 92 I. C. C. 587. Blanket Rates §13 (r); Differentials §8 (n); Discrimination §3 (i); Reasonableness of Rates §28 (3o).
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Nebraska Bridge Supply & Lumber Co. v. A. T. & S. F., 93 I. C. C. 301. Advanced Rates §3 (p), §22 (a); Commodity Rates §5 (oo); Evidence §47 (c); Reconsignment §3 (h); Reparation §7½ (a).
Nebraska Bridge Supply & Lumber Co. v. Director General, as Agent, 85 I. C. C. 327. Advanced Rates §9½; Classification §17; Procedure Before Commission §2; Reparation §6.
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Nebraska Cement Co. v. A. T. & S. F. Ry., 102 I. C. C. 265. Commodity Rates §5 (4w); Reasonableness of Rates §28 (10c).
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New Italian Importing Co. v. S. P., 95 I. C. C. 611. Blanket Rates §10½ (gg), §13 (t); Branch Lines §1 (p); Discrimination §4 (p).
New Mexico Corp. Commission v. A. T. & S. F., 93 I. C. C. 43. Minimums §1 (l), §7 (g) (z) (aa).
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New Orleans Coal & Bisso Towboat Co. v. I. C. C. R. R., 92 I. C. C. 333. Allowances §8 (7) (b).
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New Orleans Export Co. v. I. C. R. R. Co., 96 I. C. C. 509. Export Rates and Facilities §7 (d); Facilities and Privileges §10 (b); Tariffs §7 (ll).
New Orleans Joint Traffic Bureau v. A. & A. R. R. Corp., 95 I. C. C. 77. Canada (b) (j); Differentials §8 (t); Rail-and-Water Rates (r) (uu); Through Routes and Joint Rates §1 (h).
New Orleans Joint Traffic Bureau v. A. & V. Ry. Co., 89 I. C. C. 223. Classification §17 (d), §22 (b); Distance Rates §1 (a); Long and Short Hauls §4 (d), §4¾ (a); Reasonableness of Rates §7½ (e) (f); State Rates and Regulations (c).
New Orleans Joint Traffic Bureau v. B. S. L. & W., 102 I. C. C. 686. Discrimination §3 (wb); Distance Rates §3 (5oe); Equalization of Rates §3 (cca); Evidence §32 (o); Export Rates and Facilities §4 (h), §6 (cca); Interstate Commerce Commission §1 (q); Through Routes and Joint Rates §13½ (mb); Words and Phrases (s).
New York & Pennsylvania Co. v. Davis, 2 Fed. (2d) 858. Freight Charges (ee).
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New York & Pennsylvania Co. v. New York Cent. R. Co. (Penn. 1924) 126 Atl. 382. State Rates and Regulations (zz) (3a) (3b).
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Newport News v. B. & O. R. R., 96 I. C. C. 425. Car Ferry (h); Discrimination §4 (x); Equalization of Rates §3 (e) (p), §4 (5) (b) (c); Evidence §14 (5) (a); Local Rates and Combinations (tt).
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Norfolk S. R. Co. v. Armfield., (N. C. 1925) 127 S. E. 557. Interstate Commerce §½ (c).
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Northeast Mississippi Traffic Bureau v. A. & V., 102 I. C. C. 611. Association (f); Blanket Rates §3 (b), §10½ (3hc), §11 (bb); Commodity Rates §5 (5e); Reasonableness of Rates §28 (10q); Reparation §6 (3ki); Through Routes and Joint Rates §15 (31a).
Northeast Miss. Traffic Bureau v. M. & O., 101 I. C. C. 451. Discrimination §3½ (n); Evidence §66 (t); Through Routes and Joint Rates §13 (dd).
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Northern Pacific Railway Co. v. St. Paul & Tacoma Lumber Co., 4 Fed. (2d) 359. Discrimination §2½ (f); Special Contracts §1 (a), §2 (g) (h), §4 (a).
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Northwest Potato Exchange v. G. N., 96 I. C. C. 187. Classification §17 (3q); Discrimination §4 (v); Local Rates and Combinations (s); Reasonableness of Rates §32½ (j); Reduced Rates §4½ (u) (v) (w).
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Norwich Pharmacal Co. v. B. & O. R. R., 93 I. C. C. 246. Class Rates §2 (z); Differentials §8 (r).
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Oakes & Co. v. O. S. L., 96 I. C. C. 95. Claims §1 (cc); Classification §7 (l) §17 (3o); Commodity Rates §5 (3g).
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Ohio Farm Bureau Federation v. A. & W. Ry. Co., 89 I. C. C. 489. Class Rates §2 (g); Divisions §9 (a); Evidence §17 (a); Live Stock Shipments (gg); Long and Short Hauls §13 (u); Tap Lines §6½ (a); Through Routes and Joint Rates §14 (b).
Ohio Quarries Co. v. N. Y. C., 92 I. C. C. 703. Common Carrier §7½ (g); Discrimination §3 (j); Tap Lines §6 (b); Through Routes and Joint Rates §13 (jj).
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Oklahoma Corp. Commission v. A. & S. Ry. Co., 98 I. C. C. 183. Blanket Rates §2 (i) (j), §4 (b); Bridges and Tolls §1 (b); Cars and Car Supply §10 (d); Class Rates §2 (tt); Discrimination §4½ (l); Distance Rates §3 (4b) (4c) (4d) (4e); Evidence §11 (b), §12 (1) (ll) (mm), §13 (1) (j), §22 (b) (c), §32 (h) (i), §50 (f), §61 (b), §63 (b) (i) (j); Export Rates and Facilities §6 (aa); Hoch-Smith Resolution (b); Local Rates and Combinations (uu); Long and Short Hauls §4 (3f); Minimums §7 (ii); Reasonableness of Rates §28 (7c); Reparation §8½ (q); River Crossings (e); State Rates and Regulations (5j); Tank Car Shipments (r); Through Routes and Joint Rates §4 (c).
Oklahoma Corp. Comm. v. A. & S. Ry., 101 I. C. C. 116. Basing Points and Lines §3 (t) (u); Blanket Rates §19¼ (i); Differentials §8 (tt) (uu); Discrimination §3½ (f) (g) (h), §12½ (a); Distance Rates §3 (mm) (5g) (5h) (5i) (5j) (5k) (5l) (5m); Evidence §20 (k); Facilities and Privileges §15 (3j); Long and Short Hauls §4 (3y); Minimums §7 (tt); Reparation §8½ (x).
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Oklahoma Millers Asso. v. A. & V. Ry., 96 I. C. C. 195. Export Rates and Facilities §4 (b) (f), §6 (u) (v).
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Oklahoma Portland Cement Co. v. A. & S. Ry., 93 I. C. C. 605. Reduced Rates §5 (g) (v) (w).
Oklahoma Portland Cement Co. v. A. T. & S. F. Ry., 93 I. C. C. 203. Class Rates §1 (b); Long and Short Hauls §6⅞ (w); Rail-and-Water Rates (qq); Tariffs §6 (d), §7 (ff); Through Routes and Joint Rates §15 (jj), §22 (e).
Oklahoma Portland Cement Co. v. St. L. S. F. Ry. Co., 96 I. C. C. 468. Long and Short Hauls §4 (3a), §5 (z); Reasonableness of Rates §28 (6o).
Oklahoma Publishing Company v. A. T. & S. F. Ry., 95 I. C. C. 448. Blanket Rates §19¼ (a); Evidence §44¼ (d); Reparation §8½ (ke) (kf).
Oklahoma Publishing Co. v. A. T. & S. F. Ry., 101 I. C. C. 635. Import Traffic §2 (u) (ss) (tt) (uu); Percentage Rates (ff).
Oklahoma S. W. Ry. Co. v. St. L. S. F. Ry. Co., 88 I. C. C. 235. Evidence §15½.
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Oklahoma Traffic Asso. v. C. R. I. & P. Ry., 100 I. C. C. 307. Classification §17 (cc); Equalization of Rates §3 (cc); Reasonableness of Rates §28 (8s).
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Omaha Chamber of Commerce v. A. T. & S. F., 95 I. C. C. 713. Advanced Rates §7 (8) (e), §7 (9) (a); Classification §17 (31); Discrimination §4 (r); Equalization of Rates §3 (d); Reasonableness of Rates §28 (5r).
Omaha Chamber of Commerce v. C. R. I. & P. Ry., 102 I. C. C. 103. Routing and Misrouting §4 (ee) (eea).
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Omaha Cold Storage Co. v. C. & N. W. Ry., 98 I. C. C. 437. Class Rates §3 (a); Classification §16 (d) (w), §16a (b); Reasonableness of Rates §2 (i), §11 (a); Reparation §7½ (v); Tariffs §18 (uu).
Omaha Grain Exchange v. A. N. Ry., 102 I. C. C. 533. Local Rates and Combinations (3h) (3ha).
Omaha Refining Co. v. Director General, 91 I. C. C. 575. Differentials §2½ (a); Reparation §19 (e) (j) (k), §21 (a); Tank Car Shipments (d); Through Routes and Joint Rates §16 (h).
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Ontario Paper Co. v. C. N. Rys., 95 I. C. C. 66. Canada (g) (h) (i); Reparation §½ (j), §25 (c); Through Routes and Joint Rates §13 (f), §16 (d).
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Opler v. A. & R. Ry., 104 I. C. C. 468. Classification §22 (3s).
Orange Chamber of Commerce v. A. & W. Ry. Co., 98 I. C. C. 101. Blanket Rates §10 (g); Differentials §8 (cc) (dd), §5½ (b); Evidence §59 (a) (b); Export Rates and Facilities §4 (g), §5 (e), §6 (z); Port Differentials (a); Routing and Misrouting §6 (m).
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Oregon Cattle & Horse Raisers Asso. v. N. P. Ry., 104 I. C. C. 51. Live Stock Shipments (ee); Reasonableness of Rates §2 (gg).
Orford Soap Co. v. B. & M., 95 I. C. C. 615. Classification §17 (3h); Embargoes (c) (d); Local Rates and Combinations (j) (ll); Through Routes and Joint Rates §22 (h).
Orford Soap Co. v. B. & M. R. R., 107 I. C. C. 338. Evidence §63 (p); Local Rates and Combinations (3r); Routing and Misrouting §4 (ii).
Orford Soap Co. v. B. & M. R. R., 109 I. C. C. 434. Commodity Rates §5 (6j).
O-So-Ezy Products Co. v. Director General, 96 I. C. C. 220. Classification §5 (hh), §7 (e) (m).
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Otis Steel Co. v. C. V. Ry., 109 I. C. C. 238. Switch Tracks and Switching §3 (ee).
Ouachita Cotton Oil Co. v. M. P. R. R., 91 I. C. C. 750. Claims §5½ (e); Long and Short Hauls §5 (i); Reasonableness of Rates §28 (oo).
Owens Bottle Co. v. Director General, as Agent, 88 I. C. C. 285. Commodity Rates §5; Procedure Before Commission §5.
Ozark Cooperage & Lumber Co. v. A. & R. R. R., 91 I. C. C. 329. Minimums §5 (b) (c), §7 (o) (p); Reasonableness of Rates §28 (hh); Reparation §6 (z).

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Pacific Adjustment Co. v. O. W. R. R. & N. Co., 95 I. C. C. 669. Local Rates and Combinations (k); Proportional Rates I (b), VIII (d).
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Pacific Grain Co. v. Director General, as Agent, 85 I. C. C. 710. Long and Short Hauls §5, §16; Tariffs §13a.
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Pacific Mills, Ltd. v. Director General, as Agent, 85 I. C. C. 677. Long and Short Hauls §6¾; Procedure Before Commission §13; Reasonableness of Rates §32½; Reparation §6; State Rates and Regulations.
Pacific Mutual Door Co. v. A. A. R. R., 101 I. C. C. 633. Evidence §12 (1) (3p), §44¼ (k), §69 (c) (d); Local Rates and Combinations (ff); Percentage Rates (ee).
Pacific Portland Cement Co. v. Director General, 102 I. C. C. 515. Evidence §13 (6) (c); Reasonableness of Rates §28 (10o); State Rates and Regulations (5rc) (5s) (5sa).
Pacific States Paper Trade Ass'n. v. Federal Trade Commission, 4 Fed. (2d) 457. Federal Trade Commission (a).
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Pacific Telephone & Telegraph Co. v. Agnew, 2 Fed. (2d) 155. Courts §5 (a) (b).
Package Sales Corp. v. U. P. R. R. Co., 91 I. C. C. 697. Advanced Rates §3 (i), §5 (3) (b), §19¼ (c), §23 (a); Classification §17 (o); Perishable Freight (c); Tariffs §3 (2) (c), §6 (c).
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Palmer & Co. v. C. G. W. Ry., 112 I. C. C. 323. Through Routes and Joint Rates §13 (5i).
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Palmolive Co. v. C. M. & St. P. Ry. Co., 88 I. C. C. 756. Procedure Before Commission §5.
Paper and paper Articles to New Orleans, 88 I. C. C. 345. Long and Short Hauls §4.
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Paper Boxes between Southeastern Points, 93 I. C. C. 559. Advanced Rates §16½ (f) Equalization of Rates §2 (h); Long and Short Hauls §4½ (i); Reasonableness of Rates §16 (c), §26½ (m).
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Parkersburg Rig & Reel Co. v. C. & N. W. Ry., 107 I. C. C. 187. Local Rates and Combinations (3p).
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Parkersburg Rig & Reel Co. v. M. P., 93 I. C. C. 667. Class Rates §1 (i), §2 (ff) (4b); Percentage Rates (i); Reasonableness of Rates §40 (b); Rearation §12 (j).
Parkersburg Rig & Reel Co. v. M. V. R. R. Co., 91 I. C. C. 583. Local Rates and Combinations (v); Long and Short Hauls §5 (h), §6¾ (v), §13 (ij).
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Parkersburg Rig & Reel Co. v. T. & P. Ry. Co., 88 I. C. C. 463. Distance Rates §3; Reduced Rates §4½.
Parlor Frame Mfrs. Asso. v. A. A. R. R., 93 I. C. C. 506. Classification §3 (h) (i).
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Patterson v. Louisville & N. R. Co., 2 Fed. (2d) 592. Long and Short Hauls §13 (n); Through Routes and Joint Rates §1 (f).
Patterson Commission Co. v. C. of G. Ry. Co., 96 I. C. C. 473. Cars and Car Supply §8 (g), §9⅝a (a) (c); Reasonableness of Rates §28 (6q).
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Peerless Carbon Black Co. v. A. & L. M. Ry., 95 I. C. C. 696. Classification §7 (j); Reduced Rates §5 (j) (aa) (bb).
Peerless Lumber Co. v. Director General, as Agent, 88 I. C. C. 457. Cars and Car Supply §7.
Peerless White Lime Co. v. C. & E. I. Ry., 95 I. C. C. 260. Commodity Rates §5 (3b); Evidence §66 (g); Long and Short Hauls §13 (f) (q); Reasonableness of Rates §28 (4z).
Penalty Charge on Shipments in Fiber Boxes, 95 I. C. C. 528. Classification §11¾ (a), §12¼ (b) (d), §14 (b), §16 (r).
Pendleton & Gilkey v. Director General, 95 I. C. C. 699. Advanced Rates §8½a (n) (q); Local Rates and Combinations (l); Tariffs §12 (d) (e); Through Routes and Joint Rates §21 (j).
Penn. Grain & Feed Co. v. Reading Co., 102 I. C. C. 100. Class Rates §2 (5v); Reasonableness of Rates §27¾ (h); Reduced Rates §4½ (aag); Routing and Misrouting §5 (ee).
Pennsylvania R. Co. v. Cameron (Pa., 1924), 124 Atl 638. Courts §12 (a); Freight Charges (i) (j) (k) (l); Special Contracts §2 (a); Undercharges §7 (b) (c).
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Salina Northern R. R. v. A. T. & S. F. Ry., 92 I. C. C. 475. Advanced Rates §7 (6) (i); Divisions §1 (c), §10 (b) (cd); Tap Lines §10 (a).
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San Antonio Paper Co. v. S. A. & P. Ry., 93 I. C. C. 352. Commodity Rates §5 (pp); Reasonableness of Rates §26½ (k).
San Diego Chamber of Commerce v. A. & V., 102 I. C. C. 27. Adjacent Foreign Country (c); Canada (u); Facilities and Privileges §15 (3na); Foreign Commerce §½ (a), §1 (a); Mexico (da); Through Routes and Joint Rates §11 (n), §13 (xxa).
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Sauquoit Paper Co. v. Director General, 92 I. C. C. 61. Class Rates §2 (3r); Long and Short Hauls §5 (d), §13 (c); Reasonableness of Rates §28 (ss).
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Shafer, Atty. Gen. of N. D. v. Farmers Grain Co. of Embden, 45 Sup. Ct. 481. State Rates and Regulations (4n) (4o) (4p) (4q).
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Shanard Elevator Co. v. M. E. Ry., 93 I. C. C. 151. Absorption of Charges §5 (a); Switch Tracks and Switching §3 (m), §9 (c).
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Shealey v. Seaboard Air Line Ry. Co., (S. C., 1924) 126 S. E. 622. Switch Tracks and Switching §2 (a).
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Shreveport Creosoting Co. v. L. & P. Ry., 92 I. C. C. 519. Act to Regulate Commerce §2 (c) (d); Claims §1 (o) (p); Long and Short Hauls §6¾ (f); Reasonableness of Rates §7½ (aa); Reparation §½ (g) (h), §6 (ij), §7 (s), §7½ (n) (o) (p), §10½ (b) (c) (l) (m) (n), §17½ (a) (b) (c) (d) (f) (g) (h) (i) (j), §19 (f).
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Simon v. Southern Ry., 102 I. C. C. 325. Classification §10 (j), §28 (dd); Tariffs §1 (d), §18 (3kd).
Sinclair Oil & Gas Co. v. C. & N. E. Ry., 96 I. C. C. 286. Evidence §30 (f); Long and Short Hauls §4½ (m); Reasonableness of Rates §28 (6d); Reconsignment §3 (1), §6½a (e); Routing and Misrouting §7 (r), §7½ (o).
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Sioux City Gas & Electric Co. v. C. B. & Q. R. R., 112 I. C. C. 344. Tank Car Shipments (ee).
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Sioux Falls Livestock Exchange v. A. T. & S. F. Ry., 109 I. C. C. 501. Discrimination §1 (f); Evidence §47b (e); Live Stock Shipments (zz).
Sisal from Gulf Ports, 85 I. C. C. 467. Advanced Rates §7 (6); Through Routes and Joint Rates §24.
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Sisal Sales Corp. v. B. & O., 93 I. C. C. 297. Class Rates §2 (3z); Facilities and Privileges §16½ (c); Import Traffic §2 (h).
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Smith Richardson & Conroy v. N. Y. C. R. R., 107 I. C. C. 553. Rail-and-Water Rates (3k).
Smokeless Fuel Co. v. Chesapeake & O. Ry Co., (Va., 1925) 128 S. E. 624. Demurrage §10¾ (d) (e), §23 (f) (g) (h); Special Contracts §2 (j); Tariffs §7 (z) (aa) (bb) (cc) (dd).
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Smythe Company v. Chesapeake Steamship Co., 92 I. C. C. 95. Rail-and -Water Rates (k) (jj); Reasonableness of Rates §7½ (r), §16½ (a) §32½ (r); Reduced Rates §4½ (k).
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Somerville Iron Works v. C. R. R. of N. J., 101 I. C. C. 683. Blanket Rates §2 (gh), §10½ (3h), §13 (x); Evidence §13 (1) (f) (t); Reasonableness of Rates §7½ (kk).
Somerville Iron Works v. Long Island R. R. 102 I. C. C. 511. Blanket Rates §10½ (tt) §11 (ba), §15½ (c).
South Carolina Produce Assn. v. A. & R. R. R., 96 I. C. C. 107. Classification §16 (s); Reasonableness of Rates §2 (cc); Refrigeration §4 (c) (j); Weights and Weighing §2½ (f) (g).
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South Dakota Railroad Commission v. C. & N. W. Ry., 92 I. C. C. 174. Distance Rates §3 (h) (vv).
South Dakota R. R. Commissioners v. C. & N. W. Ry., 107 I. C. C. 35. Commodity Rates §5 (5r); Reasonableness of Rates §2 (hh).
South River Lumber Co. v. N. & W. Ry., 109 I. C. C. 173. Equalization of Rates §2 (q).
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Southeastern Express Co. v. American Ry. Express Co., 44 Sup. Ct. 560. Courts §6 (a) (b); Express Companies §16 (a); Through Routes and Joint Rates §1 (d).
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Southeastern Points, 93 I. C. C. 559. Evidence §44¼ (b).
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U. S. Gulf Refining Co., 45 Sup. Ct. 597. Classification §10 (e), §28 (t); Courts §10 (f); Crimes §7 (a), §28¾ (a); Tariffs §11 (f) (g).
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United States v. Live Poultry Dealers' Protective Ass'n, 4 Fed. 2d 840. Act to Regulate Commerce I (h).
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United States v. Pennsylvania R. Co., 45 Sup. Ct. 43. Terminal Facilities §1 (c) (d) (e), §7 (c).
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United States v. Southern Ry. Co., 1 Fed. (2d) 607. Crimes §8 (a); Twenty Eight Hour Law (a).
United States v. Tippitt, 298 Fed. 495. Crimes §35 (a) (b) (c).
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United States v. Western & A. R. R., 297 Fed. 482. Safety Appliance Acts (c) (d) (e) (f); State Rates and Regulations (aa).
United States v. Winkler, 299 Fed. 832. Crimes §34 (a).
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Wallingford Bros. v. C. R. I. & P. Ry., 102 I. C. C. 239. Facilities and Privileges §15 (zz), §18 (jc); Reasonableness of Rates §2 (11b); Through Routes and Joint Rates §18 (ba).
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Walsh Fire Clay Products Co. v. C. & A. R. R., 98 I. C. C. 458. Blanket Rates §12 (c); Evidence §64 (p); Reparation §12 (d); Switch Tracks and Switching §4 (pp).
Walsh Fire Clay Products Co. v. Director General, 95 I. C. C. 439. Act to Regulate Commerce II (k); Allowances §10 (c); Tariffs §11 (h); Weights and Weighing §2½ (b), §7½ (b).
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Warren Brothers Co. v. S. P. Co., 112 I. C. C. 87. Class Rates §2 (8g).
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